

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Staff: MKH-V
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5/8/01 (postponed by applicant);
6/15/01 (continued); 8/10/01 (denied)
Commission Action: Denied/Vote: 5--4



TU10b

STAFF REPORT: REVISED FINDINGS

APPLICATION NO. 4-00-259

RECORD PACKET COPY

APPLICANT: Malibu Beachfront Properties (Ralph Herzig)

AGENTS: Susan McCabe, Alan Block, Skylar Brown

PROJECT LOCATION: 21200 & 21202 Pacific Coast Hwy., Malibu, Los Angeles Co.

COMMISSION DECISION: Denied.

DATE OF COMMISSION ACTION: August 10, 2001, in Redondo Beach (denial);
December 11, 2001 in San Francisco (revised findings).

COMMISSIONERS ON PREVAILING SIDE: Commissioners Allgood, Dettloff, McCoy, Nava, and Wan.

PROCEDURAL NOTE: Adoption of the revised findings requires a majority vote of the members from the prevailing side present at the August 10, 2001 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings. The associated motion and resolution are located on Page 3 of this report.

PROJECT DESCRIPTION: Redivide two adjacent beachfront lots (one lot comprised almost entirely of the flood channel of Las Flores Creek) and construct eight two-story, 27 ft. high above existing grade residential condominium units totaling approximately 19,000 sq. ft., private stairway to beach, 14 ft. high "privacy" wall along westernmost parcel boundary, widen flood channel of Las Flores Creek by 20 feet, construct seawall, return wall, retaining wall along Las Flores Creek channel seaward of proposed bulkhead, 29 paved parking spaces, septic disposal system, demolish and remove residual debris from foundation of previously burned structure, and undertake 1,000 cu. yds. of grading (all cut and export). The proposed project is residential development of beachfront lands presently designated for Visitor-Serving Commercial use in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP).

Gross (Total) Lot Area: 30,570 sq. ft. (.70 acres)
(Total area includes all easements and Las Flores Creek)
Building coverage: 8,826 sq. ft.
Pavement coverage: 4,282 sq. ft.
Landscape coverage: 772 sq. ft.
Parking spaces: 27 enclosed; 2 guest

SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the Commission **adopt** the following revised findings in support of the Commission's decision on August 10, 2001 to **deny** the proposed project. The Commission found that the proposed project is not consistent with the applicable Chapter Three policies of the Coastal Act. Because staff had recommended approval of the proposed project in the staff report published prior to the previous hearing (but with a requirement for substantially revised plans, which the applicant declined to accept), and because the Commission denied the project at the hearing, revised findings are necessary. Staff recommends, therefore, that the Commission adopt the resolution and revised findings set forth herein in support of its action to deny a permit for the proposed project. **The motion and resolution are found on Page 3 of this report.**

LOCAL APPROVALS RECEIVED: City of Malibu approvals include General Plan and General Plan Land Use Map Amendment 96-001 (with Negative Declaration 96-009) and Rezoning and Zoning Map Amendment 96-002, July 22, 1996, Lot Line Adjustment 98-010 approved January 19, 1999, and Planning Department Approval-In-Concept for subject proposal, including Plot Plan Reviews 99-183 and -184, Conditional Use Permit 99-004 and -005, and Negative Declaration 99-013 and -014, all cited in planning approval-in-concept dated November 16, 1999, and Environmental Health Department septic approval-in-concept dated October 14, 1999.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan (LUP); CDP No. P-79-4918 (Felina's); CDP No. P-75-6353 (Hall); Report of Geotechnical Investigation, Proposed Residence, 21202 Pacific Coast Highway, Malibu, prepared by Law Crandall Engineering and Environmental Services, Inc., dated August 4, 1999; State Lands Commission Letter of Review, dated February 17, 2000; Streambed Alteration Agreement No. 5-002-00, Department of Fish and Game, dated April 6, 2000; 17-page excerpt from a Draft 1992 Report by Moffatt & Nichol Engineers relating to Shoreline Change, and prepared for the City of Malibu Comprehensive Plan ("Draft Moffatt and Nichol Engineers Report"); U.S. Army Corps of Engineers (1994) Reconnaissance Report: Malibu/Los Angeles County Coastline, Los Angeles County, California; "The Effect of Dam Construction in the Malibu Creek Watershed on the Malibu Coastline Sediment Budget", a thesis prepared by Reinard Knur, 2000, presented to the Faculty of the Departments of Civil Engineering & Geology, California State University, California; Conditional Certificate of Compliance, issued by City of Malibu, dated August 12, 1998.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission adopt the revised findings in support of the Commission's action on August 10, 2001, denying Coastal Development Permit 4-00-259.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings for denial of the project as proposed, as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the August 10, 2001, hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for denial of Coastal Development Permit 4-00-259 on the ground that the findings support the Commission's decision made on August 10, 2001, and accurately reflect the reasons for that decision.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description, Physical Setting; Background

The applicant proposes to redivide two adjacent beachfront lots within the City of Malibu (one lot comprised almost entirely of the flood channel of Las Flores Creek) and to construct eight two-story, 27 ft. high above existing grade residential condominium units totaling approximately 19,000 sq. ft., a private stairway to the beach, a 14 ft. high "privacy" wall along the westernmost parcel boundary, widen the flood channel of Las Flores Creek by approximately 20 feet, construct a seawall, a return wall, and a retaining wall along Las Flores Creek channel (extending seaward of the proposed seawall, along the widened creek channel), construct 29 paved parking spaces, install a new septic disposal system, demolish and remove residual debris from foundation of previous structure reportedly burned to the ground in 1993, and undertake 1,000 cu. yds. of grading (all cut and export), at 21200 and 21202 Pacific Coast Highway, within the City of Malibu.

The proposed project location is comprised of approximately three-fourths of an acre (approximately 30,000 sq. ft. gross area) of beachfront land on the easternmost end of La Costa Beach, immediately upcoast of a channelized portion of Las Flores Creek.

Duke's restaurant is located downcoast, on the opposite side of Las Flores Creek, and a beachfront condominium complex and the Unocal station are located adjacent to the subject site, on the upcoast (western) side. Access to the subject site is taken from Pacific Coast Highway (between Rambla Pacifico Road and Las Flores Road), which borders the northern boundary of the site. The subject site is vacant, except for the structural remains of the former Albatross restaurant (abandoned in 1978), which according to the applicant, burned down in the 1993 Malibu wildfire. The downcoast lot is comprised almost entirely of a channelized portion of Las Flores Creek.

The applicant claims to have two separate legal lots, identified as Parcel 1 (upcoast) and "Parcel 2" (downcoast) in the applicant's submittal. Parcel 2, which is the flood channel of Las Flores Creek, does not appear to have been considered a separate legal lot until the applicant acquired it in 1996. On August 12, 1998 the applicant applied for, and on the same day received approval from the City of Malibu for, a Conditional Certificate of Compliance recognizing the flood control channel as a separate legal lot. The City imposed a condition on the Certificate of Compliance requiring the applicant to construct flood control improvements within the stream channel, which, according to City staff would alleviate flooding of upstream parcels the City has acquired on the inland side of Pacific Coast Highway.

The issuance of the Certificate of Compliance enabled the applicant to seek a land redivision (characterized by the City as a lot line adjustment). The redivision, combined with the City's application of a new multi-unit residential zoning designation to the property (4 unit maximum per parcel) enabled the applicant to secure developable area from the upcoast parcel for use on the redivided downcoast parcel (which otherwise has little net developable area) and thereby double the number of condominiums that the City could technically approve for the subject site.

The proposed 19,000 sq. ft., eight-unit condominium project would therefore convert beachfront lands designated for Visitor-Serving Commercial use in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) to residential use. The City of Malibu is no longer bound by the LUP, which was certified before the City incorporated. The City has rezoned the subject site, but the City's new zoning is not certified by the Commission and therefore is not binding on the Commission in considering the appropriate land use for the parcel(s). The Commission continues to rely on the certified LUP as guidance in evaluating development proposed in the Malibu area for consistency with the applicable policies of the Coastal Act.

In addition to the physical constraints posed by the Las Flores Creek corridor draining south across the site to the Pacific Ocean, development of the site is also constrained by vertical and lateral public access easements on the site that have been owned by the State Coastal Conservancy ("Conservancy") since 1982. The Conservancy owns an unimproved 10 ft. wide vertical access easement along the Las Flores Creek boundary of the upcoast parcel and a 25 ft. wide lateral public access easement (plus a 5 ft. privacy buffer) ambulatory with the movement of the Mean High Tide Line traverses

the beachfront side of the subject lands. Both easements have been shown in publicly recorded documents since 1982.

The closest improved vertical accessway upcoast of the subject site is over two miles away, at Zonker Harris Accessway. Public access from Zonker Harris to La Costa Beach is limited by a number of physical impediments to pedestrians. The nearest improved downcoast vertical accessway is at Moonshadows Restaurant, approximately one mile east of the subject site. Access to La Costa Beach from Moonshadows is equally limited by the revetment in front of Duke's Restaurant, downcoast from the subject site, on the opposite bank of Las Flores Creek. The Duke's revetment completely blocks pedestrian passage on all but a few days of the year, during the lowest low tide conditions. For these reasons, the Conservancy considers the public access easements on the subject lands to be of significant value

Initial Commission Consideration

At the Commission's November 2000 meeting, the staff recommendation was for denial of the project as submitted due to the inconsistency of the proposed residential development with the underlying Visitor-Serving Commercial land use that had been previously certified by the Commission.

The applicant explained that visitor-serving development of the site (examples include a hotel, restaurant, a combination of these, or a convenience store) would not be economically feasible from the applicant's perspective. The applicant did not submit an economic feasibility analysis prepared by a qualified economist, business analyst or accountant, or disclose to the Commission that the property had been previously seized by the Federal government and thereafter purchased by the applicant at a discounted, but undisclosed, price. The applicant testified, however, that the physical constraints of the site and the site's history of failed visitor-serving businesses demonstrated that such development was infeasible.

The applicant requested that the Commission therefore disregard the designation of the site as Visitor-Serving Commercial in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) based on his statement that visitor serving uses were not feasible for the property in question, and instead approve multi-unit residential development of the site.

Although the Commission did not vote on the proposed project at that hearing, the consensus of the Commissioners present appeared to be that the residential use could be approved. The Commission directed staff to determine the appropriate footprint for development of the site, and other potential applicable conditions of approval, in light of public coastal access concerns raised at the meeting.

The applicant thereafter withdrew the then-pending application to allow staff time to confer with the Conservancy regarding vertical and lateral public access easements owned by the Conservancy on the subject site and to develop a recommendation

regarding the appropriate footprint for development of the subject site and applicable special conditions of approval.

New Recommendation Considered by Commission

Subsequently the staff prepared a recommendation for the Commission's May 8, 2001 meeting. The item was postponed before the hearing, however, at the applicant's request and was subsequently heard by the Commission at the Commission's June 15, 2001 meeting. The Commission received testimony concerning the proposed project at the June meeting as scheduled, but continued the item without voting on the proposed project, specifically directing staff to: 1) Determine the extent of landward setback necessary to protect the Conservancy's 25 ft. wide lateral public access easement across the seaward portion of the subject site (the easement is ambulatory with the Mean High Tide Line); and 2) Evaluate the project's adverse impacts on the Conservancy's existing vertical access easement on the upcoast side of Las Flores Creek, and recommend potential mitigation measures.

Conservancy's Public Access Concerns

After the June, 2001 hearing, the Conservancy staff provided Commission staff with a copy of a letter dated July 18, 2001 addressed by the Conservancy's Coastal Access Program Manager to the applicant's attorney (see Exhibit 19). The letter stated the Conservancy's position with regard to the location of the vertical and lateral easements and the potential impacts of the applicant's proposal on the easements. The Conservancy's letter also confirmed that an alternative improved public vertical accessway on the upcoast property boundary would adequately mitigate the adverse impacts of the proposed project on the Conservancy's existing vertical public access easement.

The Conservancy's letter stated:

... With respect to the vertical access at the site, you represent that the proposed development "...does not block or restrict public access in any way." To the contrary, the proposed development will make it impossible for the public to reach the Conservancy's 10-foot wide vertical easement without trespassing on your client's property. Thus, the proposed development will adversely impact the existing public access to the shoreline.

... we accept your proposed alternative to address the adverse impacts to our existing vertical access easement, as follows: Your client will construct at an alternative location on the subject property as described in your July 8th letter, a vertical public accessway extending from the public sidewalk (including the public sidewalk to be constructed by your client as a condition of this coastal development permit) to the seaward-most extent of the subject property, connecting with stairs down to the lateral public

easement on the beach. The proposed alternative accessway would be constructed, publicly signed and not gated, within one year of issuance of the coastal development permit or within such additional time as may be authorized by the Executive Officer of the Coastal Conservancy. The new vertical access easement in favor of the Conservancy would be recorded prior to issuance of the coastal development permit.

The letter also addressed the Conservancy's lateral public access easement across the seaward portion of the applicant's proposed site:

With respect to the lateral easement owned by the Conservancy, the proposed development will adversely affect our easement if the footprint extends at any point any further seaward than 30-feet landward of the State Lands Commission's designated 1928 mean high tide line (MHTL). Our easement will remain the same, that is, *ambulatory*, as measured 25 feet inland from the mean high tide during each day. The additional 5 feet represents a privacy buffer which your client could elect to eliminate by recording a lateral access easement offering the public access to the dripline of the proposed structures.

Further, although the applicant's attorney testified at the June 15, 2001 Commission hearing that the Conservancy's lateral access easement extends 25 feet inland from the 1969 Mean High Tide Line, the recorded easement language defines the lateral access easement as follows:

That portion of the land described in Exhibit A (which is a legal description of the property) lying within 25 feet as measured inland from the water line (which is understood by both parties to be ambulatory as will the 25 feet strip) but in no case closer than 5 feet to any structure.

Therefore the assertion of the applicant's attorney at the June 15, 2001 hearing (that the 25 ft. easement must be referenced strictly from the 1969 MHTL and no other) is incorrect. That the line moves with the ambulatory tide line is clear from the text of the applicable recorded easement. The applicant's attorney asserted that an "Exhibit C" to the recorded lateral access easement proves that the 1969 MHTL is established as a fixed line from which the inland extent of the Conservancy's 25 ft. lateral access easement must be interpreted.

An examination of the referenced "Exhibit C" reveals that it is nothing more than a photocopy of an assessor's parcel map and shows the approximately 26 properties that line Pacific Coast Highway upcoast from and including the applicant's site. The map has no indicated scale, and an assessor's parcel map scale is too small for interpretation of easements in any case (the applicant's entire property is reduced to about one inch in size at such a scale). The 1969 MHTL shown in the referenced exhibit appears to be illustrative only, as evidenced by the fact that the same map and MHTL indicator appear in different assessor parcel map pages that show the parcels in

the La Costa Beach section of the Malibu coastline, including the subject site, many years subsequent to the 1981 recordation of "Exhibit C." A copy of "Exhibit C" is included in Exhibit 23 and a comparative example of an assessor's map book page for the same location in a different year, with the same MHTL illustration, is shown in Exhibit 24.

As stated above, the Conservancy's recorded lateral access easement and all underlying documents prepared previous to the Conservancy's acceptance of the Offer-to-Dedicate consistently state that the 25 ft. wide easement is to be measured inland from the ambulatory mean high tide line (Exhibit 20).

Applicant's claims and representations

The applicant's attorney asserted at the June 15, 2001 Commission hearing and at the August 10, 2001 hearing that: 1) the subject area of La Costa beach is accreting (advancing seaward), not eroding as the previous staff reports stated; 2) that the Conservancy's lateral access easement should be interpreted strictly as a landward setback of 25 ft. (plus 5 ft. privacy buffer) from the 1969 MHTL and no other; and 3) that a disaster rebuild would automatically be authorized under the Coastal Act for reconstruction of the former, burned out restaurant on the former footprint that is seaward of such a setback (the applicant states that the structure was abandoned in 1978 and burned to the ground at the time of the 1993 Malibu wildfire). According to the applicant's attorney, the third contention justifies a decision by the Commission to exercise some special standard of review, rather than the policies of Chapter 3 of the Coastal Act, and to thereby authorize encroachment into the Conservancy's 25 ft. wide lateral access easement by approving the applicant's presently proposed footprint (the footprint of the applicant's proposed project encroaches as much as 20 feet seaward into the Conservancy's lateral access easement, as measured according to the applicant's own prescribed methodology, from the 1969 MHTL).

Applicant's claim that La Costa is an accreting beach

With respect to item 1) above, site-specific information recorded by staff and reported in letters submitted to the Commission and included in Exhibit 19, and reported by at least one neighbor residing in the upcoast condominiums located immediately adjacent to the subject site (Scott Haller, personal communication with Commission staff), and shown in aerial photographs of the site in Commission archives, demonstrates that the applicant's parcel is regularly subject to wave action landward of the applicant's proposed project footprint (or is in the "swash zone" as coastal engineers refer to the area routinely affected by tidal action). The subject site shows established debris upcast deposit patterns (the inland extent of the band of driftwood, etc., cast on the beach repeatedly by wave action) and coastal erosion patterns caused by wave energy as high as the 16 ft. elevation contour shown on the applicant's project plans. These patterns are quite apparent in the aerial photographs of the site available in the Commission's archives. Slides of the subject site taken by Commission staff, including slides taken the week of the August 2001 hearing also demonstrate these patterns

(which include debris cast lines to at least the 16 ft. elevation contour, evidence of wave runup significantly further inland than had previously been disclosed by the applicant, inundation of the 1969 mean high tide line by surf, wet sand at least ten feet landward of the 1928 mean high tide line at the downcoast corner of relict foundations, and wave break under the condominiums immediately upcoast before the daily high high tide was reached) and documented that the wave uprush patterns on the subject site were significantly further inland than the applicant had represented as recently as the June, 2001 hearing.

A neighbor of the proposed project site residing in the immediately adjacent upcoast condominiums has contacted staff by telephone on two occasions to report that the area beneath the condominiums is typically subject to wave uprush and tidal coverage at least part of each day during most of the year, consistent with staff observations on numerous site visits and as evidenced by slides shown by staff at the August 10, 2001 hearing.

Nevertheless it is true and has been reported by staff in previous reports prepared for this project, and stated in correspondence submitted to the Commission by interested parties, that a beach often builds at the mouth of Las Flores Creek and along the subject site during the less turbulent conditions of the summer months. Sand is deposited during the summer season by waves and by longshore currents and is not removed by storm wave action during that time. But at times of peak summer sand deposition, this portion of La Costa Beach is still a relatively narrow strip. No significant beach was present during the site visits of Commission staff in August, 2001, as shown in slides taken by staff in August and shown at the August Commission hearing. Therefore, if there is, as the applicant contends, a long-term accreting pattern established for this beach, it is proceeding at an almost imperceptibly slow rate. However, as explained below, the Commission's coastal engineer has determined that the beach at this location is not accreting, but is either an oscillating or slowly eroding beach. The condition of the subject site in August, 2001 clearly indicates that there are at least some years when no beach returns to the subject site. Therefore, buildout of the applicant's proposed project footprint would completely preclude public use of the lateral access easement owned by the Conservancy in such years.

The applicant represents in asserting that La Costa is an accreting (growing) beach that the Conservancy's lateral access easement is therefore moving steadily seaward in similar fashion to the supposedly accreting beach. The applicant contends, based on his theory of La Costa Beach accretion, therefore, that the Commission should authorize the construction of the proposed project in the proposed footprint.

Neither the Conservancy (Exhibit 19) nor the Commission staff, including the Commission's senior coastal engineer, nor the substantive literature on coastal processes affecting this area of Malibu, agree with the applicant's conclusion that the easternmost portion of La Costa Beach is accreting (particularly as a long-term trend).

If the applicant's assertion is that La Costa Beach has been accreting since the MHTL survey of 1969, then the proposed project should be fronted by an increasingly wide, and thus increasingly passable, sandy beach over time. To the contrary, the approximate location of the 1969 MHTL was observed to be well under water during a site visit by staff in August of 2001.

The State Coastal Conservancy staff has also repeatedly stated in correspondence with the applicant (see Exhibit 19) and in direct testimony at the June 15, 2001 public hearing on this application, that the Conservancy believes that the proposed project, built in the footprint the applicant presently seeks, will adversely affect—and potentially eliminate—the vertical and lateral access easements owned by the Conservancy on the subject site. Conservancy staff visited the subject site on at least two occasions in 2001 (once in August 2001) and found no evidence that the beach, and thus the Conservancy's lateral access easement across the subject site, has moved seaward from that portion of La Costa Beach that would have been subject to an easement measured from the MHTL in 1969.

The Commission's senior coastal engineer, Lesley Ewing, has evaluated the two page letter signed by the applicant's consulting coastal engineer (Exhibit 22), which is the only document submitted by the applicant to support the applicant's claim that the subject beach area is accreting. Ms. Ewing's memorandum (Exhibit 21) prepared subsequent to the June hearing concludes that the applicant's engineer relies on a draft study prepared for the City of Malibu in 1992 by Moffatt and Nichol Engineers—a draft that was never published in final form nor peer-reviewed, to the knowledge of staff— as evidence of a pattern of beach accretion. The draft report cited by the applicant's consultant contains hand-drawn, relatively crude draft illustrations of coastal process data charted in a cut-and-paste manner below a roughly correlating map of the Malibu coastline. The draft state of the report and its illustrations do not invite any precise analysis of the general data presented in the draft. In addition, the Commission's coastal engineer raises questions about the completeness of the data set relied on in the draft report and notes that significant coastal engineering studies published *since* the release of the Moffatt and Nichol draft report neither reference the report *nor* concur independently with the conclusion the applicant has drawn from the Moffatt and Nichol draft (that the downcoast portion of La Costa Beach displays a long-term accreting trend).

As noted in the memorandum attached as Exhibit 21, the Commission's senior coastal engineer located equal and perhaps more compelling, and more recent, technical literature on the shoreline processes affecting the Malibu coastline, including a final study published by the Army Corps of Engineers in 1994. The Corps' document, in particular, indicates that the downcoast portion of La Costa Beach is more likely in a long-term oscillating or slightly erosional pattern than an accreting pattern.

Additional effects of sea level rise

Moreover, as discussed in this report, sea level rise is a confounding trend that has only recently become widely recognized as a force that will drive and perhaps even dramatically accelerate, the overall inland retreat of beaches in southern California. Because sea level rise will almost certainly cause shoreline retreat, though the exact extent and timeline of such retreat is uncertain, the most inland extent of Mean High Tide Lines that have been delineated along southern California beaches during the past century (such as the 1928 MHTL recognized by the State Lands Commission along La Costa Beach) will likely be revisited or exceeded in landward extent by the Mean High Tide Lines measured in the future--even on beaches that may have had an overall accreting trend during the same century.

For this reason, the Commission and the Conservancy's interpretation of the lateral access easement traversing the subject site as being ambulatory and extending as far as 25 feet inland from the 1928 MHTL (the most landward MHTL recognized by the State Lands Commission to date) is consistent with current projections by the Federal Emergency Management Agency (FEMA), the Environmental Protection Agency (EPA), and other state and federal agencies evaluating the potential for sea level rise to cause future shoreline retreat.

Any MHTL survey is a "snapshot" in time

Further, as noted by Commission staff at the June 2001 hearing and reiterated at the August 2001 hearing, any one MHTL survey is only a "snapshot" taken at that point in time. The MHTL moves daily, monthly, yearly, in accordance with seasonal changes, fluctuations in coastal processes, and in response to storm wave attack during the winter months, or the deposition of sand and sediment during the calmer summer months.

The terms of the lateral access easement owned by the Conservancy specifically note the ambulatory nature of the MHTL, from which the easement is measured at any given time. This recognition ensures that the lateral access easement will be interpreted in accordance with actual shoreline conditions over time, and demonstrates that the easement was never intended to occupy an area of the beach permanently fixed at one point in time.

Use of 1928 MHTL in light of likely future shoreline erosion and historic presence on site

As stated previously, the Commission has not identified any convincing evidence that the portion of La Costa Beach adjacent to Las Flores Creek is accreting, but finds at least equally compelling evidence that the beach is either oscillating in relative equilibrium over time, or eroding. Therefore, in light of reduced sand supplies in the overall sand budgets statewide attributable to shoreline armoring and stream alteration, and the widely accepted predictions that sea level rise is a near-certainty in the future, the Commission, in consultation with the State Coastal Conservancy, and in light of recent documentation by staff and others of the actual physical condition and limited

extent of the sandy beach adjacent to the applicant's proposed project location, finds that the Conservancy's lateral access easement should be interpreted to extend 25 ft. plus a 5 ft. privacy buffer specified in the easement documents, for a total of 30 ft., landward of the landwardmost MHTL (that is, the 1928 MHTL) acknowledged to date by the State Lands Commission.

The Commission notes that if the applicant believes that the MHTL has actually moved seaward of the 1928 MHTL relied on by the Commission to evaluate the project's impacts on the Conservancy's lateral access easement on the subject site, the applicant may request a new delineation of the MHTL prepared by the California State Lands Commission, and that the applicant has been advised of this.

Disaster replacement with Visitor-Serving Commercial use

As noted previously, the applicant's attorney contended at the June 15, 2001 hearing, in correspondence with the State Coastal Conservancy since that hearing, and at the August 10, 2001 hearing, that the applicant or other future landowner could simply invoke the disaster replacement provisions Section 30610(g) of the Coastal Act and rebuild on the subject site without seeking further permits from the Commission. Because the previously burned-out restaurant/hotel complex extended further seaward than the development footprint presently proposed by the applicant, the applicant has informed the Conservancy that the proposed project should benefit from a more permissive standard of seaward encroachment than would otherwise apply under the Chapter 3 policies of the Coastal Act.

This argument is irrelevant to the Commission's consideration of the applicant's pending coastal development permit application. First, the project before the Commission in Coastal Development Permit Application No. 4-00-259 is not a disaster replacement. When the legislature adopted the Coastal Act it allowed for disaster replacement in very limited circumstances and based upon that established provisions within the Coastal Act that if there was a disaster replacement that met those circumstances a permit would not be required for such development.

Since the proposed project does not meet any criteria for a disaster replacement as set forth in the Coastal Act, a permit is required. Rebuilding a burned out visitor-serving commercial use with a residential use would not qualify as a disaster replacement, even if the same building footprint were proposed. As a consequence, there is no basis (as the applicant seems to suggest), for a different standard of review than the Coastal Act for this project. The fact that the applicant might under some circumstances be able to do a disaster replacement for a different project doesn't give the applicant any special entitlement with respect to the presently proposed project. The applicable standard upon which the Commission must base its review is the Chapter 3 policies of the Coastal Act and there are no other applicable standards that the Commission should apply.

Nor do the disaster replacement provisions contained in the Coastal Act give the applicant any particular precedence on the use of state lands, whether those lands are under the control of the State Lands Commission or whether they are accepted easements that are under the control and purview of the Conservancy. There is nothing about the disaster replacement provisions in the Coastal Act that in any way abrogates any of those legal rights with respect to public lands.

Posing alternative of a Disaster Rebuild is inconsistent with the applicant's previous testimony that constructing a visitor-serving commercial development on the site is infeasible, thereby seeking and justifying residential development

In addition, the applicant's claim at the June 15, 2001 hearing and in correspondence with the Conservancy made subsequently, and raised again at the August 10, 2001 hearing that a restaurant could be rebuilt within the old footprint of the burned out former structure (a footprint that extended approximately six (6) feet further seaward than the footprint of the project the applicant presently proposes) is in conflict with the applicant's testimony to the Commission at the November 17, 2000 hearing. At that hearing and in ex parte communications disclosed by Commissioners at that hearing, it was clearly represented to the Commission and to at least some Commissioners before the hearing by the applicant and the applicant's agents, that no visitor serving commercial use of the subject site was feasible.

On the basis of that testimony, the majority of the Commission seemed to conclude that the applicant had adequately demonstrated the infeasibility of constructing a visitor-serving commercial development on the subject site, and that residential development of the site could be approved, contrary to the staff's recommendation that the change of use from visitor-serving commercial to residential be denied.

If the applicant now asserts that a rebuild of a visitor-serving commercial use of the site is feasible after all, and that the applicant is prepared to pursue such a use of the site in the future, or believes that a future land owner would find such a pursuit economically feasible, a question as to the validity of the applicant's previous testimony is raised. It may be that the applicant now believes that a visitor-serving use of the site is feasible after all, even if it would not achieve the particular goals or financial objectives of the present applicant.

Applicant purchased a severely challenged site with uncertain land use entitlements as a highly speculative investment

The applicant asserts that he has an entitlement or justified expectation that the Commission should allow him to construct eight large condominiums (averaging approximately 2,300 sq. ft. per unit, with at least one unit that exceeds 3,000 sq. ft.) with blue water views on the subject site, even if such construction encroaches into the Conservancy's easements. The staff notes that the applicant purchased the subject site in 1996 after the property had been seized by the federal government (according to the applicant). The site was purchased by the applicant even though it was well

documented that the site was subject to an unusual number and degree of natural hazards, encumbered by publicly recorded easements held by the State Coastal Conservancy, and had a long history of business failures. The applicant states that at the time he acquired the property, it contained only the burned out remnants of a former restaurant structure that had not been operated successfully and had been abandoned in 1978 and burned to the ground at the time of the 1993 Malibu wildfire.

Area occupied by flood channel granted development consideration by the City of Malibu in development agreement-style negotiated land use entitlement

While the applicant claims the site totals 30,570 sq. ft. in gross area, approximately 12,000 sq. ft. of that area is occupied by the Las Flores Creek corridor draining seaward across the site, and by public access easements owned by the State Coastal Conservancy. The easterly parcel claimed as a separate parcel by the applicant is comprised almost entirely of the creek's flood channel. The lands comprising the two parcels appear to always have been held jointly in the past, and there is no evidence that the parcels were ever considered separate legal parcels before the applicant applied for, and received, a Conditional Certificate of Compliance from the City of Malibu on August 12, 1998.

The City of Malibu staff indicates that the certificate was issued to secure a development package with the applicant that would require the applicant to pay for, and construct, flood control improvements in Las Flores Creek and thereby reduce flooding on parcels acquired by the City of Malibu upstream.

The site was not zoned for residential use when the applicant acquired it – it was zoned and designated (under the certified Malibu/Santa Monica Mountains Land Use Plan) for Visitor-Serving Commercial use. According to the applicant, while still in escrow to buy the property in 1996, the applicant worked out the equivalent of a development agreement with the City of Malibu wherein in exchange for substantially increased development entitlements from the City (enabled through amendment of the zoning provisions, a conditional certificate of compliance, and a lot line adjustment increasing the area of a previously undevelopable stream channel parcel, and a number of variances to relieve the applicant of certain parking restrictions, etc.), the applicant would pay for and build flood control improvements for the City's benefit within the Las Flores Creek channel.

The City of Malibu issues a Conditional Certificate of Compliance for flood channel as separate parcel

The applicant asserts that the certified Land Use Plan requires the construction of a multi-unit residential development on the subject site as a matter of policy (the policy cited by the applicant is LUP Policy 271, reproduced in pertinent part in Exhibit 25), and that a density analysis for development of lands under the LUP is always undertaken on the basis of gross, rather than net, acreage. The applicant further contends that a density should be established for the site based on an analysis that reasons backwards

from the constructed densities of pre-Coastal Act development adjacent to, or near, the subject site—rather than the proper method of applying the densities established within the certified LUP for the designations applied to these lands when the LUP was certified by the Commission.

Specifically, in exchange for recognition by the City of the legality of the flood channel lot as a separate parcel (through issuance of a Conditional Certificate of Compliance conditioned to require construction of the flood control improvements), combined with rezoning of the two resultant parcels from visitor-serving commercial to multi unit residential, and a lot redivision between the two lots that would double the density the applicant could potentially construct on the parcel under the City's uncertified zoning ordinances¹— the applicant would agree to pay for and construct the flood control improvements desired by the City.

In addition to the natural hazards that may affect the site, the applicant has recounted to staff a long history of business failures, bankruptcies, and criminal action against

1 According to the applicant and City of Malibu staff, the City developed the MFBF ("Multi-Family Beachfront) designation/zoning to provide a negotiated land use for the applicant's site. Though the City has applied the MFBF zoning elsewhere within the City, according to staff, the applicant's parcel is the only vacant property to which it has been applied. The MFBF zoning designation allows up to 4 units per parcel provided the parcel has the minimum gross area of 5,000 sq. ft. and allows one unit per every 1,885 sq. ft., up to four (4) units maximum, per parcel. This method of calculating acceptable land use densities for a particular site, without consideration of the net developable area of the site, contrasts sharply with the Commission's long established method of using net acreage when evaluating the land use density that may be authorized for a specific site. By use of the City's gross acreage method, however, the applicant secured conceptual approval to construct 4 condominium units on the upcoast parcel (the parcel with most of the developable area) and conceptual approval to construct 4 condominium units on the downcoast Las Flores Creek parcel. gross area. The applicant's plans for the proposed lot line adjustment state in the upper right corner that the flood control parcel (identified as "Parcel 2") contains 9,220 sq. ft. of net area. Staff is unable to verify this assertion of net area on Parcel 2—staff calculates that at most there may be between 2,000—2,500 sq. ft. of net area, total, based on the location of the existing flood channel wall. In any case it is clear that the implementation of construction of the approved four (4) condominium units credited to Parcel 2 (stream channel) could never have been realized on the ground except that by obtaining a Conditional Certificate of Compliance for the flood channel as a separate parcel, the applicant was able to demonstrate "lot legality" for that parcel as a separate parcel for the first time, and to thereby secure a "lot line adjustment" from the City. Thus approval of the proposed lot line adjustment will facilitate a doubling of density that would not have otherwise occurred on the subject lands. To further facilitate the arrangement, the City also authorized various variances and secondary approvals to allow a portion of the parking for one set of condominiums to be constructed on the adjacent parcel.

previous owners and/or operators of businesses on the subject site. The applicant had no reason to believe, at the time of property purchase, that the Commission would authorize a permit for a residential use of a site designated previously by the Commission for Visitor-Serving Commercial use in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). While the applicant may have entered into special agreements with the City concerning development that would be approved by the City for the subject lands, the applicant had no reasonable basis to believe, at the time of his acquisition of the property, that any permits would ever be approved by the Coastal Commission for development within the Las Flores Creek corridor, or that the Commission would approve the land redivision necessary to secure a doubling of density allowed on the balance of the subject lands in a manner similar to the City's approval under the uncertified MFBF zoning.

Despite the application of the City's MFBF zoning to the subject site, without the land redivision approved by the City of Malibu, even the City could not have authorized the actual construction of more than a maximum of four (4) condominium units for the entire site.

As noted above, the applicant's attorney asserted on the applicant's behalf, in a lengthy document (more than 100 pages) submitted to the Commission and to staff for the first time on the day of the Commission's June 15, 2001 hearing on this application, that density under the certified LUP is always calculated on the basis of gross acreage—not net acreage. To the contrary, the Commission has consistently relied on net acreage in establishing the number of units that could be constructed on a site pursuant to the certified LUP designation. As a practical matter, it makes little planning sense to authorize more units for development on any site than can be made to fit into the net (usable) area available for the development envelope and supporting structures (septic, parking, flood control, etc.).

The City's MFBF zoning designation allows: 1 unit per 1,885 square feet of lot area, not to exceed a maximum of 4 units per lot. In a telephone conversation with Commission staff, City staff explained that its determination of allowable units per lot is based on an analysis of the gross acreage of a parcel under consideration—not net acreage. City staff have further explained that the City only deducts road rights-of-way from the gross acreage of a parcel in applying MFBF performance standards, and does not deduct areas of a parcel under consideration that contain access easements in public ownership, deed restricted areas, flood zones, or stream channels (even in the case of Las Flores Creek, which has extremely proven hazardous during winter flooding conditions) wave uprush areas, or any other applicable setbacks such as front and sideyard setbacks that generally inform a typical density analysis. Therefore, the City of Malibu did not approve 8 condominium units on the subject site on the basis of any analysis of net acreage.

As addressed in more detail below, the staff has been unable to confirm the applicant's representations of the net area, measured in square feet, in the stream channel parcel. According to the calculations summarized on the applicant's plans, the pre-lot line

adjustment flood channel parcels contains 12,750 sq. ft. of gross (total) area and 9,220 sq. ft. of net (usable) area. Staff calculations estimate that the net area of the flood control parcel cannot be more than 2,000 to 2,500 sq. ft. The applicant's lengthy submittal to the Commission and staff at the previous hearing has not addressed this disparity, which was discussed in detail in the previous staff report prepared for that hearing.

The applicant also submitted his own comparative "density analysis" for surrounding sites in the documents delivered at the June 15, 2001 hearing. The so-called "density analysis" had never been previously submitted to the Commission or to staff. Staff determined after the June hearing that the applicant's method of evaluating an appropriate development density for the subject site was to identify the existing pre-Coastal Act development density on surrounding sites, extrapolate a resultant density based on the total size of the associated lots, and reason backwards to a false "comparative" land use density for the subject site. This method obscures the accurate density analysis performed by staff in accordance with the Commission's practices, and more importantly ignores the actual densities established in the certified LUP. The Commission's established practice for evaluating densities relies on an application of the densities set forth for the subject lands in the certified LUP, as applied to the net acreage available on the lands in question.

The discussion of applicable densities for the subject site is important not so much for determining the specific number of condominiums that could be built (if a revised project for multi-unit residential development is favorably considered in the future), but to reveal that the applicant is seeking to greatly increase the development potential on the subject lands. As evaluated below, a density analysis by staff indicated that the number of units that likely would be authorized using the LUP as guidance would be two or perhaps three. The applicant nevertheless insists that unless he can build 8 luxury-sized condominium units (approximately 19,000 sq. ft. total, or over 2,300 sq. ft. per unit on average), arranged in side-by-side, two-story fashion to achieve optimal blue water views and beachfront locations, he will not have a feasible project. For the reasons discussed previously, this is an unreasonable expectation of such a physically-constrained site. If the applicant built fewer units, or build the larger number of units but of somewhat reduced size, he could easily achieve a buildable project yet remain within the setback guidelines that the Commission could find consistent with the applicable policies of the Coastal Act. The applicant has not provided evidence supporting his claim that a project with a reduced building footprint is not economically feasible.

In addition, the applicant incorrectly cited at the June 2001 hearing a provision of the certified LUP (Policy 271 in pertinent part, shown in Exhibit 26) that the applicant offered as proof that the LUP requires the development of multi-unit residential development on infill properties in Malibu. The applicant incorrectly stated that this LUP policy requires the Commission to authorize multi-unit residential development of the subject lands.

To the contrary, LUP Policy 271 addresses new development policies to be applied in the Malibu area shown on the LUP maps, and states (in the pertinent part cited by the applicant, which is specific to development along the Pacific Coast Highway Corridor):

As noted, the narrow corridor along Pacific Coast Highway, from the City of Los Angeles to the Malibu Civic Center area, is already largely developed for residential and commercial uses. New development in this area would infill vacant parcels with the same uses as an integrated mixed-use area. New residential development should generally be limited to multiple units.
(from Page 61 of the certified LUP)

This policy statement simply establishes that new development along the Pacific Coast Highway corridor should reflect the integrated mixed-uses found in the area, and would presumably thereby include visitor serving commercial uses consistent with surrounding sites and the former (restaurant/hotel) use of the site (there are restaurants, gas stations, commercial developments, apartments, and condominiums all adjacent to, or within immediate walking distance of the subject site) as well as other potential uses.

With regard to multiple units, LUP Policy 271 merely states that where such infill development is contemplated for residential use on vacant lots, the residential use should be for multiple units (rather than single family residences). The policy does not direct, as the applicant asserts, that all infill development along the Pacific Coast Highway corridor be multiple unit residential. That the applicant's conclusion is incorrect is further demonstrated by the fact that the LUP maps specifically designate certain lands in Malibu along Pacific Coast Highway—including the applicant's subject property-- for uses other than residential.

The City's MFBF general plan designation and zoning designation have not been certified by the Commission because the City does not have a certified Local Coastal Program; therefore the City's rezoning of the subject site to the MFBF zoning designation does not apply to the Commission's consideration of the appropriate intensity of development for the subject site. The certified LUP, which the Commission relies upon for guidance in the consideration of development proposals in the Malibu/Santa Monica Mountains, presently designates the subject site for Visitor-Serving Commercial use.

Therefore, in analyzing a LUP density that would be most applicable to the site in lieu of the certified Visitor-Serving Commercial designation, the Commission looks to the density applied to the nearest parcel that is residentially designated in the certified LUP.

The adjacent, upcoast (westerly) parcel contains a pre-Coastal Act condominium development (constructed in 1972) on a little over one-half of an acre of land. That site, which is the most representative of nearby residentially designated parcels of the conditions found on the subject site, is designated 9A, Residential, 6-8 units per acre, on the certified LUP map. The map was certified after the condominiums were constructed. The original condominium construction is thought to have included 8 units,

however there is some evidence in the TRW microfiche records that unauthorized further divisions of some of the condominium units may have been occurred since the original construction, thereby increasing the number of units. The most recent Commission files pertaining to the adjacent condominiums suggest that as many as 11 units exist there now; the applicant's plans assert that the number is 14. Regardless, the Coastal Commission did not approve the number of condominiums on that site, or their location seaward of the wave uprush zone, and in certifying the LUP, the Commission determined that the appropriate density of development for that site is a maximum of 6-8 units per acre.

To apply the 9A-Residential density standard (6-8 dwelling units per acre (dua)) identified above, and to thus arrive at a number of units that could be constructed on the subject site if the project site were evaluated by that measure only, the net square footage available for development must first be determined. According to the applicant, the combined area of the two parcels is 30,570 gross sq. ft., or about three-fourths of an acre. The applicant's plans state that Parcel 1, the upcoast or westernmost of the two parcels, contains 17,820 sq. ft. of gross area and 15,400 sq. ft. of net area, and that Parcel 2, the downcoast or easternmost parcel, contains 12,750 sq. ft. of gross area and 9,220 sq. ft. of net area.

As stated above, Commission staff was unable to confirm the applicant's representation that the net square footage of Parcel 2 is 9,200 sq. ft. Parcel 2 is comprised mostly of the Las Flores Creek corridor, and appears to contain less than 2,500 sq. ft. of developable area (and perhaps considerably less than that if local requirements such as sideyard setbacks, streetfront setbacks, easements, and other typical planning considerations are factored into the calculation of net acreage). The streambed itself is a navigable waterway of the United States and as such is not typically owned by a private party. And even if private ownership were established for some portion of that parcel, the areas of the parcel that are subject to flooding (which would be most of Parcel 2) are typically not counted as developable, or net, area. In addition, the parcels contain vertical and lateral access easements that must also be deducted from the net acreage available for developable area calculations.

The applicant's net acreage totals only a maximum of 24,620 sq. ft., according to the applicant; or approximately 18,000 net sq. ft. pursuant to the staff corrections due to flood control channel and access easement constraints applicable to Parcel 2.

An acre of land is comprised of 43,561.6 square feet. Thus, the applicant's 24,620 sq. ft. combined net acreage (equal to .565 acres) analyzed for a density designation of 6-8 units per acre, yields a total of between 3.42 to 4.56 units, maximum, for the net acreage of the combined parcels.

The staff estimate of 18,000 net sq. ft. (equal to .413 acres) yields a total of between 2.48 to 3.30 units, maximum, for the combined parcels. The staff estimate has not taken into consideration the net area reduction that results from the application of the development setback line shown in Exhibit 4a and discussed below. If consideration of

the proposed project were undertaken by the Commission strictly on an allowable density basis only, instead of the overall development envelope analysis set forth herein, it appears that no more than two units would likely result as the acceptable number for the net lot acreage.

Thus, a reasonable range of potential densities for the subject site, based on the LUP density standard of the nearest residentially-designated lot, is between 2 and 4 units for the combined parcels as a whole. This number of units is significantly less than the 8 units approved by the City for construction in the same area.

Seaward Extent of Appropriate Development Envelope

Prior to the August 2001 hearing on this application, the Commission directed staff to evaluate the appropriate seaward extent of the proposed project, and related vertical and lateral public access issues, particularly in consideration of the fact that a settlement of the matter of the revetment seaward of Duke's restaurant extending beyond the MHTL was reached between the downcoast property owners of Duke's Restaurant, and the State Lands Commission. In addition, staff determined that the upcoast development adjacent to the subject site is also pre-Coastal Act development that appears to extend seaward of the "swash zone," or area subject to tidal influence on this portion of La Costa beach, particularly during winter months.

The applicant asserts that because the proposed project is infill development, the project should be entitled to the full benefit of the seawardmost stringline drawn between the corners of the structures situated on the nearest adjacent lots. Such a stringline, measured by the applicant's method, yields a development footprint that extends development on the subject site seaward of the "swash zone" visible on the subject site in aerial photographs and verified by staff on a number of site visits.

The applicant claims that he should receive the benefit of a traditional stringline analysis for the subject site despite the fact that the stringline would be established by the footprint of the condominiums upcoast, which are pre-Coastal Act development and extend further seaward than would be approved by the Commission under the policies of Chapter 3 of the Coastal Act. The applicant seeks the benefit of a stringline buildout analysis despite the fact that there is substantial evidence in the records of the State Lands Commission to indicate that Duke's Restaurant, which would establish the downcoast stringline marker, may extend seaward of the Mean High Tide Line. Moreover, the structures on the next lots beyond the immediately adjacent lots, both up- and down- coast, are set back significantly landward than the upcoast adjacent condominiums and the downcoast Duke's restaurant. Further evidence that the Duke's restaurant and its revetment are in state waters is provided by the fact that the revetment renders the area impassible to the public at all but the lowest low tides, which may occur on only a few days per year.

As discussed above, Exhibits 2 and 3b illustrate that the structures upcoast from the referenced condominium complex west of the subject site, and the structures

downcoast from Duke's Restaurant, east of the subject site, are set back much further landward than either of these developments. Thus, even if the condominiums and Duke's Restaurant were not located within the area of tidal influence, under some theory, a stringline drawn from these structures would nevertheless derive a falsely seaward-extending line of development when considered in the context of the overall shoreline shape and characteristics.

The converse of this excessive stringline "entitlement" argument arises when an applicant requesting infill development seeks relief from a stringline analysis that would result from the interpretation of adjacent parcels where the existing adjacent structures that would fix the points for the stringline are set unusually far back (landward) on the parcels adjacent to the site under consideration. In these cases the Commission exercises common sense and does not demand an arbitrary and unfair application of an inflexible stringline analysis. The applicant's request, on the other hand, seeks the benefit of a strict stringline analysis that would be based on pre-Coastal Act development that is located far seaward of other development even in the same immediate area—development patterns that would likely not be authorized by the Coastal Commission in the same location if reviewing these projects.

Pre-Coastal Act documents, including aerial photographs and maps on file in the Commission archives and in the office of the State Lands Commission, show that the form of the coastline containing Duke's Restaurant, the applicant's proposed site, and the upcoast adjacent condominium development extends significantly further seaward than the up- and down-coast shoreline on either side of this area. This profile may be attributed to the natural contours of the shoreline but is also partially due to the placement of large quantities of artificial fill generated by the grading and construction of Pacific Coast Highway. The placement of highway construction cuttings thus pushed the coastline significantly further seaward than the natural contour previously extended, exaggerating the atypical seaward extent of the immediate area. This fill is also highly prone to erosion, as evidenced by the placement by Duke's Restaurant of a massive rock revetment in front of that development, and by the erosion patterns evident on the subject site.

Patterns of wave action apparent on the subject site indicate that a significant amount of the older fill material was likely placed seaward of the mean high tide line, and thus on public trust lands. Erosion from wave action has affected the site, eroding the fill material back to approximately the 16 ft. elevation contour, except where remnant structural pads and walls, and the residual asphalt apron are located. This erosion pattern indicates that these remaining structures function at least part of the year as a seawall, preventing the erosion from wave impact that has clearly occurred where there is no such protection on the site.

Staff has gathered substantial evidence that indicates that the zone of tidal influence on the subject site is landward of the applicant's proposed development footprint. This evidence, though disputed by the applicant, includes: 1) the on-site erosional pattern described above, 2) the observations of site conditions by staff during fluctuating tides

over numerous site visits, 3) the correspondence of others who use the vertical public access corridor in Las Flores Creek regularly (see Exhibit 19), 4) the presence of substantial cover by marine algal growth on the rocks comprising the rock revetment and cobble located landward of the applicant's proposed development footprint (indicating inundation by seawater for substantial periods of time on a daily basis), and 5) the settlement entered into by the State Lands Commission with the owners of the adjacent (downcoast) Duke's Restaurant complex to resolve what the State Lands Commission asserted was the occupation of state tidelands by the Duke's revetment.

In addition, the downcoast portion of La Costa Beach is a narrow beach that staff believes is either oscillating in equilibrium or eroding at a slow rate.

Thus the patterns of adjacent development and the relationship of such development to areas of the shoreline subject to tidal influence argue against the use of a stringline analysis as the appropriate planning tool to determine the most seaward extent of development that is appropriate on the subject site. The Commission has noted in past deliberations and actions that the stringline used to evaluate infill development does not bind the Commission in anomalous circumstances where the use of the stringline measured from the nearest applicable adjacent corners of development on neighboring lots encourages the seaward location of development as opposed to simple infill development.

These factors further suggest that a landward setback of the proposed project, at least 30 feet landward of the 1928 MHTL as deemed necessary by the State Lands Commission (Exhibit 19) is necessary to avoid adverse impacts on the public trust lands and public access and recreation that will otherwise result from the seaward encroachment of the project as presently proposed.

In summary, a stringline analysis is not an appropriate indicator of the seaward extent of the subject site that new development should be authorized to occupy. First, the profile of the coastline along the point dividing La Costa Beach from Las Flores Beach is unique. The coastline juts anomalously further seaward at this location, near the mouth of Las Flores Creek, than the rest of the nearby coastline, and was the site of extensive fill placement during the construction of Pacific Coasts Highway. The placement of the highway construction fill material further exaggerated this seaward displacement. Second, the development on each side of the subject site is placed much further seaward than would be approved by the Commission if proposed today. For all of these reasons, a typical infill stringline analysis does not reasonably apply to the facts and unique circumstances of the subject proposal.

Public Coastal Access Concerns

The State Coastal Conservancy owns an unimproved ten (10) ft. wide public vertical easement along the upcoast property line west of Las Flores Creek, which intersects a lateral public access easement traversing the subject parcels that is also owned by the Conservancy. The Conservancy has confirmed that the acceptances of these offers-to-

dedicate public coastal access easements were recorded against the title to the subject lands in 1982. There are also recorded deed restrictions for lateral and vertical public access recorded against the title to the subject lands; the vertical easement is located on the downcoast (eastern) side of Las Flores Creek, adjacent to the parcel containing Duke's Restaurant and the lateral access easement is located in approximately the same location as the Conservancy's lateral access easement.

Staff also further evaluated tidal and topographic conditions at the subject site, and conducted four additional site visits to the La Costa beach area of the site subsequent to the Commission's November 2000 meeting (first hearing on the proposed project), including two site visits by the Commission's statewide coastal access coordinator, and two site visits by the State Coastal Conservancy's coastal access program director. In addition, members of the several nonprofit groups, including Coastwalk, Sierra Club, and Access for All have contacted staff verbally or in writing to express concern about the need to protect the vertical and lateral public coastal access easements on the subject site. (Correspondence received by the Commission's District Office has been included in Exhibit 19.) Coastwalk program leaders have notified staff that the vertical and lateral access easements on the subject site are part of the Coastal Trail, and are used during the annual Coastwalk event as well as at other times when conditions permit.

The Conservancy staff have noted that the vertical accessway owned by the Conservancy provides access to over a mile of La Costa beach, upcoast. The rock revetment in front of Duke's Restaurant, immediately downcoast on the opposite side of Las Flores Creek from the proposed project, precludes lateral public access in the downcoast direction of the subject site at all but the lowest of low tides, which occur on only a few days each year. Commission staff has observed, and Coastwalk members have confirmed, that the vertical and lateral access easements on the subject site are frequently used by the public for surfing and fishing access to this area of the Malibu shoreline.

Planning solution acceptable to the State Coastal Conservancy

These issues notwithstanding, in light of the clarifications the Conservancy has provided concerning its vertical and lateral access easements on the subject site, the adverse impacts the project poses to these easements, and potential mitigation measures acceptable to the Conservancy, the staff developed a planning solution to the overall situation, and presented it at the August, 2001 Commission hearing. The main recommendation of staff to accomplish this solution was set forth in a recommended special condition for revised plans (in addition to other project revisions and special conditions of approval) that would:

- a) set the seaward extent of the development envelope back to a line 30 feet landward of the 1928 MHTL or from such other MHTL as the applicant may secure in a new MHTL survey requested from and prepared by the State Lands Commission (the 30

ft. easement is for the 25 ft. wide easement plus 5 ft. privacy buffer referenced in the relevant documents); and

- b) require the dedication and improvement of an alternative vertical public access easement at least five feet wide in finished internal clearance, along the westernmost boundary of the subject site (to mitigate the applicant's present proposal to simply build over the Conservancy's existing vertical access easement).

The staff concluded that the overall planning solution for the subject site would be consistent with the applicable policies of Chapter 3 of the Coastal Act. This recommendation was a compromise in comparison to the extent of landward setback the staff had recommended in the staff report prepared for the June 2001 hearing. The previous recommendation included a landward setback of the proposed project's seawardmost footprint to approximately the 16-ft. elevation contour shown on the applicant's proposed plans. After consulting further with the staff of the Conservancy, Commission staff determined that a setback of 30 feet from the 1928 MHTL would not have substantial interference with lateral public access. The Conservancy concurred with this determination. The previous staff recommendation (for the June hearing) resulted in a landward setback of approximately 60 feet from the 1928 MHTL, or twice the setback recommended in the staff report prepared for the August 2001 hearing.

The revised staff recommendation for the August 2001 hearing took into consideration the public coastal access benefit that would be derived from the new vertical accessway that the applicant had conceptually offered between the two hearings. Such an accessway would offer public access to the sandy beach and to upcoast stretches of La Costa Beach that are otherwise unreachable when floodwaters fill the Las Flores Creek channel during the winter, thus providing reliable public access to stretches of La Costa Beach that can otherwise only be accessed via the Zonker Harris Accessway located over two miles upcoast. Alternative access to La Costa Beach from downcoast is only available at Moonshadow's Restaurant, over a mile downcoast from the applicant's site, and that route to La Costa Beach is blocked at all but the lowest tides for a few days per year by the rock revetment seaward of Duke's restaurant on the downcoast side of Las Flores Creek (and by the waters of Las Flores Creek during high winter flows).

The planning solution recommended by staff in August was also endorsed by the Coastal Conservancy staff. However, the applicant specifically objected to the recommended landward setback measured from the 1928 MHTL.

The applicant stated in a letter to the Conservancy dated July 23, 2001 that the recommended setback of 30 feet from the 1928 MHTL would deprive him of at least sixty percent (60%) of his condominium square footage. Staff performed a preliminary analysis of the site plans that concluded that if the setback recommended by staff in the report prepared for the Commission's August, 2001 hearing was implemented, the applicant's proposed square footage of approximately 19,000 sq. ft. (excluding decks, according to the applicant) would be reduced by approximately 5,000 sq. ft., or just over twenty-five percent (25%). Staff determined that some of this loss could be made up

with a more efficient redesign, and that the applicant could also either reduce the size of some or all of the condominiums to maintain the same total number (at least one proposed condominium is presently sized to be over 3,000 sq. ft., while the overall average for the condominiums is over 2,300 sq. ft. per condominium) or build fewer condominiums within the development footprint established by the implementation of the recommended landward setback of the proposed project.

Nevertheless, the applicant declined to revise the project to achieve the setback of 30 feet landward from the 1928 MHTL (or 25 feet landward, with the privacy buffer eliminated). As a result, the project as submitted by the applicant, would have adverse impacts on public access to the sea, and must be denied.
boundary.

B. Shoreline Protective Devices; Geologic Stability

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

The proposed project includes the deepening of the foundation of an existing seawall (a remnant of the former structure on the site that burned down in 1993) that is presently approximately 4 feet high above existing grade and approximately 95 ft. long, and the construction of a return wall. The return wall would, however, extend significantly further seaward than the proposed seawall, as shown in Exhibit 4. A typical return wall does not extend further seaward than the seawall with which it is associated. Thus the placement of the new wall will significantly alter the mouth of Las Flores Creek and may additionally cause significant new, adverse effects upon the shoreline sand deposition patterns at the mouth of Las Flores Creek as the result.

The applicant has submitted a Report of Geotechnical Investigation, Proposed Residence, 21202 Pacific Coast Highway, Malibu, prepared by Law Crandall Engineering and Environmental Services, Inc., dated August 4, 1999. The report contains specific recommendations as to construction, foundations, drainage, and septic system which the geotechnical consultant states will ensure that the resultant structure is stable and the site free from avoidable geologic hazards.

The applicant has submitted evidence that the proposed seawall is necessary to protect the proposed septic disposal system from wave attack. In the context of the applicant's present proposal (for eight condominiums placed along the beachfront side of the site), the applicant has demonstrated that there is no location further landward to locate the septic system than the location proposed, while still complying with the minimum applicable plumbing code requirements. If the applicant submits revised plans in the future that may be considered favorably, it is possible that the septic disposal system, and the seawall to protect the system, could be relocated further landward. Additional coastal engineering analysis would be necessary to analyze the resultant shoreline effects of a relocated system.

As stated above, the applicant has demonstrated that if a septic disposal system is to be constructed in the location proposed, a shoreline protective device (seawall in this case) is necessary. There is evidence that such development has the potential to adversely impact natural shoreline processes. Therefore, it is necessary to review the proposed project for its consistency with Sections 30235, 30250(a), and 30253 of the Coastal Act and with past Commission action.

Section 30235 of the Coastal Act states:

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

Section 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.

Section 30250(a) of the Coastal Act states, in part:

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.

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

Wave Uprush

Although the proposed structure will be located landward of the 1928 mean high tide line, site specific evidence discussed previously in this report indicates that a significant area landward of the applicant's proposed project is regularly located within the "swash zone" and exposed to wave action. The applicant's coastal engineer has indicated that although the proposed project would be constructed seaward of the maximum wave uprush limit, the condominiums will be supported by a concrete friction pile and grade beam foundation system and will not require any form of shoreline protection to ensure structural stability. In addition, the proposed project includes the installation of a new bottomless sand filter septic system.

In addition, an unauthorized rock revetment is located along the beach on the subject site, seaward of the proposed seawall. The rocks take up sandy beach area, and the applicant had previously represented to staff that the consulting coastal engineer determined that the rocks were not necessary from a shoreline protection perspective and could be removed. The applicant has conceptually proposed to remove the rock revetment.

As stated above, the applicant has demonstrated that the presently proposed project cannot feasibly accommodate a septic disposal system located any further landward than the applicant's proposal indicates. However, the seaward extent of the septic system and leachfield will still be within the wave uprush limit and will require a shoreline protection device to ensure the stability of the system.

In addition, the flood channel of Las Flores Creek borders the downcoast side of the proposed condominiums. The portion of the flood control wall proposed by the applicant along that portion of the stream corridor (which the applicant's proposed project would widen by approximately 20 feet) that parallels the portion of the site extending landward of the proposed seawall is necessary both to retain the waters of Las Flores Creek from affecting the development in general, but also to serve as a return wall associated with the proposed seawall itself.

In addition, and as also stated above, the applicant proposes to expand the channelization of the Las Flores Creek corridor approximately 65 feet further seaward than flood control structures presently in place in the channel. This portion of the so-called return wall is not necessary to protect the septic disposal system, but is located within the wave uprush limits affecting the site. Therefore, the proposed further

channelization of Las Flores Creek would have potentially significant, adverse effects on the shoreline processes associated not only with wave uprush patterns, but also with the dynamics of the peak flows of Las Flores Creek. The applicant has not explained any purpose for the extension of the channel wall seaward of the proposed seawall, nor submitted any coastal engineering analysis of the potential effects such construction would have on the complex shoreline processes associated with the outflow turbulence of Las Flores Creek combined with the tidal processes affecting the mouth of the creek and the adjacent shoreline. The shoreline protective devices and further stream channelization proposed by the applicant would be subject to wave or stream flow action under widely varying tidal and seasonal conditions, and the Commission's senior coastal engineer has noted that the effect of these structures on stream corridor meander patterns and upon the other shoreline processes affecting the site - particularly during storm and high tide events - could be significant. Permanent alteration of the shoreline processes and thus the patterns of sand deposition or erosion along this portion of La Costa Beach, could therefore result from the construction of the project as proposed.

For these reasons, therefore, the following subsections evaluate the impacts of the proposed bulkhead and return walls on the beach, based on the information which the applicant has submitted to identify the location of the structure, and in light of the shoreline geomorphology associated with the subject site.

Beach Scour

Scour is the removal of beach material from the base of a cliff, seawall, or revetment due to wave action. The scouring of beaches as a result of seawalls is a frequently observed occurrence. When waves impact a hard surface such as a coastal bluff, rock revetment, or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. In the case of a vertical bulkhead, return walls are typically constructed in concert with the seawall, and, thus, wave energy is also directed to the return walls causing end erosion effects. This reflected wave energy in conjunction with incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature on the subject acknowledges that seawalls affect the supply of beach sand.

The applicant's coastal engineering consultant indicates that the proposed bulkhead and flood control/return walls will be located seaward of the maximum wave uprush limit and will, therefore, periodically be subject to wave action. In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering: "Seawalls usually cause accelerated erosion of the beaches fronting them and an

increase in the transport rate of sand along them."² In addition, experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement regarding the adverse effects of shoreline protective devices:

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

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

The impact of seawalls as they relate to sand removal on the sandy beaches is further documented by the State of California, Department of Boating and Waterways, which stated:

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

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

Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring . . . Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on

2 "Saving the American Beach: A Position Paper by Concerned Coastal Geologists," Skidaway Institute of Oceanography, March 1981, page 4.

3 "Saving the American Beach: A Position Paper by Concerned Coastal Geologists," Skidaway Institute of Oceanography, March 1981, page 4.

4 "Shore Protection in California," State Department of Boating and Waterways (formerly Navigation and Ocean Development), 1976, page 30.

an eroding coast and interruption of supply if the armoring projects into the active littoral zone.⁵

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

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

Dr. Everts further asserts that armoring in the form of a shoreline protection device interrupts the natural process of beach retreat during a storm event and that, "a beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat."

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

As set forth previously, the subject site is located on La Costa Beach, which is narrow in the location of the proposed project, and oscillating or eroding at the eastern end--nearest Las Flores Creek--according to the Army Corps of Engineers and the Commission's senior coastal engineer (Exhibits 21 and 22).

The applicants' coastal engineering consultant has indicated that the proposed seawall and return wall will be acted upon by waves during storm conditions. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a bulkhead and return and flood control walls on the subject site, then the subject beach would also accrete (a small beach builds seasonally at the mouth of Las Flores Creek when conditions are favorable for temporary sand deposition and retention) at a

5 "Coastal Sediment Processes: Toward Engineering Solutions," Robert G. Dean, 1987.

6 Letter Report from Dr. Craig Everts, Moffatt and Nichol Engineers, to California Coastal Commission staff member and senior engineer, Lesley Ewing, March 14, 1994.

slower rate. The Commission notes that many studies performed on both oscillating and eroding beaches have concluded that a loss of beach occurs on both types of beaches where a shoreline protective device exists. Therefore, the Commission finds that the proposed bulkhead and return walls, over time, will result in potential adverse effects to the beach sand supply, resulting in increased seasonal erosion of the beach, and longer recovery periods.

In addition, the impacts of potential beach scour are important relative to beach use for two primary reasons. Public access is one major concern. The subject property contains both a public vertical access easement and a lateral access easement owned by the State Coastal Conservancy. If the beach scours at the base of the seawall, even minimal scouring in front of the seawall and flood control/return wall that will extend an additional 65 ft. (approximately) further seaward than the proposed seawall, and further seaward than the present channelization structures in the stream corridor-- then public access associated with the Conservancy's easements will be impaired or possibly rendered inaccessible as the result.

The second impact relates to the potentially increased ocean turbulence that may result from the proposed construction. Scour at the face of a seawall and the deflection of wave energy off the return wall will result in greater interaction with the wall and, thus, make the ocean along this stretch of La Costa Beach more turbulent than it would be normally be along an unarmored beach area. As noted above, the Commission's senior coastal engineer has identified the potential for the increased focalization of peak stream flows from Las Flores Creek that would result from the proposed new channelization structures. These changes in stream hydrology, in addition to the associated changes that will result in the stream's past meander variability and patterns--particularly under peak flow storm conditions--when combined with high tides and storm wave conditions will likely magnify the turbulence and related beach scour at the subject site, according to the Commission's coastal engineer.

The Commission has ordinarily required that shoreline protection devices be located as far landward as possible, in order to reduce adverse effects from scour and erosion. In the case of this project, the applicant proposes to construct significant shoreline protective structures, including a seawall, a return wall, and new channelization structures that will widen Las Flores Creek by approximately 20 feet and extend the channelized portion of the stream corridor over 65 feet further seaward along the vertical boundary of the Las Flores Creek channel than the applicant's proposed seawall. The applicant has not submitted any coastal engineering data to analyze the effects of the proposed channelization on shoreline processes, nor any evidence of consultation with or preliminary approval from the Army Corps of Engineers. It is evident that the wall will further channelize and both fix in place and focalize the mouth of Las Flores Creek where it empties into the Pacific Ocean, without any justification for such construction based on coastal engineering data. In fact, the applicant's coastal engineer stated that no shoreline protective devices were necessary to protect the proposed project from coastal hazards - except for the limited extent of the seawall necessary to protect the septic disposal system landward of the proposed

condominiums. The shoreline protective structures presently proposed by the applicant will affect the distribution of sediments flowing from Las Flores Creek and an unavoidable, and potentially significant, adverse effect will thus result on the profile and extent of the beach sands at the eastern end of La Costa Beach.

In addition, as noted in the background section of this report, there is ample site-specific evidence, confirmed by the applicant's own coastal engineer, to conclude that the area of beach that will be occupied by the proposed return/flood control wall is situated within the area that is subject to predictable tidal inundation. The Commission further finds that the shoreline structures proposed by the applicant--and most notably the proposed flood channel wall extending seaward from the applicant's proposed seawall--will be located within the vertical and lateral public access easements on the subject site that are owned by the State Coastal Conservancy. This aspect of the proposed project is addressed in the next section of this report.

In addition, in past permit actions, the Commission has required that all new development on a beach, including the construction of new single family residences or shoreline protection devices, provide for lateral public access along the beach in order to mitigate adverse effects to public access from increased beach erosion. In this case, the Commission notes that in 1982 the Conservancy accepted offers to dedicate both lateral and vertical public access easements on the subject site. The Conservancy staff notified the Commission that the applicant's proposal will impair the Conservancy's easements and that they oppose the cantilevering of condominiums over the proposed flood channel wall, and therefore potentially over their vertical, or relocated vertical access easement that is presently shown on documents submitted by the applicant as lying along the westernmost bank of the Las Flores Creek Channel easement.

In addition to concerns about the effects of the proposed project on the Conservancy's vertical access easement on the subject site, the Conservancy has testified, and the Commission finds that the lateral public access easement provides for public access to the area of the sandy beach 25 feet landward of the ambulatory mean high tide line. As stated previously, the Conservancy has determined that the proposed project will also adversely affect the lateral public access easement owned by the Conservancy unless the proposed project's seaward footprint is set back at least 30 ft. landward from the 1928 MHTL, as previously recommended by staff. The applicant declined to revise the proposed project to incorporate the development setbacks that the Conservancy staff requested and the Commission staff recommended prior to the August 10, 2001 hearing on the proposed project. The applicant did not dispute that the proposed stream channel wall seaward of the proposed seawall could intersect the Conservancy's lateral access easement, and moreover, preclude public access to the lateral access easement altogether by rendering the intersection of the vertical and lateral access easements impassable even during summer months at all but the lowest of low tide conditions (similar to the effect of the Duke's revetment on the opposite, downcoast side of Las Flores Creek).

End Effects

End scour effects involve the changes to the beach profile adjacent to the shoreline protection device at either end. One of the more common end effects comes from the reflection of waves off of the shoreline protection device in such a way that they add to the wave energy which is impacting the unprotected coastal areas on either end. In addition, the Commission notes that the literature on coastal engineering repeatedly warns that unprotected properties adjacent to any shoreline protective device may experience increased erosion. Field observations have verified this concern. Although it is difficult to quantify the exact loss of material due to end effects, in a paper written by Gerald G. Kuhn of the Scripps Institute of Oceanography, it is concluded that erosion on properties adjacent to a rock seawall is intensified when wave runup is high.⁷

An extensive literature search on the interaction of seawalls and beaches was performed by Nicholas Kraus in which he found that seawalls will have effects on narrow beaches or beaches eroded by storm activity. His research indicated that the form of the erosional response to storms that occurs on beaches without seawalls which are adjacent to beaches with seawalls is manifested as more localized toe scour, with end effects of flanking and impoundment at the seawall.⁸ Dr. Kraus' key conclusions were that seawalls could be accountable for retention of sediment, increased local erosion and increased end erosion. Kraus states:

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

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

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

7 "Coastal Erosion along Oceanside Littoral Cell, San Diego County, California," Gerald G. Kuhn, Scripps Institute of Oceanography, 1981.

8 "Effects of Seawalls on the Beach," Nicholas Kraus, Ph.D., Journal of Coastal Research, Special Issue #4, 1988.

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

A more comprehensive study was performed over several years by Gary Griggs, which concluded that beach profiles at the end of a seawall are further landward than natural profiles.¹⁰ This effect appears to extend for a distance of about six-tenths of the length of the seawall and represents both a spatial and temporal loss of beach width directly attributable to seawall construction. These end effects would be expected only when the seawall was exposed to wave attack. Under equilibrium or accreting beach conditions, this scour will likely eventually disappear during post-storm recovery. The Commission notes that end effect erosion may be minimized by locating a proposed shoreline protection device as far landward as possible in order to reduce the frequency that the seawall is subject to wave action.

In the case of this project, the proposed seawall will be located as far landward as feasible consistent with the need to protect the proposed septic disposal system. However, other project components unnecessarily extend physical development and shoreline protective or stream channelization structures seaward of the seawall. The applicant proposes to construct a private beachfront staircase seaward of the seawall and, as discussed above, extensive stream channelization structures -- also seaward of the proposed seawall. In fact, the flood control channel/return wall will be located almost 65 feet further seaward than the seawardmost extent of the proposed seawall. The applicant has not submitted coastal engineering plans for the seaward component of the return wall/channelization structure or any analysis of why the wall is necessary for the proposed project.

Seaward Encroachment

In 1981, the Commission adopted the "District Interpretive Guidelines" for the Malibu Santa Monica Mountains area of the coastal zone. These guidelines established specific standards and criteria for shoreline development along the Malibu Coast. These guidelines included the "stringline" policy for the siting of infill development:

In a developed area where new construction is generally infill and is otherwise consistent with Coastal Act policies, no part of a proposed new structure, including decks and bulkheads, should be built further onto a beach than a line drawn between the nearest adjacent corner of the adjacent structures. Enclosed living space in the new unit should not extend farther seaward than a

9 "Laboratory and Field Investigations of the Impact of Shoreline Stabilization Structures on Adjacent Properties," W. G. McDougal, M. A. Sturtevant, and P. D. Komar, Coastal Sediments, 1987.

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

second line drawn between the most seaward portions of the nearest corner of the enclosed living space of the adjacent structure.

The intent of the stringline policies was to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach. In past permit actions in Malibu, the Commission has typically limited infill development to the construction of one to two structures on one to two vacant parcels between existing structures.

The applicant asserts that because the proposed project is infill development, he should be entitled to the full benefit of the seawardmost stringline drawn between the corners of the structures situated on the nearest adjacent lots. The Commission notes, however, that in this case such a stringline would yield a development footprint that extends development on the subject site seaward of the wave uprush zone.

An analysis of pre-Coastal Act documents, including aerial photographs and maps, and consultation with the staff of the State Lands Commission concerning their archival history of this portion of the Malibu coastline, indicates that the form of the coastline containing Duke's Restaurant downcoast, the adjacent condominium complex upcoast, and the applicant's proposed site extends significantly further seaward than the up- and down-coast shoreline beyond these sites. This anomalous shoreline shape is partly attributable to the natural contours of the shoreline in this area, but also in part due to the placement of large quantities of artificial fill generated by the grading and construction of Pacific Coast Highway. This portion of the coastline juts considerably further seaward than the adjacent coastline in this area, but the effect is exaggerated by the past placement of graded cuttings placed during highway construction and possibly through other disposal practices undertaken in the past.

The affect of the fill placement is to exaggerate the seaward protrusion of this small area of land adjacent to each side of Las Flores Creek. Application of a stringline to these sites similarly, artificially, and inappropriately exaggerates the seaward protrusion of associated development. The stringline drawn by the applicant results in a pattern of development on the subject site that is "outfill" rather than "infill" development.

Thus, the patterns of adjacent development and associated encroachment into the public trust tidelands discussed above argue against the use of a stringline analysis as the appropriate planning tool to determine the most seaward extent of development that is appropriate on the subject site. The Commission has noted in past deliberations and actions that the stringline used to evaluate infill development does not bind the Commission in anomalous circumstances where the use of the stringline measured from the nearest applicable adjacent corners of development on neighboring lots encourages the seaward location of development as opposed to simple infill development. These factors suggest that a landward setback of the proposed project is necessary to avoid adverse impacts on the public trust lands and public access and recreation that will otherwise result from the seaward encroachment of the project as presently proposed. The extent of the landward setback necessary to avoid these

impacts, and to render the development footprint acceptable on the subject site compatible with the continued protection of the public access easements owned by the State Coastal Conservancy on the subject site is discussed in the background section, and in the next section of this report.

The Commission has therefore concluded that a stringline analysis is not an appropriate indicator of the seaward extent of the subject site that new development should be authorized to occupy for reasons discussed herein and in the background section above and thereby incorporated into this section.

Sea Level Rise

Sea level has been rising slightly for many years. In the Santa Monica Bay area, the historic rate of sea level rise has been 1.8 mm/yr. Or about 7 inches per century.¹¹ Sea level rise is expected to increase by 8 to 12 inches in the 21st century.¹² There is a growing body of evidence that there has been a slight increase in global temperatures and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Mean water level affects shoreline erosion in several ways and an increase in the average sea level will exacerbate all of these conditions.

On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. On a relatively flat beach, with a slope of 40:1, every inch of sea level rise will result in a 40-inch landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a single family residence, pilings, or seawalls, an increase in sea level will increase the extent and frequency of wave action and future inundation of the structure. More of the structure will be inundated or underwater than are inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently.

Accompanying this rise in sea level will be increased wave heights and wave energy. Along much of the California coast, ocean bottom depth controls nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. So, combined with a physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to both inundation and wave attack, and those areas that are already exposed to wave attack will be exposed to more frequent wave attack with higher wave forces. Structures that are adequate for current storm conditions may not be adequately constructed to withstand storm conditions in the future.

¹¹ Lyles, S.D., L.E. Hickman and H.A. Debaugh (1988) Sea Level Variations for the United States 1855-1986. Rockville, MD: National Ocean Service.

¹² Field et al., Union of Concerned Scientists and the Ecological Society of America (November 1999) Confronting Climate Change in California, www.ucsusa.org.

A second concern with global warming and sea level rise is that climatic changes could cause changes to storm patterns and wave climate for the entire coast. As water elevations change, the transformation of waves from deep water will be altered and points of energy convergence and divergence could shift. The new locations of energy convergence would become the new erosion "hot spots" while the divergence points may experience accretion or stability. It is highly likely that portions of the coast will experience more frequent storms and the historic "100-year storm" may occur every 10 to 25 years. For most of California the 1982/83 El Nino event has been considered the "100-year storm." Certain areas may be exposed to storms comparable to the 1982/83 El Nino storms every few decades. In an attempt to ensure stability under such conditions, the Commission has required that all new shoreline development be designed to withstand either a 100-year storm event, or a storm event comparable to the 1982/83 El Nino.

Therefore, if new development along the shoreline is to be found consistent with the Coastal Act, the most landward location must be explored to minimize wave attack with higher wave forces as the level of the sea rises over time. Shoreline protective devices must also be located as far landward as feasible to protect public access along the beach.

Therefore, for all of the reasons set forth above, the Commission finds that the proposed project is inconsistent with Sections 30235, 30250, and 30253 of the Coastal Act.

C. Public Access

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

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

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

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

Section 30220 of the Coastal Act states:

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

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

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

The major access issue in this permit application is the occupation of sandy beach area by a structure and the potential effects on shoreline sand supply and public access in contradiction of the policies set forth under Sections 30211 and 30221 of the Coastal Act that may result from the construction of the project as proposed.

The proposed project is located on the eastern end of La Costa Beach, just upcoast from Las Flores Beach, off Pacific Coast Highway in the City of Malibu. A vertical public access easement transects the two parcels which comprise the subject site. The State Coastal Conservancy owns both a vertical access easement and a lateral access easement on the subject site. The Conservancy's easements are discussed in more detail in the background section of this report and that discussion is incorporated herein by reference.

The language of the Conservancy's lateral access easement states that it is comprised of the area measured 25 ft. landward from the Mean High Tide Line, but that public

access shall not come closer than within five (5) feet of any structure. This means that to ensure that the proposed project does not impair public access the area subject to this easement, the development footprint must be located at least thirty feet landward of the Mean High Tide Line. The project as proposed by the applicant does not meet this setback.

The applicant has not requested that the State Lands Commission determine where the Mean High Tide Line is on the subject parcel. The State Lands Commission has a specific process for undertaking such a determination, which requires a minimum of several years of mean high tide line survey data, collected at prescribed seasonal windows, annually. The State Lands Commission does however, recognize two previous MHTL surveys, dated in 1928 and 1969. As discussed in this report, the 1928 MHTL is the landwardmost MHTL of the two lines, and absent a more current determination of the MHTL by the State Lands Commission, and based on numerous observations of the site, the Commission has determined that the 1928 MHTL is the line most representative of the existing conditions on this portion of La Costa Beach. This determination is supported by the State Lands Commission.

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

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

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally

associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

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

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately, to the extent and availability of tidelands. For these reasons, the Commission must also consider whether a project will have indirect effects on public ownership and public use of shorelands.

As stated previously, the proposed project includes the construction of a flood control channel wall that will also serve as a return wall on the western side of Las Flores Creek. The applicant additionally proposes to construct a seawall at approximately the 16 ft. elevation contour in accordance with the recommendations of the applicant's consulting coastal engineer. The return wall extends approximately 65 feet further seaward than the seawall however, crossing to the seaward side of the 1928 MHTL—the landwardmost MHTL shown on the applicant's plans or accepted as the best present indicator of the MHTL for La Costa Beach by the State Lands Commission—at the proposed wall's seawardmost extent. The project also includes the placement of a private stairway to the beach, seaward of the proposed seawall.

The Commission notes that interference with shoreline processes by a shoreline protective device or return wall has a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, which result from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use.

The second adverse effect of structures placed within the wave uprush area--particularly on public coastal access-- is through a progressive loss of sand, as shore material is no longer available to nourish the sand bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect this has on the public is a loss of area between the mean high water line and the actual water.

Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline, eventually affecting the profile of a public beach.

Fourth, if not sited as far landward as possible, in a location that ensures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate wave energy.

Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

In past permit actions, the Commission has required new shoreline protection devices to be located as far landward as possible in order to reduce adverse effects on sand supply and public access from the development. In the case of this project, the Commission notes that the new bulkhead and septic system will be located as far landward as possible for the presently proposed project design.

More significantly, the proposed stream channelization structure construction will extend a concrete wall approximately 65 feet seaward of the seawall proposed by the applicant. The wall would further channelize Las Flores Creek and focalize the mouth of the stream channel in a more seaward location. As stated above, the wall is proposed to extend to a location that the State Coastal Conservancy believes lies within the Conservancy's vertical public access corridor and further, bisects the Conservancy's public lateral access easement.

In addition, the proposed project may adversely affect public access along Pacific Coast Highway, which is the main public coastal access transportation corridor in the Malibu area. The applicant's proposal would result in ingress and egress to the subject site directly off Pacific Coast Highway. The project may cause traffic congestion at the intersection of Pacific Coast Highway and the subject site, which is also opposite the junctions of Rambla Pacifico Road and the adjacent Las Flores Canyon Road, and may increase potential hazards to drivers and pedestrians seeking access to the beach on or near the subject site. The applicant did not submit any evidence of preliminary approval by Caltrans of the proposed project.

Furthermore, the Commission must also consider whether a project affects any public right to use shorelands that exist independently of the public's ownership of tidelands. In addition to a new development's effects on tidelands and on public rights which are protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of the ownership underlying the land on which the public use takes place. Generally, there are three additional types of public uses, which are identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and State common law, (2) any rights that the public might have acquired

under the doctrine of implied dedication based on continuous public use over a five year period, and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

These use rights are implicated when the public walk on the wet or dry sandy beach below the mean high tide plane. This area of use, in turn, moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, which is why the effects of structures placed on or adjacent to the beach are of particular concern.

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

In past permit actions, the Commission has required that all new development on a beach, including the construction of residential development or shoreline protection devices, provide for lateral public access along the beach in order to mitigate adverse effects to public access from increased beach erosion. In the case of the present application, and as discussed in detail previously in this report, the State Coastal Conservancy already owns both vertical and lateral public access easements across the subject site.

The observations of Commission staff and others, the existing patterns of tidal erosion and debris "upcast" lines (the line of driftwood, kelp and other debris that shows where the reach of waves deposits these materials) marking the site, the reports of neighbors residing in the upcoast condominiums, and aerial photographs from the Commission archives indicate that wave action regularly affects the site to approximately the 16 ft. elevation contour shown on the applicant's plans. A remnant foundation from the previous structure functions as a seawall where its footprint still exists and prevents the corresponding degree of erosion evident on the upcoast beachfront portion of the site. Nevertheless, site visits by Commission staff in August, 2001 (also documented in slides taken during these site visits and shown during the August, 2001 Commission hearing) verified that the patterns evidenced in aerial photographs of the subject area are matched by patterns of wave action present even during the height of the summer beach accretion season. Waves were breaking over the relict foundation, which is landward of the 1928 Mean High Tide Line delineating the seawardmost reach of the Conservancy's lateral access easement according to the Conservancy staff and as set forth in the documents establishing the relevant easement. The Conservancy has stated that the proposed project would have adverse impacts on the lateral and vertical

access easements the Conservancy owns on the subject site. This is discussed further in the background section of this report, which is incorporated herein by reference.

As stated previously, a narrow beach tends to form adjacent to the proposed project location during the summer months, near the mouth of Las Flores Creek (though no significant sandy beach was evident in August, 2001). The sand typically erodes during the winter storm season.

Conservancy staff have indicated that the applicant's proposed development footprint would adversely affect, and could potentially eliminate the public's ability to utilize the vertical and lateral access easements owned by the Conservancy. These easements provide critical, and otherwise unavailable public access to this portion, and the upcoast stretches of La Costa Beach.

The applicant's project, as proposed would potentially build over, or encroach upon the Conservancy's vertical access easement on the western side of Las Flores Creek. The Conservancy staff has notified Commission staff of their objection to the cantilevering of the proposed condominiums over the channel of Las Flores Creek and over their vertical access easement. The Conservancy staff has also indicated that the applicant's proposed lot line adjustment may eliminate the Conservancy's vertical access easement altogether, and that the proposed development footprint appears to be placed over the Conservancy's vertical easement. Further, widening the stream channel could strand the existing vertical access easement in the middle of the widened creek, and permanently foreclose the Conservancy's ability to improve the easement. Although the stream channel widening and flood control wall construction proposed by the applicant will directly and significantly impair the Conservancy's vertical access easement, the applicant has not included any measures within the proposed project to address or mitigate these impacts.

No mitigation measures have been required by the City. The proposed stream channel wall would potentially cut off the public's vertical access to the beach area, and to the lateral access easement that intersects that easement and allows upcoast access to the rest of La Costa Beach. As stated, the Conservancy has provided a letter regarding the impacts of the proposed project on the Conservancy's access easements (Exhibit 19).

Prior to the August, 2001 hearing the Coastal Commission staff and the Conservancy staff had explored with the applicant the possibility of dedicating and improving an alternative vertical access easement on the upcoast side of the subject site, along the parcel boundary shared with the Unocal gasoline station. Although the applicant was conceptually willing to incorporate such an easement into the proposed project, the project was not amended to incorporate this change. In addition, the applicant declined to make the changes in the project footprint to setback the proposed project 30 ft. inland from the 1928 MHTL, which was a change that was necessary to ensure that development on the site does not intrude into the Conservancy's lateral access easement and thereby result in adverse impacts on public access and recreation.

For all of these reasons and the reasons stated in the background section of this report, the Commission finds that as the proposed project, as submitted, is inconsistent with Sections 30210, 30211, 30212, and 30220 of the Coastal Act.

D. Environmentally Sensitive Habitat Area

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states that:

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

Section 30240 of the Coastal 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.

Sections 30230 and 30231 require that the biological productivity and quality of coastal waters and the marine environment be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, and maintaining natural buffer areas.

In addition, the Coastal Act defines environmentally sensitive habitat areas (ESHAs) as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. Section 30240 of the Coastal Act permits development in areas that have been designated as ESHA only when the location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value.

The portion of Las Flores Creek within the applicant's property is both channelized and highly disturbed and does not presently support significant riparian habitat. During times of significant waterflow in the stream channel, however, the federally endangered Tidewater goby could potentially be present. The applicant has not incorporated any measures into the proposed project to avoid adverse impacts to sensitive species that may be caused by construction within the stream channel. Such impacts could include sedimentation caused by disturbing the streambed, direct injury to fish present, or limitation on the use of riparian habitat by fish or other sensitive populations. The applicant has not submitted any evidence of consultation with the U.S. Fish and Wildlife Service regarding potential impacts to federally listed species, such as the Tidewater goby, that may be present in Las Flores Creek during some stream conditions and seasons.

The applicant had submitted a Streambed Alteration Agreement from the State Department of Fish and Game, but the term of the agreement had expired.

The Commission finds for the reasons set forth above, that the proposed project, as submitted, is inconsistent with the applicable requirements of Coastal Act Sections 30230, 30231, and 30240.

E. Visual Resources

Section 30251 of the Coastal Act states:

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

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

The project site is located on the westernmost portion of La Coast Beach, a built-out area of Malibu primarily consisting of residential and commercial development. The Commission notes that the visual quality of La Costa Beach area in relation to public views from Pacific Coast Highway have been significantly degraded from past residential and commercial development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential and commercial related development between Pacific Coast Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels that have not yet been developed. The Commission notes that the construction of large individual residential structures, or large residential projects including one or more structures, extending across multiple beachfront parcels, similar to the proposed project, is becoming increasingly common in the Malibu area and that several applications for similar development have recently been submitted. As such, the Commission notes that such development, when viewed on a regional basis, will result in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

In this case, the applicant proposes to construct 8 two-story condominiums on two combined vacant beachfront parcels, one containing Las Flores Creek. As stated above, Coastal Act Section 30251 requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The Commission notes that the construction of new residential development provides for the opportunity to enhance public views, where such views have been significantly degraded by past development, through the creation and maintenance of public view corridors, consistent with Section 30251 of the Coastal Act. In past permit actions, the Commission has found that new residential development, such as the proposed project, should be designed to provide for a public view corridor of no less than 20 percent of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway, as seen in CDP 4-99-154 (Montanaro), CDP 4-99-153 (Ioki), and CDP 4-99-155 (Ioki). In the case of the proposed project, the Commission notes that the subject site (both parcels combined) is approximately 104 feet in width, thus the applicable public view corridor would be just over 20 feet in width. The width of the Las Flores Creek channel that remains open to public view (after subtracting the portion of the channel overhung by the cantilevered condominium construction proposed by the applicant) is approximately 28 feet in width.

The applicant proposes to construct a fourteen (14) ft. high "privacy" wall on the westernmost (upcoast) boundary of the subject site. This wall will interfere with public coastal views to and along the coast from Pacific Coast Highway, which is designated as a scenic coastal highway, and will be located within the view corridor provided by the side yard setback and required by the policies of the certified Malibu/Santa Monica Mountains Land Use Plan, which the Commission has relied on for guidance in evaluating development in the Malibu area.

Therefore, the Commission finds that the proposed project, as submitted, is inconsistent with Section 30251 of the Coastal Act.

F. Water Quality

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

Section 30231 of the Coastal Act states:

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

As described above, the proposed project includes the construction of a multi-unit condominium development, septic system, and a seawall with return walls for the protection of the proposed septic system. The proposed development will result in increased impervious surface on the subject site. Further, use of the site for residential purposes will introduce potential sources of pollutants such as petroleum, household cleaners and pesticides, as well as other accumulated pollutants from rooftops and other impervious surfaces.

The construction of impervious surfaces; such as the proposed multi-residential development, allows for less infiltration of rainwater into the soil, thereby increasing the rate and volume of runoff, causing increased erosion and sedimentation. Additionally, the infiltration of precipitation into the soil allows for the natural filtration of pollutants. When infiltration is prevented by impervious surfaces in beachfront areas, pollutants in runoff are quickly conveyed to the ocean. Thus, new development can cause

cumulative impacts to the coastal water quality by increasing and concentrating runoff and pollutants.

Such cumulative impacts can be minimized through the implementation of drainage and polluted runoff control measures. In addition to ensuring that runoff is conveyed from the site in a non-erosive manner, such measures should also include opportunities for runoff to infiltrate into the ground by incorporating filter elements that intercept and infiltrate or treat the runoff from the site. This requirement is typically implemented through a Drainage and Polluted Runoff Control Plan. Such a plan would allow for the infiltration and filtering of runoff from the developed areas of the site, most importantly capturing the initial, "first flush" flows that occur as a result of the first storms of the season. This flow carries with it the highest concentration of pollutants that have been deposited on impervious surfaces during the dry season.

The applicant has not included such a plan in the materials submitted in support of this coastal development permit application.

Finally, the applicant proposes to construct a new 6,000 gallon septic system. In order to reduce the size of the required leachfield for the proposed septic system and to allow the system to be located as far landward as possible, the applicant proposes to install an alternative bottomless sand filter septic system. This system is also designed to produce treated effluent with reduced levels of organics, biochemical oxygen demand, and total suspended solids, while occupying only 50 percent of the area which would otherwise be required for a conventional septic system and leachfield. As proposed, the septic system will be located as landward as possible in the context of the applicant's presently proposed project.

Therefore, for the reasons set forth above, the Commission finds that the proposed project, as submitted, is inconsistent with Section 30231 of the Coastal Act.

G. Cumulative Impacts of New Development

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area. Section 30250(a) of the Coastal Act states that:

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 30105.5 of the Coastal Act defines the term "cumulatively" as it is used in Section 30250(a) to mean that:

the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

As described previously, the proposed project includes the construction of an 8-unit multi-family residential development on two existing parcels. The Coastal Act requires that new development, including subdivisions and multi-family projects, be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The proposed development is located on the coastal terrace at the base of the Santa Monica Mountains where the most extensive infrastructure and services are found.

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact of new development in part stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, (Malibu Pacifica); 5-83-43 (Heathercliff); 5-83-591 (Sunset-Regan); and 5-85-748, (Ehrman & Coombs); 5-90-103 (Solar Systems Specialists); 4-91-755 (Lunita Pacifica); 4-91-754 (Trancas Town); and 4-98-281(Cariker). The TDC program has resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a). The Commission has found that the retirement of lots through TDC program, is a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a) of the Coastal Act.

The applicant proposes to subdivide two parcels of land into eight multi-family residential condominium units. The proposed project will result in the creation of additional multi-family units with an incremental contribution to cumulative impacts such

as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation. Through past permit actions, the Commission has established that one transfer of development credit must be provided for each multi-family unit (minus the number of existing legal parcels comprising the project site), unless the units are less than 2,500 sq. ft. in size. In that case, the TDC requirement is calculated on the basis of one TDC per 2,500 sq. ft. of gross structural area of living space.

The applicant's proposed project does not presently contain any cumulative impact mitigation measures. The Commission finds therefore, for the reasons set forth above, that the proposed project, as submitted, is inconsistent with Section 30250 of the Coastal Act.

H. Alternatives

Although the Commission is denying the applicant a coastal development permit for a project as submitted, in the location proposed by the applicant, the applicant is not barred from applying for a permit for or pursuing an alternative proposal to address the adverse impacts on shoreline processes, visual resources, water quality, sensitive habitat areas, and public access and recreation posed by the present project design and location, as discussed in the previous sections. Feasible alternatives to the proposed project exist that could avoid or reduce the adverse impacts of the proposed project, and feasible mitigation measures exist to reduce project impacts that cannot be fully avoided. These alternatives and mitigation measures are discussed in the prior sections of this report. To summarize, feasible alternatives that could reduce adverse impacts on coastal resources include setting back the proposed project to a development line that is at least 25 feet landward of the 1928 Mean High Tide Line, and re-recording the easement to eliminate the 5 ft. privacy buffer that is otherwise applicable, thereby avoiding the need for the full 30 ft. setback otherwise necessary to protect the lateral public access easement owned by the State Coastal Conservancy along the beachfront of the subject site. In addition, an alternative vertical access easement could be dedicated and constructed along the upcoast, westernmost parcel boundary adjacent to the Unocal gasoline station, to mitigate the loss of the Conservancy's vertical access easement adjacent to Las Flores Creek that will result from the proposed land redivision and project construction. The privacy wall, private staircase seaward of the proposed seawall, and the seaward portion of the proposed stream channel wall can be eliminated or redesigned to achieve consistency with the applicable policies of Chapter 3 of the Coastal Act.

If feasible alternatives and mitigation measures were fully implemented, the applicant would still have an adequate building envelope available to construct a reasonable number and size of condominium units. Setting back the development to avoid adverse impacts on the Conservancy's lateral access easement would allow for a significant percentage of the buildout proposed by the applicant. As discussed previously, the site is subject to an unusual number and degree of coastal hazards, contains public vertical and lateral coastal access easements owned by the State Coastal Conservancy, and is significantly impacted by the proximity of the Las Flores Creek channel draining

southward across the site to the Pacific Ocean. The applicant has noted to the Commission and staff that the triangular pattern of the site, and access off a congested portion of Pacific Coast Highway constrain the development potential of the site.

Therefore, the Commission finds that alternatives are available that would substantially reduce the adverse environmental impacts of the proposed project.

I. Local Coastal Program

Section 30604 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 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).

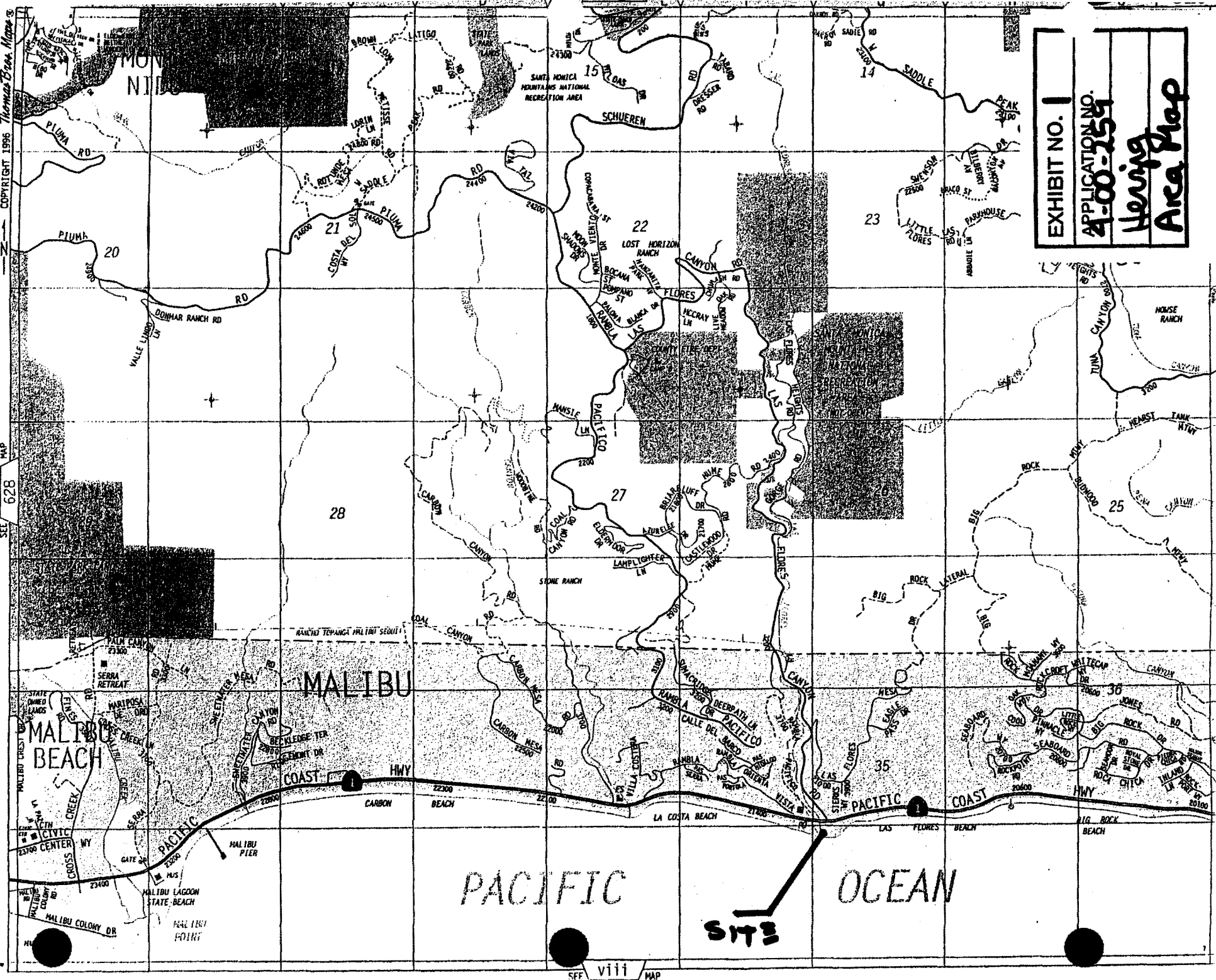
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project does not conform with the provisions of Chapter 3, and that alternative designs and mitigation measures exist that would allow the proposed project, modified and/or mitigated accordingly, to achieve consistency with the policies and provisions of Chapter 3 of the Coastal Act. The applicant has declined to incorporate some or all of these changes or mitigation measures into the proposed project. Therefore, as presently proposed, the development will cause adverse impacts on coastal resources and is found to be inconsistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as submitted, will prejudice the City of Malibu'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).

J. CEQA

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

The Commission finds that the proposed project, as submitted, will have significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970. In addition, one or more alternatives exist that would avoid or reduce these impacts, but which the applicant has declined to incorporate into the proposed project. Therefore, the proposed project, as submitted, does not adequately mitigate the adverse environmental impacts that the project will pose on coastal resources and is therefore determined to be inconsistent with the requirements of the CEQA and the policies of the Coastal Act.

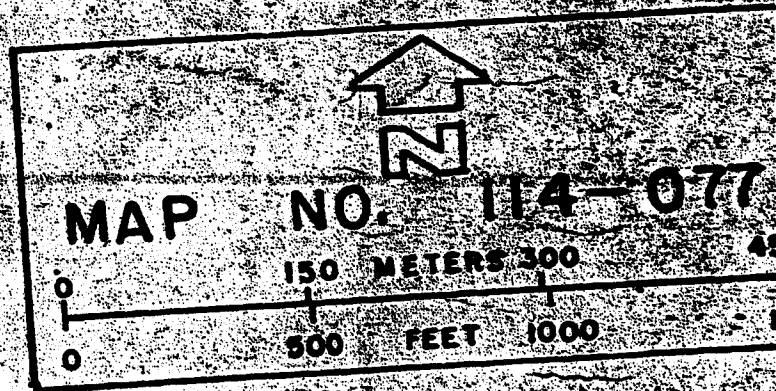
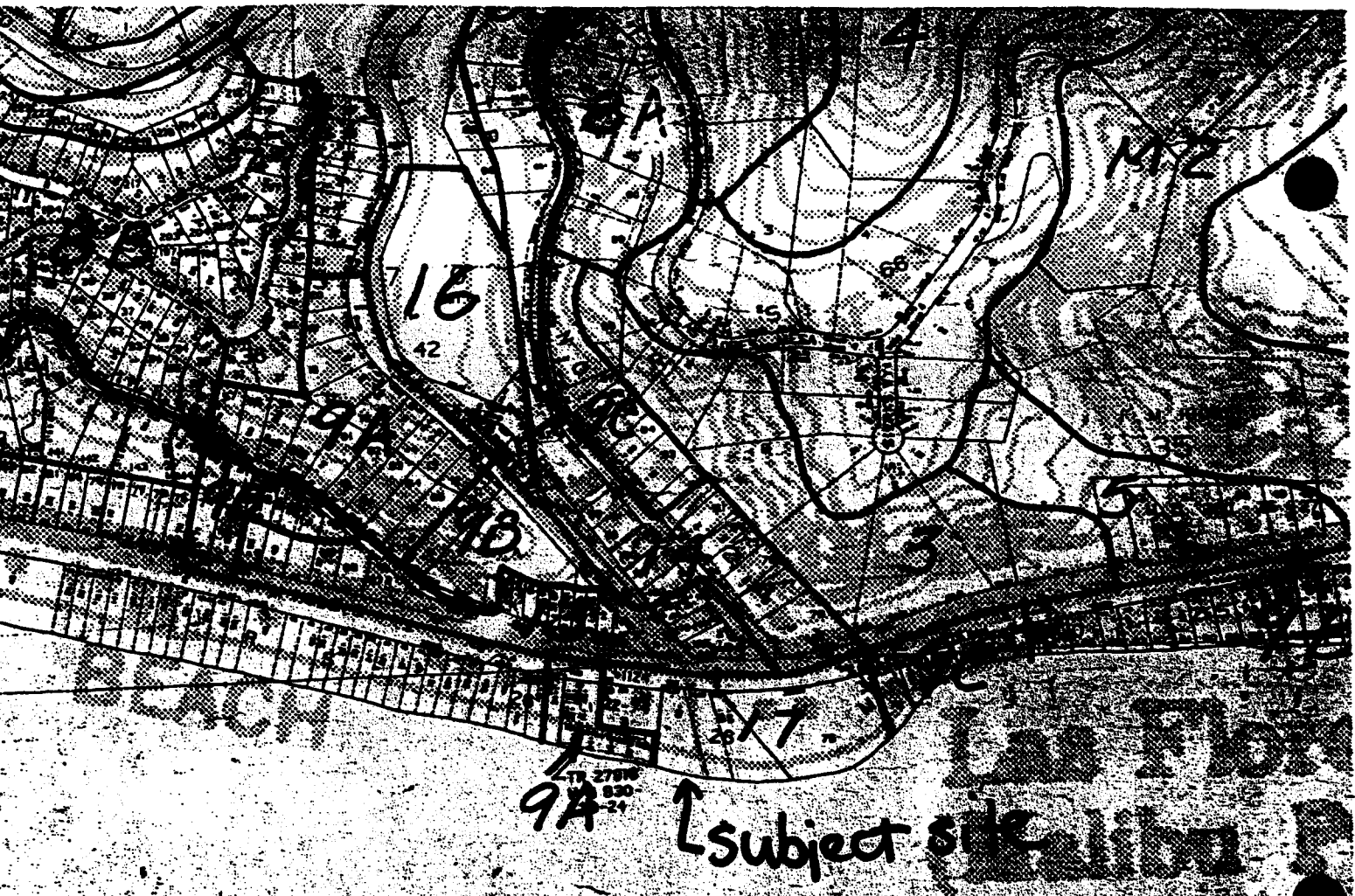
EXHIBIT NO. 1
APPLICATION NO. 4-00-254
Hering Area Map



PACIFIC

OCEAN

SITE



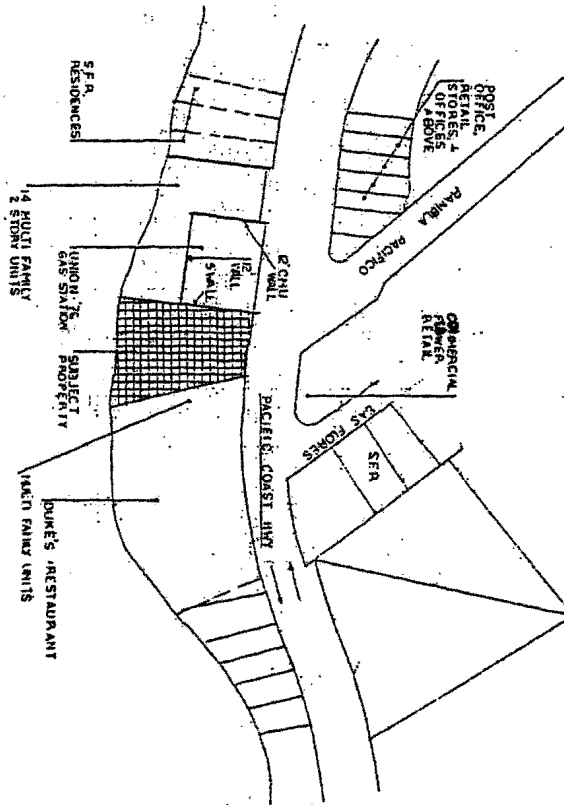
LUP MAP Designations

EXHIBIT NO. 2
APPLICATION NO. 4-00-25411
LUP Map Designations

O C E A N U S

VICINITY MAP
1" = 100'-0"

P A C I F I C O C E A N



21002	PACIFIC	COAST	HIGHWAY	MALIBU	CALIFORNIA	90266	2488	SYCAMORE MEADOWS DRIVE	MALIBU	CALIF.
O C E A N U S SKYLAR BROWN:										
1										

EXHIBIT NO. 3
APPLICATION NO.
4-00-259(Herzie)
Adjacent
Development

Pacific Coast Highway



Bridge over PCH

Las Flores Creek

EXISTING CONDITIONS PLAN

Duke's Restaurant

Duke's Restaurant

Palm trees

16' elev. contour

Revetment

Remnant foundations

Pacific Ocean

OCEANUS

SKYLAR BROWN, ARC

EXHIBIT NO. 3a

APPLICATION NO.

4-00-259

Existing Conditions

Applicant's
Proposed
Site

Condos
not
constructed
till 1972

Pacific
Ocean

Duke's
Restaurant
Site

Pattern of Development Existing
in 1960's

Unreal Station

FLH-100A (O A S T)
16.66

O.M.H.s.

58 M.H.

15.4

15.4

15.4

14.9

14.6

14.1

14.6

Asph.

Asph.

Asph.

Asph.

Curr

BERM

Signal

Lo Box

34

O.M.H. 14.2

C-B

EXHIBIT NO. 3b

APPLICATION NO.

Herzig

4-00-259

Pattern of Development
in 1960's

Page 5

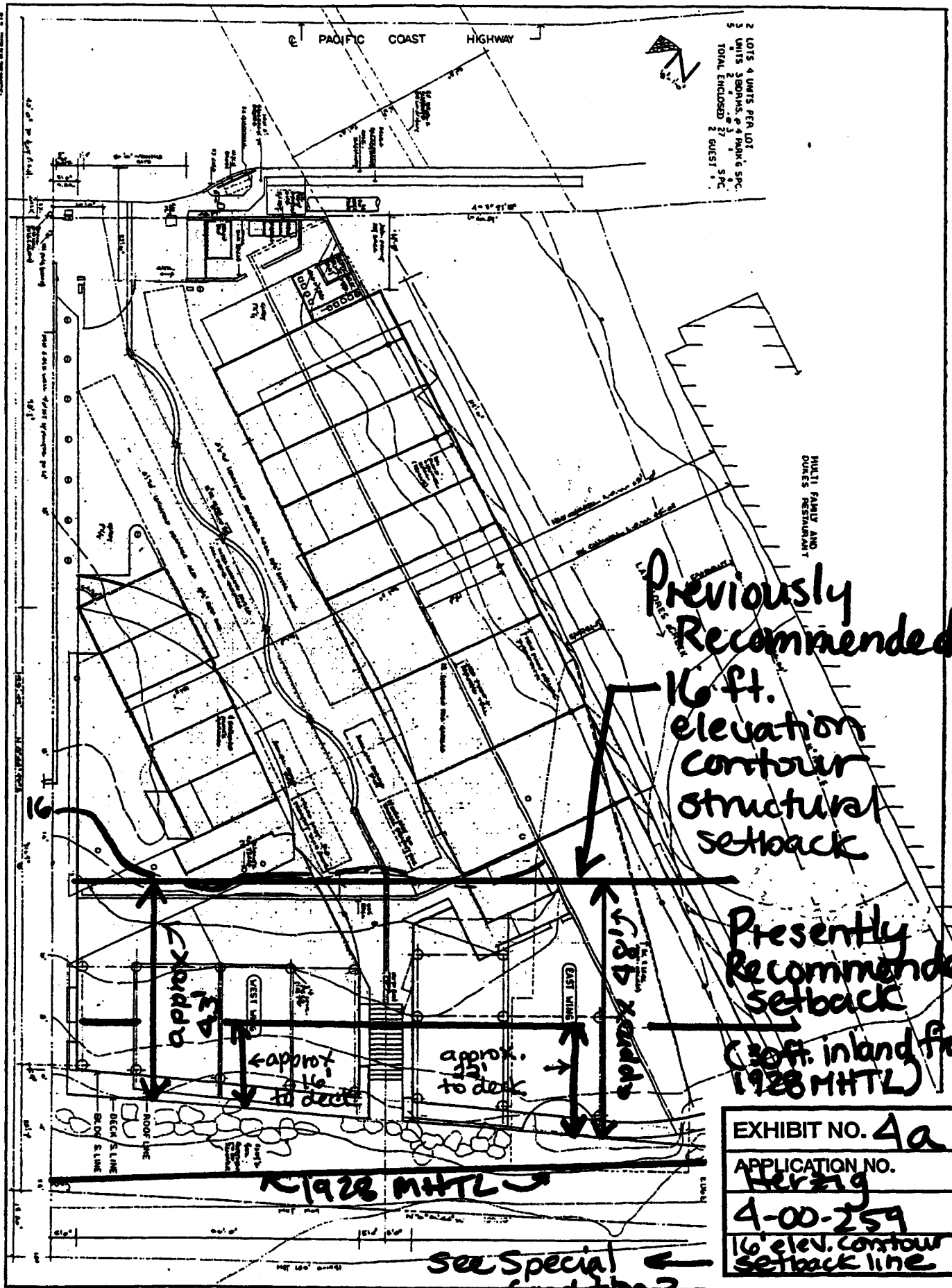


EXHIBIT NO. 4a
APPLICATION NO.
Herzog
4-00-259
16' elev. contour
setback line

SKYLAR BROWN: ARCHITECT
6-455 SYCAMORE MDWS 311 45 6100 MALIBU CA 90265

8/2/11

Pacific Coast Hwy.



← Illustration of vertical access easement on western parcel boundary.

(not to scale)

— finished, constructed access way to be a minimum of 5 feet in width

Las Flores Creek

note "as built" plans cantilever development over creek bed

bulkhead

Pacific Ocean

EXHIBIT NO 46

APPLICATION NO.

Hertzig

4-00-259

new vertical p... access corridor

O C E A N U S

5455 BYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA 90265 310-457-6109
SKYLAR BROWN: ARCHITECT

21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265

DATE	BY	REVISION
11/11/11	SK	1
11/11/11	SK	2
11/11/11	SK	3
11/11/11	SK	4
11/11/11	SK	5
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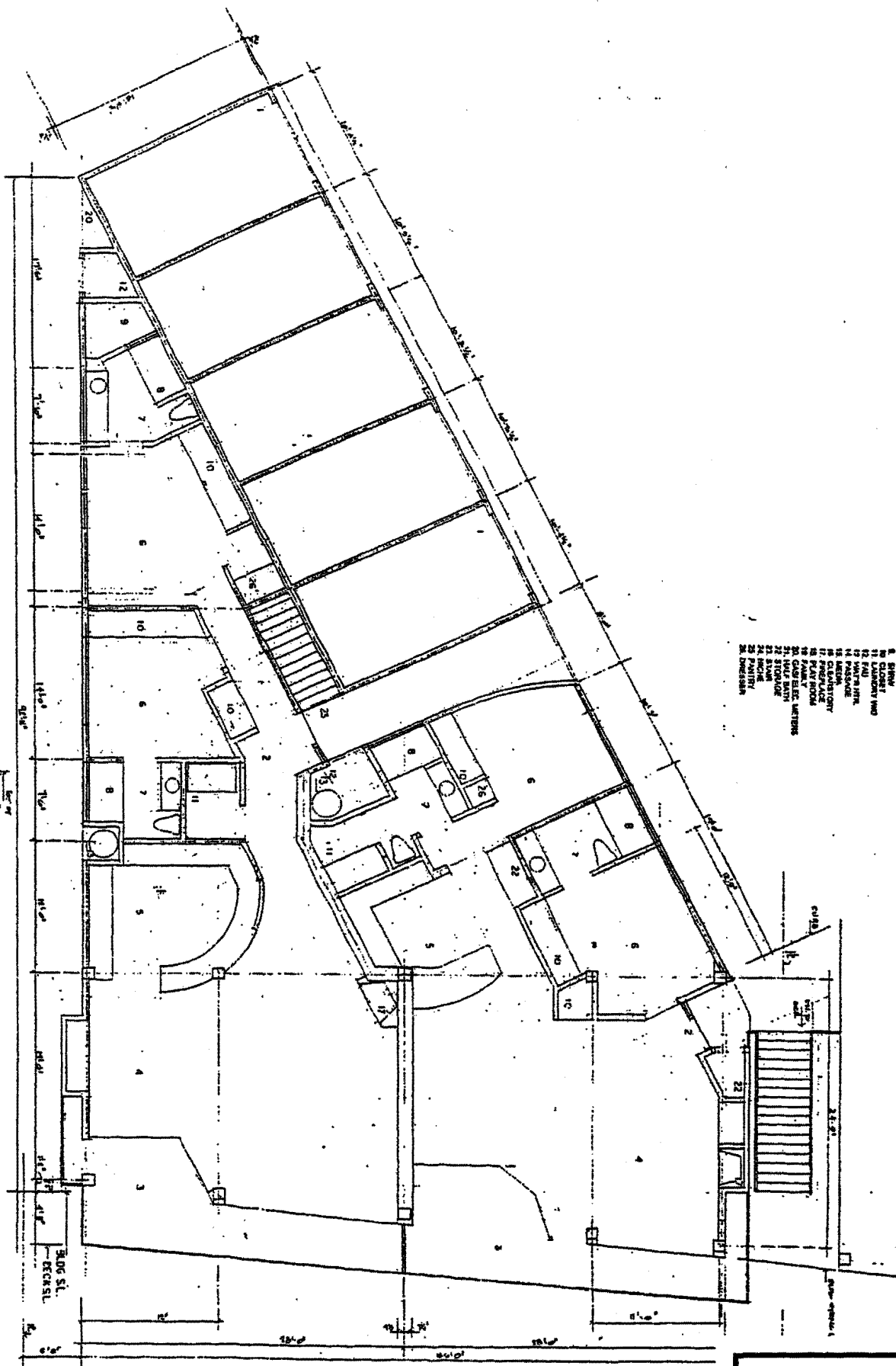


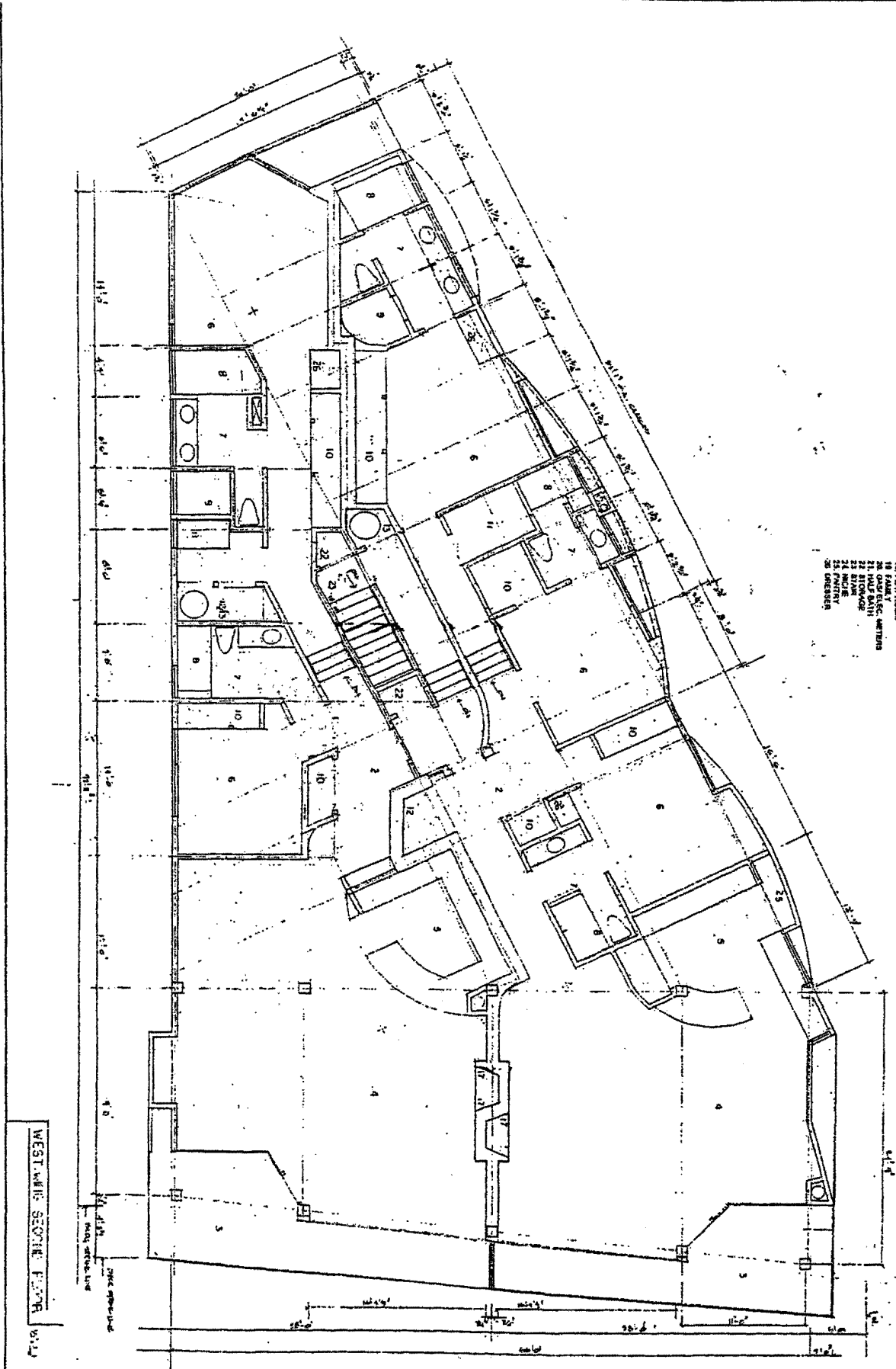
EXHIBIT NO.5

APPLICATION NO.

Herzig

4-00-259

West Wing 1st Flr



1. GARAGE
2. ENTRY
3. RECEPTION
4. HALLWAY
5. HALLWAY
6. HALLWAY
7. HALLWAY
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OCEANUS SKYLAR BROWN:ARC

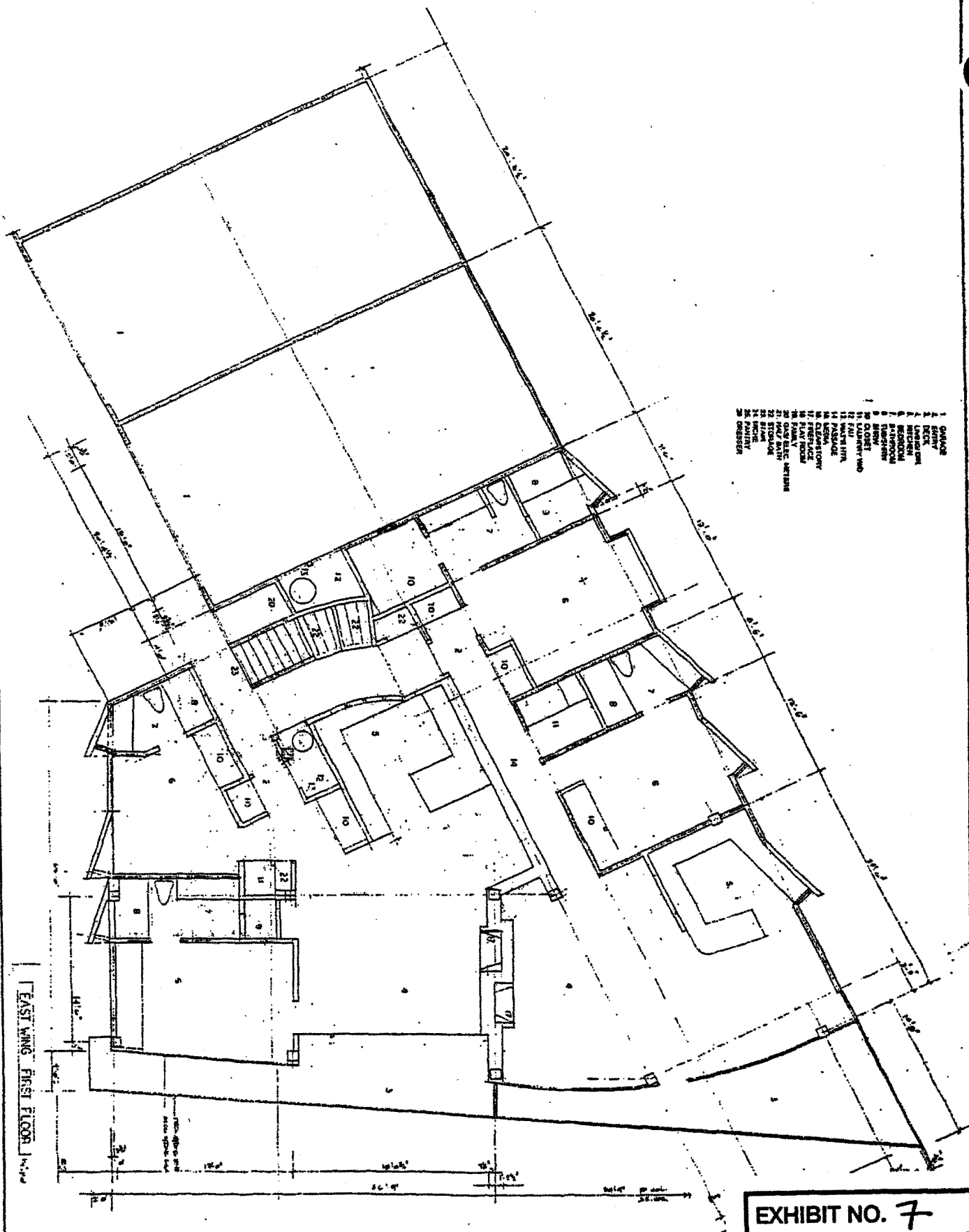
21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 6455 SYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

EXHIBIT NO. 6

APPLICATION NO. Verzig

4-00-259

West Wing 2nd Flr.

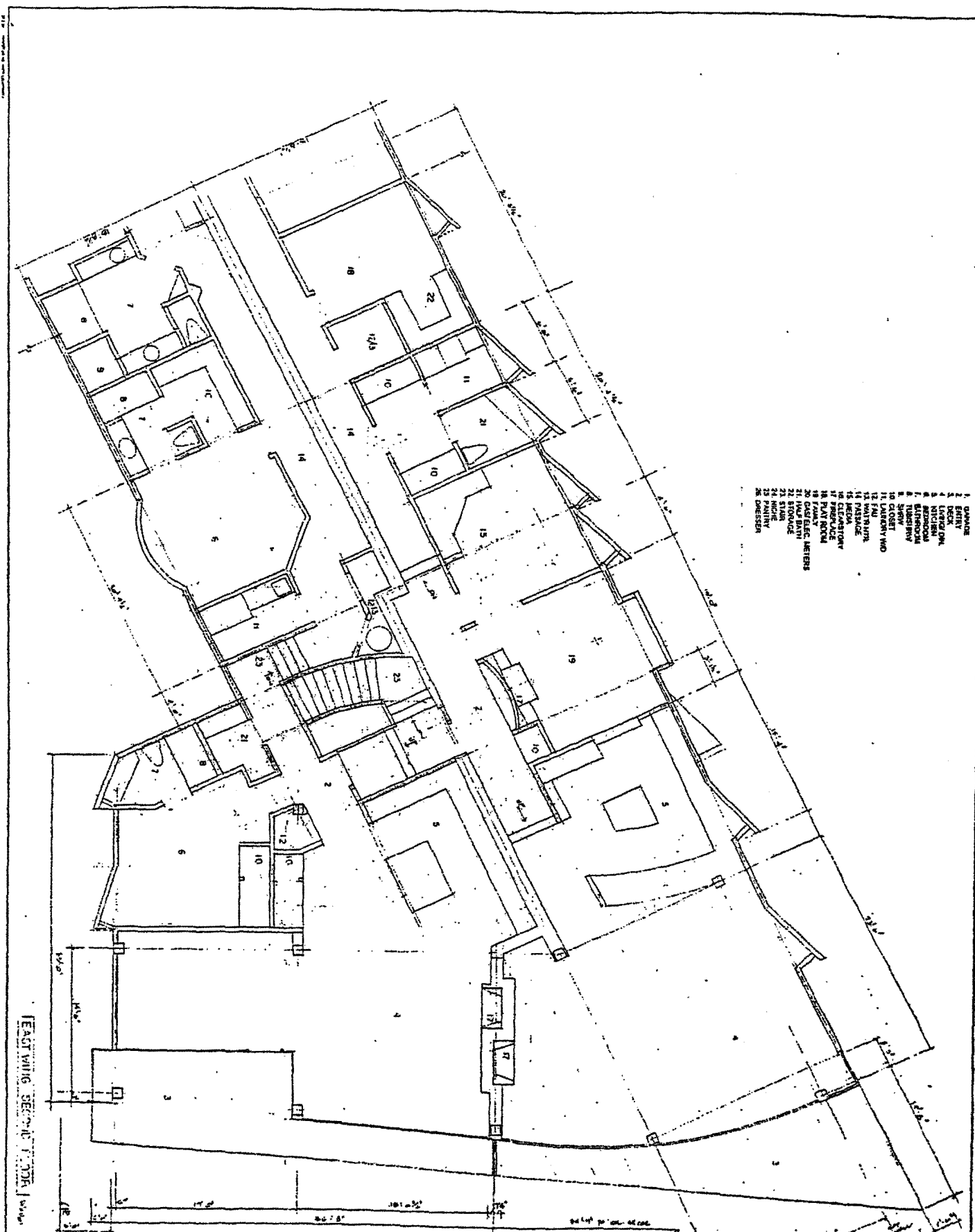


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EAST WING FIRST FLOOR

OCEANUS SKYLAR BROWN:ARC
 21302 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90262 6446 SYCAMORE MEADOWS DRIVE MALIBU CALIFORNIA

EXHIBIT NO. 7
APPLICATION NO. Herzig
4-00-259
East Wing - 1st Flr

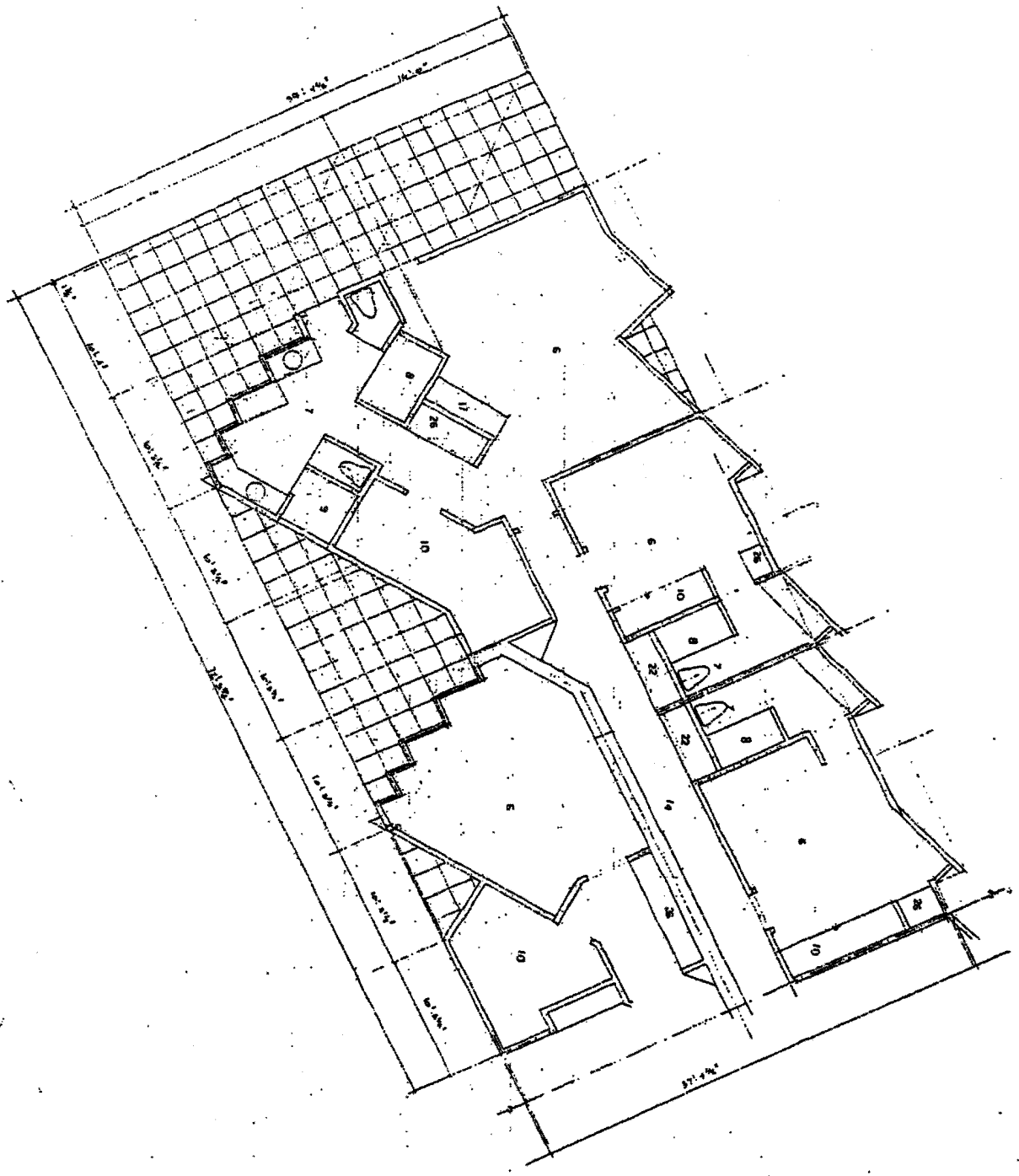


1. GRABBAR
2. ENTRY
3. DECK
4. HALLWAY
5. KITCHEN
6. BEDROOM
7. BATHROOM
8. BATHROOM
9. BATHROOM
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EAST WING, SECOND FLOOR

OCEANUS SKYLAR BROWN:ARC
 21002 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90265 9455 SYCAMORE MEADOWS DRIVE MALIBU CALIFORNIA

EXHIBIT NO. 8
 APPLICATION NO. Herzig
 4-00-259
 East Wing 2nd Flr

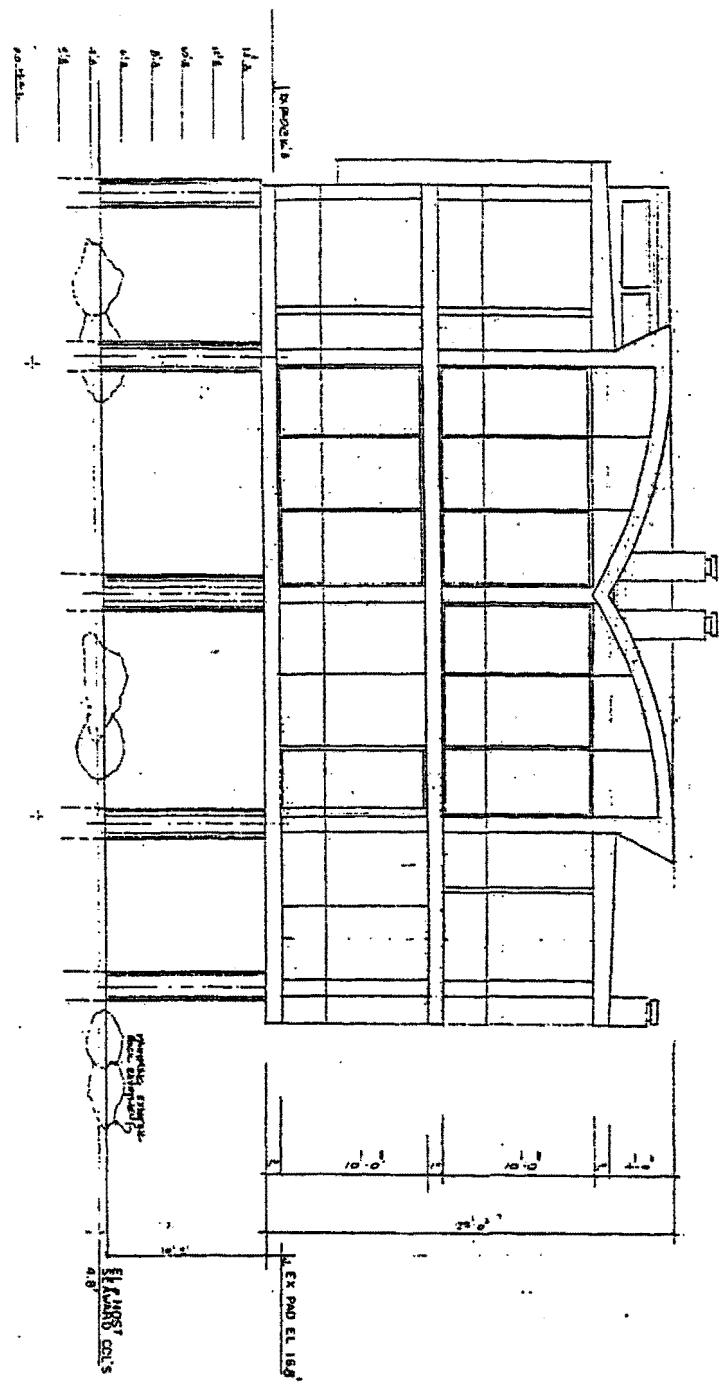


EAST WING, SECOND FLOOR

- 1. ENTRANCE
- 2. DECK
- 3. LIVING ROOM
- 4. KITCHEN
- 5. BEDROOM
- 6. BATHROOM
- 7. CLOSET
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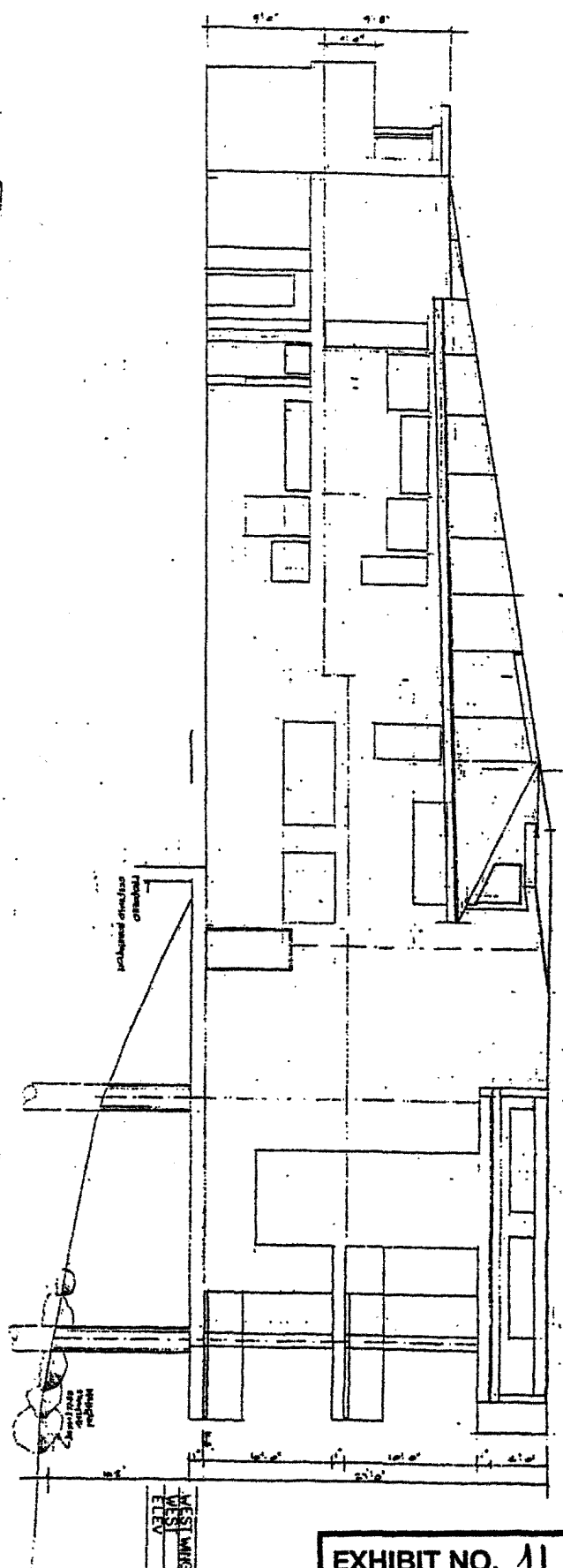
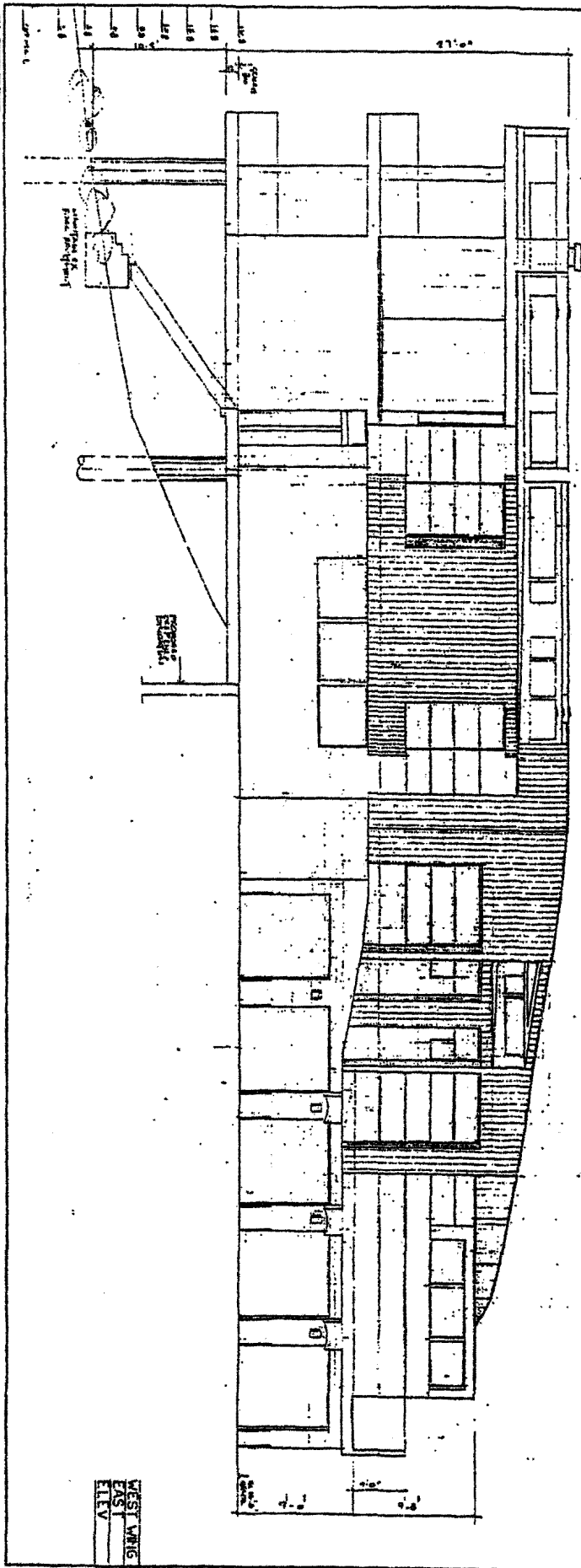
OCEANUS SKYLAR BROWN: A.
 21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 648 STAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

EXHIBIT NO. 9
APPLICATION NO. <i>Hertz</i>
East Wing 2nd Flr
4-00-259

[illegible]

WEST WING SOUTH ELEV		WEST WING NORTH ELEV		O C E A N U S		SKYLAR BROWN: A	
71502		71502		71502		71502	
PACIFIC COAST		PACIFIC COAST		PACIFIC COAST		PACIFIC COAST	
HIGHWAY		HIGHWAY		HIGHWAY		HIGHWAY	
MALIBU, CALIFORNIA		MALIBU, CALIFORNIA		MALIBU, CALIFORNIA		MALIBU, CALIFORNIA	
90286		90286		90286		90286	
9446 SYCAMORE MEADOWS DRIVE		9446 SYCAMORE MEADOWS DRIVE		9446 SYCAMORE MEADOWS DRIVE		9446 SYCAMORE MEADOWS DRIVE	
MALIBU, CALIF		MALIBU, CALIF		MALIBU, CALIF		MALIBU, CALIF	

EXHIBIT NO. 10
APPLICATION NO. Herzig
4-00-259
West Wing South Elevation



O C E A N U S SKYLAR BROWN: AR
 71200 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90263 445 SYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

EXHIBIT NO. 11
APPLICATION NO. Herzig
4-00-259
West Wing West Elevation

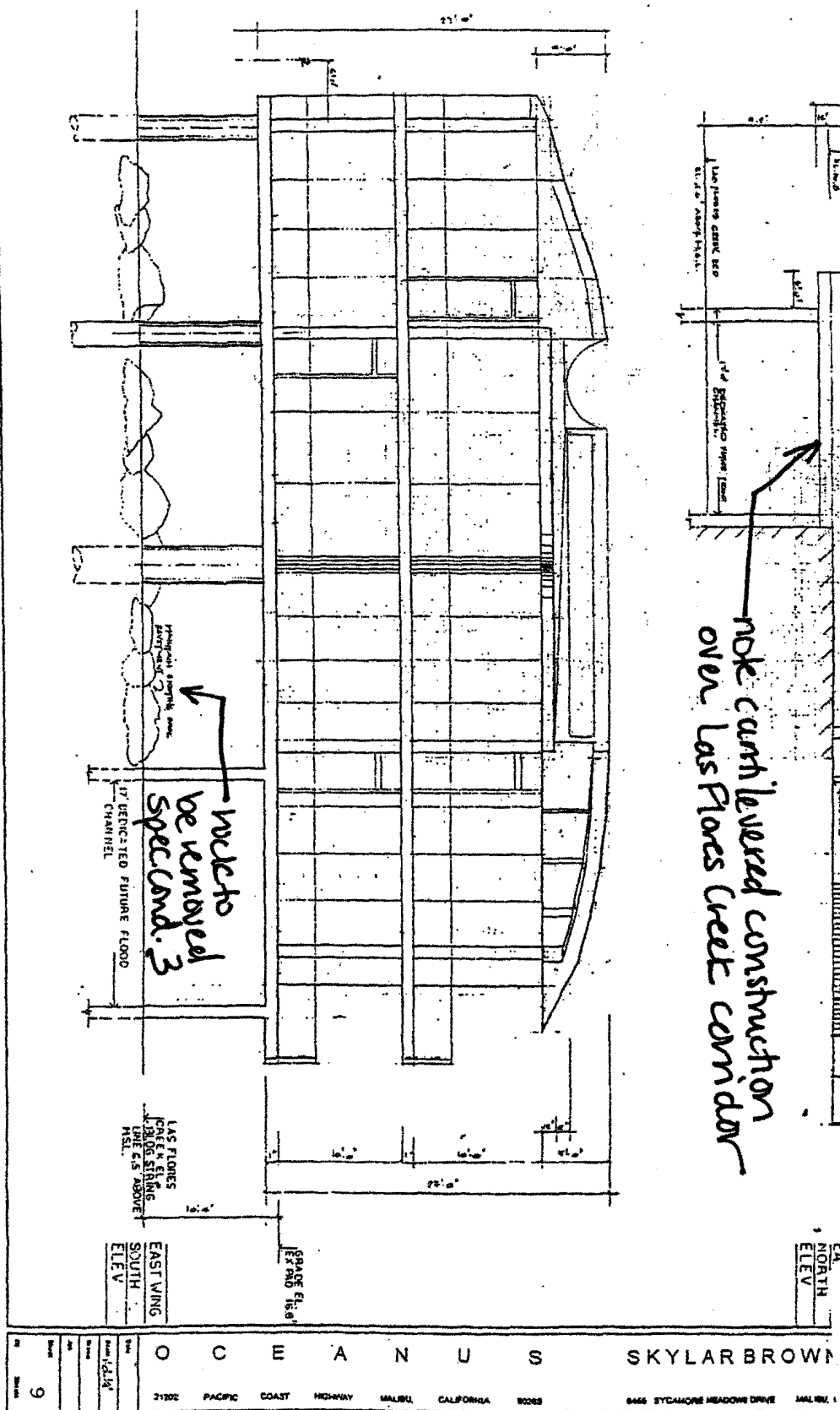
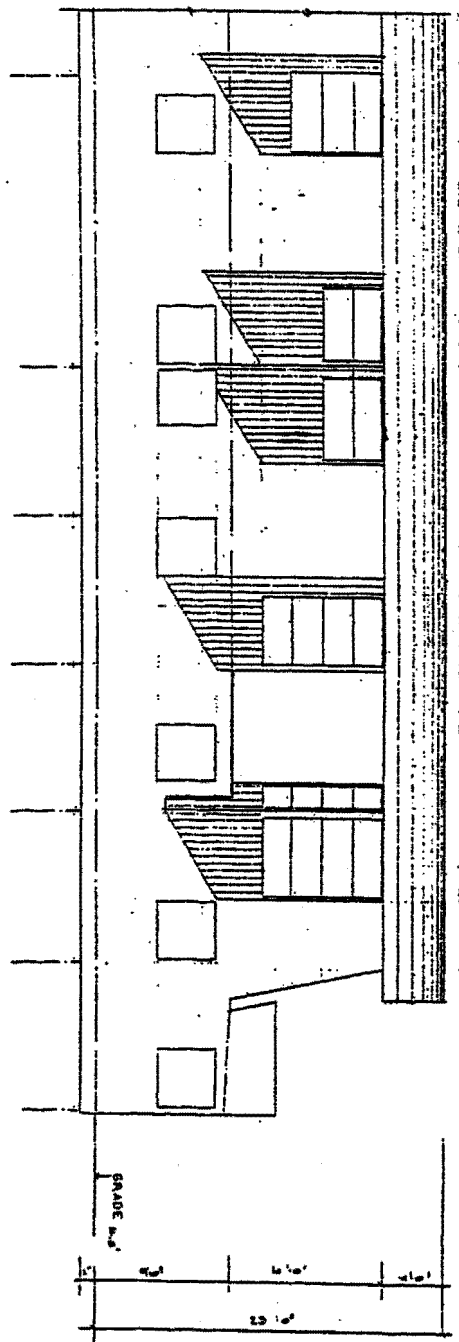
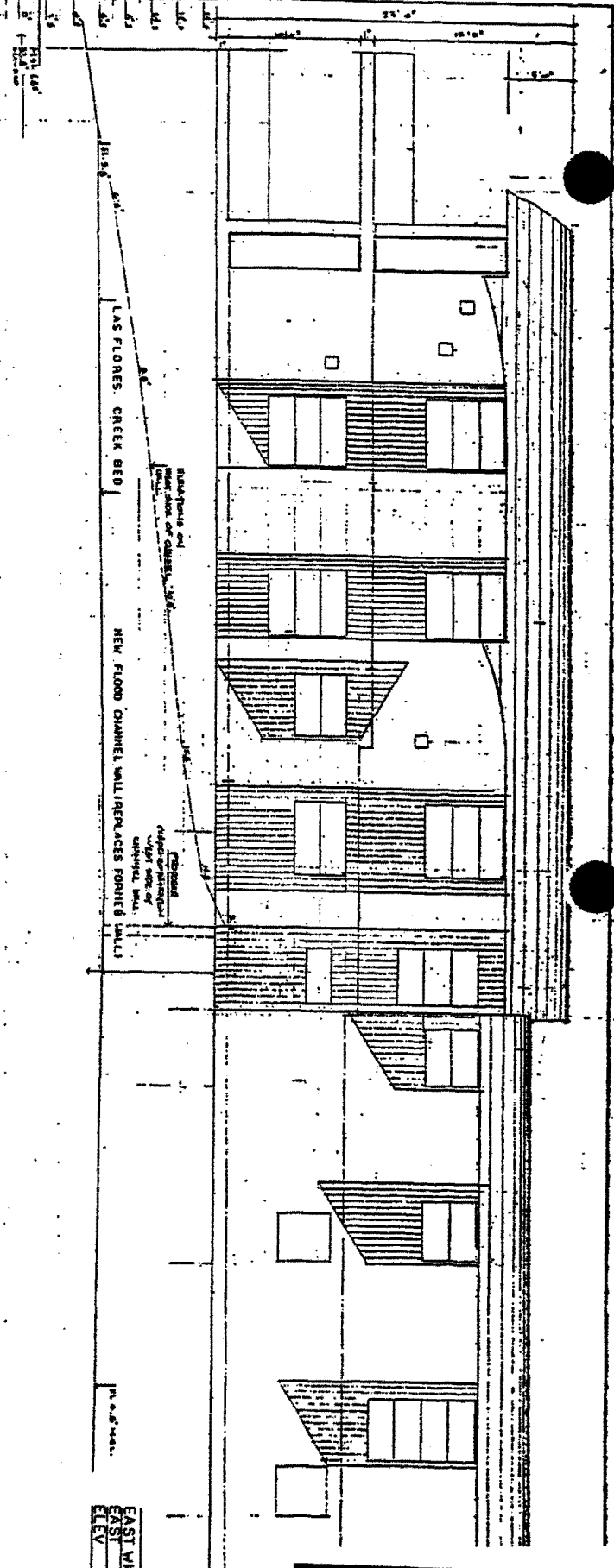


EXHIBIT NO. 12
APPLICATION NO. Herzig
4-00-259
East Wing South Elevation



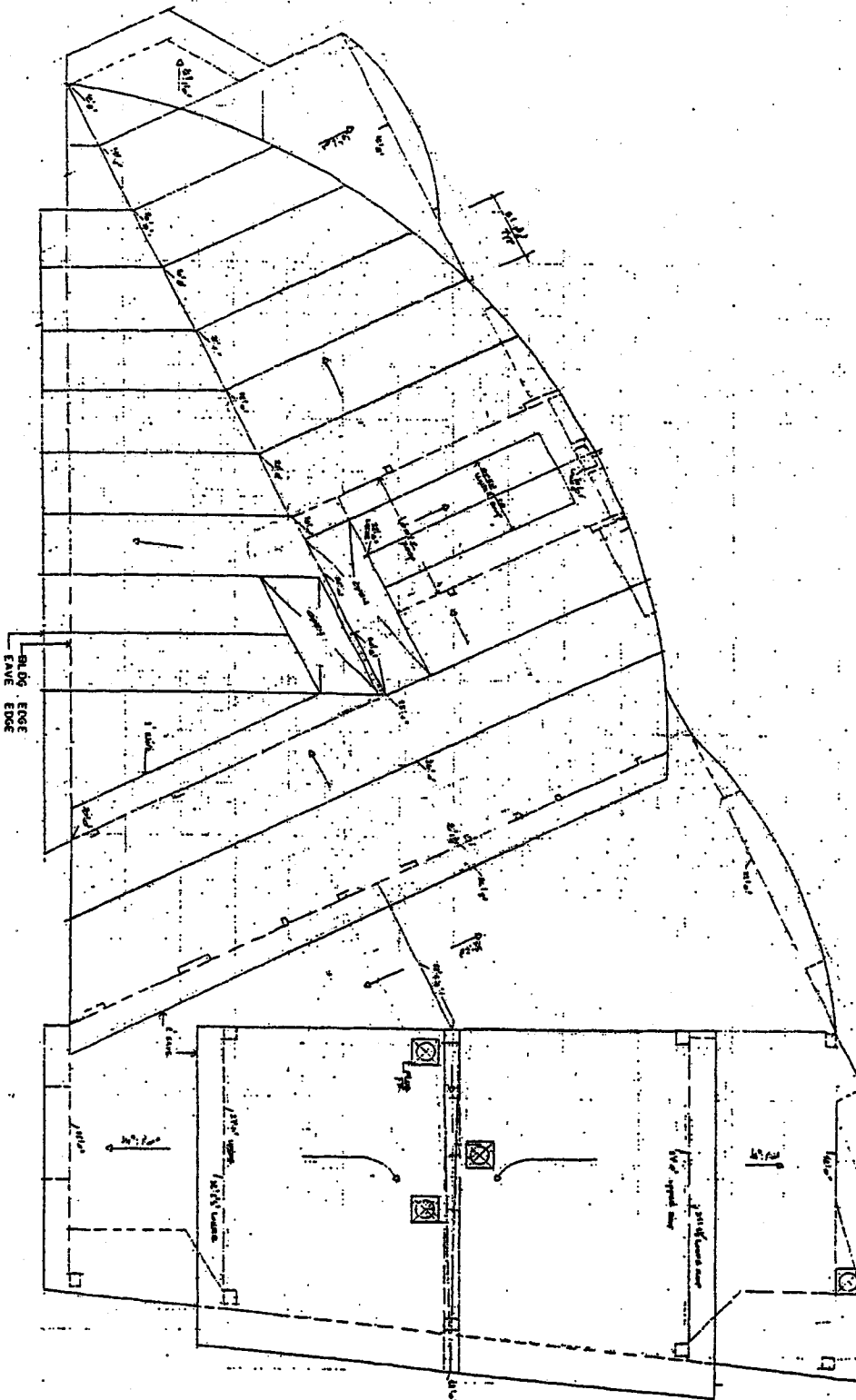
EAST WING
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EAST WING
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O C E A N U S SKYLAR BROWN
2120 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90265 5486 SYCAMORE MEADOWS DRIVE MALIBU CALIF

EXHIBIT NO. 13
APPLICATION NO.
Hering
4-00-259
East Wing
East Elevation



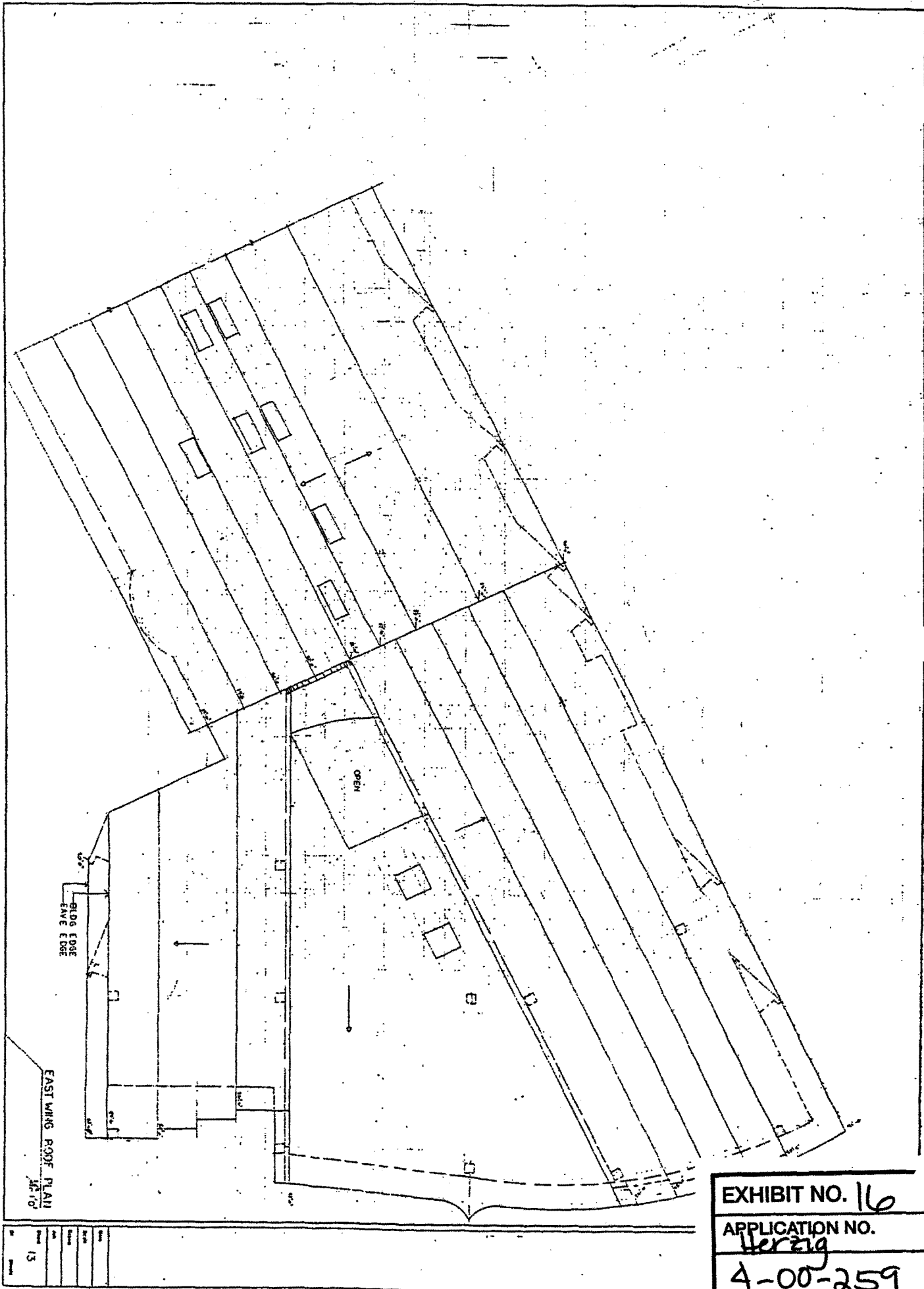
WEST WING ROOF PLAN 1/4" = 1'-0"

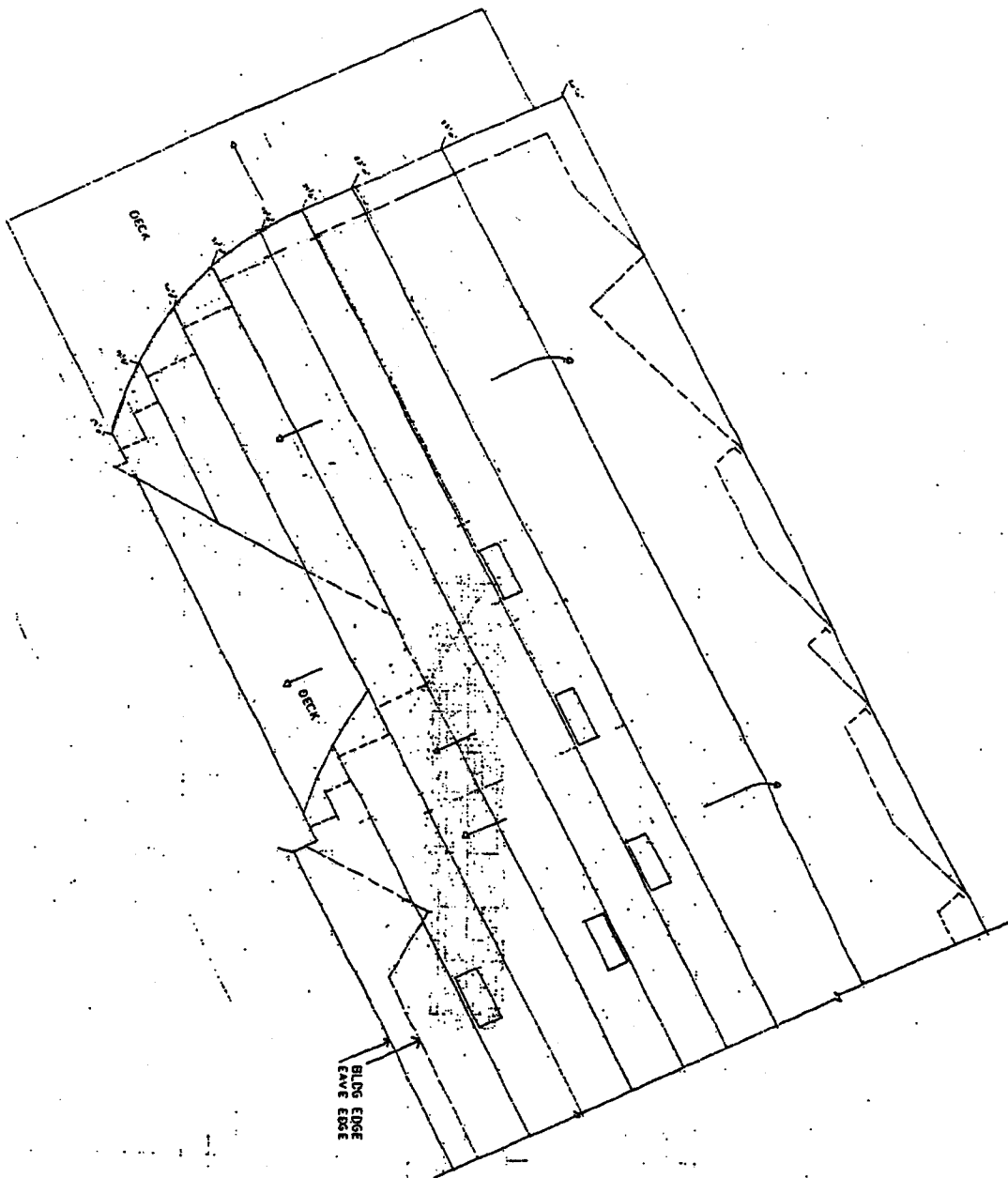
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SKYLAR BROWN: A

21322 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90265 8455 SYCAMORE MEADOWS DRIVE MALIBU CALIFORNIA

EXHIBIT NO. 15
APPLICATION NO. Herzig
4-00-259
West Wing Roof Plan





EAST WING ROOF PLAN 1/4" = 1'-0"

14	O	C	E	A	N	U	S	SKYLAR BROWN: A
14	21302	PACIFIC	COAST	HIGHWAY	MALIBU,	CALIFORNIA	90265	6405 SYCAMORE MEADOWS DRIVE MALIBU, CALIFOR

EXHIBIT NO. 17
APPLICATION NO. Herzig
4-00-259
East Wing Roof Plan

STATE OF CALIFORNIA

GRAY DAVIS, Governor

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



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

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

February 17, 2000

File Ref: SD 98-09-22.2

Ralph B. Herzig, Manager
Malibu Beachfront Properties, LLC
1246 Lago Vista Drive
Beverly Hills CA 90210

Dear Mr. Herzig:

SUBJECT: Coastal Development Project Review for Removal of Existing
Timber Pilings and Concrete Foundation and Construction of Two,
Two-Story, Multi-Family Condominiums at 21200 and 21202 Pacific
Coast Highway, Malibu, Los Angeles County

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

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

You propose a lot line adjustment and the removal of existing timber pilings and
a concrete foundation and construction of two, two-story, four-unit condominiums at
21200 and 21202 Pacific Coast Highway in the Las Flores Canyon area of Malibu. The
Albatross Restaurant and Hotel, which burned in the Malibu fire of 1993, formerly
occupied the property. Based on the plans you have submitted, the proposed
condominiums will be sited landward of the existing restaurant/hotel footprint. However,
based on the location of the Los Angeles County surveyed mean high tide line of 1928,
as depicted on your plans, a very small corner of the proposed deck on the east
extends beyond the 1928 line. The project should be revised so that the entire project
remains landward of that line.

It is our understanding that the property is zoned visitor serving pursuant to the
County's certified Land Use Plan. In addition, we are unable to determine whether the
project, as proposed, complies with the established string line policy of the California

(2 pages)

EXHIBIT NO. 18
APPLICATION NO. 4-00-259
Herzig
State Lands letter

Ralph B. Herzig

2

February 17, 2000

Coastal Commission (CCC), as we understand it to be. We anticipate that the land use and string line issues will be worked out to the satisfaction of the CCC.

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

We note that the February 10, 1999 plans you submitted show that the property is burdened with public access easements. One is an existing Irrevocable Offer to Dedicate a ten-foot wide easement for public access to the shoreline along the eastern boundary of the property line, recorded on March 19, 1981 as Instrument No. 81-279808, Official Records of Los Angeles County, and accepted by the California Coastal Conservancy on May 3, 1982. Your plans also reference another ten-foot wide vertical access easement located on the eastern side of Las Flores Creek pursuant to Instrument No. 77-899337. Both easements appear to be located within Las Flores Creek Channel. Your submittal also references plans to widen the Channel in conjunction with the City's Hazard Mitigation Plan for Las Flores Canyon.

The other easement is a deed restriction that gives the public "... the privilege and right to pass and repass over a strip of the Property 25 feet in width measured landward from the line of the mean high tide of the Pacific Ocean; however, in no case shall said dedication be nearer than five feet to any structure or other improvement now or hereafter constructed on the Property." This deed restriction was recorded as Instrument No. 77-899338 on August 16, 1977, Official Records of Los Angeles County.

We anticipate the effect of the project being proposed on these public access easements will be addressed by the CCC in their consideration of your application for a coastal development permit.

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

Sincerely,


ROBERT L. LYNCH, Chief
Division of Land Management

cc: Craig Ewing, City of Malibu

Page 2

EXHIBIT NO. 18
APPLICATION NO. 4-00-259 Herz
State Lands Comm.
Letter

Letter/
Page 1.

EXHIBIT NO. 19
APPLICATION NO.
Coastal Conservancy Letter of 7/18/01
Public Access Easements

July 18, 2001

Alan Robert Block, Esq.
1901 Avenue of the Stars, Suite 1610
Los Angeles, CA 90067-6001

Re: Proposed development at 21200 and 21202 Pacific Coast Highway

Dear Mr. Block:

Thank you for your letter of July 8, 2001. We appreciate your willingness to propose alternative solutions to the adverse impacts on our existing public access easements from your client's proposed development. We also would like to clarify your statements regarding the circumstances of the existing public access at the site and the potential impact of your client's proposed development on that access.

The Vertical Access Easement:

With respect to the vertical access at the site, you represent that the proposed development "...does not block or restrict public access in any way." To the contrary, the proposed development will make it impossible for the public to reach the Conservancy's 10-foot wide vertical easement without trespassing on your client's property. Thus, the proposed development will adversely impact the existing public access to the shoreline.

You also misstate in your letter that there are "... two 10-foot wide vertical *accessways* [emphasis added] which presently exist on the east side of the property...". In fact, there is only one 10-foot wide vertical *easement*, which is owned by the Conservancy, as yet unimproved and unopened to the public. There is also a 10-foot wide *deed restriction* for public access on your client's property on the east side of Las Flores Creek. As you know, this deed restriction only restricts your client from building anything within the 10-foot wide strip that would impede public access.

Despite these misunderstandings, we accept your proposed alternative to address the adverse impacts to our existing vertical access easement, as follows: Your client will construct at an alternative location on the subject property as described in your July 8th letter, a vertical public accessway extending from the public sidewalk (including the public sidewalk to be constructed by your client as a condition of this coastal development permit) to the seaward-most extent of the subject property, connecting with

2530 Broadway, 11th Floor

Oakland, California 94612-2530

510-286-1015 Fax: 510-286-0470

stairs down to the lateral public easement on the beach. The proposed alternative accessway would be constructed, publicly signed and not gated, within one year of issuance of the coastal development permit, or within such additional time as may be authorized by the Executive Officer of the Coastal Conservancy. The new vertical access easement in favor of the Conservancy would be recorded prior to issuance of the coastal development permit.

The Lateral Access Easement:

With respect to the lateral easement owned by the Conservancy, the proposed development will adversely affect our easement if the footprint extends at any point any further seaward than 30-feet landward of the State Lands Commission's designated 1928 mean high tide line (MHTL). Our easement will remain the same, that is, *ambulatory* as measured 25 feet inland from the mean high tide during each day. The additional 5 feet represents a privacy buffer which your client could elect to eliminate by recording a lateral access easement offering the public access to the dripline of the proposed structures.

We look forward to your response. You may contact our counsel, Elena Eger, at (510) 286-4089 if you need further information.

Best regards,



Joan Cardellino
Access Program Manager

Cc: Melanie Hale, Coastal Commission
Chuck Damm, Coastal Commission
Elena Eger, Conservancy

Letter/
PAGE 2

EXHIBIT NO. 1
APPLICATION NO. 4-00-259 Herzog
Coastal Conservancy Letter 7/18/01
Page 2

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

ALAN ROBERT BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

1501 AVENUE OF THE STARS, SUITE 1610
LOS ANGELES, CALIFORNIA 90067-6001

E-MAIL: alan@arblock.com
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1950

July 23, 2001

VIA FAX & FIRST CLASS MAIL

Ms. Joan Cardellino
Access Program Manager
California Coastal Conservancy
1330 Broadway, 11th Floor
Oakland, CA 94612

Re: Coastal Development Permit (CDP) Application No. 4-00-021 (Herzig)
Project Addresses: ~~21206 & 21202~~ Pacific Coast Highway, Malibu

Dear Ms. Cardellino:

Thank you for your letter of July 18, 2001. I appreciate the opportunity to discuss this matter with you in a reasonable and amicable manner in order to both improve public access opportunities and enable Dr. Herzig to obtain Coastal Commission approval to build the pending project.

Vertical Access

As you acknowledge in your correspondence, Dr. Herzig has agreed with the Commission staff to provide a new 5 foot vertical accessway on the west side of the property (adjacent to the Union 76 gas station). In addition, he has agreed to offer to dedicate the entire 45 foot wide Las Flores Creek (flood control channel) to the Coastal Conservancy in order to provide extensive vertical access.

Dr. Herzig does not propose to perform any development in Las Flores Creek beyond his agreement with the City of Malibu to widen the same. Although his plans do propose a parking area to cantilever over this widened area of the creek, no structure is proposed at or near the elevation of the creek bed. As such, I do not understand the statement in your correspondence that "the proposed development will make it impossible for the public to reach the Conservancy's 10 foot wide vertical easement without trespassing on your client's property". If your concern is that the Conservancy does not presently have access to the

Letter - Page 1 of 5

EXHIBIT NO. 19
APPLICATION NO. 4-00-251 Herzig
Letter from Applicant to Conserv.

Joan Cardellino.

Re: CDP Application No. 4-00-021 (Herzig)

July 23, 2001

Page 2

creek (and its vertical access easement) from the applicant's property, perhaps we can explore that issue. This provides an additional reason for the Conservancy to attempt to reach an agreement with Dr. Herzig. However, it is our understanding that the proposed development will not adversely affect the existing vertical access already accepted by the Conservancy. To the contrary, the applicant is willing to enlarge the existing vertical access easement, as well as dedicate and construct the vertical accessway on the west end of the property.

Lateral Access

As you know, until the late 1970s, a small restaurant and hotel, appropriately known as The Albatross, was operated on the subject property. The restaurant was 6,000 square feet and the hotel had 8 guest rooms. In 1975, the owner of The Albatross sought to increase the restaurant's capacity and the Commission's South Coast Regional Board approved CDP No. P-6353 on condition, *inter alia*, that the owner dedicate lateral and vertical access to the public, expand the existing parking by an additional 20 off-site spaces and construct a public sidewalk over Las Flores Creek on the seaward side of Pacific Coast Highway.

Although the lateral access deed restriction was recorded, it specifically provided that it "shall remain in full force and effect during the period that said Permit, or any modification or amendment thereof, remains effective." Unfortunately, CDP No. P-6353 was shortly thereafter revoked by the Commission because of a lack of parking and the revocation had the effect of voiding the subject deed restriction.

Subsequent to the Commission's revocation of CDP No. P-6353, the restaurant and hotel were abandoned, and the building remained vacant until it was completely destroyed in the Las Flores Canyon fire of 1993. The Commission thereafter approved the construction of a new restaurant on April 23, 1979, in CDP No. P-79-4918. Although the permit was never activated, and the restaurant never constructed, the former owner did grant the public a 25-foot wide strip of beach for lateral access, no closer than 5 feet to any structure, as well as an additional 10-foot wide vertical access. A true and correct copy of Irrevocable Offer to Dedicate, Los Angeles County Recorder Document No. 81-279809, recorded on March 19, 1981, was previously forwarded to you for your review.

Said document, which has been accepted by the Coastal Conservancy consists of an

Exhibit 19
letter - Page 2 of 5

Joan Cardellino.

Re: CDP Application No. 4-00-021 (Herzig)

July 23, 2001

Page 3

offer a 25 foot wide strip of beach located on the subject property as measured inland from the water line and as specifically set forth by the attached Exhibit "C" to the Irrevocable Offer To Dedicate. Exhibit "C" specifically references the 1969 mean high tide line. It does not reference the 1928 mean high tide line.

As presently proposed, Dr. Herzig's project's most seaward projection is approximately 17 feet landward of the location of the former Albatross restaurant/hotel and revetment, and entirely landward of the 1928 mean high tide line. The ambulatory nature of the easement does not remove the restrictions on the lateral easement that require it be located no closer than 5 feet seaward of any structure. In fact, the existing remnants of the pre-existing building and the rock revetment - which are being removed and not rebuilt under the plan - are fixed points and limit the greatest landward extent of the Conservancy's lateral access as would a rebuilding of the pre-existing building. The State Lands Commission has specifically indicated that the proposed structure will not be located on state lands.

Dr. Herzig's project (as now proposed) extends fifty (50) feet inland from the 1928 mean high tide line toward Pacific Coast Highway. A setback of 25 to 30 feet from the 1928 mean high tide line for a lateral access dedicated to the public would preclude the development of approximately sixty percent (60%) of the subject property. For this reason Dr. Herzig cannot accept the setback as suggested by the Conservancy and it is extremely doubtful that any government entity would attempt such a large-scale taking of Dr. Herzig's property for public use without just compensation.

I believe that Dr. Herzig, however, would accept a compromise position, which I would recommend, wherein he would agree to setback development 15 feet from the 1969 mean high tide line referenced in the existing Irrevocable Offer To Dedicate and provide an additional 5' under the building which is designed to be at an elevation approximately 12-15 feet above the shore. Although such a setback would still require the location of the proposed structure to be moved landward and the project substantially reduced in size, I believe he would likely agree to it in order to satisfy the Conservancy's concerns.

Clearly, if the pending project is denied by the Coastal Commission, and/or conditioned in such a manner as to be tantamount to a denial (i.e., set back 25 feet from the 1928 mean high tide line), not only will Dr. Herzig be denied a reasonable development, but,

Exhibit 19
Letta - Page 3 of 5

Joan Cardellino.
Re: CDP Application No. 4-00-021 (Herzig)
July 23, 2001

Page 4

moreover, the public will also lose by not being able to benefit from the additional, enlarged access offered by Dr. Herzig.

Pursuant to the disaster replacement sections of the Coastal Act, Dr. Herzig or a future owner of the subject property could rebuild the former Albatross restaurant/hotel and revetment without even applying for a Coastal Development Permit.

Public Resources Code §30610(g) provides, in part, as follows:

"[N]o coastal development permit shall be required pursuant to this chapter for. . . [t]he replacement of any structure . . . destroyed by a disaster. The replacement 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."

If such were the case, the public would lose at least 20-25 feet of beach across the front of the subject parcel, not to mention the additional access it will receive should the pending application be approved with reasonable conditions acceptable to Dr. Herzig.

Conclusion

The purpose of this letter is not to argue the law. I certainly understand why the Conservancy would want to use the 1928 mean high tide line because it represents the most seaward mean high tide line ever recorded. It is not, however, the mean high tide line referenced in the recorded irrevocable Offer To Dedicate.

Rather, the purpose of this letter is to attempt to reasonably work out public access conditions and a development which both Dr. Herzig and the Conservancy can live with. An uncompromising position on lateral access by the Conservancy will not result in additional public access or remedy its present access concerns. Only an acceptable approval of the project by the Coastal Commission will assure maximum public access. Hopefully, this correspondence can lead to a compromise position for both parties that will encourage a satisfactory Coastal Commission approval.

I look forward to discussing these matters with you at your earliest convenience. If

Exhibit 19
Letter - Page 4 of 5

Joan Cardellino.

Re: CDP Application No. 4-00-021 (Herzig)

July 23, 2001

Page 5

a sit-down meeting and a review of the plans would be helpful, we are most interested in proceeding. Thank you for your courtesy and review of this proposal.

Very truly yours,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation



ALAN ROBERT BLOCK

cc: Ralph Herzig
Susan McCabe
Elana Egger, Esq.

Exhibit 19
Letter - Page 5 of 5

7E

TO THE HOMEOWNERS OF LA COSTA BEACH, LAS FLORES BEACH, DUKES RESTAURANT, AND THE LA COSTA BEACH CONIDMINIUM ASSOCIATION.

IT SHALL BE THE ATTEMPT TODAY TO DISPLAY WHY PUTTING AN EASMENT FOR INGRESS AND EGRESS, AT THE HERZIK (ALBATROSS) SITE OF LA COSTA BEACH IS POOR JUDGEMENT. MORE IMPORTANTLY, TO BRING OUR NEIGHBORHOOD TOGETHER TO STOP THIS PROCESS, AND TO SHOW OUR SUPPORT AT THE COASTAL COMMISION HEARING, JUNE 15TH AT THE L.A.X. MARRIOT, AT 8:00 A.M.

THE PROPOSED EASMENT WILL RUN ADJACENT TO, AND IN BETWEEN, THE PROPOSED HERZIK SITE AND THE EXISTING 76 STATION AND CONDIMINIUMS. IT WOULD ORIGINATE AT THE CROSSWALK AT THE RAMBLO PACIFICA STOPLIGHT. THE PROPOSITION IS A FIVE FOOT WIDE CORRIDOR STRECHING THE LENGTH OF THE PROPERTY, FINDING A VIRTUAL DEAD END UPON ARRIVAL TO THE BEACH. THIS DEAD END WILL LEAD TO SERIOUS LIABLITY ISSUES BY THE PROPERTY OWNERS ON EITHER SIDE OF THE EASMENT, THE COASTAL COMMISION, COASTAL CORSERVANCY, ANDTHE CITY OF MALIBU. THE PROBABLITY OF THE PUBLIC BEING SWEEP BY INCOMING TIDAL SURGE IS HIGH IN ANY CONDITIONS. SHOULD THE PUBLIC WANT TO TRAVEL UP THE BEACH, WEST TO LA COSTA BEACH, THE ONLY ACCESS IS TO TRESSPASS UNDERNEATH THE CONDOMINIUM ASSOCIATION'S PROPERTY. THE SHERIFFS DEPARTMENT IS OPPOSED TO THIS DUE TO PROBLEMS AFTER THE MALIBU FIRE. TRANSIENTS LIVING AND LIGHTING FIRES UNDERNEATH THE LA COSTA CONDOMINIUM ASSOCIATION'S PROPERTY, TRASH, DEBRIS, LACK OF TOILET FACILITIES, AND THEFT PROVED TO BE AN ONGOING PROBLEM. THE PROBLEM EXISTS TODAY EVEN WITHOUT AN OPEN PUBLIC EASMENT.

THE COASTAL CONSERVANCY MADE AN ARANGMENT WITH THE SHERRIF'S DEPARTMENT TO CLEAN THE BEACH OF DEBRIS AFTER THE FIRE, AND THIS HAS NOT BEEN KEPT. THE OPEN EASMENTS TO THE EAST ARE NOT CLEANED OR PATROLED. LITIGATION IS LIKELY FOR THE HOMEOWNER'S PROPERTY'S SECURITY SHOULD THIS EASMENT BE PURSUED. FURTHERMORE SHOULD THIS EASMENT PASS THE LA COSTA CONDIMINIUM ASSOCIATION MIGHT OPT TO CONTRUCT A CHAIN LINK FENCE TO KEEP THE PUBLIC FROM ACCESS PROCEEDING TO THE WEST TO AVOID THEIR OWN LIABLITLTY. THERE IS NOT A SAFE ACCESS UNDERNEATH THE CONDOS. THERE IS NO LIGHTING, AS A WET BEACH, THE WAVE ACTIVITY IS FREQUENTLY AN ISSUE. THE CONDOMINIUM ASSOCIATION WILL NOT ASSUME LIABILITY AND FURTHERMORE DOES NOT WANT THIS WALK WAY SEEN AS AN IMPLIED OR PRESCRIBED EASMENT.

SHOULD THE PUBLIC WALK DOWN THE BEACH OR EAST TOWARDS DUKES THEY WOULD RUN DIRECTLY INTO AN EXISTING EASMENT, THE LAS FLORES CREEK. THIS EASMENT HAS BEEN OVERLOOKED BY THE

Exhibit 19
Unknown Author: Delivered to Staff Table
6/15/01 page 1/2

COASTAL COMMISSION DUE TO LIABILITY ISSUES CONCERNING THE DANGEROUS OUTFLOW OF THE CREEK. 2 MONTHS OUT OF THE YEAR LAS FLORES CREEK IS A NICE SANDY BEACH. 6 MONTHS OF THE YEAR A DANGEROUS WATERWAY, AND THE ADDITIONAL 4 MONTHS SOMEWHERE IN BETWEEN. DUKE'S RESTAURANT IS OPPOSED TO THE PUBLIC GATHERING BELOW THEIR PROPERTY AS IT ATTRACTS THEIR CUSTOMERS TO THE BEACH. THIS IS A DIRECT LIABILITY ISSUE FOR DUKES. SHOULD THE PUBLIC GO EAST FROM HERE, DUKES THEN ASSUME LIABILITY FOR ANYONE TRYING TO PROCEED DOWN THE ROCKS. DUE TO LIABILITY ISSUES THE OWNERS OF THE PROPERTY AND DUKES FORBID ANY TRESSPASSING BY CUSTOMERS OR PUBLIC ONTO THESE ROCKS FOR OBVIOUS REASONS. SHOULD THE HERZIK PROJECT BE HELD TO THE 1972 STRING LINE (76 STATION LINE), THE PROBLEMS MENTIONED HERE WOULD REALLY NOT CHANGE.

THE BEACH STUDY OF THE COASTAL COMMISSION IS VERY ASTUTE. THEY FOUND LA COSTA TO BE AN ERODING BEACH. SO ANY OF THE PROBLEMS FORMENTIONED WILL ONLY GET WORSE AND INCREASE LIABILITY. THE REPORT MENTIONED GLOBAL WARMING AND INCREASED SEA LEVELS. SHOULD THIS BE TRUE THE PROBLEMS WILL BE GREATER STILL. THIS IS BEING CONSIDERED FOR LITIGATION SHOULD THE COASTAL COMMISSION PROCEED WITH THIS. THIS PARTICULAR LOCATION FOR AN EASEMENT IS A VERY BAD IDEA. THE COASTAL COMMISSION'S AGENDAS ARE DISTURBING BUT NOT AT ISSUE IN THIS CASE. TO OPEN A DANGEROUS ACCESS TO THE PUBLIC IS BOTH RECKLESS AND IRRESPONIBLE AND NOT IN THE PUBLIC'S BEST INTEREST. THIS EASMENT WILL NOT INCREASE TOURISM. THIS EASMENT WILL NOT OPEN A VIEW CORRIDOR TO THE PUBLIC. THIS EASMENT WILL SIMPLY LED TO INCREASED LIABILITY FOR ALL INVOLVED. WE WOULD HOPE YOU MIGHT FIND IT IN YOUR INTEREST TO PROTECT THE BEACH WE LIVE ON, AND YOUR LIABILITY INTERESTS. PLEASE ATTEND THE HEARING JUNE 15 OR MAKE SURE TO GET YOUR OPPOSITION ON RECORD. AS A FINAL NOTE, IT WOULD BE A POSITIVE IMPROVEMENT TO HAVE MR. HERZIK BUILD HIS PROJECT. TO RELIEVE US THE ENTIRE EYESORE OF THE EMPTY LOT WOULD BE AN IMPROVEMENT. WE ARE SIMPLY OPPOSED TO THE COASTAL COMMISSION'S BLIND OBSESSION TO OPEN UP BEACHES TO THE PUBLIC, WITHOUT WEIGHING THE CONSEQUENCES.

THANKYOU

Exhibit 19
Page 2/2



May 1, 2001

Sara Wan
Chair, California Coastal Commission
C/o Ventura District Office
89 South California Street, 2nd Floor
Ventura, CA 93001

Re: Herzig Property Application: 21202 Pacific Coast Highway, Malibu

Dear Ms. Wan:

The Coastal Conservancy owns two public access easements on the property located at 21202 Pacific Coast Highway in Malibu. The proposed development will effectively eliminate the easements and prevent any possible public access to the coast at this location. Conservancy staff believes this is completely unacceptable and that the Coastal Commission should deny the permit for this development on that basis.

In late February of this year after a conversation with Mr. Herzig, Conservancy staff asked Mr. Herzig in writing, to provide detailed project plans that would indicate the verbally promised public access improvements. Mr. Herzig never responded to that request; however, the lot line adjustment site plan prepared in 1998 shows that both the vertical and the lateral access easements would be built upon, a clear violation of the Conservancy's property rights.

This project should only be approved if a vertical public accessway is required to be built as part of the condominium development. The accessway should be constructed by the applicant, and offered for dedication to a public agency or private association so that it is managed by an entity other than the condominium owners. Signs directing the public to the accessway should be required on Pacific Coast Highway, and public parking spaces should be provided on-site.

Regarding the lateral public access easement, that easement is ambulatory with the mean high tide line. The easement is 25 feet wide, but may not move closer than 5 feet to any *existing* structure. This is not to be construed to mean any structure that may have been on the site in 1977.

1330 Broadway, 11th Floor
Oakland, California 94612-2530

C a l i f o r n i a S t a t e C o a s t a l C o n s e r v a n c y


Letter-
Page 1 of 2

EXHIBIT NO. 19
APPLICATION NO. Herzig
4-00-259
Correspondence

This site is particularly important for public coastal access since public access on the La Costa beach of Malibu is severely restricted. From this location it is approximately one mile to the nearest public accessway. The downcoast stretch of beach is inaccessible at this point because Duke's Restaurant protrudes into the tidal area, making it impossible for pedestrians to traverse. An accessway at this location would provide a valuable entrance and exit for visitors to the upcoast portion of La Costa beach.

The Commission should act to promote public access at this site, either by denying the permit so the Conservancy can construct improvements on our property, or by mitigating the proposed project as described above.

Sincerely,



Joan Cardellino
Access Program Manager



SIERRA
CLUB
FOUNDED 1892

May 7, 2001

The Honorable Sara Wan, Commission Chair & Honorable Commissioners
California Coastal Commission
89 South California Street, 2nd Floor
Ventura, CA 93001

re: Application No. 4-00-259

TU 14j

Angeles Chapter

Dear Chair Wan and Commissioners:

Sierra Club would prefer to see this project site purchased for the public for a beach access park. Anyone who has ever seen television reports of Malibu floods, knows this site. It is the subject of frequent flood damage, and it is against our policy to recommend building in repeated flood zone territories such as this, where natural wetland and creek functions are the best defense for protecting surrounding homes and businesses from severe damage.

However, if the Commission determines it must approve a project of some sort on this site, the staff has completed a tremendous report that provides plenty of back-up as to why the proposed project changes and conditions need to be required if any building at all is to exist on this sensitive flood-prone site.

That said, we are very concerned that the City of Malibu has decided to make such a substantial change to the land-use in this area and impact a functioning coastal wetland, while they have yet to complete a Malibu LUP or LCP. We have expressed to the City Council on numerous occasions our desire to participate in the process of preparation of an LUP and LCP that would comply with the Coastal Act and have also asked repeatedly that this process be expedited - all to no avail. **We, once again, make a similar request of the Commission that Sierra Club would like to participate in the preparation of Malibu's LUP and LCP.**

Given the likelihood that the Commission needs to provide guidance to the applicant as to what sort of project would work on a property with such serious limitations, we support the staff recommendation that requires a design change in the project that would limit the proposed project significantly and are very enthused to see the public access issues of this site have been properly addressed since the November meeting when this item was withdrawn and re-submitted after Commissioners expressed concerns about public access issues.

Sierra Club has supported opening of Offers to Dedicate accessways along the Malibu coast, and as such, several of our coastal activist leaders have participated in forming a nonprofit organization, Access for All, that is specifically set up to take ownership of these access sites and open them up for greatly needed access in this region. Staff has been exceptional in researching the access issues here, and we appreciate their diligence in doing so.

While the staff report states that a small viewshed will still remain at this site, this is the only view of the coast for at least one mile in each direction, with two nearby stop lights that allows for those traveling on Pacific Coast Highway to view the beach and the ocean. If this project is built, that viewshed would be seriously diminished, effectively meaning two miles of virtually no view along the Malibu coast, where dolphins swim close to shore, occasional whales are spotted and seabirds abound. How tragic that only a privileged few are able to view these treasures.

While we agree that, if this project is to be approved, every single condition enumerated by the staff must not only be required, but also monitored closely for compliance, we think that the requirement for biological surveys should not only be required for the Tidewater Goby, but for other wetland species, as well. In addition, such surveys need to be performed in all four seasons, as the lagoon is markedly distinct in each season of the year, due to tidal conditions, rainfall, migration and nesting patterns.

We would prefer to see this land acquired by the public so that enhanced beach access can be made available and increased in Malibu for all Californians, flood damage to surrounding properties can be minimized and meaningful coastal wetland restoration can take place. For these reasons, we support denial of the project application. If you feel the need to approve something, we support your approving the staff recommendations in their entirety, with the addition of the more accurate biological surveys as mentioned above.

Sincerely,

Rachaela

Wetlands Action Network

protecting & restoring wetlands along the Pacific Migratory Pathways

May 7 2001

The Honorable Sara Wan, Commission Chair & Honorable Commissioners
California Coastal Commission
39 South California Street, Suite 200
Ventura, CA 93001

re: Application No. 4-00-259

TU 14j

Dear Chair Wan and Commissioners:

Wetlands Action Network commends the staff for a meticulous job at attempting to insure compliance with the California Coastal Act for the issuance of the above-mentioned permit. For the most part, we agree with staff's assessment, and especially appreciate the work done to insure biological monitoring and assessment for the possibility of presence of the Tidewater Goby and lighting restrictions in a sensitive lagoon area. We also very much agree with the required conditions related to construction equipment not being allowed in the intertidal zone and the removal of rock revetments.

Most notably, the conditions that make the project almost palatable are the public access provisions and the requirement for revised plans to be submitted that set back the project 43 feet on the western side of the subject site and 48 feet on the eastern side of the subject site. Staff has completed a tremendous amount of research, including on-site research, that we appreciate, as this site really must be seen first-hand to understand its inherent limitations. If the California Coastal Commission is to truly do what the people of California expected when they voted for Proposition 20 in 1972, a project like the one originally proposed by the applicant in this case could never be approved.

One of the applicant's assertions to staff is that the subject property burned down in the 1993 Malibu fire. While the 1993 Malibu fire was devastating in many places, this location was not one of those effected by this fire. According to long-time community members in Malibu, the Albatross Restaurant building burned down many years before, which makes the urgency of the applicant's need less obvious. In fact, the land was taken over by the federal government and sold to the present owner for a very low price.

It is unfortunate that this land ever left the hands of a public agency, as it is the perfect location for a beach-access park, which would link up to Arroyo de las Flores, or Las Flores Creek, across Pacific Coast Highway, where a city park is in the planning stages, after the City acquired several properties that were frequently subject to flood and fire disasters. Given the natural hazards in this area, and now that the state has funding through Propositions 12 and 13 for just this sort of project, we think the hazard that destroyed the building on this site offers Malibu an opportunity to acquire this land for the public and restore the lagoon of Las Flores Creek.

We still would prefer, as we suggested to you in our letter last November, that this permit application be denied, as the proposed development project would, even with the proposed revisions, limit coastal viewsheds and exclude the potential for restoration of a small, yet functioning coastal lagoon and prematurely prejudice the completion and certification of Malibu's LUP and LCP. The proposed project site is in a major flood zone that regularly appears on television as proof that Malibu is subject to natural disasters of high magnitude. We need to pay attention to these natural constraints, and address them in the LUP and the LCP. Also, in the earlier staff report of last November, the staff made excellent points about the legality of the City's zone changes for this property from visitor-serving to residential. This change does not appear to be in compliance with Coastal Act policies.

We would prefer to see this land acquired by FEMA (Federal Emergency Management Act) funds or Southern California Wetlands Recovery project funds and placed into public ownership so that beach access can be maintained and enhanced and coastal wetland restoration can take place. However, if this is not possible, the public access and underlying land-use for visitor-serving activities should prevail and insure the Malibu coastline is shared with all of the people in California. For these reasons, we ask that you deny this permit application, or at the very least, accept the staff recommendations in their entirety, with every condition suggested not only required, but monitored for strict compliance.

M. J. [Signature]

510 Palisades Ave.
Santa Monica, CA 90402
October 30, 2000

Melanie Hale
California Coastal Commission, Ventura Office

Re: Application 4-00-21 (21000/21202 Pacific Coast Highway)

Dear Ms. Hale:

This application seeks approval for a multifamily building situated on a fairly small, odd-shaped lot where Rambla Pacifico meets the Pacific Coast Highway (enclosed photos 1 and 2). I have a long standing interest in this site because of the **potential for public access** from the highway down to the beach that exists on both sides of the adjoining creek's outflow (3).

As a Coastwalk hike leader, I have on several occasions led walkers south along the beach from the Malibu pier only to have our path blocked by the sea-wall protecting Duke's restaurant on the south edge of the creek (4). In fact I was there last Sunday walking with my wife at about 2 PM when the tide was out (a +1 low tide at about 1 PM), but that point was impassable. As with a previous occasion, a resident there indicated that we could go out to the highway through the restaurant, which we did. It was then that we discovered the sign posted on the property announcing the application for development. Since I had a camera with me, I took the enclosed pictures.

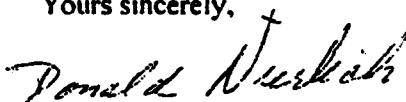
I am opposed to the development as I understand it, because the space is too small for a multiunit project. On the other hand, if I understand correctly, the developer has proposed to construct an access path to the beach on the existing easement. This being the case, I could see the virtue of a smaller project on the site if the beach access was built *and* a portion of the beach in front of the property was dedicated to public use.

In my opinion, the need for additional space on the beach is essential for the access way to be of any real value. First the beach is very narrow there before it steps up to the level of the lot and is covered at moderate tides, and second, during the winter/spring rainy season, the creek fills and its channel flares laterally as it crosses the beach, essentially erasing what little beach is there. (This may be hard to imagine in the fall when the stream bed is filled with sand creating a lovely little beach; 1.)

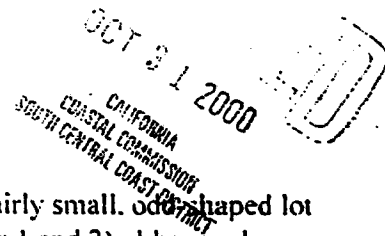
Further, the need for additional room on the beach is made even greater and more visible by the very large apartment building and its armoring rocks adjacent on the north-west of the project site at the back of the service station (5). The building is on piles and extends over the surf at all but low tide, and the rocks in front require careful maneuvering if one is to walk in the water. Most people simply pick their way underneath the structure. Indeed there is no alternative most of the time.

This will be a challenging site to develop because of the terrain and more so if it is to provide useful public access to the beach. The public interest here is of particular importance, first because of the blockage of the path south by Duke's and by the the stream when it's rainy, and second in that there is no access way to the north, up the beach, for more than a mile.

Yours sincerely,



Donald Nierlich
L.A. County Coastwalk





In Memoriam
Harry Barovsky
Honorary Mayor
2000

PLANNING DEPARTMENT

City of Malibu

23555 Civic Center Way, Malibu, California 90265
310.456.2489 extension 243 Fax 310.456.3356
www.ci.malibu.ca.us

RECEIVED
MAY 14 2001
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

May 4, 2001

Mr. Gary Timm, District Manager
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Coastal Commission Staff Report (21200 and 21202 Pacific Coast Highway)

Dear Mr. Timm,

It has come to my attention that there have been some incorrect statements made in the current California Coastal Commission Staff Report for 21200 and 21202 Pacific Coast Highway. I have reviewed a copy of the staff report, and verified that indeed this is the case.

The report indicates the City of Malibu created a new General Plan Land Use designation exclusively for this request. This is incorrect. The City of Malibu General Plan, adopted in November, 1995, established the Multi-Family Beach Front (MFBF) Land Use Designation as part of the Land Use Element. The General Plan states that "The MFBF designation...is intended to provide for a variety of residential opportunities ranging from single-family to multi-family...allowing for 1 unit per 1,885 square feet of lot area, not to exceed 4 units per lot."

The report also indicates that the City of Malibu created a new zoning designation exclusively for this request. This is also incorrect. City of Malibu Ordinance No. 151, adopted in August, 1996, established the Multi-Family Beach Front (MFBF) zoning designation. The MFBF designation conditionally permits multi-family residential uses with the following Lot Development Criteria (Zoning Ordinance Section 9.2.36.5):

1. Minimum Lot Area: 5,000 sq. ft. per lot unless otherwise provided in Article X (Subdivision Standards)
2. Minimum Lot Width: 50 feet
3. Minimum Lot Depth: 100 feet
4. Units per Lot: 1 unit per 1,885 sq. ft. of lot area, not to exceed 4 units.
5. Density: 1 additional unit per lot may be permitted, not to exceed 5 units per lot, for affordable housing in accordance with the Department of

☐ City of Malibu - Planning Department ☐
Coastal Commission Staff Report (21200 and 21202 Pacific Coast Highway)

Housing and Urban Development (HUD) definition of very low, low, and moderate income households.

The report further indicates that the City has not applied the MFBF zone district to any other property in the City. Once again, this is incorrect. The City has many parcels zoned MFBF. As a matter of fact, one-hundred (100) of the adjacent beachfront parcels are zoned MFBF. In addition, the report includes an argument that the City "spot zoned" the two subject parcels. On the contrary, 100 of the adjacent beachfront parcels having the same MFBF zoning designation precludes this argument.

This information is readily and easily available by a simple phone call or e-mail to me or my staff. Unfortunately your planner chose to do neither. We hope that you will correct these mistakes for the official record.

Sincerely,



Barry K. Hogan
Planning Director

cc: Peter Douglas
Chuck Damm
Ralph Herzig

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 1610
LOS ANGELES, CALIFORNIA 90067-6001

E-MAIL alanblock@pacbell.net

TELEPHONE (310) 552-3336

TELEFAX (310) 552-1850

ALAN ROBERT BLOCK

OF COUNSEL

MICHAEL N. FRIEDMAN

June 8, 2001

From:

Block
JUN 15 2001

Received at Commission
Meeting

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Re: Coastal Development Permit (CDP) Application No. 4-00-021 (Herzig)

Project Addresses: 21200 & 21202 Pacific Coast Highway, Malibu

Project Description: Construct eight two-story, 27 ft. high above existing grade residential condominium units (including stairway to beach), including lot line adjustment between two adjacent beachfront lots, flood control improvements, seawall, 29 paved parking spaces, septic disposal system, demolish and remove residual debris from foundation of previously burned structure, and 1,000 cu. yds. grading (all cut and export).

Scheduled: June 15, 2000
Agenda Item: 7 (e)

Dear Commissioners:

This office represents the applicant herein, Ralph B. Herzig, the owner of the two legal beachfront lots located at 21200 & 21202 Pacific Coast Highway, in Malibu ("subject property").

We have reviewed the staff report regarding this matter, dated April 26, 2001, and revised on May 22, 2001, and strongly disagree with many of staff's recommended conditions of approval, particularly Special Condition Nos. 3A, 3B, 11, 15 and 16. Before providing the reasons for the applicant's opposition to the foregoing Special Conditions, a description of the property and its background is provided for your consideration.

*Letter /
18 pages*

EXHIBIT NO. 19
APPLICATION NO. 4-00-251 Herzig
Letter from Alan Block
Herzig Attorney

California Coastal Commission
Re: CDP Application No. 4-00-021 (Herzig)
June 8, 2001

Page 2

Project Background

The subject property consists of two parcels which form a triangular-shaped building area, totaling approximately three-quarters of an acre. It is situated on the ocean-side of Pacific Coast Highway, next to the Las Flores Creek drainage channel, between a Union 76 gas station and Duke's restaurant. On the opposite side of both the gas station and the restaurant, and behind the gas station, are multi-family residences. The site is barely visible from Pacific Coast Highway because its frontage is virtually limited to the driveway which provides ingress and egress for the property and the subject property slopes gently seaward toward a wet, rocky beach.

Until the late 1970s, a small restaurant and hotel, appropriately known as The Albatross, was operated on the subject property. The restaurant was 6,000 square feet and the hotel had 8 guest rooms. In 1975, the owner of The Albatross sought to increase the restaurant's capacity and the Commission's South Coast Regional Board approved CDP No. P-6353 on condition, *inter alia*, that the owner dedicate lateral and vertical access to the public, expand the existing parking by an additional 20 off-site spaces and construct a public sidewalk over Las Flores Creek on the seaward side of Pacific Coast Highway. A true and correct copy of the staff report for CDP No. P-6353 is attached hereto as Exhibit 1 and incorporated herein by reference.

Although the former owner, John T. Hall, recorded the offers to dedicate as Los Angeles County Recorder Document Nos. 77-899337 (vertical) and 77-899338 (lateral), he was unable to obtain rights for off-site parking. Therefore, on March 13, 1978, CDP No. P-6353 was revoked. A true and correct copy of the staff report recommending revocation, dated March 6, 1978, is attached hereto as Exhibit 2 and incorporated herein by reference.

The lateral access deed restriction specifically provided that it "shall remain in full force and effect during the period that said Permit, or any modification or amendment thereof, remains effective." As such, the revocation of the underlying CDP No. P-6353 had the effect of voiding the subject deed restriction. A true and correct copy of the recorded lateral access Deed Restriction, Document No. 77-899338, is attached hereto as Exhibit 3 and incorporated herein by reference.

Ex. 19

California Coastal Commission
Re: CDP Application No. 4-00-021 (Herzig)
June 8, 2001

Page 3

Subsequent to the Commission's revocation of CDP No. P-6353, the restaurant and hotel were abandoned, and the building remained vacant until it was completely destroyed in the Las Flores Canyon fire of 1993. The Commission approved the construction of a 1,511 square foot restaurant, on April 23, 1979, in CDP No. P-79-4918. However, that permit was never activated. In its approval of CDP No. P-79-4918, the Commission required the applicant, Felina's Inc., to grant the public a 25-foot wide strip of beach for lateral access, no closer than 5 feet to any structure, as well as an additional 10-foot wide vertical access. The offers to dedicate were required since CDP No. P-6353 had been revoked. A true and correct copy of CDP No. P-79-4918 is attached hereto as **Exhibit 4** and incorporated herein by reference. True and correct copies of the recorded Offer to Dedicate (vertical access), Document No. 81-279808, and Irrevocable Offer to Dedicate (lateral access), Document No. 81-279809, recorded on March 19, 1981, are attached hereto as **Exhibit 5** and **Exhibit 6**, respectively, and are incorporated herein by reference.

It is extremely important to note for this application that the Irrevocable Offer to Dedicate lateral access specifically provided that the 25-foot lateral access across the beach was to be "measured inland from the water line as specifically set forth in Exhibit C" to the subject offer to dedicate. Exhibit C specifically providing that the applicable "water line" is the 1969 Mean High Tide Line. The State Coastal Conservancy recorded a Certificate of Acceptance on October 26, 1982, as Los Angeles County Recorder's Document No. 81-279809.

In 1996, Mr. Herzig purchased the subject property and applied for and received a general plan amendment from the City of Malibu, changing the approved use from Commercial Visitor Serving -1 (CV-1) to Multi-Family Beach Front (MFBF). In approving the general plan amendment, the City found that the change would produce less adverse traffic impacts. A true and correct copy of the City of Malibu Planning Commission Agenda Report, dated September 27, 1996, is attached hereto as **Exhibit 7** and incorporated herein by reference.

In 1999, the applicant sought approval from the City of Malibu to construct the subject project, which consists of one, two-story, four-unit condominium on each of the two parcels which comprise the subject property. Additionally, the applicant agreed to widen the Las Flores Creek drainage channel by 20 feet. An initial study performed by the City to

assess potential environmental impacts of the proposed development found that it would not have a significant effect on the environment and that a negative declaration was appropriate. In the study, the City expressly notes that the "condominium complex is consistent with the multi-family beach front land use designation and zoning established for the subject property." A true and correct copy of the City of Malibu Planning Commission Staff Report, dated October 25, 1999, is attached hereto as Exhibit 8 and incorporated herein by reference. Although consistent with the subject property's land use and zoning designations, a conditional use permit and variance were deemed necessary, in large part, due to limited on-site parking.

In order to obtain a variance from the City of Malibu, the applicant needed to show, among other things, that the subject property was unique in some fashion, which justified different land use restrictions from those set forth in the City's general plan. The City undertook to set forth the factors which made the subject property unique for purposes of the variance. Most relevant hereto, the City found that the configuration of the "pie-shaped" lot makes it difficult for site planning. See Exhibit 8. Moreover, the applicant's plan to widen the existing Las Flores Creek drainage channel was well-received because a Caltrans study prompted by massive flooding from 1998 El Niño storms identified the channel as having insufficient capacity to accommodate the swelling of the creek during heavy rains. Therefore, Caltrans strongly supported the applicant's willingness to donate a 20-foot wide portion of his property adjoining the drainage channel to increase the width and capacity of the channel. A true and correct copy of a letter from the California Department of Transportation, dated April 24, 2000, is attached hereto as Exhibit 9 and incorporated herein by reference.

On November 1, 1999, the Malibu Planning Commission voted to approve the proposed development. Its decision was not appealed, and the City provided the applicant an approval-in-concept on November 16, 1999.

This CDP application was filed on March 24, 2000. In its original Staff Report, dated October 30, 2000, staff recommended denial of the application based on the proposed residential use of the property and its designation under the draft Santa Monica Mountains/Malibu Land Use Plan (LUP) as visitor serving commercial. During a hearing in November 2000, the Commission acknowledged the uniqueness of the lot and that it

California Coastal Commission
Re: CDP Application No. 4-00-021 (Herzig)
June 8, 2001

Page 5

considered the property inappropriate for continued visitor serving use. The Commission, thereafter, continued the matter and requested staff to prepare appropriate conditions for the proposed residential use.

Staff's Recommended Special Conditions

The current Staff Report, dated April 26, 2001, and revised again on May 22, 2001, recommends 20 Special Conditions which it contends are necessary to reasonably mitigate adverse impacts from the proposed development. Said conditions include, but are not limited to: (1) a deed restriction assuming the risks of development and waiving the rights of Public Resources Code §30235, which permit a shoreline protective device to protect existing structures; (2) biological monitoring and construction responsibilities; (3) revised plans setting back all proposed development behind the 16-foot elevation contour; (4) sign restrictions; (5) construction of a public sidewalk; (6) conformance with all geologic recommendations; (7) construction responsibilities and debris removal; (8) a future improvements deed restriction; (9) removal of all excavated material; (10) a drainage and run-off control plan; (11) an offer to dedicate vertical public access; (12) Pacific Coast Highway Intersection Safety Improvements; (13) removal of the rock revetment; (14) removal of excess graded material; (15) a Public Access Plan and Construction of Access Improvements; (16) Lot Consolidation; (17) the purchase of Transfer of Development Credits (TDCs); (18) construction timing restrictions; (19) a deed restriction limiting the use of the shoreline protective device to only the approved septic system; and (20) lighting restrictions relating to the Las Flores Creek Channel.

The Applicant's Contentions

The special conditions recommended by staff are both extensive and excessive. Nevertheless, the applicant will accept Special Condition Nos. 1, 2, 3C, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 17, 18, 19, and 20. The applicant vigorously contends, however, that Special Condition Nos. 3A, 3B, 11, 15, and 16 require modification and/or deletion.

Special Condition Nos. 3A and 16

These special conditions effect the location of the structures on the subject property

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and, due to the limited size of the subject property, its proposed density. Special Condition No. 3A requires the applicant to submit revised plans relocating all structures, including decks, stairways, seawalls, and return walls, to a landward location extending no further seaward than the 16-foot elevation contour. This condition further requires the deletion of the privacy wall between the applicant's western lot and the adjacent Union 76 service station. Special Condition No. 16 requires the applicant to seek and obtain a merger of the two parcels which comprise the subject property pursuant to the provisions of the California Subdivision Map Act, and to thereafter hold the property as a single parcel and record a deed restriction agreeing not to seek a subdivision of the subject property in the future.

With respect to the location of the proposed development on the subject property, the effect of Special Condition No. 3A would be to move the entire development landward 43 to 48 feet from where it is now proposed to be located, which is already well within the stringline of the immediately adjacent beachfront development, Duke's restaurant to the east and the condominiums to the west. Moreover, the foundation of the old Albatross hotel and restaurant is still plainly visible on site. The proposed project is located at all points landward of the footprint of the Albatross.

Contrary to staff allegations at page 15 and 17 of the Staff report, dated April 26, 2001, the boundary line agreement entered into between the owners of Duke's restaurant and the States Land Commission does not in any manner require the relocation of the proposed project or make the use of the restaurant for stringline purposes inappropriate. The fact is, the portion of Duke's restaurant from which the stringline is drawn for the applicant's proposed project is on privately held lands, not State Trust Lands. A true and correct copy of a site plan evidencing the location of the restaurant and 1928 mean high tide line is attached hereto as Exhibit 10 and incorporated herein by reference. The boundary line agreement did not place any restriction on development landward of the 1928 mean high tide line.

Similarly, the State Lands Commission in correspondence, dated October 3, 1972, has previously determined that the condominiums located immediately to the west of the subject property are also located landward of the applicable mean high tide line. The fact is in said correspondence the State Lands Commission specifically states that it does not consider the 1928 mean high tide line to be determinative of the location of the shoreline boundary as of

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that date. A copy of the State Lands Commission correspondence, dated October 3, 1972, is attached hereto as Exhibit 11 and hereby incorporated by reference.

The State Lands Commission has reviewed the applicant's plans for the proposed development and has indicated that it is asserting "no claims that the project will intrude into sovereign lands or that it will lie in an area that is subject to the public easement in navigable waters, if located where requested" so long as the applicant agrees to revise his plans to relocate a very small portion of the proposed deck on the east side of the property landward of the 1928 mean high tide line. The applicant's plans have already been revised to incorporate the State Lands Commission's request. A true and correct copy of the State Lands Commission's letter, dated February 17, 2000, evidencing its approval of the applicant's plans is attached hereto as Exhibit 12 and incorporated herein by reference.

According to the Malibu/Santa Monica Mountains Land Use Plan, certified by the Commission in 1986, new development located on Pacific Coast Highway between the City of Los Angeles and the Malibu Civic Center is deemed "infill" development. A true and correct copy of page 16 of the Malibu/Santa Monica Mountains Land Use Plan which evidences this is attached hereto as Exhibit 13 and incorporated herein by reference.

As staff correctly notes on page 28 of the Staff Report, dated April 26, 2001, "in a developed area where new construction is generally infilling, and is otherwise consistent with Coastal Act policies, no part of a new structure, including decks and bulkheads, should be built further onto a beach than a line drawn between the nearest adjacent corner of the adjacent structures." See also, California Coastal Commission Regional Interpretive Guidelines, dated May 11, 1981, pages 8-9, a true and correct copy of which is attached hereto as Exhibit 14 and incorporated herein by reference. The location of the proposed development herein is consistent with the stringline policies of the Coastal Act and all other applicable policies. Staff fails to properly or adequately explain why the Commission should deviate from these policies for this one modest project.

Staff further fails to support its contention that all proposed development should be relocated landward of the 16-foot contour elevation. To the contrary, the applicant's coastal engineer, David W. Skelly, in correspondence dated May 4, 2001, specifically states that there is absolutely no evidence, much less the legally required substantial evidence, to

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suggest that the erosive forces of waves and tides on the subject property have created the 16-foot contour. Coastal Engineer Skelly states, "[T]his elevation most likely represents a limit to the wave runup"; "that the wave has lost all of its energy at the maximum limit of wave runup"; "that the maximum wave forces occur at sea level which for the most part is at mean sea level and in the extreme at the highest water, about +5 feet mean sea level", and "that this is nowhere near the 16 foot contour that staff refers to". Coastal Engineer Skelly concludes that the "existing revetment is almost non-functional and if it is removed along the seaward cement foundation it is highly unlikely that erosion would occur at this site". A true and correct copy of David W. Skelly's coastal engineering report, dated May 4, 2001, is attached hereto as Exhibit 15 and incorporated herein by reference.

Coastal Engineer Skelly's report further references a study prepared for the City of Malibu by Moffatt & Nichols, Engineers, who have extensively analyzed the shoreline change rate in the Malibu area. Their study covered a 50-year period and included, specifically, the shoreline at Las Flores Beach. *The study concluded that, at this specific location, in front of the subject site, the beach is not eroding but rather accreting at a rate of about one foot per year.* A true and correct copy of the applicable pages of the Moffatt & Nichols Study, evidencing the sand accretion at the subject location is attached hereto as Exhibit 16 and incorporated herein by reference.

Based upon this empirical study, staff's assertion, at page 16 of the April 26, 2001, Staff Report, that "La Costa beach is a narrow, eroding beach" is patently false, and does not support the recommended Special Condition Nos. 3A which would require that the proposed development be relocated landward approximately 43 feet on the western side of the property and 48 feet on its eastern side. Staff's allegations are not based on fact - they contradict the scientific data readily available to staff, and reasonably call into question the reliability of staff's analysis.

The applicant herein only requests that he be treated equally and in the same manner as earlier applicants who have obtained approvals to build within the well-established stringline guidelines promulgated by the Commission. For over 20 years, the Commission has consistently advised applicants that "infill" development should be built in a stringline with immediately adjacent structures. See Exhibit 12. The applicant herein has clearly followed the guidelines set forth by the Commission, and has designed a project which is

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consistent with the Commission's published guidelines. The proposed development is in a stringline with the immediately adjacent structures and, in fact, is actually set back from the location of the previously existing structure, which was destroyed by a wild fire, not wave action.

Without question, recommended Special Condition No. 3A is not reasonable. Pursuant to Coastal Act §30612(g), found in the Public Resources Code, the applicant could have rebuilt the former structure, destroyed by fire, without even applying for a Coastal Development Permit. Public Resources Code §30610(g) provides, in part as follows:

"[N]o coastal development permit shall be required pursuant to this chapter for. . .[t]he replacement of any structure . . . destroyed by a disaster. The replacement 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."

The proposed structure is set back over 10-12 feet from where the Albatross restaurant was located, and it is in a stringline with the immediately adjacent structures. The State Lands Commission has specifically indicated that the proposed structure is not located on state lands. See Exhibit 12. The above-referenced State Lands Commission settlement with the owners of the adjacent Duke's restaurant specifically provides that the state can not challenge the existing location of the adjacent Duke's structure as encroaching on state lands.

This evidence is overwhelming compared to the unsupported allegations of staff. Setting back the proposed development to the 16-foot contour elevation, as recommended by staff, will not permit reasonable development of the subject property. To the contrary, if the Commission were to require the same, the most seaward portion of the proposed development would be located in virtually the exact location of the most landward portion of the former restaurant, and would be tantamount to a taking of the applicant's property when considered in conjunction with the other proposed conditions of development, including a new vertical accessway on the western portion of the property, the two (2) earlier recorded vertical accessways on the eastern portion of the property, and the recorded lateral access across the beach, previously required by the Commission for public access. If Special Condition No. 3A is required by the Commission, the proposed structure will be set back a

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minimum of 37 feet behind the existing condominiums to the west, and 48-50 feet behind Duke's to the east. A true and correct aerial photograph evidencing the location of the proposed development, as well as the location proposed by staff, is attached hereto as Exhibit 17 and incorporated herein by reference.

Contrary to the allegations of staff, the proposed development will not interfere with either the vertical and/or lateral public access, which was previously recorded against the property (and accepted by the Coastal Conservancy), and/or the new vertical accessway proposed on the western portion of the property.

In the first instance, the existing unimproved, 10-foot vertical accessway on the eastern portion of the property is located in the flood control channel of Las Flores creek, at an elevation far below the location of the proposed development. No development is proposed at or near the flood control channel, and the proposed development will in no way interfere with the existing development. Moreover, staff recommends that the applicant offer to dedicate a third vertical accessway on the western portion of the property and the applicant agrees to do so. There is more than ample access to the beach given the foregoing.

Has the Commission, since its formation, ever required a property owner to dedicate three (3) vertical access easements, as well as a lateral access easement, on a three-quarter acre parcel of property? I submit that it has never before done so. As conditioned, the public will have vertical access easements on both sides of the subject property which will tie into a lateral access across the beach. The applicant cannot build in the flood control channel, and no development is proposed therein. Therefore, staff's contention that the proposed development will somehow interfere with public access is devoid of any merit whatsoever.

With respect to the lateral access, it was recorded against the property in March 1981, as Document No. 81-279809, and accepted by the Coastal Conservancy on August 26, 1982. Contrary to the unsupported contentions of staff, the lateral access provides that the 25-foot lateral access granted to the public shall be ambulatory and no closer than 5 feet to any structure, "as measured inland from the water line and as specifically set forth by attached Exhibit C hereby incorporated by reference". Exhibit C specifically provides that the applicable mean high tide line from which the 25 feet is to be measured is the 1969 mean high tide line. See Exhibit 6. A true and correct copy of the Coastal Conservancy's

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Certificate of Acceptance, dated August 26, 1982, is attached hereto as Exhibit 18 and incorporated herein by reference.

Staff's repeated reference in the Staff Report of April 26, 2001, that the 25-foot lateral access is to be measured from the 1928 mean high tide line directly contradicts the public records establishing the accessway. These public records are readily available to staff and it is staff's obligation to accurately advise the Commission of the facts. The recorded document itself states that the lateral access is to be measured from the 1969 mean high tide line which is located between 6-16 feet further seaward than the 1928 mean high tide line. This is consistent with the Moffat & Nichols study which evidences that the beachfront at the subject property is accreting, not eroding, a fact also misstated by staff. The fact is even Exhibit 3b, as well as the two mean high tide lines referenced in Exhibit 4 as found in the Staff Report of April 26, 2001, reveal that the mean high tide line is seaward of the development herein proposed by the applicant. A recent survey performed Coastal Engineer Skelly, dated May 3, 2001, which will be available at the hearing on June 15, 2001, further evidences that the mean high tide line has continued to accrete and that the current mean high tide line is even further seaward than previously indicated.

As referenced above, the location of the proposed development is setback between 11-12 feet from the previously existing Albatross restaurant. As such, the proposed development increases, not decreases, the public access previously dedicated and in no way interferes with or is inconsistent with the lateral access dedication accepted by the Coastal Conservancy.

The requirement in Special Condition 3A that the applicant delete the 14-foot high privacy wall between proposed condominium units and the new vertical accessway proposed on the western side of the project is also patently unreasonable. Without the proposed privacy wall, there will be no separation between the occupants of the proposed condominium units and members of the public using the vertical accessway. The wall will not interfere with the proposed accessway, and will provide reasonable privacy, as well as necessary security, to the condominium owners.

All of the foregoing special conditions indirectly effect how large the proposed development can be and what density will be allowed. The applicant has proposed a total

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of four units on each lot for a total of 8 units. This density is consistent with the subject property's zoning density designation. Staff asserts that the maximum density for the subject property should be only 2 to 4 units. In arriving at this flawed conclusion, Staff commits some rather egregious errors, as discussed below.

Special Condition No. 16, again, indirectly limits the density of the proposed development. Special Condition No. 16, which requires the merger of the two parcels comprising the subject property is not reasonably related to the proposed development and is, in fact, solely a means of improperly regulating the proposed density of the proposed development. Staff explains its reason for recommending a merger of the two parcels at page 18 of the April 26, 2001, Staff Report:

"The applicant proposes to combine the development potential of two parcels under one ownership to achieve a doubling of allowable density. . . The difficulty with this method of arriving at a density is that the City has allowed a total of 8 units by authorizing a lot line adjustment that combines one parcel with developable area with a second parcel with almost no developable area, and then redivides the sum to achieve "two" developable parcels and a resultant doubling of density. The proposed lot line adjustment is therefore a redivision of land, rather than a simple lot line adjustment as might be undertaken to resolve the encroachment of a structure over a neighbor's property line, for example."

Amazingly, despite the holding of the California Supreme Court in *Landgate, Inc. v. California Coastal Commission* (1998) 17 Cal. 4th 1006, staff persists in unlawfully asserting the Commission's jurisdiction over lot line adjustments. Throughout the court's opinion, it repeatedly characterizes the Commission's assertion of jurisdiction over lot line adjustments as "mistaken" or "erroneous," although the court allowed the Commission to avoid liability for a temporary taking of Landgate's property as a result of its mistaken assertion of jurisdiction.

It is a clear, undeniable fact that the City of Malibu has approved a lot line adjustment which does not require Coastal Commission approval. The lot line adjustment did not create a new lot. The reason for this is that the subject property's MFBF zoning designation allows,

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as a matter of right, 1 unit per 1,885 square feet of lot area, not to exceed 4 units per lot. Staff grossly misstated this at page 13 of its April 26, 2001, Staff Report, which erroneously provides:

"At the applicant's request, the City of Malibu created a new general plan designation and zone district, Multi-Family Beach Front (MFBF), and applied the new designation and zoning to the subject site. The MFBF zone district allows up to 4 residential units per lot (not per unit of area, such as per acre). The new zone district has ~~not been~~ applied to any other properties within the City of Malibu."

Incensed by this gross misstatement, the City of Malibu's Planning Director responded as follows:

"The [staff] report indicates the City of Malibu created a new General Plan Land Use designation exclusively for this request. This is incorrect. The City of Malibu General Plan, adopted in November, 1995, established the Multi-Family Beach Front (MFBF) Land Use Designation as part of the Land Use Element. The General Plan states that '*The MFBF designation . . . is intended to provide for a variety of residential opportunities ranging from single-family to multi-family . . . allowing for 1 unit per 1,885 square feet of lot area, not to exceed 4 units per lot.*' [¶] The report also indicates that the City of Malibu created a new zoning designation exclusively for this request. This is also incorrect. . . City of Malibu Ordinance No. 151, adopted in August, 1998, established the Multi-Family Beach Front (MFBF) zoning designation. . . The report further indicates that the City has not applied the MFBF zone district to any other properties in the City. Once again, this is incorrect. *The City has many parcels zoned MFBF. As a matter of fact, one-hundred (100) of the adjacent beachfront parcels are zoned MFBF.* In addition, the report includes an argument that the City 'spot zoned' the two subject parcels. On the contrary, 100 of the adjacent beachfront parcels having the same MFBF zoning designation precludes this argument. [¶] *This information was readily and easily available by a simple phone call or e-mail to me or my staff. Unfortunately, your planner chose to do neither.*"

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[Emphasis added]

Here again, the Staff Report contains a very significant misstatement of an easily verifiable fact. Only this time, it was the City of Malibu's Planning Director who found it so objectionable. A true and correct copy of the City of Malibu's Planning Director to the Coastal Commission, dated May 4, 2001, with the attached zone description and zoning map, is attached hereto as Exhibit 19 and incorporated herein by reference. It is clear that the factual statements in the Staff Report are wholly unreliable.

Based upon the City's zoning designation, it makes no difference for density purposes whether the lot line was changed or not. Neither does it make a difference whether you consider the parcels' gross square footage versus its net square footage.¹ In either case, there is sufficient lot area to permit 4 units per lot. Thus, there is no basis for requiring the applicant to merge the two lots. The real issue, which staff would have the Commission avoid by requiring a merger of the two parcels, is whether the density proposed is too great under the circumstances. The applicant submits that the density requested and approved by the City is appropriate.

The surrounding uses, Duke's restaurant, a condominium complex and a Union 76 gas station, all make the subject property unsuitable for single family residential use. The adjacent condominium project to the west has 11 units on a 27,915 square foot lot. A ratio of one unit per 2,538 square feet. The development proposed in the subject application seeks the approval of only 8 units on 30,570 square feet, or one unit per 3,821 square feet. As such, the applicant herein is requesting a density of approximately 25% less than the residential density on the immediately adjacent property, despite the fact that the applicant's

¹ Whereas staff would like the Commission to believe that the Malibu/Santa Monica Mountains LUP mandates that density be based on net square footage of a lot, the County of Los Angeles has specifically stated that it interprets density under the LUP as being based on the gross square footage of the lot. A copy of an inter-office memorandum to the Los Angeles County Planning Commission, from James E. Hartel, Director of Planning for the County of Los Angeles, dated April 6, 1999, confirming this issue, is attached hereto as Exhibit 20 and hereby incorporated by reference.

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property is larger in size than the adjacent lot. The adjacent property is not the only indicator of density in the area. Other adjacent properties all have substantially higher density than the proposed development. A true and correct survey of the density of surrounding residential property is attached hereto as Exhibit 21 and incorporated herein by reference.

Staff's reliance upon the 1986 Malibu/Santa Monica Mountains LUP ("MLUP") is misplaced. The Commission has previously stated that the MLUP is no longer authoritative but may provide guidance to the Commission. The Commission has previously stated that strict adherence to the MLUP would impair the ability of the City of Malibu to formulate its own land use plan. In 5-91-754 (Trancas Town), the Commission found:

"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 to the 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.*"

A true and correct copy of the face page and quoted page 53 of the Trancas Town Staff Report, dated February 24, 1992, is attached hereto as Exhibit 22 and incorporated herein by reference.

Recognizing that the MLUP is not legally binding, but may provide some guidance to the Commission, the applicant submits that the Interpretive Guidelines provide the best guidance where it states, at Section IV(C)(1):

"... [M]ultiple-unit development offers opportunities to concentrate development consistent with basic Coastal Act objectives, thus providing for some of the residential demands in the area with a minimum of impact on natural resources. Multiple-unit development also offers opportunities for

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construction of lower-cost housing. . . [¶] If mitigated by the use of transferred development credits, *multi-unit development may be found to be an appropriate use within developed areas where such development would constitute infilling among other multiple unit projects.* Permitting multi-unit development should not exceed the density of the proposed County Area Plan." [Emphasis added]

A copy of the applicable page of the California Coastal Commission Regional Interpretive Guidelines, dated May 11, 1981, ~~page 16~~, is attached hereto as Exhibit 23 and incorporated herein by reference.

There is no doubt that the subject property is the prototypical infill property. It is surrounded by commercial and high-density multi-unit development. It is poorly configured for any visitor serving or single family residential use. The proposed development provides an opportunity to satisfy Malibu's growing housing needs without straining or harming natural resources. The natural resources, such as they are include a concrete drainage channel for Las Flores Creek and an accreting beachfront which has a large lateral public access across it. As a visitor-serving use, the Commission would have allowed as many as 25 bedrooms on the subject property. How then can 8 units be deemed too dense a development? It is clear from the foregoing that the Staff Report is filled with inaccuracies, poor reasoning, and no justification for the Commission to require Special Condition Nos. 3A and 16. Therefore, these special conditions should be deleted from the Commission's approval of the subject application.

Special Condition Nos. 3B, 11 and 15

These special conditions all relate to the dedication of a vertical accessway along the westerly boundary of the western parcel of the subject property, and the build-out of the accessway by the applicant. Special Condition No. 3B requires the applicant to submit revised plans for the construction of a vertical accessway a minimum of 5 feet along the western boundary of the western parcel of the subject site. Special Condition No. 11 requires that the applicant both record an offer to dedicate a 5-foot easement for vertical access and construct an accessway. Special Condition No. 15 requires the applicant to submit plans for the vertical accessway and obtain approval of the plans by the Executive

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Director and the California Coastal Conservancy.

As stated above, the applicant has agreed to record the offer to dedicate the requested vertical access easement, regardless of the fact that former owners of the subject property seeking Commission approval to develop the property were previously required to dedicate two (2) separate and distinct ten foot easements for vertical access on the easternmost portion of the eastern lot. The applicant contends, however, that the offer to dedicate the vertical accessway be conditioned on said easement being open during daylight hours only, and subject to being gated and locked during the evening hours, as are ~~most~~, if not all, of the other public vertical accessways that are now open in the Malibu area.

In addition, the applicant strenuously contends that it is patently unreasonable to require that he not only have to offer to dedicate the vertical accessway, but moreover, actually construct the same. Clearly, such a requirement is not normally required of applicants seeking approval from the Commission for similarly situated properties, and the applicant vigorously maintains that he should not be treated differently than others who have previously come before the Commission. The entire width of both lots as they front Pacific Coast Highway (the widest portion of the property), including the width of the flood control channel, is 106 feet. The Commission has previously required the recordation of two separate deed restrictions dedicating a 10 foot vertical access easement on the eastern portion of the property, and now a 5 foot vertical accessway easement on the western portion of the property. As such, 15 feet of the 106 foot width of the frontage of the property has been required to be dedicated to the public for vertical access. This is nearly 15 percent of the width of the frontage of the property. That is an excessive amount of the applicant's property to be required to be dedicated to the public.

The additional requirement that the applicant actually be responsible for constructing the accessway is unreasonable. The offer to dedicate this easement has not been accepted and no public agency has agreed to accept liability with respect to the access easement. "Dedication of private property for public use requires an offer of dedication by the property owner and an acceptance of the offer by a public entity." *Ackley v. City and County of San Francisco* (1970) 11 Cal. App. 3d 108, 112, citing *Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235, 240.

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Until the offer to dedicate is accepted by the California Coastal Conservancy, the dedication is not legally effective and the accessway will be the applicant's responsibility and any accidents or injuries occurring thereon will likewise be his responsibility. There is no requirement in the Staff Report that the California Coastal Conservancy accept the offer to dedicate and the Commission has no authority to require it to do so. Budgetary constraints and different priorities might cause the Coastal Conservancy to wait many years before accepting the offer, if ever. The offer, as required by Staff, is to remain open for 21 years and the Coastal Conservancy has the right to wait to accept the offer, or not accept it at all. As such, the condition is illegal and the applicant respectfully requests that he not be required to construct the newly proposed vertical accessway, and that said requirement be deleted from the recommended condition.

Conclusion

In light of the above, the applicants respectfully request that the Commission approve the subject application, with the deletion and/or revision of Special Condition Nos. 3A, 3B, 11, 15, and 16 as referenced above.

I will be present at the hearing on June 15, 2001, in order to answer any of your questions.

Very truly yours,

LAW OFFICES OF
ALAN ROBERT BLOCK
A Professional Corporation

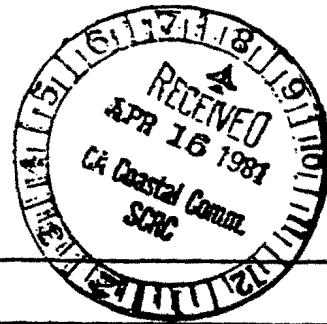

ALAN ROBERT BLOCK

cc: Commissioners
Ralph Herzig
Susan McCabe

Ex. 19

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
3100 BOULEVARD, SUITE 3107
SANTA MONICA, CALIFORNIA 90401
590-5071 (714) 846-0648

COASTAL DEVELOPMENT PERMIT



Application Number: P-79-4918

Name of Applicant: Felina's Inc.

3212 Nebraska Avenue, Second Floor, Santa Monica, CA

90404

Permit Type: ☐ Emergency
☒ Standard
☐ Administrative

Development Location: 21202 Pacific Coast Highway, Malibu, CA

Development Description: Construction of a restaurant and vertical access
way with serving area and 33 parking spaces in an existing, two-story
structure formerly used as a motel.

The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

See attached Page 3 for conditions.

29 PAGES TOTAL

EXHIBIT NO. 20
APPLICATION NO. 4-01-259 HERRING
Access Easement Documents

Condition/s Met On _____ By ADH kph

II. The South Coast Commission finds that:

A. The proposed development, or as conditioned:

1. The developments are in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and 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 of the California Coastal Act of 1976.
2. If located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.
3. There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this Commission under the power granted to it which would substantially lessen any significant adverse impact that the development, as finally proposed may have on the environment.

III. Whereas, at a public hearing, held on April 23, 1979 at Torrance by a unanimous ~~xxx~~ vote permit application number P-79-4918 is approved.

IV. This permit may not be assigned to another person except as provided Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until a COPY of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.

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

VII. Issued on behalf of the South Coast Regional Commission on April 3, 19 81.

M. J. Carpenter
Executive Director

I, John T. Hall, permittee/agent, hereby acknowledge receipt of Permit Number P-79-4918 and have accepted its contents.

(date)

(signature)

Prior to issuance of permit, applicant shall submit a deed restriction for recording:

1. to be recorded as a covenant running with the land which shall be subject to all encumbrances except for tax liens and shall bind the applicant and any successors in interest to allow the public to walk, sit, swim and otherwise use a 25 ft. wide strip of beach as measured inland from the water (the document shall state that the mean high tide line is understood by parties to be ambulatory as will the 25 ft. wide strip); in no case shall public be allowed to use the beach closer than 5 ft. to any structure;
2. limiting the use of the second story of the structure to restaurant storage and other ancillary restaurant uses but in no case open for public use unless pursuant to a permit from this Commission or its successor agency and
3. the applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access to the shoreline. (such easement shall be along the eastern boundary of the property in Las Flores Creek). Such easement shall be free of prior liens or encumbrances except for tax liens and shall extend from Pacific Coast Highway to the mean high tide line. Pursuant to Public Resources Code Section 30212, any public agency or private association accepting such dedication may limit public use to pedestrian, viewing and tideland access and recreation, and shall assume responsibility for maintenance and liability. 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 25 years, such period running from the date of recording.

* * *

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
646 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1439
LONG BEACH, CALIFORNIA 90801
(213) 590-3071 (714) 844-0648

RE

FILE COPY

NOTICE OF PUBLIC HEARING

Pursuant to order of the California Coastal Commission, notice of public hearing is hereby given.

Said public hearing is scheduled on the April 23, 1979

Agenda for application for permit, number P-79-4918

*** as submitted by Felina's Incorporated

The subject request is to permit construct a restaurant with
1511 sq. ft. of serving area and 33 parking spaces in an existing,
vacant, 2-story structure formerly used as a motel. Note: Project
excluding second floor meets parking guidelines and applicant
offers vertical and lateral access, previous permit, P-75-6353
was revoked, with conditions.

at 21202 Pacific Coast Hwy., Malibu.

Said agenda public hearings will commence at 4.00 p.m.

on April 23, 1979

at Torrance City Council Chambers

3031 Torrance Blvd., Torrance

During which time all persons either favoring or opposing the application will be heard. Testimony should be related to issues addressed by the California Coastal Act of 1976. Any written correspondence regarding the application should be directed to this office prior to the hearing date.

All interested individuals who wish additional information may contact this office.


M. J. Carpenter
Executive Director

*** FOR APPLICANT ONLY.....

COPY OF THIS NOTICE IS TO BE POSTED ON SUBJECT PROPERTY

3678

(over)

EXHIBIT "B"

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
300 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1430
LONG BEACH, CALIFORNIA 90801
(213) 390-3071 (714) 846-8648

NOTICE OF PROPOSED PERMIT CONDITIONS

The following conditions have been appended to your application for
Permit No. P-79-4918 for consideration by the Commission
on April 23, 1979.

PROJECT DESCRIPTION:

Construct a restaurant with 1511 sq. ft. of serving area and 33
parking spaces.

CONDITION:

See attached page 3.

If you feel that you cannot agree to these conditions, please notify
this office no later than April 17, 1979.

Date: April 2, 1979

M.J. Carpenter
Executive Director

MJC:cw

32278

EXHIBIT "B"

Conditions:

Prior to issuance of permit, applicant shall submit a deed restricted for recording:

1. to be recorded as a covenant running with the land which shall be prior to all encumbrances except for tax liens and shall bind the applicant and any successors in interest to allow the public to walk, sit, swim and otherwise use a 25 ft. wide strip of beach as measured inland from the water line (the document shall state that the mean high tide line is understood by both parties to be ambulatory as will the 25 ft. wide strip); in no case shall the public be allowed to use the beach closer than 5 ft. to any structure;
2. limiting the use of the second story of the structure to restaurant storage and other ancillary restaurant uses but in no case open for public use unless pursuant to a permit from this Commission or its successor agency; and
3. the applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access to the shoreline. Such easement shall be 10 ft. wide along the eastern boundary of the property line. Such easement shall be free of prior liens or encumbrances except for tax liens and shall extend from Pacific Coast Highway to the mean high tide line including the observation deck area as indicated on site plan and steps to beach from the observation deck. Pursuant to Public Resources Code Section 30212, any public agency or private association accepting such dedication may limit public use to pedestrian viewing and tideland access and recreation, and shall assume responsibility for maintenance and liability. 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 25 years, such period running from the date of recording.

* * *

Exhibit B

81- 279808

verified

RECORDATION REQUESTED BY AND MAIL TO:

SOUTH COAST REGIONAL COMMISSION
566 East Ocean Boulevard
Long Beach, California 90801

OFFER TO DEDICATE

I. WHEREAS, FELINA'S, INC., a California corporation is the lessee of real property located at 21202 Pacific Coast Highway, Malibu, California and more specifically described in Exhibit "A", attached hereto and incorporated by reference; and

II. WHEREAS, the Estate of Eloise M. Burnett and Albatross Hotel, Inc., a corporation, are the owners of the property leased by Felina's, Inc. described above; and

III. WHEREAS, the South Coast Regional Commission (the "Commission") is acting on behalf of the People of the State of California; and

IV. WHEREAS, the People of the State of California have a legal interest in the lands seaward of the mean high tide line; and

V. WHEREAS, pursuant to the California Coastal Act of 1976, the Owners applied to the Commission for a coastal development permit for a development on the real property described above; and

VI. WHEREAS, a Coastal Development Permit No. P-79-4918 was granted on April 23, 1979 by the Commission subject to the following condition:

1. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access to the shoreline. Such easement shall be 10 feet wide along the eastern boundary of the property line. Such easement shall be free of prior liens or encumbrances except for tax liens and shall extend from Pacific Coast Highway to the mean high tide line including the observation deck area as indicated on site plan and steps to beach from the observation deck. Pursuant to Public Resources Code Section 30212, any public agency or private association accepting such dedication may limit public use to pedestrian, viewing and tideline access and recreation, and shall assume responsibility for maintenance and liability. 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 25 years, such period running from the date of recording.

VII. WHEREAS, the real property described above are parcels located between the first public road and the shoreline; and

VIII. WHEREAS, under the policies of Section 30210 through 30212 of the California Coastal Act of 1976, public access to the shoreline and along the coast is to be maximized and in all new development projects between the first public road and the shoreline provided; and

-2-

81-273808
81-273808

(This page to be added without text)

CHICAGO TITLE

MAY 9 1981

IX. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the public access provisions of Sections 30210 through 30212 and that a permit could not therefore have been granted.

NOW THEREFORE, in consideration of the granting of Permit No. P-79-4918 to the Applicant by the Commission, the parties hereto hereby offer to dedicate an easement for public access and recreational use to a public agency or private association approved by the Commission. Said easement shall encumber the property described herein as Exhibit "B" which is a portion of the property described in Exhibit "A" hereto. Said easement is designed to provide public access from Pacific Coast Highway to the line of mean high tide of the Pacific Ocean.

This offer to dedicate shall run with the land, and be binding upon the parties hereto, their heirs, assigns or successors in interest. The People of the State of California shall accept this offer through the local government, any public agency or private association approved by the Commission or its successor in interest, whichever first accepts the offer. This offer shall be irrevocable for a period of 25 years, such period to run from the date of recordation of this offer. In accordance with Public Resources Code §30212, any acceptor of this offer shall assume maintenance and liability

-3- 81- 279808 81-271095

CHICAGO TITLE

for said easement.

This offer of dedication is made subject to the condition that the first offeree to accept the offer may not abandon the public access easement granted by such acceptance, provided, however, that if said offeree should at any time determine that it cannot or will not use said easement, said offeree shall grant the easement to another of the above-named public agencies. Once granted to the original offeree, the public access easement shall run with the land and shall be binding on the grantors, their heirs, successors and assigns.

DATED: October 11, 1979

FELINA'S INC.

By

J. J. Hood
President & Sec.

By

ESTATE OF KLOISE BURNETT

By

James M. Parker
Executor

ALBATROSS HOTEL, INC.

By

James M. Parker
President

By

Sally T. Parker Sec.

81- 279808

81- ~~279808~~ -4-

81- 279808
~~81- 271895~~

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On October 11, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared John I. Hall known to me to be the President of the corporation that executed the within instrument, and acknowledged to me that such execution constituted the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Madeline E. Sells
MADLINE E SELLS
Notary (Typed or Printed)

OFFICIAL SEAL
MADLINE E. SELLS
NOTARY PUBLIC - CALIFORNIA
My Comm. Exp. May 28, 1982

(This area for official notary seal)

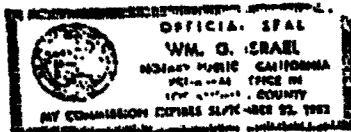
CHICAGO TITLE

MAR 19 81

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

On October 26, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared James M. Parker, known to me to be the President, and Sally T. Parker, known to me to be _____ Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.



Wm G Israel

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

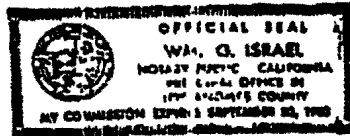
On October 26, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared James M. Parker, known to me to be the Executor of the Estate of Eloise M. Burnett and acknowledged to me that he executed the within instrument as such executor.

- 5- ~~81- 271095~~

81- 279808

CHICAGO TITLE

WITNESS my hand and official seal.



Wm. G. Israel

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }

On October ____, 1979 before me, the undersigned,
a Notary Public in and for said State, personally appeared
_____, known to me to be
the _____ President, and
_____, known to me to
be _____ Secretary of
the corporation that executed the within Instrument, known
to me to be the persons who executed the within Instrument
on behalf of the corporation therein named, and acknowledged
to me that such corporation executed the within instrument
pursuant to its by-laws or a resolution of its board of directors.
WITNESS my hand and official seal.

- 5 A -

81-271035 81-279808

CALIFORNIA TITLE

1 This is to certify that the Offer to Dedicate set forth above dated
2 Oct. 1, 19 79, and signed by John T. Hall, John A. Baker
3 Sally T. Yacker, owner(s), is hereby acknowledged by the under-
4 signed officer on behalf of the California Coastal Commission pursuant to
5 authority conferred by the California Coastal Commission when it granted
6 Coastal Development Permit No. R-79-4918 on, April 28, 1979
7 and the California Coastal Commission consents to recordation thereof by its
8 duly authorized officer.

9 Dated: March 11, 1981

10 Cynthia K. Long
11 CYNTHIA K. LONG, Notary Public
12 California Coastal Commission

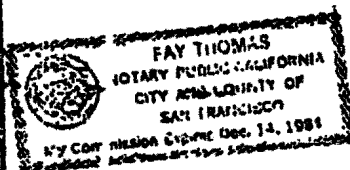
13 STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 On March 11, 1981, before the undersigned, a Notary Public in
16 and for said State, personally appeared Cynthia K. Long
17 Legal Counsel, known to me to be the authorize representative
18 five of the California Coastal Commission and known to me
19 to be the person who executed the within instrument on behalf of said Commis-
20 sion, and acknowledged to me that such Commission executed the same.

21 Witness my hand and official seal.

22
23 Fay Thomas
24 Notary Public in and for said County and State



COURT PAPER
State of California
SFP 115 - 000 5/79

81- 279808

81- 271095

CHICAGO TITLE

PARCEL 1:

A parcel of land in Los Angeles County, State of California, being a portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by Patent recorded in Book 1, Page 407, et seq. of Patents, records of said County, particularly described as follows:

Beginning at a point in the Southerly line of the 80 foot strip of land described in the deed from F. R. Cadwalader, Trustee, et al, to the State of California, recorded in Book 15228, Page 342 of Official Records of said County, said point of beginning being distant North 81°15'15" West 45.27 feet, measured along said Southerly line, from a point bearing South 8°44'45" West 40 feet from Engineer's centerline Station 1069 plus 66.17 at the Easterly extremity of that certain course in the center line of said 80 foot strip of land described in said deed as South 81°15'15" East 325.85 feet, said point of beginning being at the Northeastly corner of the land described in the deed to Lawrence Block Co., Inc., recorded October 13, 1939, in Book 16949, Page 187 of Official Records; thence along the Southerly line of said 80 foot strip, South 81°15'15" East 45.00 feet to a point; thence South 12°15'15" East to the line of ordinary high tide of the Pacific Ocean; thence Westerly along said tide line to the Easterly line of the land described in said deed to Lawrence Block Co., Inc.; thence North 8°44'45" East along said Easterly line to the point of beginning.

EXCEPTING any portion of said land, which at any time was tide land, which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees.

Said land is shown as part of Parcels 1, 2 and 3 upon a Licensed Surveyor's Map recorded in Book 26, Page 26 of Records of Surveys of said County.

EXCEPT all oil, gas, hydrocarbon substances in or on said land, but without right of entry, as reserved in the deed from Marblehead Land Company, a corporation, recorded March 18, 1940, as Instrument No. 166.

EXHIBIT "A"

~~81-271035~~

81- 279808

U.S. COAST AND GEODETIC SURVEY

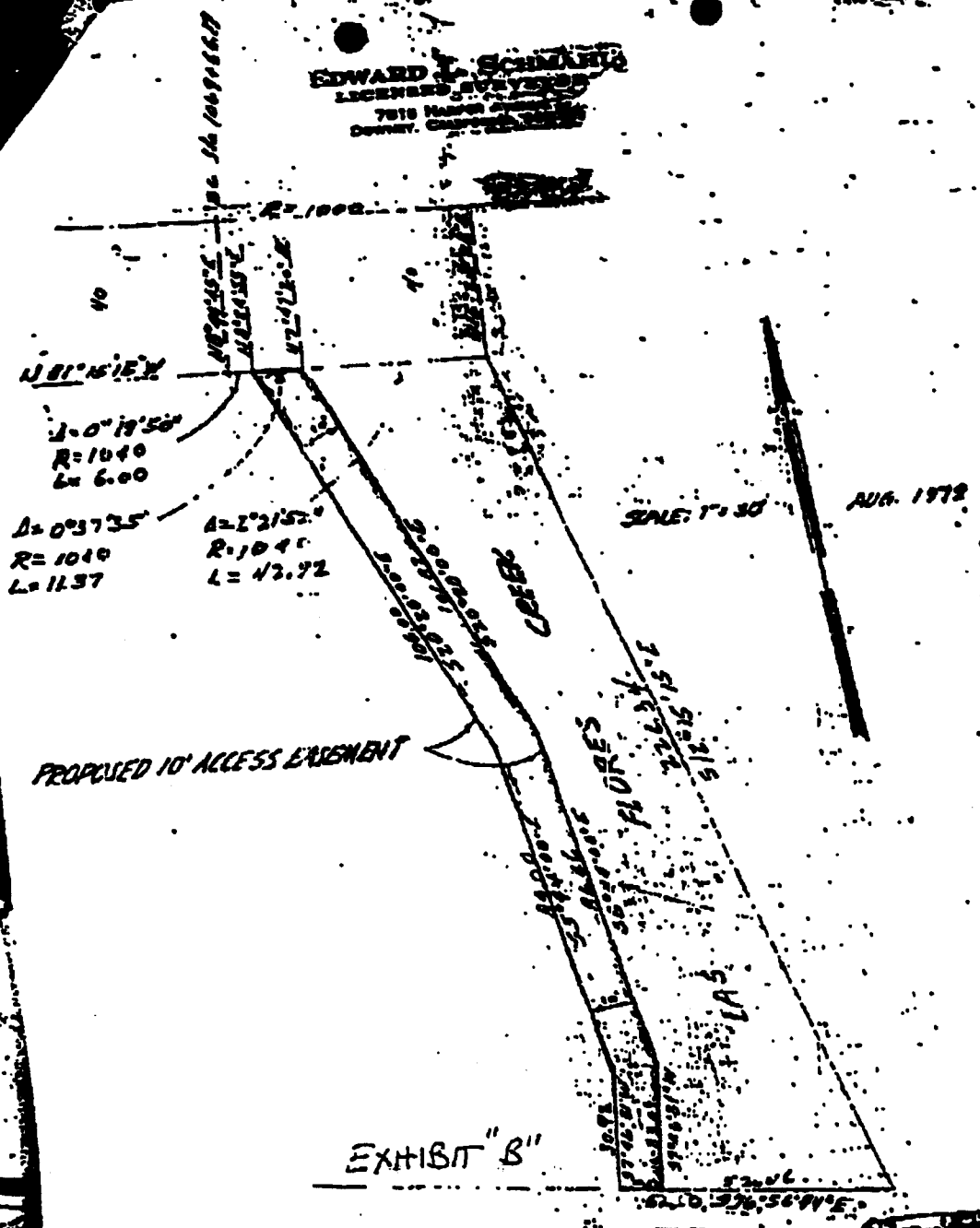
OCEAN

~~81-271035~~

CHICAGO TITLE

1981

EDWARD L. SCHMIDT
LICENSED SURVEYOR
7810 MAPLE AVENUE
DOWNEY, CALIFORNIA 90241



SALE T-30 AUG. 1972

PROPOSED 10' ACCESS EASEMENT

EXHIBIT "B"

PACIFIC
81-279809

OCEAN

81-271885

PARCEL 2:

A parcel of land situated in Los Angeles County, being a portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller, by Patent recorded in Book 1, Page 407 of Patents, records of said County, particularly described as follows:

Beginning at a point in the Southerly line of the 80 foot strip of land described in the deed from T. R. Calvalader, et al, to the State of California, recorded in Book 15228, Page 342, Official Records, said point of beginning being South 8°44'48" West 40 feet and North 81°15'15" West 0.27 feet from the Engineer's Center Line Station 1064 plus 66.17 at the Easterly extremity of that certain center line course described in said deed as South 81°15'15" East 325.85 feet, said point of beginning being also the Northwestern corner of the parcel of land described in the deed from Marblehead Land Co. to Eugenie Stocking Kilbourne, recorded in Book 17284, Page 396, Official Records; thence South 81°15'15" East 0.27 feet along the Southerly line of said 80 foot strip to the beginning of a tangent curve concave Northerly with a radius of 1040 feet, thence Easterly 60.99 feet, more or less, along the arc of said curve to the Northwestern corner of the parcel of land described in the deed from Marblehead Land Company to Harrison X. Symmes, et ux, recorded in Book 17580, Page 258, Official Records; thence South 12°15'15" East along the Westerly line of said last mentioned parcel to a point in the ordinary high tide line of the Pacific Ocean; thence Westerly along said tide line to the intersection of said tide line with that line which bears South 12°15'15" East from the point of beginning; thence North 12°15'15" West to the point of beginning, said last mentioned course being along the Easterly line of said Eugenie Stocking Kilbourne parcel heretofore mentioned.

EXCEPTING therefrom all minerals, oil, petroleum, oil petroleum, asphaltum, gas, coal and other hydrocarbon substances in, on, within and under said lands and every part thereof, but without right of entry, as reserved by Marblehead Company in deed recorded May 22, 1945, as Instrument No. 1242.

ALSO EXCEPTING any portion of said land lying outside of the patent lines of the Rancho Topanga Malibu Sequit, as such lines existed at the time of issuance of the patent which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees.

EXHIBIT "A"

81-279808

81-279808

U1 6/10/01

81-279808

CHICAGO TITLE

1981

Return Original To and
Recording Requested By:
State of California
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA

MAR 19 1981 AT 8 A.M.

Recorder's Office

FREE

12

IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, FELINA's, INC., A CALIFORNIA CORPORATION is the Lessee of the real property located at 21202 Pacific Coast Highway, Malibu, California, legally described as particularly set forth in attached Exhibit A hereby incorporated by reference, and hereinafter referred to as the "subject property"; and

II. WHEREAS, the estate of ELOISE M. BURNETT and ALBATROSS HOTEL, INC., a Corporation, are the record owners of the property leased by Felina's Inc. described above; and

III. WHEREAS, the California Coastal Commission, South Coast Regional Commission, hereinafter referred to as "the Commission", is acting on behalf of the People of the State of California; and

IV. WHEREAS, the People of the State of California have a legal interest in the lands seaward of the mean high tide line; and

V. WHEREAS, pursuant to the California Coastal Act of 1976, the owner applied to the Commission for a coastal development permit for a development on the real property ; and

VI. WHEREAS, a coastal development permit no. P-79-4918 was granted on April 23, 1979, by the Commission in accordance with the provisions of the Staff Recommendation and Findings Exhibit B attached hereto and hereby incorporated by reference, subject to the following condition:

Prior to issuance of permit, applicant shall submit a deed restriction for recording:

To be recorded as a covenant running with the land which shall be prior to all encumbrances except for tax liens and shall bind the applicant and any successors in interest to allow the public to walk, sit, swim and otherwise use a 25 ft. wide strip of beach as measured inland from the water line (the document shall state that the mean high tide line is understood by both parties to be ambulatory as will the 25 ft. wide strip); in no case shall the public be allowed to use the beach closer than 5 ft. to any structure;

VII. WHEREAS, the subject property is a parcel located between the first public road and the shoreline; and

VIII. WHEREAS, under the policies of Sections 30210 through 30212 of the California Coastal Act of 1976, public access to the shoreline and along the coast is to be maximized, and

in all new development projects located between the first public road and the shoreline shall be provided; and

IX. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Section 30210 through 30212 of the California Coastal Act of 1976 and that therefore in the absence of such a condition, a permit could not be have been granted;

NOW THEREFORE, in consideration of the granting of permit no. P-79-4918 to the owners by the Commission, the owners hereby offer to dedicate to the People of California an easement in perpetuity for the purposes of allowing the public to walk, sit, swim and otherwise use a 25 ft. wide strip of beach located on the subject property as measured inland from the water line and as specifically set forth by attached Exhibit C (12) hereby incorporated by reference.

This offer of dedication shall be irrevocable for a period of twenty-one (21) years, measured forward from the date of recordation, and shall be binding upon the owners, their heirs, assigns, or successors in interest to the subject property described above. The People of the State of California shall accept this offer through the _____, the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

Acceptance of the offer is subject to a covenant which runs with the land, providing that the first offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original offer to dedicate. The grant of easement once made shall run with the land and shall be binding on the owners, their heirs, and assigns.

Executed on this 20th day of January, 1981, in the City of Santa Monica, County of Los Angeles

FELINA'S INC.

By *[Signature]*

By *President & Secretary*

ESTATE OF ELOISE BURNETT

By *James M. Parker*
Testamentary Executor

ALBATROSS HOTEL, INC.

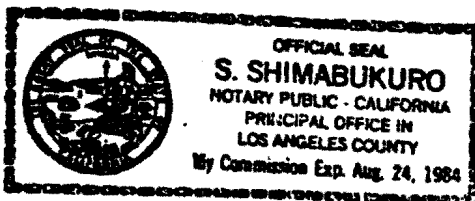
By *James M. Parker*

President & Secretary
By _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On February 26, 1981 before me, the undersigned,
a Notary Public in and for said State, personally appeared
John T. Hall, known to me to be
the _____, President, and
John T. Hall, known to me to
be _____, Secretary of
the corporation that executed the within Instrument, known to
me to be the persons who executed the within Instrument on
behalf of the corporation therein named, and acknowledged to
me that such corporation executed the within instrument
pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

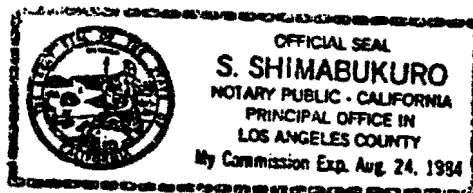


S. Shimabukuro
S. Shimabukuro

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On February 26, 1981 before me, the undersigned,
a Notary Public in and for said State, personally appeared
John T. Hall, known to me to
be the President, and John T. Hall, known
to me to be _____ Secretary of the
corporation that executed the within Instrument, known to me
to be the persons who executed the within Instrument on behalf
of the corporation therein named, and acknowledged to me that
such corporation executed the within instrument pursuant to
its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

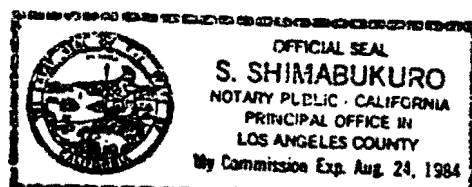


S. Shimabukuro

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On February 26, 1981 before me, the undersigned,
a Notary Public in and for said State, personally appeared
James M. Parker, known to me to be
the Executor of the Estate of Eloise M. Burnett and acknowledged
to me that he executed the within instrument as such executor.

WITNESS my hand and official seal.



S. Shimabukuro

This is to certify that the offer of dedication set forth above dated _____, 1981, and signed by John T. Hall & James M. Parker, owner(s), is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. P-77-4918 on April 23, 1979 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: March 11, 1981

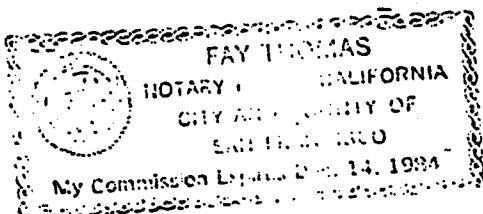
Cynthia K Long
CYNTHIA K LONG, LEGAL COUNSEL
California Coastal Commission

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On March 11, 1981, before the undersigned, a Notary Public in and for said State, personally appeared Cynthia K. Long (name), Legal Counsel (title) known to me to be the authorized representative of the California Coastal Commission and known to me to be the person who executed the within instrument on behalf of said Commission, and acknowledged to me that such Commission executed the same.

Witness my hand and official seal.



Fay Thomas
Notary Public in and for said
County and State

81- 279809

PARCEL 1:

A parcel of land in Los Angeles County, State of California, being a portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by Patent recorded in Book 1, Page 407, et seq. of Patents, records of said County, particularly described as follows:

Beginning at a point in the Southerly line of the 80 foot strip of land described in the deed from T. R. Cadwalader, Trustee, et al, to the State of California, recorded in Book 15228, Page 342 of Official Records of said County, said point of beginning being distant North 81°15'15" West 45.27 feet, measured along said Southerly line, from a point bearing South 8°44'45" West 40 feet from Engineer's centerline Station 1069 plus 66.17 at the Easterly extremity of that certain course in the center line of said 80 foot strip of land described in said deed as South 81°15'15" East 325.85 feet, said point of beginning being at the Northeasterly corner of the land described in the deed to Lawrence Block Co., Inc., recorded October 13, 1939, in Book 16949, Page 187 of Official Records; thence along the Southerly line of said 80 foot strip, South 81°15'15" East 45.00 feet to a point; thence South 12°15'15" East to the line of ordinary high tide of the Pacific Ocean; thence Westerly along said tide line to the Easterly line of the land described in said deed to Lawrence Block Co., Inc.; thence North 8°44'45" East along said Easterly line to the point of beginning.

EXCEPTING any portion of said land, which at any time was tide land, which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees.

Said land is shown as part of Parcels 1, 2 and 3 upon a Licensed Surveyor's Map recorded in Book 26, Page 26 of Records of Surveys of said County.

EXCEPT all oil, gas, hydrocarbon substances in or on said land, but without right of entry, as reserved in the deed from Marblehead Land Company, a corporation, recorded March 18, 1940, as Instrument No. 166.

EXHIBIT "A"

S1- 279900

PARCEL 2:

A parcel of land situated in Los Angeles County, being a portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller, by Patent recorded in Book 1, Page 407 of Patents, records of said County, particularly described as follows:

Beginning at a point in the Southerly line of the 80 foot strip of land described in the deed from T. R. Calwalader, et al, to the State of California, recorded in Book 15228, Page 342, Official Records, said point of beginning being South 8°44'45" West 40 feet and North 81°15'15" West 0.27 feet from the Engineer's Center Line Station 1069 plus 66.17 at the Easterly extremity of that certain center line course described in said deed as South 81°15'15" East 325.85 feet, said point of beginning being also the Northeasterly corner of the parcel of land described in the deed from Marblehead Land Co. to Eugenie Stocking Kilbourne, recorded in Book 17284, Page 396, Official Records; thence South 81°15'15" East 0.27 feet along the Southerly line of said 80 foot strip to the beginning of a tangent curve concave Northerly with a radius of 1040 feet, thence Easterly 60.99 feet, more or less, along the arc of said curve to the Northwesterly corner of the parcel of land described in the deed from Marblehead Land Company to Harrison X. Symmes, et ux, recorded in Book 17580, Page 258, Official Records; thence South 12°15'15" East along the Westerly line of said last mentioned parcel to a point in the ordinary high tide line of the Pacific Ocean; thence Westerly along said tide line to the intersection of said tide line with that line which bears South 12°15'15" East from the point of beginning; thence North 12°15'15" West to the point of beginning, said last mentioned course being along the Easterly line of said Eugenie Stocking Kilbourne parcel heretofore mentioned.

EXCEPTING therefrom all minerals, oil, petroleum, oil petroleum, asphaltum, gas, coal and other hydrocarbon substances in, on, within and under said lands and every part thereof, but without right of entry, as reserved by Marblehead Company in deed recorded May 22, 1945, as Instrument No. 1242.

ALSO EXCEPTING any portion of said land lying outside of the patent lines of the Rancho Topanga Malibu Sequit, as such lines existed at the time of issuance of the patent which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees.

EXHIBIT "A"

81- 279809

Prior to issuance of permit, applicant shall submit a deed restriction for recording:

1. to be recorded as a covenant running with the land which shall be prior to all encumbrances except for tax liens and shall bind the applicant and any successors in interest to allow the public to walk, sit, swim and otherwise use a 25 ft. wide strip of beach as measured inland from the water line (the document shall state that mean high tide line is understood by both parties to be ambulatory will the 25 ft. wide strip); in no case shall the public be allowed to use the beach closer than 5 ft. to any structure;
2. limiting the use of the second story of the structure to restaurant storage and other ancillary restaurant uses but in no case open for public use unless pursuant to a permit from this Commission or its successor agency; and
3. the applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access to the shoreline. Such easement shall be 10 ft. wide along the eastern boundary of the property line. Such easement shall be free of prior liens or encumbrances except for tax liens and shall extend from Pacific Coast Highway to the mean high tide line including the observation deck area as indicated on site plan and steps to beach from the observation deck. Pursuant to Public Resources Code Section 30212, any public agency or private association accepting such dedication may limit public use to pedestrian viewing and tideland access and recreation, and shall assume responsibility for maintenance and liability. 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 25 years, such period running from the date of recording.

* * *

That portion of the land described in Exhibit "A" lying within 25 feet as measured inland from the water line (which is understood by both parties to be ambulatory as will the 25 feet strip) but in no case closer than 5 feet to any structure.

Exhibit "C"

81- 279809

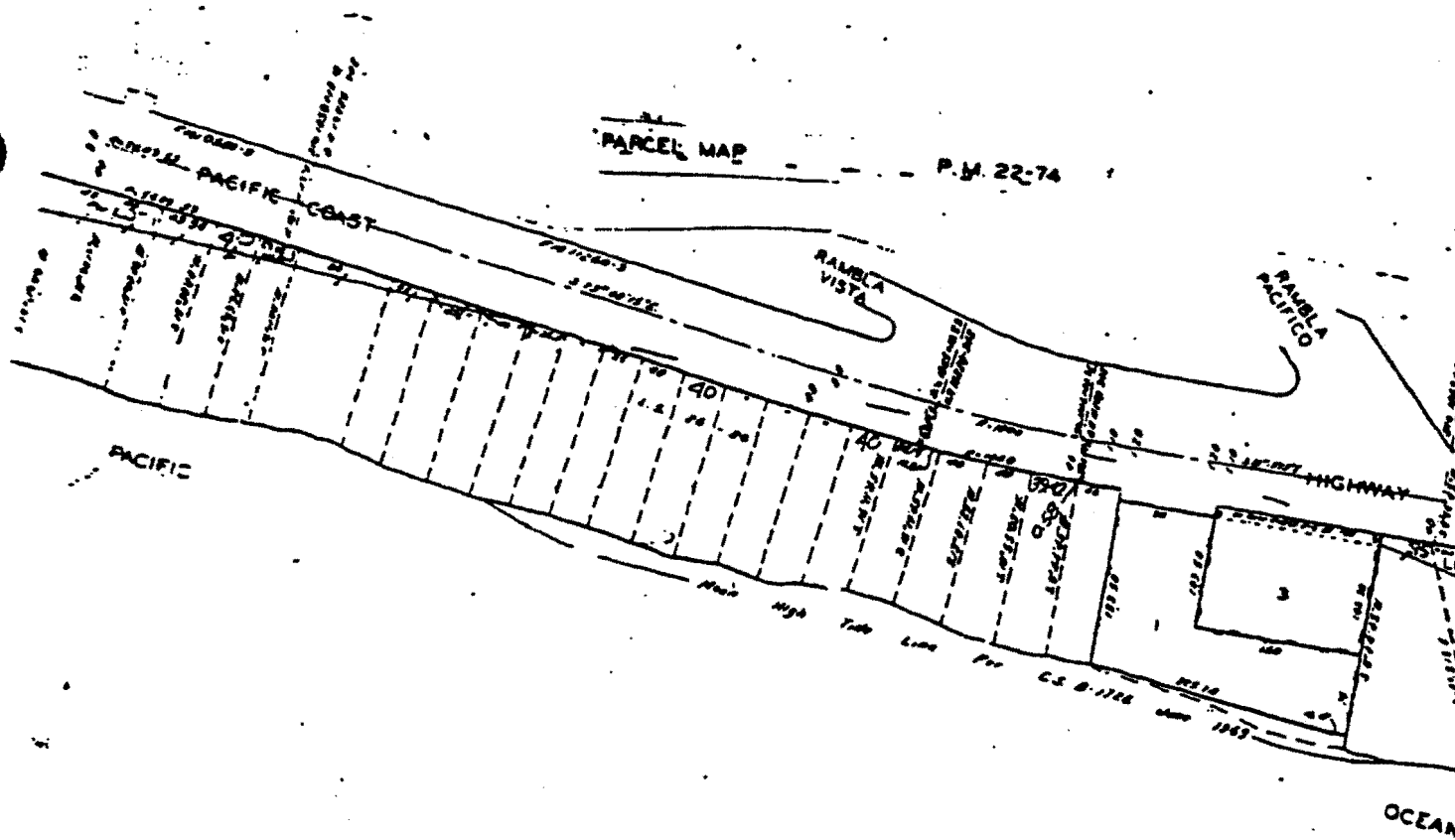


Exhibit "C"

81- 279809

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

EXHIBIT NO. 21
APPLICATION NO. 4-00-259 (Her216)
Memorandum Prepared by Commissioner's Sr. Coastal Engineer



July 18, 2001

TO: Melanie Hale, Supervisor, Ventura Office

FROM: Lesley Ewing, Sr. Coastal Engineer

Lesley Ewing

6 pages

SUBJECT: Coastal Processes at La Costa Beach, adjacent to Las Flores Creek

At your request, I have reviewed the short letter report from David Skelly, dated May 4, 2001 and the attached material. In addition I have reviewed the following additional material:

- 17 page excerpt from a Draft 1992 Report by Moffatt & Nichol Engineers relating to Shoreline Change and provided as part of the City of Malibu Comprehensive Plan (Draft M&NE Report)
- US Army Corps of Engineers (1994) Reconnaissance Report: Malibu/Los Angeles County Coastline, Los Angeles County, California (Corps of Engineers, 1994)
- Reinard Knur (2000) The Effect of Dam Construction in the Malibu Creek Watershed on the Malibu Coastline Sediment Budget, a Thesis presented to the Faculty of the Departments of Civil Engineering & Geology, California State University, California. (Knur, 2000)
- Aerial photos of the site, from 1970, 1978, 1986, 1993/94 and 1997; all provided by the Commission mapping unit.

This letter will summarize the applicable material and findings from these reports that relate to the issue whether the project site is eroding or accreting.

Project Setting, Littoral Processes and Sediment Budget

The project site is at the down coast end of La Costa Beach, adjacent to Las Flores Creek. This section of beach is part of the larger Santa Monica or Malibu Littoral Cell that runs between Mugu Canyon and Palos Verdes Point. Dume and Redondo Submarine Canyons are both sinks for some longshore sediment and numerous groins, jetties and breakwaters are human-constructed sediment barriers and traps.

The Santa Monica Cell has been greatly modified over the past century. Many of the watersheds that provided sediment to the cell have been dammed, decreasing sediment delivery to the coast. Roadwork, harbor excavations and other development have added huge amounts of sediment to the coast. And numerous structures along the

coast and nearshore have modified sediment transport rates and deposition patterns. Efforts to develop a sediment budget must consider these modifications in addition to the enormous annual variability in sediment supply and coastal processes. This complexity often makes it difficult to identify clear trends in shoreline change and to predict whether these trends will continue in the future.

Historically, Malibu Creek has been one of the major sources of sediment for the central Malibu beaches, however, by 1997, there were 23 dams in the Malibu Creek Watershed that have trapped beach-quality sediment and reduced peak water velocities and drastically reduced new coastal sediment supplies. Knur (2000) examined the capacities of the various dams in the Malibu Creek Watershed and potential upland supplies of sediment. He estimated that sediment supplies from the Malibu Creek Watershed dropped from an average annual rate of 76,000 cubic yards at the end of the 19th century to 17,000 cubic yards in 1926, with the completion of Rindge Dam. By the 1960's Rindge Dam had filled with sediment, and annual watershed yield increased to about 34,000 cubic yards. Much of the reduction on watershed sediment supply along the Malibu coast was offset by intentional nourishment and fill for road construction, estimated by Knur (2000) to be 757,000 cubic yards from the 1910's through the present.

Based on Knur's estimates of the temporal changes in both natural and anthropic sediment supplies to the Malibu coast, he concludes that recent sediment losses have been larger than sediment input. Because of this, there has been a cumulative annual loss of sediment along the coast, especially at those beaches downcoast of Malibu Creek.

The Corps of Engineers Reconnaissance Report also attempted to look at sediment input and sediment losses and develop a sediment budget for the Santa Monica Cell. General estimates are that annual net longshore transport within the Santa Monica Littoral Cell ranges from 100,000 to 250,000 cubic yards (Corps of Engineers, 1994). The Corps of Engineers divided the shoreline into 20 study reaches and both La Costa and Los Flores beaches are within Reach 9. The Corps of Engineers estimated that the average net longshore transport into the area between reach 4 and reach 12 (Point Dume to the Santa Monica City limits) is 120,000 cubic yards, the average annual fluvial sediment supply is 90,000 cubic yards, average annual artificial fill supply is 15,000 cubic yards, the average annual beach erosion is 40,000 cubic yards and the average annual sediment transport off of the area is 265,000 cubic yards. The 40,000 cubic yards of beach erosion translates to about a 1 foot per year beach loss. These are all average values for a portion of the larger littoral cell. They do not represent what will actually happen in any one year, but rather are the average of many years.

In the Santa Monica cell, sediment input varies greatly from one year to the next, as does longshore transport. However, this study estimates that there is an average annual loss of 40,000 cubic yards of sediment from the beaches as a reasonable first approximation of behavior within the subcell that includes La Costa Beach. This is a small long-term loss, and it would not be distributed evenly through all the beaches in

these reaches. As noted in the Corps study, "Higher rates of erosion could occur during years of high transport potential and low rainfall. Differences would have to be made up from erosion of existing beaches at a rate of about 1 cubic yard or more per linear foot of beach. This is essentially an imperceptible amount within the context of the Reconnaissance Study but nevertheless a rate that would result in a slow erosion of the shoreline." (Corps of Engineers, 1994, page 2-47)

The Draft Moffatt & Nichol Report did not undertake a sediment budget in the excerpt of the report that has been provided. This report identifies the Malibu Littoral Cell as going from Port Hueneme to Marina Del Rey. A main sediment input to this cell is the average annual input of 1.2 million cubic yards of sand that is placed on Hueneme Beach from dredging at the Channel Islands Harbor. An unknown amount of this material passes by both Mugu Canyon and Dume Canyon to nourish the beaches of west Malibu. An unquantified amount of sand is added annually to this from streams and cliff erosion. And 160,000 cubic yards per year move alongshore and out of the Malibu area at Las Tunas, to be deposited between Topanga Beach and Marina Del Rey. While this budget lacks the specifics and details of the other two, the overall average annual transport rate of 160,000 cubic yards is within the 150,000 to 250,000 cubic yards per year ranges developed by the Corps of Engineer. This Draft M&NE Report also finds that there has been a net sediment gain of "perhaps 100,000 cyy". This value was not derived from any analysis of sediment sources and sinks, or detailed sediment budget, but rather was estimated to be the amount necessary to provide for the shoreline advance that we measured from aerial photographs.

Shoreline Change at La Costa Beach, adjacent to Las Flores Creek

La Costa is a south-facing beach between Malibu Creek and Las Flores Creek, adjacent to Carbon and Las Flores beaches. The letter from Dave Skelly (May 4, 2001 to Mr. Ralph Herzig) used excerpts from the Draft Moffatt & Nichol Report as evidence that the shoreline in this location is advancing seaward at a rate of about 1-foot per year. It also notes that the "existing revetment is almost non-functional and if it were removed along with the seaward cement foundation it is highly unlikely that erosion would occur at the site. ... There is no long-term erosion at this location."

The Draft (M&NE) Report was prepared for the City of Malibu General Plan. By phone conversation, staff at M&NE has confirmed that this report was never issued in final form. Much of it exists in sections and excerpts, similar to what was provided to staff. There is no reason to expect that the city was not pleased with the quality of the work, but a complete report was never prepared nor was a final version ever issued. The Draft M&NE Report would be a more useful resource if a Final published version or even a complete draft were available; however, none are.

The Draft M&NE Report is based on an analysis of the wetted bound that was taken from aerial photographs from 1938 to 1988. All analysis of shoreline change and temporal changes in the sediment budget rely on the results from the aerial photographs. The Draft M&NE Report concludes that the Malibu coast has an overall

change of "+0.55 ft/yr shoreline advance averaged for the entire Malibu coast translates to a net gain in sediment budget of perhaps 100,000 cyy." It provides a different interpretation of coastal processes along the Malibu coast than the Corps of Engineers Reconnaissance Report. And while the Corps of Engineers work was published 2 years after the Draft M&NE Report the Corps of Engineers does not mention or comment on the findings of the Draft M&NE Report. Since the Draft M&NE Report has not information to support the provided conclusions, no identified peer review and no way to independently check the work (other than to redo it), it is difficult to understand the seemingly contradictory findings between this report and the other two studies.

The Draft M&NE Report provides a detailed shoreline analysis for many locations along the Malibu shoreline in both graphic and tabular forms. The graphic information shows that La Costa has had slightly larger than a 1 ft/yr mean average advance from 1938 to 1988, and a mean beach width of 70 to 80 feet between 1960 and 1988. The tabular data has not been provided with a key to the range lines so it is difficult to use this information with the graphed information. Errors can happen when data are transferred to graphic format and a key to the ranges in the tabular data would allow some verification that the data were transferred accurately. The tabular information also provides R-squared measures that indicate the scatter in the data and the ability to detect a trend from the provided information. The table contains many R-squared values less than 0.1 or 0.2 ("indicating that the trend in shoreline position was generally not noticeable by inspection of the shoreline position/time plots"). Without a graph or table relating the R-squared values to the graphical information, it is not possible to determine the validity of the general information on shoreline accretion for the downcoast portion of La Costa that can be read from the graph.

In contrast with this draft report, Corps of Engineers found that the Malibu beaches were experiencing an overall small amount of erosion. "East of Malibu Creek the beach gradually diminishes in width to a narrow to non-existent condition between Las Flores and Topanga Canyons." (Corps of Engineers, 1994, page 2-9)

For the project area, the Corps' Initial Appraisal found that the shoreline forecast was for stable to slow erosion and the greatest damage would be expected to occur from storm flooding and to older homes, with some flooding also at Pacific Coast Highway (Corps of Engineers, 1994, page 3-30). During stormy winters the beaches can experience large amounts of short-term shoreline change. The Corps Reconnaissance estimates that there can be 6' to 10' of vertical scour and 50' to 118' of horizontal erosion at La Costa Beach. The lower values are for 2 to 5-year return period storms and the higher values are for 50 and 100-year return period events. Estimated water surface elevations range from 9.6' (2-year return period event) to 15' (25-year return period event) to 17' (100-year return period event). (Corps of Engineers, 1994, page 3-44) This agrees with the scour feature at approximately +15' that was identified on the applicant's site map and has been noted by staff in the main report.

Knur's work looked at general sediment supplies within the Malibu area and this work agrees with the general findings of the 1994 Corps of Engineers Reconnaissance Report. The reduction in coastal sediment supplies from the Malibu Creek Watershed would have the greatest impact on the beaches downcoast of Malibu Creek. Immediately downcoast of Malibu Creek, the annual sand budget was estimated to have been reduced from 90,000 cubic yards down to 55,000 cubic yards after the dams were constructed.

The beaches between Malibu Colony and Las Flores Canyon suffer the largest percentage decrease in sand budget. These beaches historically have been the widest sandy beaches in Malibu. Therefore, one would expect these beaches to be the most sensitive to an interruption in the sand supply. ... A comparison of historic aerial photographs (Spence Aerial Photographs, 1922 - 1971) shows evidence of sand movement in the form of offshore plumes; they do not reveal the effects of long term erosion in this area. However, aerial photos by I.K. Curtis and Geotech Imagery indicate erosion occurring more recently in the 1980's and 1990's. Copies of the historic photos from this section of the coastline are included in Appendix D as Photos D-4 through D-19.) (Knur, 2000, page 110).

Specifically, "At la Costa Beach, the beach is significantly narrower, with many exposed gravel bars (Photos E-7, E-8, and E-9). The downcoast headland of La Costa Beach at Las Flores Canyon is also a boulder-strewn natural rock jetty (Photo E-10). However, this natural jetty appears smaller and more "porous" to sand, rendering the La Costa Beach more sensitive to a decrease in the sand budget." (Knur, 2000, page 112) An examination of the provided photographs and of the Commission's inventory of aerial photographs supports this conclusion. There is a natural "point" at Las Flores Creek and there is a bulge in the shoreline at the creek mouth. The natural boulder-strewn shoreline at the creek mouth seems to be stabilizing the shoreline and helping to maintain the upcoast beach.

This discussion also provides some clues into the differing conclusions between the Corps of Engineers, Knur and the Draft M&NE Report. If the visible evidence of erosion were only apparent in the 1980's and 1990's photographs, then the analysis of shoreline change using 1938 to 1988 photographs might not have shown this recent 1980 to 1990 trend. Also, the Corps of Engineers estimated that, during a period of relatively benign wave conditions, the beaches in the vicinity of the project site exhibit an average seasonal variability of 25 feet. This seasonal change could mask or dominate small long-term trends and make them difficult to identify with short-term data sets. If the trend from stable or slightly accretional to slightly erosional were to have occurred in the 1980's, as hypothesized by Knur, then this trend would be difficult to detect in a data set that ended just when this trend was becoming evident.

Conclusions

It is difficult to use recent aerial photographs detect shoreline changes at the project site since the development on either side has encroached onto the active beach area and revetments or development have fixed the **back shore**. Wave up-rush can be seen going up to the revetment and concrete slab in several of the photographs and the changes and migration of the shoreline in this location are limited by the location of these structures. In several of the photographs, it seems that there is no dry beach seaward of the development. As long as the wetted bound is fixed at the revetment or concrete slab, it is difficult to determine the long-term shoreline trend at this site. The No Beach condition can indicate a stable situation, an eroding beach or a slightly accreting beach.

The sediment supply and the beaches along the Malibu coast and at this location have been greatly modified by actions that have both added and depleted sediment. Responsible studies differ on the long-term trend in shoreline change, but seem to show the change to be small in comparison with seasonal and storm-related changes. Much evidence suggests that the shoreline is ~~stable or slightly~~ erosional. The Draft M&NE Report concludes that the shoreline is stable to accretional.

Finally, the identified shoreline change is slight – only about a foot per year (of erosion, based on the Reconnaissance Report by Corps of Engineers and Thesis Report by Knur, or of accretion, based on the Draft M&NE Report and letter from Dave Skelly) and the sediment supply to this portion of the coast has varied greatly over the past 50 to 100 years. The visual record can provide indications of shoreline change, but the long-term trend may be difficult to isolate. The seasonal changes (averaging about 25 feet) greatly exceed the estimated long-term trend. Since Las Flores Creek does provide sediment to the coast, visual changes to this section of shoreline would also reflect the episodic and inter-annual variability of small fluvial sediment delivery. The lack of visible shoreline advance draws into question, but does not disprove the conclusion that the shoreline at this property is accreting at a rate of 1 foot per year. Such an advance should eventually insure that there is a year-round beach seaward of the existing development and this condition has not yet developed. Furthermore, much of the "advance" would have been the result of intentional and unintentional historic beach nourishment. It would not be prudent to count on this trend to continue unless continued nourishment sources can be assured. Mr. Skelly may be correct when he stated that there is no long-term (historic) erosion at this site. However, the weight of the available evidence suggests that, in the future, the shoreline will be stable to slightly erosive.

SE SKELLY ENGINEERING
DAVID W. SKELLY COASTAL ENGINEER

May 4, 2001

Mr. Ralph Herzig
Malibu Beachfront Properties, LLC
1246 Lago Vista Drive
Beverly Hills, CA 90210

SUBJECT: Staff Report 4-00-259, Malibu Beachfront Properties

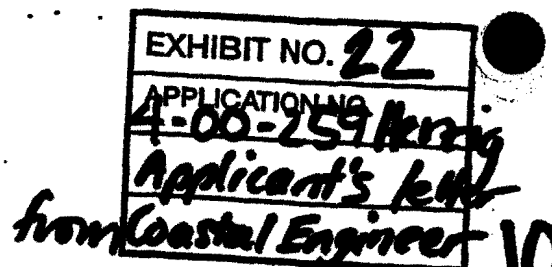
At your request I have reviewed the above referenced staff report. The report contains several errors in fact which are subsequently used to justify restrictions on the proposed development.

The staff report states "La Costa Beach is a narrow, eroding beach" (Page 15 CCC Staff Report). This statement is totally unsupported and contradictory to information provided to the staff by licensed professionals. The local coastal processes play an important role in the determining the position of the shoreline terminus of Las Flores Creek. Sedimentation occurs at the mouth not only due to the sediment load coming down the steep watershed but also from the movement of sand along the shoreline. The geometry of the local shoreline plays an important role in the accumulation of littoral material at the creek mouth. The historical delta of the Las Flores Creek forms a bulge in the shoreline. This fact is well documented in historical photographs and survey information. Natural processes form this bulge or delta; similar alluvial fans are present up and down the coast, for instance, at the foot of Malibu Canyon. Moffatt & Nichols, Engineers, performed an analysis of shoreline change rate for the Malibu area. This study covered a 50-year period and included specifically the shoreline at Las Flores Beach. The study concluded that this specific area, in front of the subject site, is not eroding but rather accreting at a rate of about 1 ft/yr. Figure 1 shows the results of the analysis for all of Malibu. This information, which has been provided to staff previously, has not been rebutted by any factual information.

The staff report also suggests that the erosive forces of waves and tides in this location have created the 16' contour. This is unsubstantiated by the photographic, survey, mean high tide data, geology, and reports prepared by licensed professionals. This elevation most likely represents a limit to the wave runup, that is in the most extreme storm and tidal conditions. Basically the wave has lost all of its energy at the maximum limit of wave runup. However, the erosive forces that staff refers to do not occur at the maximum limit of wave runup. The maximum wave forces occur at sea level which is the most part

SKELLY ENGINEERING

(720) 842-8378



Special Condition 16. Lot Combination

- A. All portions of the two parcels, APN 4451-00-900 and 4451-001-901 (formerly identified in County Assessor records as APN 4451-001-027 and 4451-01-028), shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included herein, including but not limited to sale, conveyance, development, taxation or encumbrance and (2) the single parcel created herein shall not be divided or otherwise alienated from the combined and unified parcel.
- B. Prior to issuance of the Coastal Development Permit No. 4-00-259, the applicant shall 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 the coastal development permit.

SE SKELLY ENGINEERING
DAVID W. SKELLY COASTAL ENGINEER

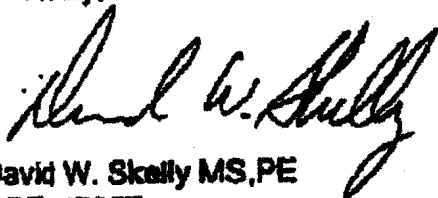
is at mean sea level (by definition) and in the extreme at the highest water, about +5' MSL. This is nowhere near the +16' MSL contour that staff refers to. If the maximum wave runup were utilized in determining beachfront development envelopes, almost all of the beachfront development now approved by the Coastal Commission would not be permitted. In fact, Staff's own exhibit 3b delineates where the contours were prior to the construction of the adjacent condominiums (before 1972) and they include 10, 9.2, 8, 6, & 4 foot contours and water levels all far seaward of the then-existing development and all above Mean High Tide Level of 1.94' MSL.

The existing revetment is almost non-functional and if it is removed along with the seaward cement foundation it is highly unlikely that erosion would occur at the site. Besides being scientifically demonstrated to be stable and accreting, under the thin layer of sand at this area of Las Flores Beach lie cobbles and hard formational material that are absolutely resistant to wave energy and would likely not erode. There is no long-term erosion at the location.

Staff uses an observation of algae on rocks to further justify its erroneous conclusions (CCC Staff report page 14) regarding shoreline stability. The report discusses erosion patterns but fails to clearly describe them, explain exactly where they are, and quantify them. Were these algae covered rocks surveyed in to determine their exact location? Where they moved there by waves? The statement in the staff report that the +16' MSL contour is the landward extent of regular wave action is absolutely incorrect. The entire paragraph is conjecture unsupported by the facts provided to the staff, still unrefuted by the staff, and is used to support an onerous setback for the structure. Therefore, there appears no reason to set the proposed location of the building landward.

If you have any questions or if your licensed professional have any question regarding this letter or any of the documents provided by this office to date concerning this project please call me at the number below.

Sincerely,



David W. Skelly MS, PE
RCE#47857

SKELLY ENGINEERING

7200 962 2377

EXHIBIT NO. 22
APPLICATION NO. 4-00-257
page 2

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

FURCA, CA 93001

(805) 585-1800

**ADDENDUM**

DATE: August 7, 2001
TO: Commissioners and Interested Parties
FROM: South Central District Staff
SUBJECT: Agenda Item Fri 8e,
CDP Application No. 4-01-030
(Moore, Friedman, Dayani)

The purpose of this addendum is to correct errors in the staff report for this agenda item, as found in the recommended **Special Condition No. Three (3)** on page 3 and 4 and in the last paragraph of recommended findings for water quality on page 9.

Corrections:

Deleted language is ~~stricken through~~ while added language is underlined, as follows:

3. Drainage, Polluted Runoff, and Animal Waste Control

Prior to issuance of the Coastal Development Permit, the applicants shall submit, for the review and approval of the Executive Director, a Drainage, and Polluted Runoff, and Animal Waste Control Plan. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving generated on the developed site. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- a) ~~Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.~~
- b) ~~Runoff shall be conveyed off site in a non-erosive manner.~~
- a) Horse manure and soiled bedding shall be collected on a regular basis, especially during wet weather. Horse manure shall be stored in structures that: a) have an earthen lining or plastic membrane lining, b) are constructed on an impervious surface (e.g., a concrete pad), or c) are storage tanks. The storage structures shall

That portion of the land described in Exhibit "A" lying within 25 feet as measured inland from the water line (which is understood by both parties to be ambulatory as will the 25 feet strip) but in no case closer than 5 feet to any structure.

Exhibit "C"

Page 1 of 2

EXHIBIT NO. 23
APPLICATION NO. 4-01-259 (Henry)
"Exhibit C"

81- 279809

Page 2 of 2

EXHIBIT NO. 23
APPLICATION NO. 4-00-259 Herne
"Exhibit C"

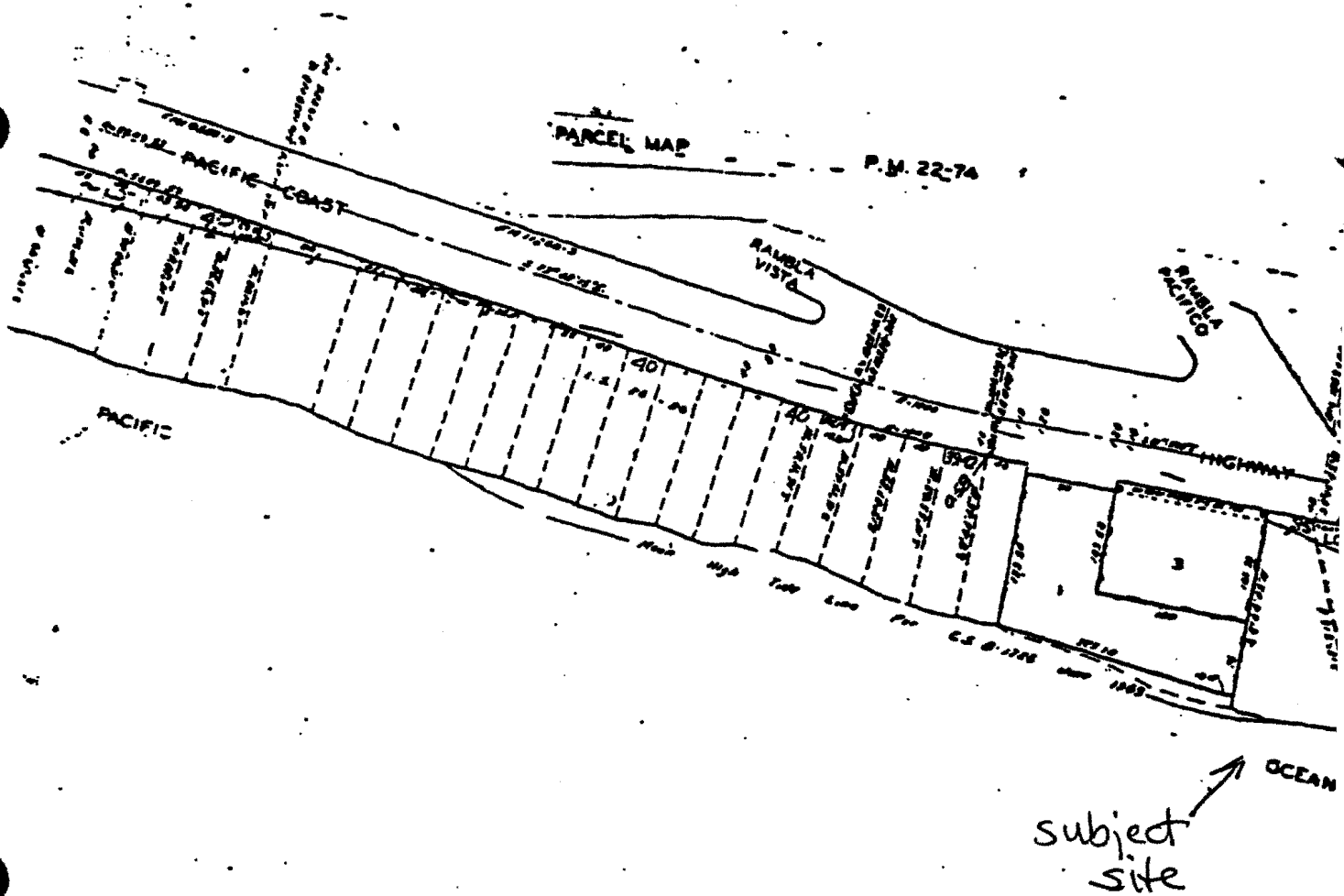


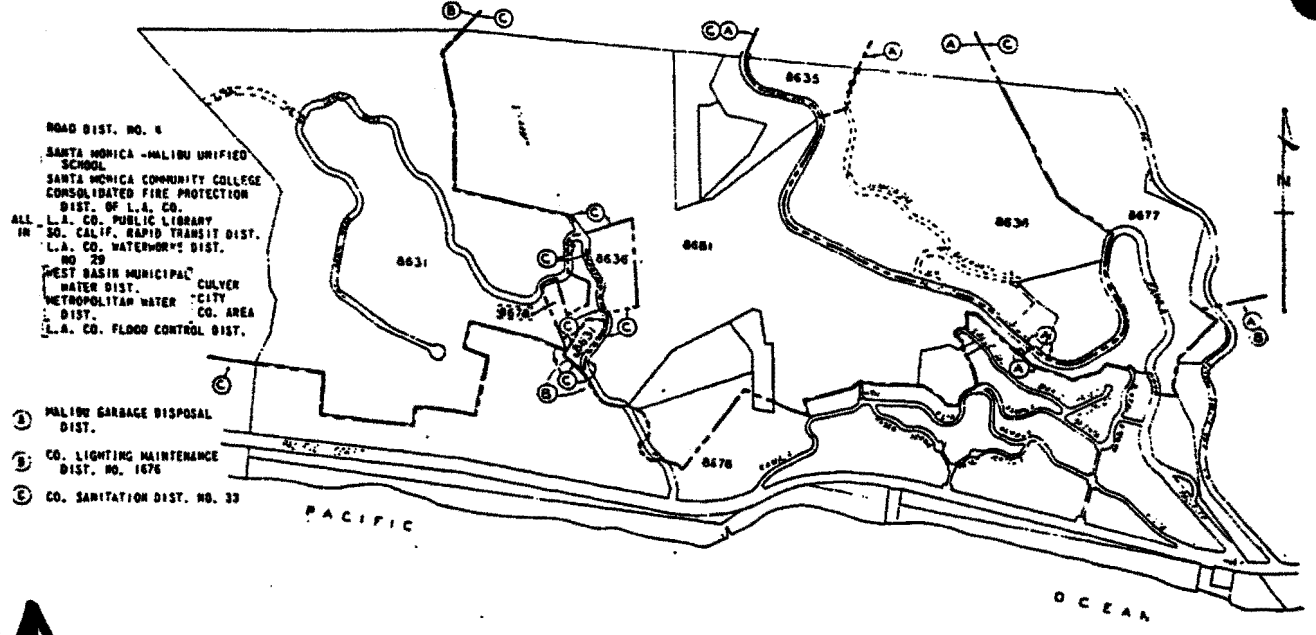
Exhibit "C"

81- 279809

MICROFILM PUBLISHERS, INC.
 P. O. BOX 2542 Santa Monica, California 90406
 Phone (213) 353-2542 Telex 151-6212
 Toll Free 800-333-2542 • Fax (213) 353-2542

4451
 SCALE: 800'

TAX RATE AREA
 8631 8636 8678
 8635 8677 8681



CODE INDEX
 BOOK 4451

ASSESSOR'S MAP
 COUNTY OF LOS ANGELES, CALIF.

MICROFILM PUBLISHERS, INC.
 P. O. BOX 2542 Santa Monica, California 90406
 Phone (213) 353-2542 Telex 151-6212
 Toll Free 800-333-2542 • Fax (213) 353-2542

4451
 SCALE 1" = 100'

The assessment of which in the following Condominium Plan B.R. 10's includes all rights and interests in the common areas as set forth in deeds of record.

Condominium B.R.	Common Area	Subdivision of Airspace
27916	27916	Sheet 2

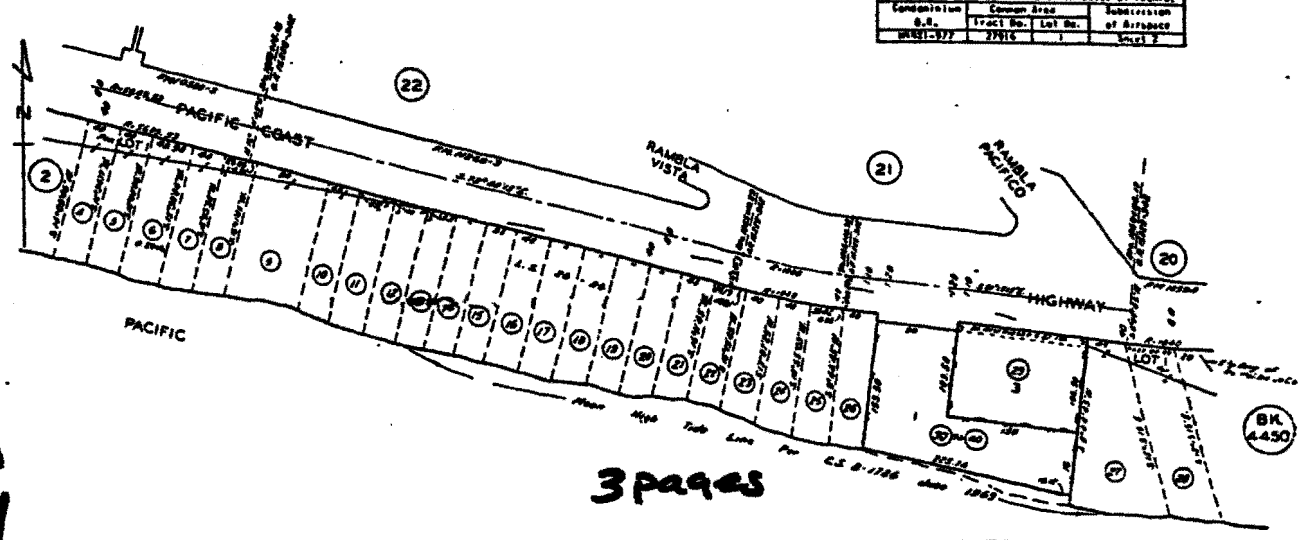


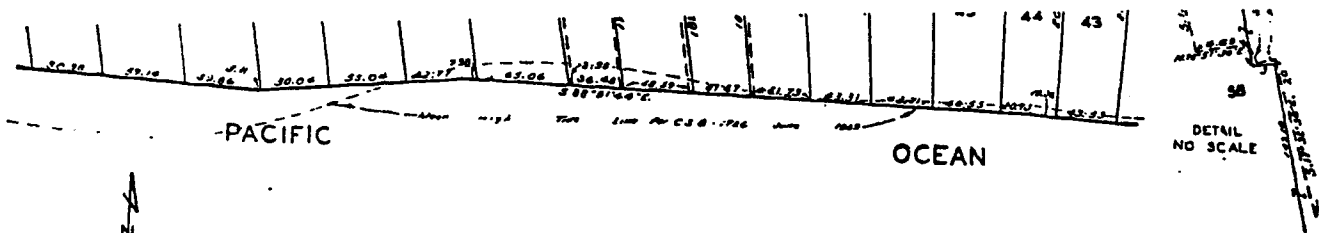
EXHIBIT NO. 24
 APPLICATION NO. 4-00-254 Her216
 Example Assessor's Map
 Pages of same title
 (other years)

CODE
 8678

FOR PREP. ASSM'T 567
 4451-348.95

LAND OF MATTHEW KELLER IN THE RANCHO
 TOPANGA MALIBU SEQUIT R.F. 534
 CONDOMINIUM TRACT NO 27916 .. MB 830-21

ASSESSOR'S MAP
 COUNTY OF LOS ANGELES, CALIF.



TRACT NO. 12634
M. B. 260-25-27

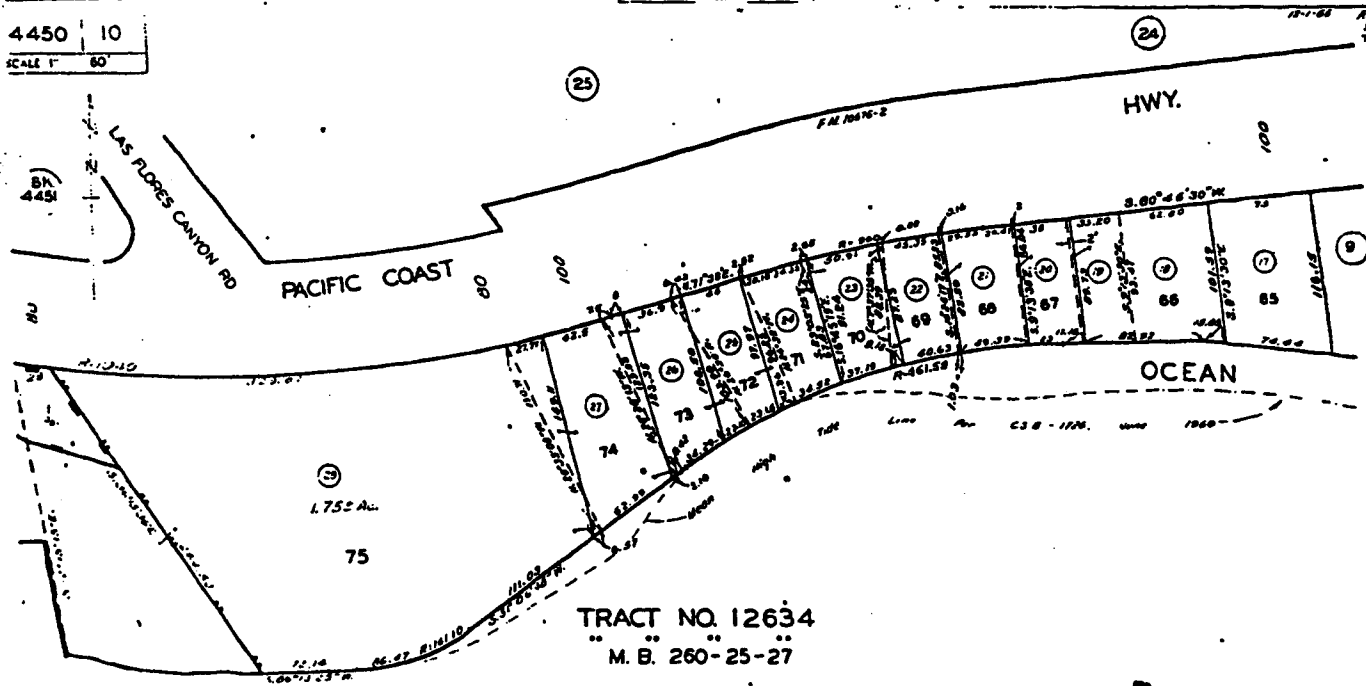
CODE
8678

FOR PREL. ASSUMT. SEE

COUNTY OF LOS ANGELES, CALIF.

AMERICAN PLANNING, INC.
P. O. Box 2000, Santa Monica, California 90406
Phone (213) 310-1000
FAX (213) 310-1000

4450 10
SCALE 1" = 80'



CODE
8678

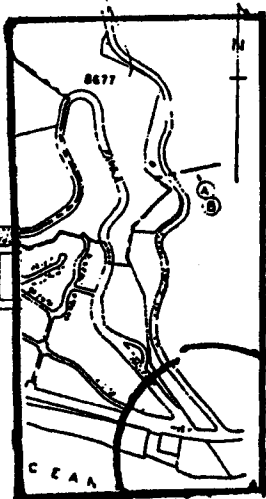
PACIFIC LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT
R. E. 534



5 1077

COUNTY OF LOS ANGELES, CALIF.

EX 24 B2



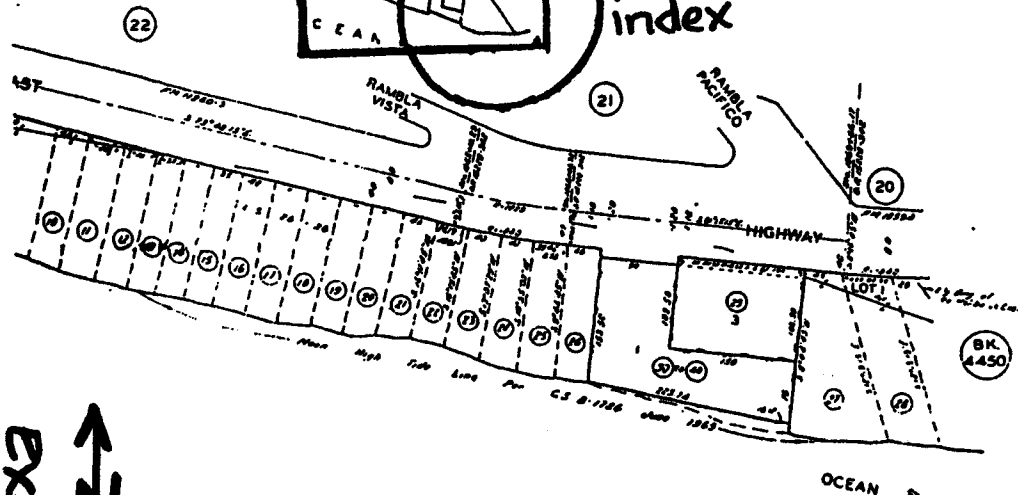
CODE INDEX BOOK 4451

ASSESSOR'S MAP
COUNTY OF LOS ANGELES CALIF

The assessment of units in the following Condominium Plan S.F. includes all rights and interests in the common areas as set forth in deeds of record.

Condominium S.F.	Common Area	Subdivision of Burgeoning
Tract No. 12634	Lot No. 1	Unit 1
Tract No. 12634	Lot No. 2	Unit 2

index



Scale = 1" = 100'

PARCEL MAP . . . P.M. 22-74

ASSESSOR'S MAP
COUNTY OF LOS ANGELES CA

EX 24 B. 3

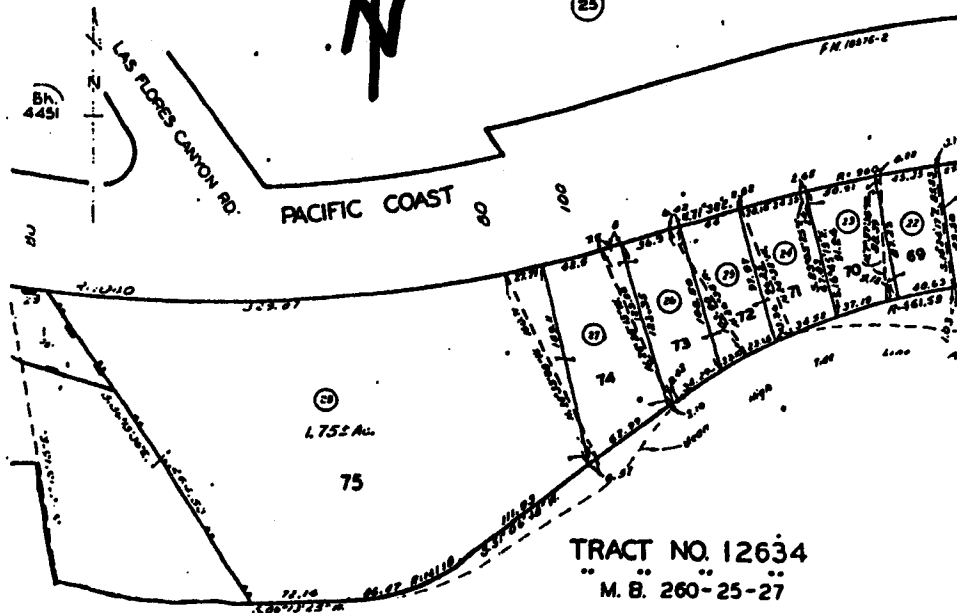
MATTHEW KELLER IN THE RANCHO
TOPANGA MALIBU SEQUIT
INDOMINIUM TRACT NO. 27916 . . . M.B. 630 23-24

CODE
8678

FOR PREV. ASSEMT. SEE

4450 10

SCALE 1" = 60'



Scale = 1" = 60'

CODE
8678

TRACT NO. 12634
M.B. 260-25-27

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT
R.F. 534

5 1077

with the provisions of state law (Calif. Government Code, Section 65450 et seq.) is required. The specific plan shall include, without limitation, regulatory controls specifying the location, intensity and height of commercial and residential uses, public utility improvements, recreational and/or open space areas as well as specifying the measures to mitigate the environmental impacts of the development. The specific plan shall further address the following areas: (1) safe access to and from the adjacent highways; (2) provisions for sewage disposal; (3) a flood plain management plan for flood hazard protection (including measures to mitigate the impact of any required improvements to the stream channel) and a method for the allocation of associated maintenance costs. The specific plan shall include the adjacent area designated 16/8A if that area is proposed for residential development.

(e) Pacific Coast Highway Corridor

As noted, the narrow corridor along Pacific Coast Highway, from the City of Los Angeles to the Malibu Civic Center area, is already largely developed for residential and commercial uses. New development in this area would infill vacant parcels with the same uses as an integrated mixed-use area. New residential should generally be limited to multiple units.

Other areas in the coastal "terrace" would be permitted to infill and expand in designated areas with residential uses consistent in density and character with those which currently exist. The prevailing pattern is primarily, low- and moderate-density single-family residential development.

Cumulatively the Plan permits the development of no more than 4,000 new residential units and 150 acres of commercial in the coastal "terrace". Development of institutional uses and parklands could occur at any location throughout the area.

(2) Rural Villages

New development would be permitted at those locations in the Santa Monica Mountains which have established themselves as "rural villages". To maintain their rural character, such development would be limited to existing prevailing densities. Generally, the Plan establishes a maximum density of one unit per acre in these areas with the potential for other local serving land uses.

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EXHIBIT NO. 26
APPLICATION NO. 4-00-259 Hrs
LUP pg. 61
Portion of Policy 27

