

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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Commission Action:



## RECORD PACKET COPY

### STAFF REPORT: REGULAR CALENDAR Appeal of Rejection of Amendment Application

**APPLICATION NO.:** 4-99-266-A2

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

**AGENT:** Knickerbocker & Associates

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

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

**DESCRIPTION OF AMENDMENT PREVIOUSLY APPROVED:** Modify Special Conditions 1, 2, and 9 to allow for off site mitigation of adverse impacts on ocean views by eliminating the required public view corridors on the subject site and providing public views and public access to the ocean from Pacific Coast Highway over the entire parcel at 21704 Pacific Coast Highway (APN: 4451-003-033). In addition, the amendment allowed for new development in the areas that were formerly required as on site public view corridors. The amendment was challenged in court and in June 2001, the Superior Court issued a judgment directing the Commission to vacate and rescind its approval of the amendment. The Commission filed an appeal, which is still pending. Therefore, the courts have not yet finally determined the legal validity of the amendment.

**DESCRIPTION OF AMENDMENT REQUESTED:** Amend the existing Coastal Development Permit to allow the deck to extend further seaward on the eastern side of the site, to align with the existing bulkhead/seawall on the adjacent property to the east. This would increase the size of the deck from approximately 7,138 square feet to approximately 7,950 square feet. The amendment request includes project plans that

illustrate a tennis court, miscellaneous development, planters, and landscaping on the site.

**SUBSTANTIVE FILE DOCUMENTS:** Letter from Knickerbocker & Associates to Commission staff, November 16, 2001; Letter from Knickerbocker & Associates to Commission staff, November 5, 2001; Letter from Commission staff to applicant, October 24, 2001; Letter from Knickerbocker & Associates to Commission staff, September 21, 2001; Coastal Development Permits 4-94-176 (Beiser/Semel), 4-99-146 (Saban), 4-99-185 (Broad), 4-99-266 (Daly), 4-00-057 (Morton); Coastal Development Permit Amendment 4-99-266-A1 (Daly); Judgment Granting Peremptory Writ of Mandate filed June 4, 2001 in *La Costa Beach Homeowners' Association, et al. v. California Coastal Commission* (L.A. Superior Court) Case No. BS063276; and the certified Malibu Santa Monica Mountains Land Use Plan.

**SUMMARY OF STAFF RECOMMENDATION:** Staff recommends that the Commission reject the amendment application on the basis that it would lessen or avoid the intended effect of at least four special conditions of Coastal Development Permit 4-99-266 (Daly) and the applicant has not presented any newly discovered material information.

The applicant submitted an application to amend Coastal Development Permit (CDP) 4-99-266 on September 25, 2001. On October 24, 2001, Commission staff rejected and returned amendment application 4-99-266-A2. Under Section 13166(a) of the California Code of Regulations (CCR), an amendment application shall be rejected if it "would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted." Section 13166(a)(1) of the CCR, however, allows the applicant to appeal the rejection to the Commission. As a result, staff recommends that the Commission find that the proposed amendment application would lessen or avoid the intended effect of CDP 4-99-266.

The proposed amendment would lessen or avoid the intended effect of **Special Condition One (1)** of CDP 4-99-266, requiring revised plans to be submitted deleting "all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4." In addition, **Special Condition Ten (10)** of CDP 4-99-266 required that an offer to dedicate a lateral public access easement be recorded from the "ambulatory mean high tide line landward to the approved deck stringline." The intent of these conditions was to locate the deck further landward, so it obstructs less of the beach and provide additional beach area that will be available for public lateral access along the shoreline. Relocating the deck stringline further seaward than was approved under CDP 4-99-266, would lessen the intended effect of **Special Conditions One (1)** and **Ten (10)** by allowing the occupation of additional sandy beach by the deck. Further, the area of the public lateral access easement required in **Special Condition Ten (10)** would likewise change and be diminished under the amendment request.

**Special Condition Nine (9)** of CDP 4-99-266 also required public view corridors of no less than 20 percent of the lineal frontage of the project site. Further, **Special Condition Two (2)** required all landscaping to be less than two feet in height within the public view corridors. The amendment application submitted illustrates tennis court, miscellaneous development, planters, and landscaping within the public view corridor. Although CDP 4-99-266-A1 amended the underlying permit to eliminate the required on site view corridors, the amendment was challenged in court. In June 2001, the Superior Court directed the Commission to vacate and rescind its approval of CDP 4-99-266-A1. The Commission has not done so because it filed an appeal of the Superior Court's decision, which is still pending. Therefore, the courts have not yet finally determined the validity of the amendment to CDP 4-99-266 that eliminated the on site view corridor requirement. The current amendment request would allow construction of a tennis court, miscellaneous development, planters, and landscaping in the public view corridors that were required under **Special Conditions Nine (9)** and **Two (2)** of the original permit. Therefore, if the Superior Court's decision is upheld on appeal, the current amendment request would lessen the intended effect of **Special Conditions Two (2)** and **Nine (9)** of the original permit.

**PROCEDURAL NOTE:** Under Section 13166(a)(2) of the CCR, if the Commission overturns the Executive Director's determination regarding the rejection of the amendment application, the application shall be accepted for processing in accordance with Section 13166(c) of the CCR.

## **I. STAFF RECOMMENDATION:**

**MOTION:** *I move that the Commission reject this amendment application to Coastal Development Permit No. 4-99-266 pursuant to the staff recommendation.*

## **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendments as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

## **RESOLUTION TO REJECT THE PERMIT AMENDMENT APPLICATION:**

The Commission hereby rejects the coastal development permit amendment application on the ground that the proposed development would lessen or avoid the intended effect of the conditionally approved CDP 4-99-266 and the applicant has not presented any newly discovered material information.

## II. Findings and Declarations

The Commission hereby finds and declares:

### A. Project Description and Background

On September 25, 2001, the applicant submitted the subject amendment application to amend CDP 4-99-266 to extend the deck further seaward on the east side of the site to align with the existing bulkhead/seawall on the adjacent property to the east (Exhibit 11). This would allow the deck to extend approximately 14 feet further seaward on the east side of the site and would increase the size of the deck from approximately 7,138 square feet to 7,950 square feet. Commission staff rejected the subject amendment application in a letter dated October 24, 2001, as it would lessen or avoid the intended effect of the underlying conditionally approved CDP 4-99-266 (Exhibit 12). On November 6<sup>th</sup>, Commission staff received a letter from the applicant requesting an appeal to the Coastal Commission of the staff rejection of the amendment application (Exhibit 13). In appealing the rejection, the applicant argues that subsequent to the approval of CDP 4-99-266, the Commission approved CDP 4-00-057 (Morton), located two parcels east of the Daly site and adopted a different stringline determination. In approving CDP 4-00-057, located two sites to the downcoast to the east, the deck stringline was drawn from the upcoast bulkhead to the downcoast deck. As a result, the applicant argues that the bulkhead used as a measuring point for the stringline on the western (upcoast) boundary for CDP 4-00-057 should also be the appropriate measuring point for the deck stringline on the eastern boundary of the Daly property. In addition, Commission staff also received a letter from the applicant on November 20, 2001, regarding the subject amendment with an exhibit of the deck stringline of the subject site and neighboring sites (Exhibits 14 and 15).

On April 12, 2000, the Commission approved CDP 4-99-266 (Exhibit 9). CDP 4-99-266 allowed the demolition of three existing single family residences and a 180 foot long bulkhead and the construction of a new 14,210 square foot single family residence with attached garage, two 104 foot long return walls along the west and east property lines, pool/spa, deck, and a septic system (Exhibits 5, 6, and 7). In addition, CDP 4-99-266 also included an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the reconstruction of an existing eight foot wide public sidewalk between Pacific Coast Highway and the proposed development. On June 13, 2000, the Commission approved an amendment to CDP 4-99-266, which modified **Special Conditions One (1), Two (2), and Nine (9)** to allow for off site mitigation of adverse impacts to ocean views by eliminating the required public view corridors on the subject site and providing public views and public access to the ocean from Pacific Coast Highway over the entire parcel off site at 21704 Pacific Coast Highway (APN: 4451-003-033) (Exhibit 10). In addition, the previously approved amendment also included modifications to the approved project plans to allow for new development within the on site public view corridor that had been required under CDP 4-99-266. The approval of

the amendment was challenged in court. In June 2001, the Superior Court entered a judgment directing the Commission to vacate and rescind its approval of CDP 4-99-266-A1. This judgment is currently on appeal. If the Superior Court's decision is upheld on appeal, the only effective permit for the subject site would be CDP 4-99-266, which requires the on site public view corridors (Exhibit 5).

The project site is located on three separate beachfront parcels of land approximately 23,400 square feet in combined size on Carbon Beach between Pacific Coast Highway and the ocean (Exhibits 1 and 2). The area surrounding the project site is characterized as a built-out portion of Malibu consisting of residential development. CDP 4-99-266 authorized demolition of three single family residences each approximately 3,500 square feet in size and a wooden bulkhead that extended across the entire project site (Exhibit 3). A bulkhead extends across the two neighboring properties to the west and east of the subject site, which have also been developed with existing single family residences.

The proposed amendment would lessen or avoid the intended effect of **Special Condition One (1)** of CDP 4-99-266, requiring revised plans to be submitted deleting "all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4" (Exhibits 4 and 10). In addition, **Special Condition Ten (10)** of CDP 4-99-266 required that an offer to dedicate a lateral public access easement be recorded from the "ambulatory mean high tide line landward to the approved deck stringline" (Exhibits 4 and 10). The intent of these conditions was to require the deck stringline to be moved further landward than the applicant had requested, by requiring the eastern side of the deck stringline to be drawn to the adjacent deck to the east of the subject site, rather than to the adjacent bulkhead to the east of the subject site, resulting in less occupation of sandy beach. Relocating the deck further seaward than approved under CDP 4-99-266 would lessen the intent of **Special Conditions One (1)** and **Ten (10)**. Under the proposed amendment, the deck would extend further seaward, resulting in the occupation of additional sandy beach. Further, the area of the public lateral access easement would likewise change and be diminished under the amendment request.

**Special Condition Nine (9)** of CDP 4-99-266 also required a public view corridor of no less than 20 percent of the lineal frontage of the project site (Exhibits 5 and 10). In addition, **Special Condition Two (2)** required the landscaping within the public view corridor to be less than two feet in height (Exhibits 5 and 10). The amendment application submitted illustrates a tennis court, miscellaneous development, planters, and landscaping within the public view corridor. Although CDP 4-99-266-A1 amended the underlying permit to eliminate the required on site view corridors, the Commission's approval of the amendment was challenged in court. In June 2001, the Superior Court issued a judgment directing the Commission to vacate and rescind its approval of CDP 4-99-266-A1. The Commission filed an appeal of the judgment, which is still pending. Therefore, the courts have not yet finally determined the validity of the amendment that eliminates the on site view corridor requirement. If the Superior Court's decision is upheld on appeal, the only effective permit for the project would be CDP 4-99-266. In

that case, the current amendment request would allow development in the on site view corridors required by **Special Conditions Two (2)** and **Nine (9)** of the original permit, and thereby would lessen the intended effect of those conditions.

## **B. Deck Stringline**

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

The amendment application that was rejected proposed to reorient the approved deck stringline to align it with the existing bulkhead/seawall on the adjacent property to the east. This amendment application would result in a seaward extension of the deck that was approved under the underlying 4-99-266. **Special Condition One (1)** of CDP 4-99-266 required the applicant to submit revised plans deleting all "portions of the proposed deck that would be located seaward of the correct stringline (as delineated by the Commission at the meeting of April CDP 10, 2000) (Exhibits 4, 5, and 10).

The revised findings staff report for CDP 4-99-266, which was approved by the Commission, addressed the issue of the appropriate deck stringline for the subject site and proposed development. That staff report stated that the applicant had submitted project plans with an incorrectly drawn deck stringline, drawn from the corners of the existing bulkheads located on the neighboring properties rather than from the corners of the existing decks/patios located on the neighboring properties. In approving that CDP, the Commission noted that although landscaping improvements, such as the placement of fill and landscaping vegetation, have occurred landward of the existing bulkheads (and seaward of the existing decks/patios) on the neighboring properties, the deck stringline should be drawn from the corners of the actual existing decks/patios on the properties located immediately upcoast and downcoast of the subject site and not from the nearest corners of the bulkheads on the neighboring properties. In addition, in approving CDP 4-99-266, the Commission noted that CDP 4-94-176 (Beiser/Semel) was issued for the demolition of an existing residence and construction of a new residence on the neighboring property immediately east (downcoast) of the subject site in 1994 consistent with structural and deck stringlines drawn between the nearest corners of adjacent structures and not from the existing bulkhead on the adjacent sites.

In approving CDP 4-99-266, the Commission noted that an existing deck extends to the seaward limit of the bulkhead on the neighboring property immediately west (upcoast)

of the subject site. However, the Commission also noted that the existing deck improvements on the neighboring property immediately east (downcoast) of the subject site are located landward of the existing bulkhead. Therefore, the Commission finds that the deck/patio stringline should be drawn from the nearest corner of the identified deck improvements on the upcoast neighboring property to the identified deck improvements on the downcoast neighboring property (Exhibits 4 and 5). The Commission also found that the deck stringline proposed by the applicant under CDP 4-99-266, as drawn from the neighboring bulkheads, rather than from the neighboring decks/patios, would allow for development on the subject site to extend up to 14 feet further seaward than otherwise allowed. The portion of the proposed deck, which extended seaward of the deck stringline delineated by the Commission under CDP 4-99-266, was approximately 812 square feet in size. Further, in approving CDP 4-99-266, the Commission also noted that the deck, as it was proposed by the applicant, would extend further seaward than existing neighboring decks/patios, would reduce the area of sandy beach available for public use, and would result in adverse effects to public views from the beach.

Therefore, to ensure that the development would be located landward of the deck stringline, **Special Condition One (1)** required the applicant to submit revised project plans deleting all portions of the proposed deck that would be located seaward of the stringline, as delineated by the Commission (Exhibits 4, 5, and 10). The Commission noted that requiring revised plans deleting this portion of the deck would still allow for the construction of the remaining approximately 7,138 square foot portion of the proposed deck. As such, the Commission found that the proposed project, only as conditioned to revise the location of the proposed deck, would not result in the seaward encroachment of development on Carbon Beach and would serve to minimize adverse effects to coastal processes. The current amendment request seeks to construct the deck approximately 14 feet seaward on the east side of the property and increase its size from approximately 7,138 square feet to 7,950 square feet.

The amendment application that the applicant submitted would lessen and avoid the intended effect of this portion of **Special Condition One (1)** addressing the deck stringline, as it would extend the deck seaward into an area that under **Special Condition One (1)** will remain as sandy beach. As a result, under Section 13166(a) of the CCR, it was appropriate to reject the amendment application as it would "lessen or avoid the intended effect" of CDP 4-99-266, which required the applicant to revise the project plans to meet the deck stringline set by the Commission for the subject site and the proposed development at the April 10, 2000 meeting.

Therefore, the Commission finds that Commission staff pursuant to Section 13166(a) of the CCR properly rejected the amendment application.

### **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 that address the issues of public access and recreation along the coast.

Coastal Act Section 30210 states that:

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

Coastal Act Section 30211 states:

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

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

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

Section 30220 of the Coastal Act states:

*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 to allow use of dry sand and rocky coastal beaches.

Pursuant to CDP 4-99-266, the applicant proposed to dedicate a new easement that would supersede and replace the previous dedications. The new lateral access easement that has been offered and recorded as **Special Condition Ten (10)** of CDP 4-99-266 includes the entire beach under all tidal conditions, as measured seaward

from the approved deck stringline and extends across all three parcels of the subject site. This new lateral public access easement recorded pursuant to **Special Condition Ten (10)** reflects the removal of the existing bulkhead and the approved deck stringline under **Special Condition One (1)** of CDP 4-99-266.

The Commission found that the offer to dedicate a lateral access easement would aid in minimizing potential adverse impacts from the underlying project on public access. The applicant proposed an offer to dedicate a new lateral access easement along the entire southern portion of the lot, as measured from the dripline of the approved deck to the ambulatory mean high tide line under CDP 4-99-266 and recorded this easement prior to issuance of the underlying CDP. As the subject amendment application requests a seaward extension of the deck on the site, however, the effect of **Special Condition Ten (10)** would be lessened. The amendment application would lessen the intended effect of **Special Condition Ten (10)** by extending the deck seaward into an area that the applicant has already offered to dedicate as a lateral public access easement. **Special Condition Ten (10)** of CDP 4-99-266 specifically stated that the lateral public access easement would be drawn from the approved deck stringline to the ambulatory mean high tide line. The applicant accepted this condition, the CDP has been issued, and the easement has been recorded. Under the proposed amendment, the deck stringline would extend further seaward, would result in the further occupation of sandy beach, and would diminish the area of the public lateral access easement existing on the site.

Therefore, the Commission finds that the amendment application would lessen or avoid the intended effect of the **Special Conditions One (1)** and **Ten (10)** of CDP 4-99-266. As a result, the Commission finds that the application was properly rejected by Commission staff pursuant to Section 13166(a) of the CCR.

#### **D. 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.*

Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required that buildings located on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80 percent of the lineal

frontage of the site. The Commission has also required that fencing or walls erected on the property must be designed and constructed to allow for view retention from scenic roadways.

The project site is located on Carbon Beach, a built-out area of Malibu primarily consisting of residential development. The visual quality of the Carbon Beach area in relation to public views from Pacific Coast Highway have been significantly degraded from past residential development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway.

The project approved by the Commission under CDP 4-99-266 includes the construction of a new large residential structure on three separate parcels. The project included the demolition of all existing development on all three parcels and the construction of a new 14,210 square foot residential structure. As stated above, Coastal Act Section 30251 requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The construction of new residential development that extends over multiple lots also provides for the opportunity to enhance public views, where such views have been significantly degraded by past development, through the creation and maintenance of public view corridors, consistent with Section 30251 of the Coastal Act.

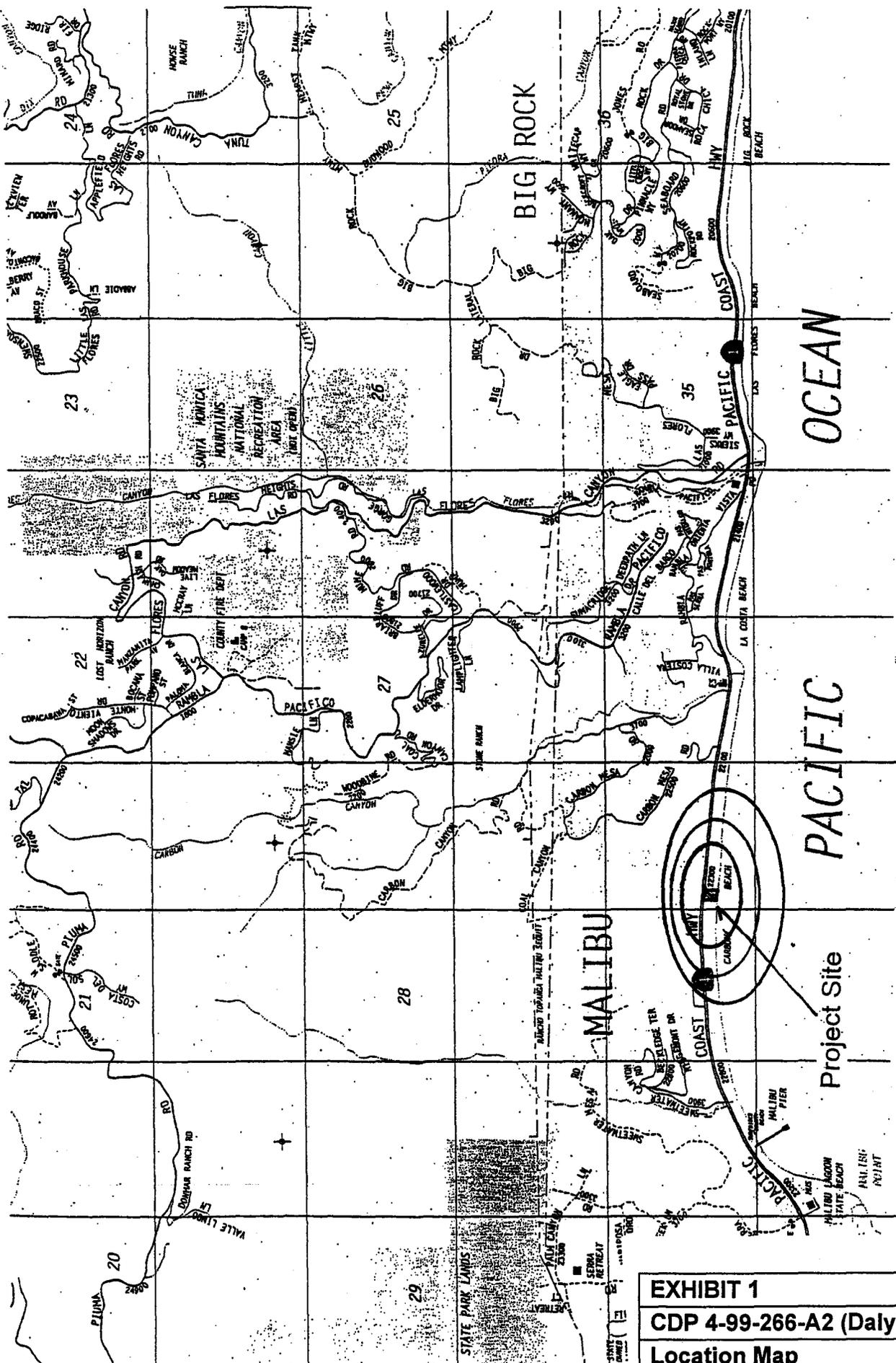
To ensure that public coastal views would be protected, **Special Condition Nine (9)** of CDP 4-99-266 required the applicant to execute and record a deed restriction providing that no less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor. Under **Special Condition Nine (9)**, development within the public view corridor was limited to fencing of visually permeable designs and materials. In addition, **Special Condition Two (2)**, as consistent with **Special Condition Nine (9)**, was also been required under CDP 4-99-266 to ensure that the landscape plan would limit vegetation within the public view corridor to low-lying vegetation of no more than two feet in height in order to preserve public coastal views.

Although the Commission approved amendment 4-99-266-A1 to eliminate the on site view corridors and allow for off site mitigation for impacts to public views of the ocean, the amendment was challenged in court. In June 2001, the Superior Court entered judgment directing the Commission to vacate and rescind its approval of CDP 4-99-266-A1. The Commission has not yet done so because it filed an appeal of the Superior Court's decision, and the appeal is still pending. Therefore, the courts have not yet finally determined the validity of the amendment. If the Superior Court's decision is upheld on appeal, the Commission will be obligated to rescind approval of the amendment. In that case, the only effective permit for the project would be CDP 4-99-266, which does require on site public view corridors.

The subject amendment application includes a tennis court, miscellaneous development, planters, and landscaping within the public view corridors required by **Special Conditions Two (2) and Nine (9)** of CDP 4-99-266. As a result, if the Superior Court's decision is upheld on appeal, the intended effect of these two special conditions would be lessened or avoided through the development proposed under the amendment application.

### **E. Conclusion**

As stated above, the Commission finds that intended effect of **Special Conditions One (1), Two (2), Nine (9), and Ten (10)** of CDP 4-99-266 relating to the deck stringline, landscaping, public view corridor, and lateral public access easement would be lessened or avoided by the development proposed under the amendment application. In these circumstances, the Commission's regulations provide that the amendment request shall be rejected "unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted." 14 CCR 13166(a). The applicant in this case has not presented any newly discovered information regarding conditions at the site or the project. The applicant asserts that the Commission's determination of the appropriate stringline for CDP 4-00-057 (Morton), which was approved by the Commission after the Daly permit was issued, warrants consideration of this permit amendment request. The Commission action on CDP 4-00-057 (Morton) does not present any newly discovered material information because it does not constitute new information regarding conditions on the applicant's site or the applicant's project. Accordingly, the Commission finds that the applicant has not presented any newly discovered material information. Therefore, the Commission finds that CDP amendment application 4-99-266-A2 was properly reject by Commission staff, as it would lessen or avoid the intended effects of the underlying permit, as set forth under Section 13166(a) of the CCR.



**EXHIBIT 1**  
**CDP 4-99-266-A2 (Daly)**  
**Location Map**

4452 | 1  
 SCALE 1" = 50'

24

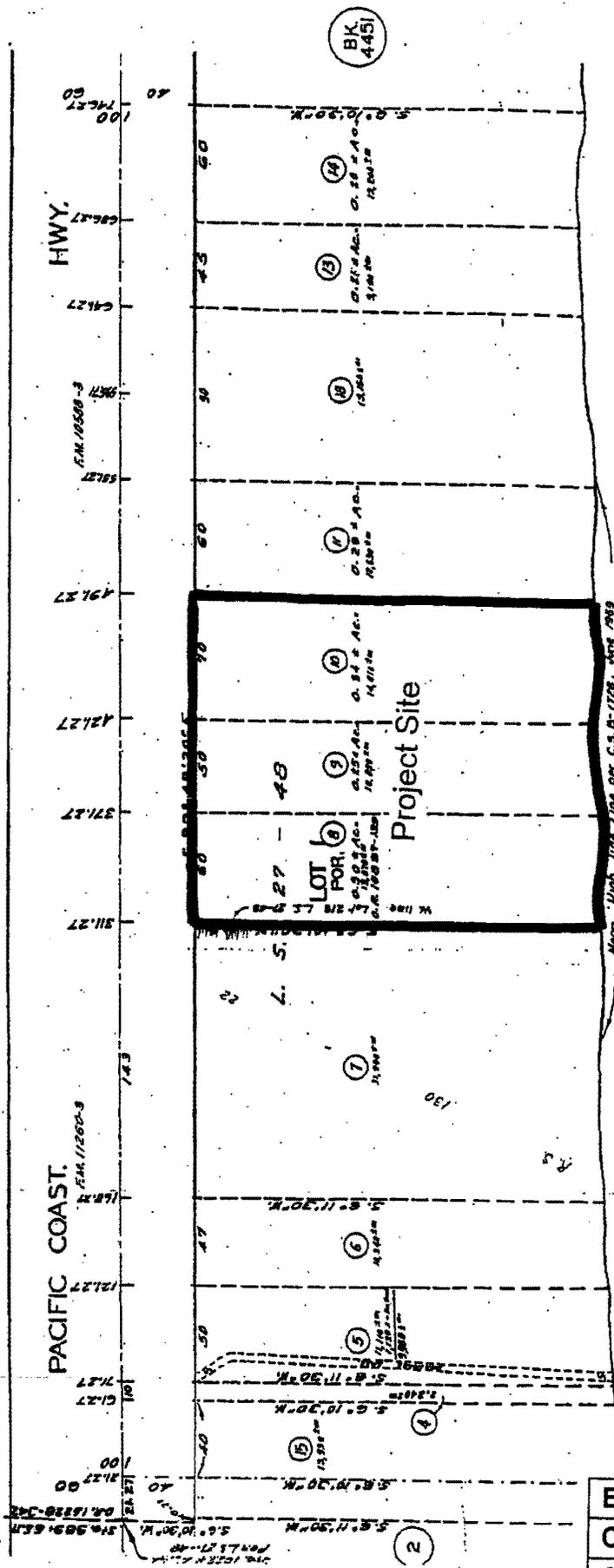
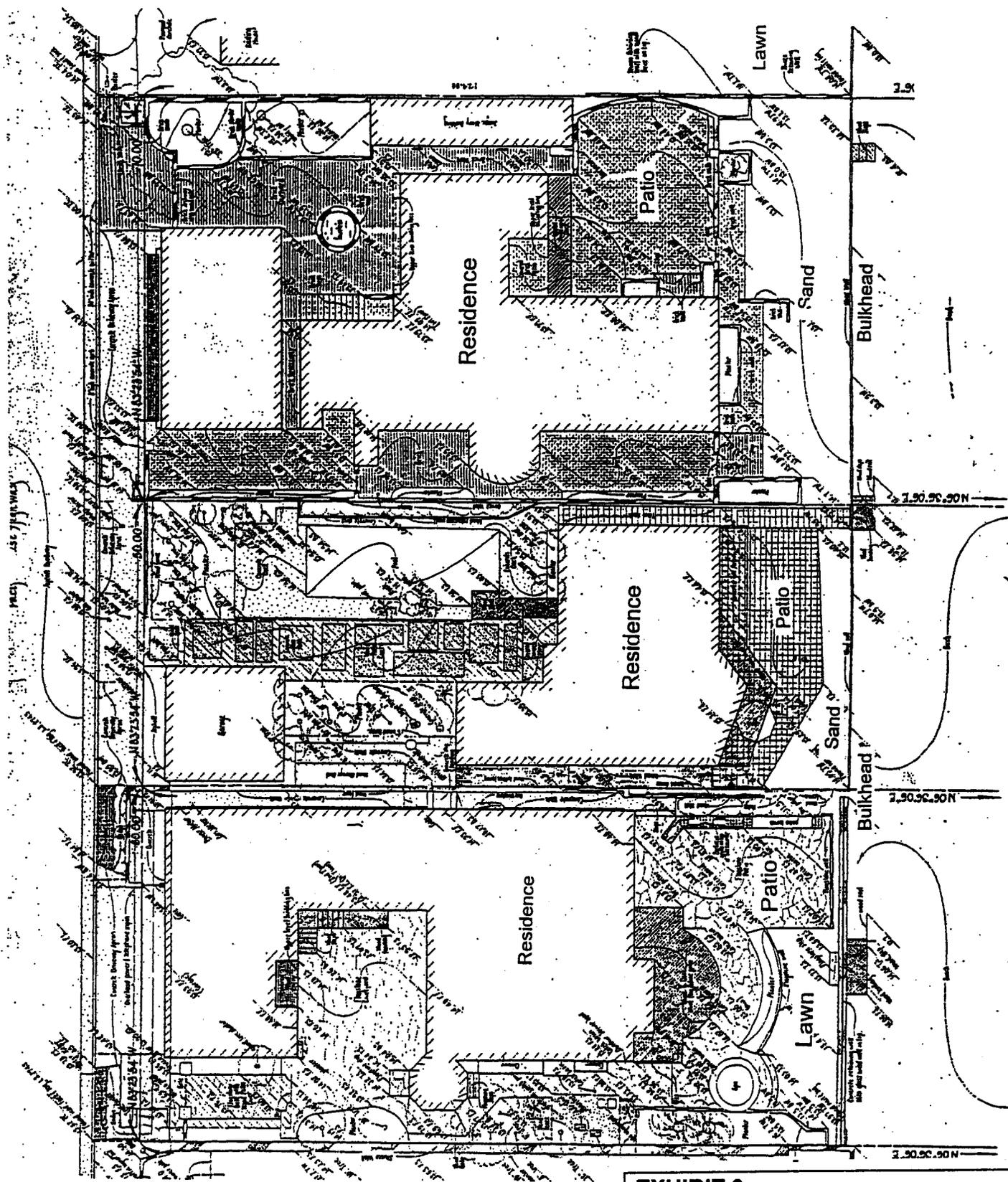


EXHIBIT 2  
 CDP 4-99-266-A2 (Daly)  
 Assessor's Parcel Map

PACIFIC IN THE RANCHO TOPANGA MALIBU SEQUIT OCEAN  
 R. F. 534

005  
 005



**EXHIBIT 3**  
**CDP 4-99-266-A2 (Daly)**  
**Previous Development on Site**

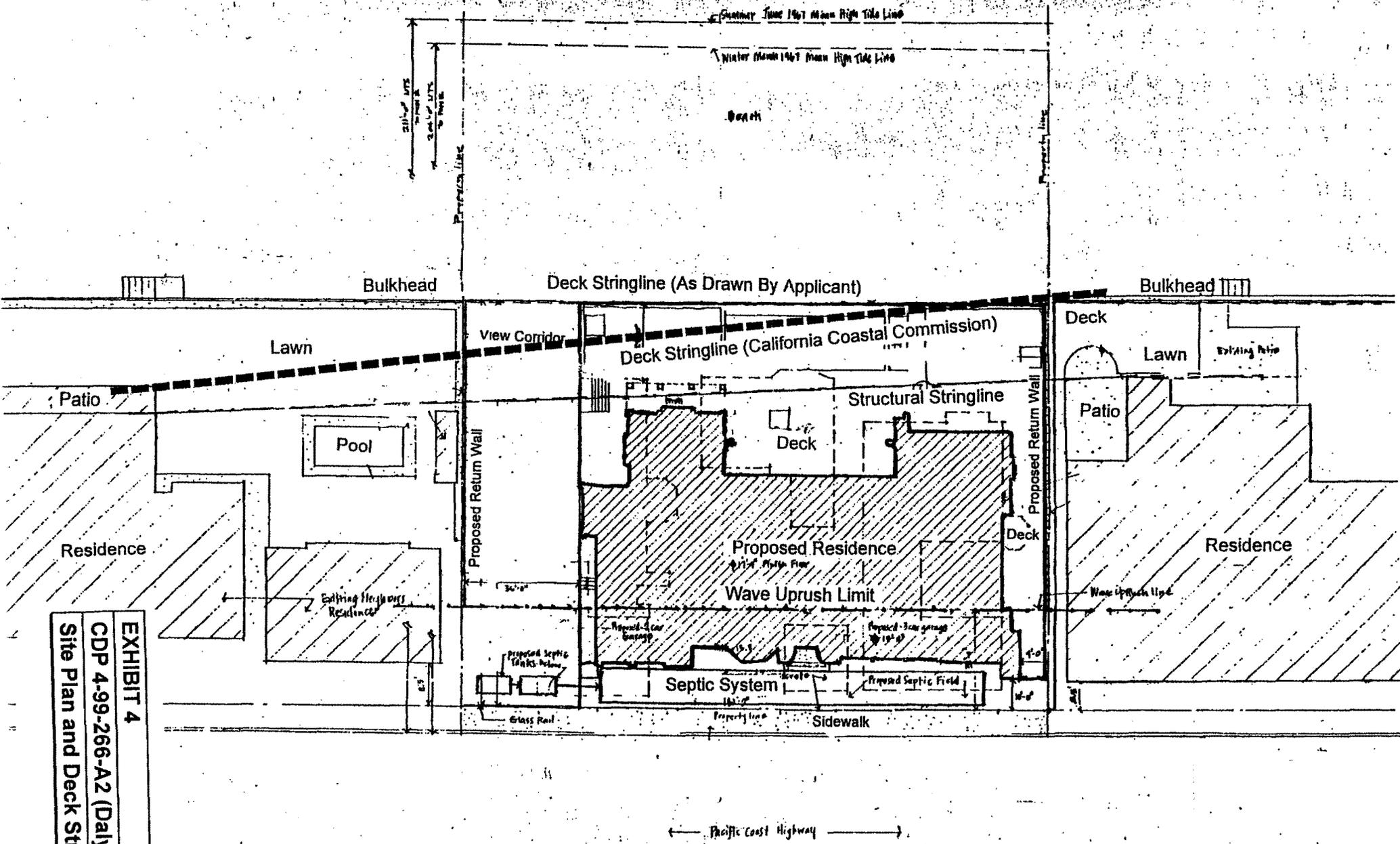


EXHIBIT 4  
 CDP 4-99-266-A2 (Daly)  
 Site Plan and Deck Stringline

Summer June 1969 MHTL Mean High Tide Line

Winter March 1969

B B A C H

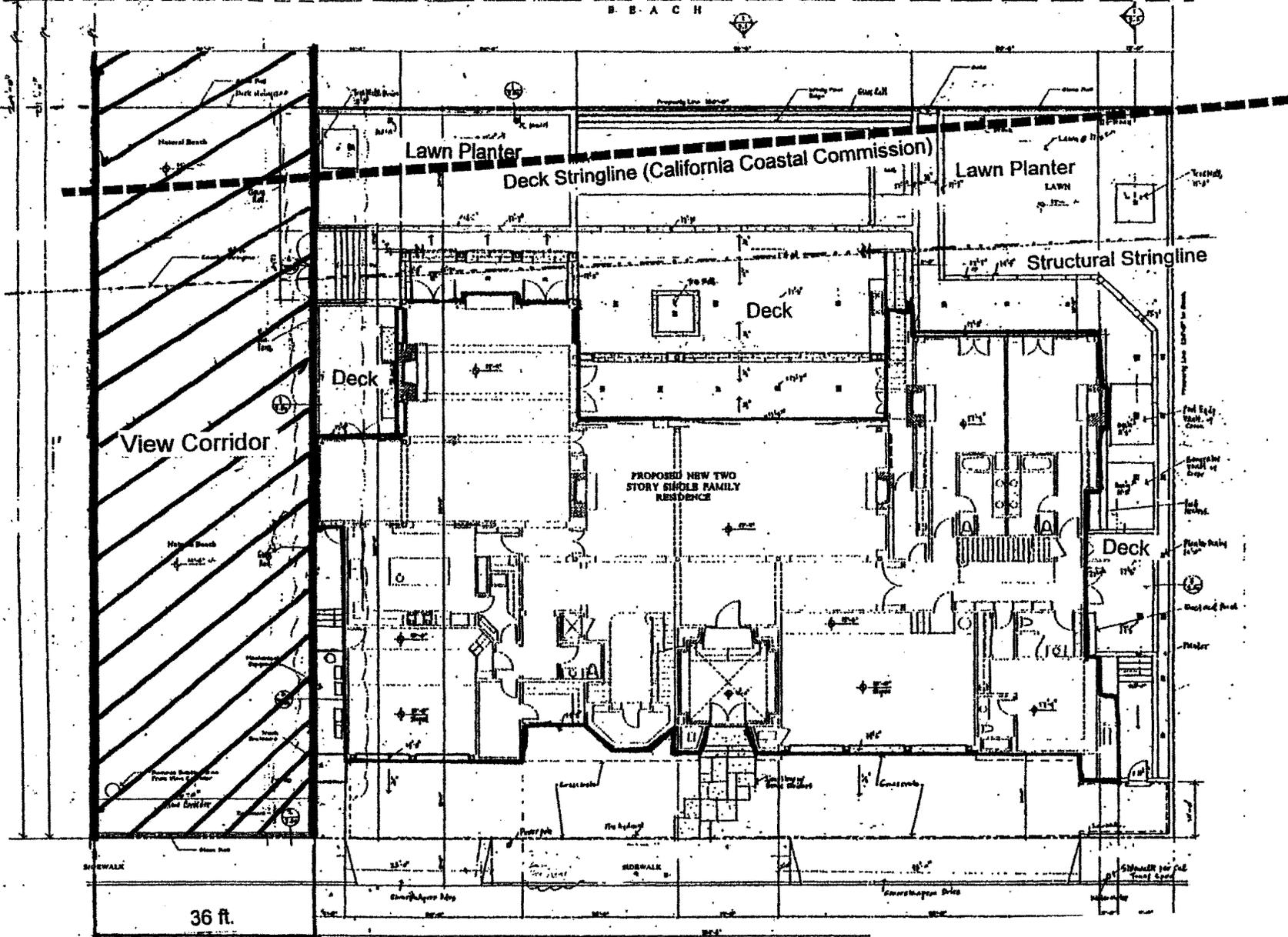


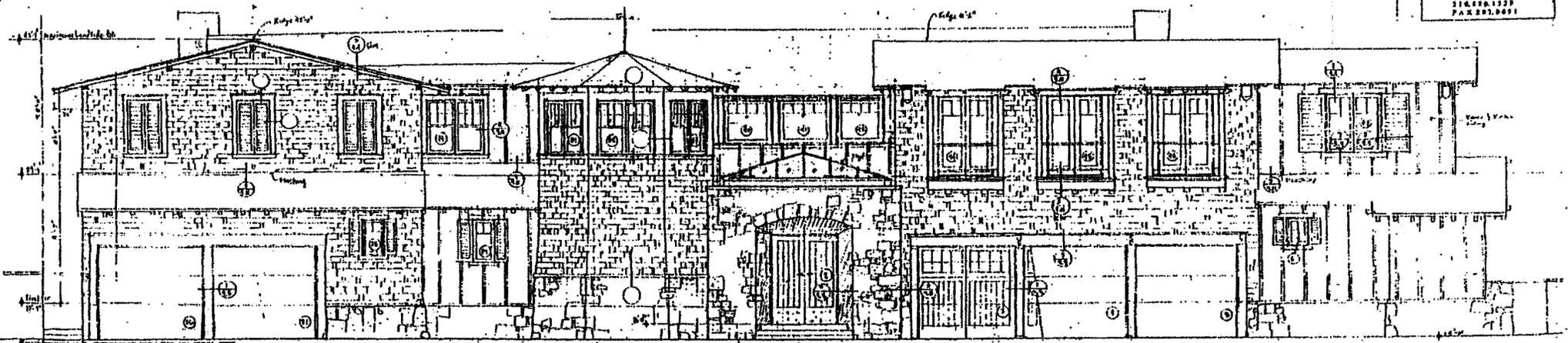
EXHIBIT 5  
 CDP 4-99-266-A2 (Daly)  
 Floor/Site Plan & Deck Stringline

PACIFIC COAST HIGHWAY

± 84' - ELEV

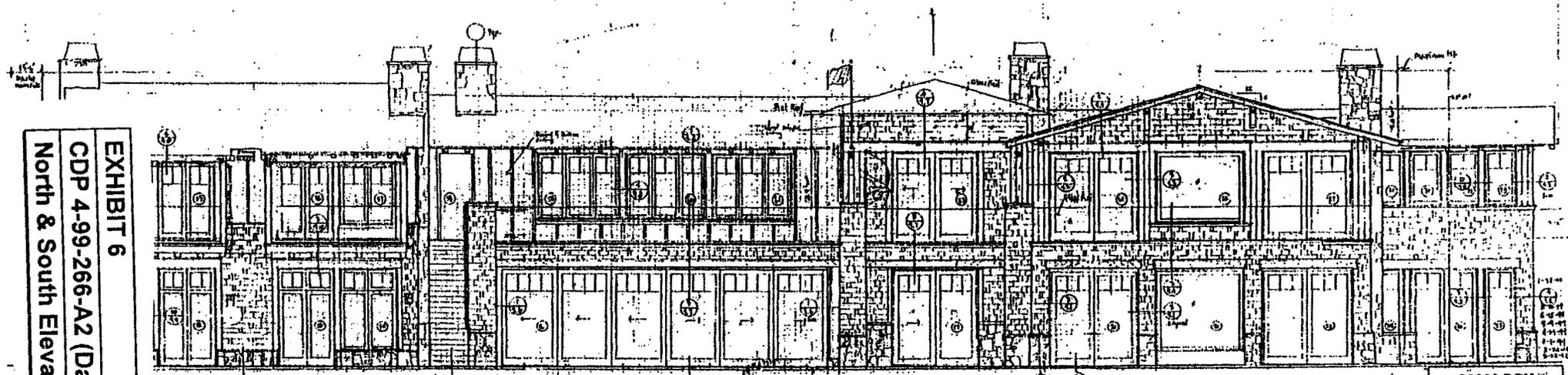
GIANNETTI  
ARCHITECTURE  
INTERIORS

12225  
DOROTHY ST.  
L.A. 90049  
310.476.1529  
FAX 310.476.1531



View from Pacific Coast Highway

North - Pacific Coast Highway  
ELEVATION  
1/4" = 1'-0" (2)



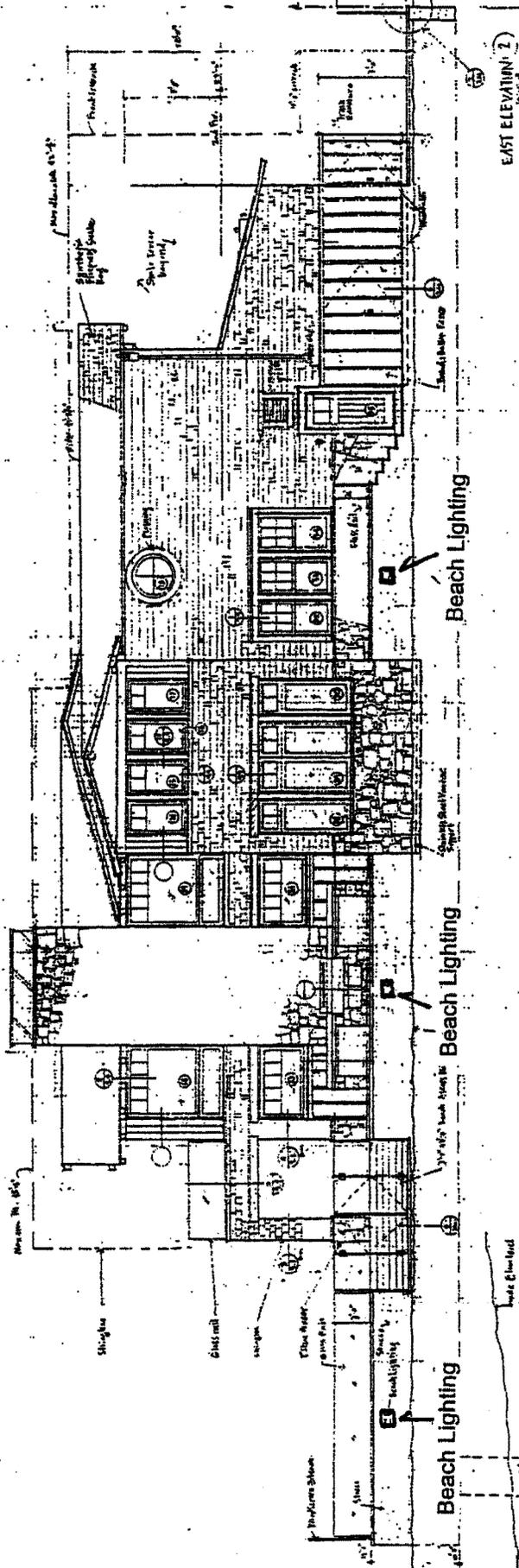
View from Beach

22338 PCH  
RESIDENCE  
22338 PAC COAST HWY  
MALIBU, CA  
North Ocean Side  
ELEVATION  
1/4" = 1'-0" (1)

EXHIBIT 6  
CDP 4-99-266-A2 (Daily)  
North & South Elevations

GIANNETTI  
 CONSULTING  
 INTERIORS  
 13285  
 MONTEVUE ST.  
 SAN ANTONIO, TX  
 78245-3555  
 FAX 781.6691

22338 PCH  
 RESIDENCE  
 WESTER PLAZA  
 MALIBU, CA  
 Drawing Set No. 4-1-99



EAST ELEVATION (2)

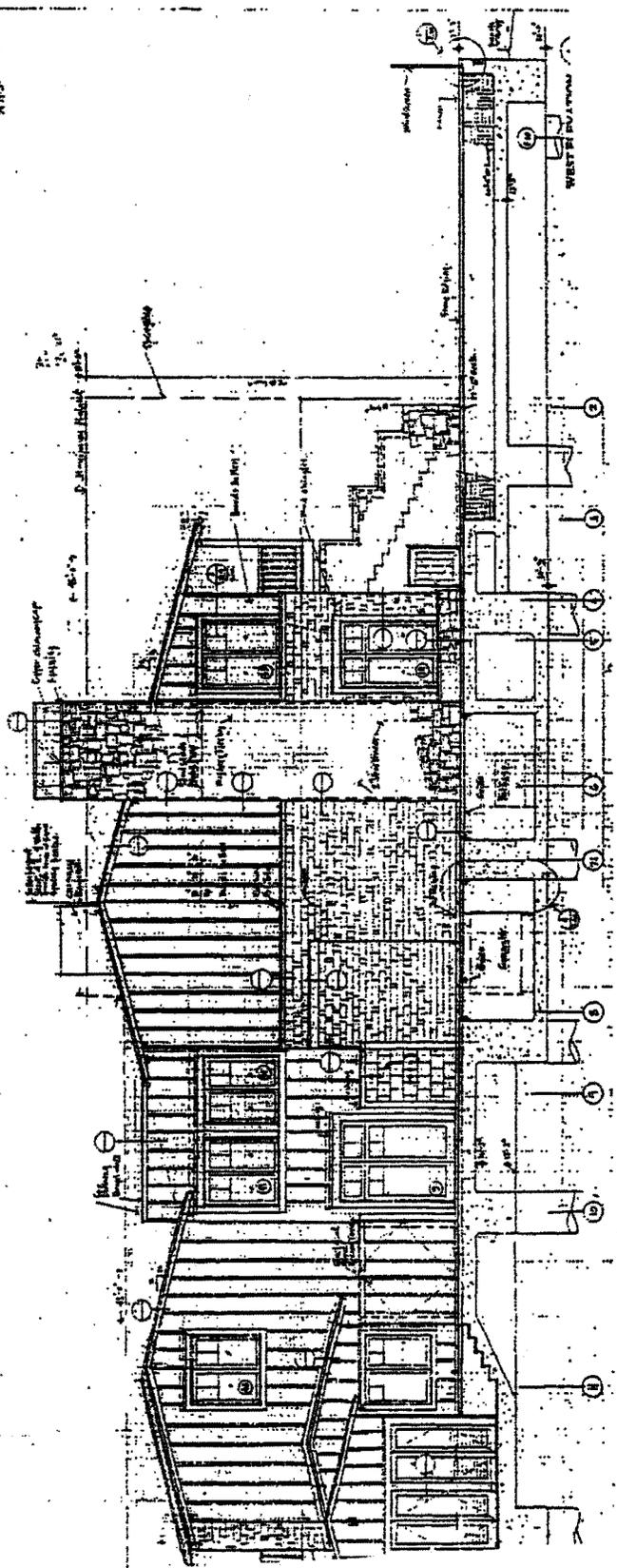


EXHIBIT 7  
 CDP 4-99-266-A2 (Daly)  
 East & West Elevations

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



**PAUL D. THAYER, Executive Officer**  
*California Relay Service From TDD Phone 1-800-735-2922*  
*from Voice Phone 1-800-736-2929*

Contact Phone: (916) 574-1882  
 Contact FAX: (916) 574-1825

December 21, 1999

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

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

Dear Mr. Barsocchini:

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

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

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

Your clients propose to demolish three existing single family residences that extend across 22328 (22332), 22336, and 22338 Pacific Coast Highway and construct a new residence and swimming pool across the lots to be known as 22338 Pacific Coast Highway in the Carbon Beach area of Malibu. An existing timber bulkhead extends across all three lots. Two of the lots contain beach access stairs and the third lot an existing platform, all seaward of the bulkhead. Based on the November 29, 1999 plans you submitted the existing timber bulkhead and stairs/platform structures, will all be removed. The new residence and swimming pool, which will be built on pilings, will extend no further seaward than the existing bulkhead and appear to be in conformance with the string lines established by the residences/decks on either side. This is a well-developed stretch of beach with numerous residences both up and down coast.

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CDP 4-99-266-A2 (Daly)

CSLC Letter for CDP 4-99-266

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

22328 Pacific Coast Highway

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

22336 Pacific Coast Highway

The dedication was recorded November 4, 1983 as Document 83-1310243, Official Records of Los Angeles County, and runs "... from the mean high tide line landward to the toe of the bulkhead ...". This dedication was a condition of the CCC's issuance of CDP 5-83-341 on June 9, 1983, and was authorized for acceptance by the CSLC at its May 9, 1986 meeting pursuant to Minute Item 63 (AD 254).

22338 Pacific Coast Highway

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

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

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

Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in

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CSLC Letter for CDP 4-99-266

December 21, 1999

navigable waters. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

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

Sincerely,



ROBERT L. LYNCH, Chief  
Division of Land Management

cc: Craig Ewing, City of Malibu

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CSLC Letter for CDP 4-99-266

**CALIFORNIA COASTAL COMMISSION**

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

**RECEIVED**

SEP 25 2001



CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Page 1 of 8

Date: October 3, 2000

Permit Application No. 4-99-266

**COASTAL DEVELOPMENT PERMIT**

On April 12, 2000, the California Coastal Commission granted to Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust, permit 4-99-266, subject to the attached Standard and Special Conditions, for development consisting of: Demolition of three existing single family residences and a 180 ft. long bulkhead and the construction of a new 14,210 sq. ft. single family residence with attached garage, two 104 ft. long return walls along the west and east property lines, pool/spa, and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the reconstruction of an existing 8 ft. wide public sidewalk between Pacific Coast Highway and the proposed development. This permit is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 22338 Pacific Coast Hwy., Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS  
Executive Director

By: Steven M. Hudson  
Coastal Program Analyst

**RECEIVED**  
OCT 03 2000  
BY: \_\_\_\_\_

ACKNOWLEDGMENT:

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

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

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

10/20/00  
Date

**EXHIBIT 9 (page 1 of 8)**  
**CDP 4-99-266-A2 (Daly)**  
**CDP 4-99-266**

COASTAL DEVELOPMENT PERMIT

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STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which show that:

- (a) All portions of the proposed deck that would be located seaward of the correct stringline (as delineated by the Commission at the meeting of April 10, 2000) shown on Exhibit 4 [labeled "Deck Stringline (California Coastal Commission)"] are deleted.
- (b) All fencing/walls/gates located within public view corridor shall consist of visually permeable designs and materials (e.g. wrought iron or non-tinted glass material) consistent with Special Condition Nine (9).

<b>EXHIBIT 9 (page 2 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266</b>

COASTAL DEVELOPMENT PERMIT

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- (c) All proposed exterior lighting for the purpose of illuminating sandy beach areas on the subject site, including the "beach lighting" flood lamps shown on Sheet 3.2 of the project plans prepared by Giannetti Architecture Interiors dated 1/28/00, are deleted.

**2. Landscaping Plan**

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

- (a) The portion of the subject site that is not sandy beach (or subject to wave action) located within the public view corridor and the portion of the site between the proposed residence and Pacific Coast Highway shall be planted within (60) days of receipt of the certificate of occupancy for the residence. Any portion of the site that is subject to wave action shall be maintained as sandy beach area. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (c) Vegetation within the public view corridor, as consistent with Special Condition Eight (8), shall be limited to low-lying vegetation of no more than 2 ft. in height.

**3. Construction Responsibilities and Debris Removal**

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

<b>EXHIBIT 9 (page 3 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266</b>

COASTAL DEVELOPMENT PERMIT

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4. Geology

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

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

5. Required Approvals

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

6. Construction of Sidewalk

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

7. Removal of Existing Bulkhead

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

EXHIBIT 9 (page 4 of 8)
CDP 4-99-266-A2 (Daly)
CDP 4-99-266

COASTAL DEVELOPMENT PERMIT

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**8. Sign Restriction**

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Numbers 4452-001-008, 009 & 010) located seaward of the residence and deck permitted in this application 4-99-266 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

**9. Public View Corridor**

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

- (a) No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.
- (b) As consistent with Special Condition One, no structures, vegetation, or obstacles (with the exception of the drainage pipe located within the drainage easement for the California Department of Transportation) which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibits 3 and 4.
- (c) Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
- (d) Vegetation within the public view corridor, as consistent with Special Condition Two, shall be limited to low-lying vegetation of no more than 2 ft. in height.

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

**EXHIBIT 9 (page 5 of 8)**

**CDP 4-99-266-A2 (Daly)**

**CDP 4-99-266**

COASTAL DEVELOPMENT PERMIT

Page 6 of 8  
Permit Application No. 4-99-266

*or*

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

**10. Offer to Dedicate Lateral Public Access**

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

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

**11. Assumption of Risk**

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

<b>EXHIBIT 9 (page 6 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266</b>

COASTAL DEVELOPMENT PERMIT

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

12. No Future Bluff or Shoreline Protective Device

- A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit 4-99-266 including, but not limited to, the construction of the residence, garage, uncovered parking area, septic system and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to, the residence, garage, uncovered parking area, septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. Prior to issuance Coastal Development Permit 4-99-266, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

**EXHIBIT 9 (page 7 of 8)**

**CDP 4-99-266-A2 (Daly)**

**CDP 4-99-266**

COASTAL DEVELOPMENT PERMIT

Page 8 of 8  
Permit Application No. 4-99-266

**13. Drainage and Polluted Runoff Control Plan**

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

- (a) Structural and/or non-structural Best Management Practices (BMPs) designed to capture, infiltrate or treat runoff from all roofs, parking areas, driveways and other impervious surfaces shall be identified and incorporated into final plans.
- (b) Selected BMPs shall, when implemented ensure that post-development peak runoff rate and average volume from the site, will be maintained at levels similar to pre-development conditions. The drainage system shall also be designed to convey and discharge runoff from the building site in non-erosive manner.
- (c) The plan shall include provisions for BMP maintenance. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) all traps/separators and/or filters shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

<b>EXHIBIT 9 (page 8 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266</b>

**CALIFORNIA COASTAL COMMISSION**

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

**AMENDMENT TO COASTAL DEVELOPMENT PERMIT**

Date: October 3, 2000

Permit No: 4-99-266

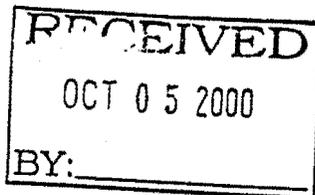
Issued to: Nancy M. Daly,  
 Trustee of the Nancy M. Daly Trust

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

at: 22338 Pacific Coast Hwy., Malibu (Los Angeles County).

has been amended to include the following change: Modify Special Conditions 1, 2, and 9 to allow for offsite mitigation of the required public view corridor on the subject site by provision of public views and public access to the ocean from Pacific Coast Highway over the entire parcel at 21704 Pacific Coast Highway (APN: 4451-003-033). In addition, the amendment also includes modifications to the previously approved project plans to allow for new development within the previously identified public view corridor on the project site.

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



PETER M. DOUGLAS  
 Executive Director

By: Steven M. Hudson  
 Coastal Program Analyst

**ACKNOWLEDGMENT**

I have read and understood the above amendment and agree to be bound by the conditions as amended of Permit No. 4-99-266.

Date: 10-20-00Signature: Nancy M. Daly

EXHIBIT 10 (page 1 of 8)

CDP 4-99-266-A2 (Daly)

CDP 4-99-266-A1

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

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Permit Application No. 4-99-266

1. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, AS AMENDED, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which show:

- (a) All portions of the proposed deck that would be located seaward of the correct stringline (as delineated by the Commission at the meeting of April 10, 2000) shown on Exhibit 4 [labeled "Deck Stringline (California Coastal Commission)"] are deleted.
- (b) Any new proposed development within the previously identified public view corridor. No new grading, retaining walls, or seawalls shall be allowed) other than the construction of return walls necessary to protect adjacent properties).
- (c) All proposed exterior lighting for the purpose of illuminating sandy beach areas on the subject site, including the "beach lighting" flood lamps shown on Sheet 3.2 of the project plans prepared by Giannetti Architecture Interiors dated 1/28/00, are deleted.

2. Landscaping Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMITS, AS AMENDED, the applicants shall submit, for the review and approval of the Executive Director, revised landscaping plans consistent with the following modifications:

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

3. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt or construction materials shall occur on the beach; b) that all grading shall be properly covered and sand bags and/or

<b>EXHIBIT 10 (page 2 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266-A1</b>

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Engineering Group dated 11/25/98, shall be incorporated into all final design and construction plans including recommendations concerning foundation and septic system plans must be reviewed and approved by the consultants prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

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

**5. Required Approvals**

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

**6. Construction of Sidewalk**

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

**7. Removal of Existing Bulkhead**

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

**8. Sign Restriction**

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Numbers 4452-001-008, 009 & 010) located seaward of the residence and deck permitted in this application 4-99-266 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

<b>EXHIBIT 10 (page 3 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266-A1</b>

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Page 4 of 8  
Permit Application No. 4-99-266

9. Public View Corridor Mitigation & Public Access Program

The deed restriction previously required by Special Condition Nine (9) of Coastal Development Permit 4-99-266 for the provision of a public view corridor on the subject site shall be deemed null and void and may be extinguished. Special Condition Nine (9) of Coastal Development Permit 4-99-266 is replaced in its entirety as follows:

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, for review and approval, evidence that:

- A. Applicants have dedicated to the State of California, or its appropriate public agency, the parcel located at 21704 Pacific Coast Highway, Malibu, Los Angeles County (APN 4451-003-033) ("the parcel") to be held in perpetuity for public view and public access purposes. The dedication of the parcel shall be in fee simple and free and clear of all liens and encumbrances. Dedication of the parcel shall be in lieu of providing public view corridors across their properties. The parcel shall be opened and used for public access, both visual and physical. A deed conveying title to the parcel and a deed restriction restricting the parcel to use for public view and public access purposes in perpetuity shall be held in escrow by a mutually agreeable escrow agent. If the sixty days statute of limitations (Public Resource Code Section 30801) to challenge the Commission's decision on this permit amendment expires and no litigation is filed, the escrow agent shall release the deed to the parcel and deed restriction to the State of California or its appropriate agency. In the event of litigation challenging the Commission's decision on this amendment, the applicants agree to cooperate in the defense of such litigation. If, at the final conclusion of such litigation, the Commission prevails, the escrow agent shall release the deed to the parcel and the deed restriction to the State of California or its appropriate agency. In the event that litigation precludes the parcel from being opened to public access, either visually or physically or both, the deed to the parcel and the deed restriction will be returned to the applicants by the escrow agent and the applicants shall pay to the California Coastal Conservancy the greater of \$1,000,000 or, in the event the applicants sell the parcel within one year of the return of the deed, the net sales proceeds; this money shall be used to open public accessways in Malibu or to obtain public access in Malibu. Nothing in this condition is intended to or will affect any sovereign rights or public trust rights that may exist in the parcel located at 21704 Pacific Coast Highway, Malibu, Los Angeles County (APN 4451-003-033).

In the event applicants are precluded from dedicating the parcel located at 21704 Pacific Coast Highway, Malibu, then applicants shall pay to the California Coastal Conservancy \$1,000,000 to be used to open public accessways in Malibu or obtain public access in Malibu.

**EXHIBIT 10 (page 4 of 8)**

**CDP 4-99-266-A2 (Daly)**

**CDP 4-99-266-A1**

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Page 5 of 8  
Permit Application No. 4-99-266

The deed restriction required above shall reflect that:

- (1) The entire parcel, as measured from the Pacific Coast Highway right-of-way line seaward to the ambulatory mean high tide line, shall be available for public recreation and both vertical and lateral public access to the beach and ocean on and across the entire site. Any future development or improvements on the parcel will require a new coastal development permit and shall be limited to those improvements necessary to provide adequate public recreation and access. New development such as gates, stairs, fences, signs, and locks may be approved, subject to the issuance of a coastal development permit, if the Commission finds that such improvements are appropriate to regulate public access on the site.
  
- (2) The entire parcel shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean. No structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted on site. Vegetation on site shall be limited to low-lying vegetation of no more than 2 ft. in height. Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
  
- (3) No signs shall be posted on the parcel which (1) explicitly or implicitly indicate that any portion of the subject site (APN: 4451-003-033) is private or (2) contain similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, prior to the issuance of the coastal permit as amended, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting, the content of any proposed signs as consistent with Part B of this condition. After the permit has been issued, new signs limiting the time that the subject site is available for public use (such as limiting public access on the site to daylight hours) may be approved, subject to the issuance of a coastal development permit, if the Commission finds that such are appropriate to regulate public access on the site.

**EXHIBIT 10 (page 5 of 8)**

**CDP 4-99-266-A2 (Daly)**

**CDP 4-99-266-A1**

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Page 6 of 8  
Permit Application No. 4-99-266

- (4) The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
  
- B. All existing fencing on the subject site has been removed. The applicant shall submit, for the review and approval of the Executive Director, revised project plans for the construction/installation of a new fence and gate consistent with the requirements of Part A. Subparts (1), (2), and (3) of this condition. The plans must also include a time-lock mechanism or other means to allow public access to the site during daylight hours and must be designed in consultation with the California Coastal Conservancy. The revised plans shall also include the provision of signage indicating the availability of public access on the site. The approved signage must be maintained at the site. After the revised project plans have been approved by the Executive Director, the fence, gate, and signage must be constructed/installed in accordance with the approved plans within 90 days of issuance of the Amended Coastal Development Permit.
  
- C. The Coastal Conservancy, or other appropriate agency, has agreed to allow construction of the new fence, gate and signage on the parcel in accordance with the plans approved by the Executive Director pursuant to Section B. above.

**10. Offer to Dedicate Lateral Public Access**

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

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

<b>EXHIBIT 10 (page 6 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266-A1</b>

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

**11. Assumption of Risk**

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

**12. No Future Bluff or Shoreline Protective Device**

- A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit 4-99-266 including, but not limited to, the construction of the residence, garage, uncovered parking area, septic system and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to, the residence, garage, uncovered parking area, septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

**EXHIBIT 10 (page 7 of 8)**

**CDP 4-99-266-A2 (Daly)**

**CDP 4-99-266-A1**

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Page 8 of 8  
Permit Application No. 4-99-266

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

13. Drainage and Polluted Runoff Control Plan

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

- (a) Structural and/or non-structural Best Management Practices (BMPs) designed to capture, infiltrate or treat runoff from all roofs, parking areas, driveways and other impervious surfaces shall be identified and incorporated into final plans.
- (b) Selected BMPs shall, when implemented ensure that post-development peak runoff rate and average volume from the site, will be maintained at levels similar to pre-development conditions. The drainage system shall also be designed to convey and discharge runoff from the building site in non-erosive manner.
- (c) The plan shall include provisions for BMP maintenance. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) all traps/separators and/or filters shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

<b>EXHIBIT 10 (page 8 of 8)</b>
<b>CDP 4-99-266-A2 (Daly)</b>
<b>CDP 4-99-266-A1</b>

# **K** KNICKERBOCKER & ASSOCIATES

- Project Management
- Estate Management
- Owner Representation
- Construction Defect Consulting

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SEP 25 2001

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DIST.

September 21, 2001

Mr. Jack Ainsworth  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001

RE: PERMIT NO. 4-99-266  
NANCY M. DALY, TRUSTEE OF THE NANCY M. DALY LIVING TRUST

Dear Mr. Ainsworth:

We would like to submit our Application for Amendment to Coastal Development Permit for the above mentioned Permit Number 4-99-266 attached hereto.

Craig Knickerbocker (on behalf of Nancy Daly-Riordan), attended the February 13, 2001 Coastal Commission hearing in San Luis Obispo, specifically for the Peter Morton issue (Application #4-00-057).

Peter Morton, is a neighbor of Nancy Daly-Riordan, in Malibu, who was successful in obtaining approval from the Coastal Commission in bringing his stringline out to their mutual neighboring property (Semel).

This has resulted in the Katzenberg project, the Semel project and now the Morton project all having perfectly parallel stringlines, while Nancy Daly-Riordan's property has one side even with Katzenberg's, and one side 15 feet short of the Semel's property. Nancy Daly-Riordan's property is sandwiched between these two properties.

Based upon this latest ruling by the Commission and the video taped comments by the Commission, we have strongly encouraged Mrs. Daly-Riordan to request an amendment to her approval to bring her stringline out to the Semel property wall. Mrs. Daly-Riordan is not attempting to encroach seaward, but merely requesting a parallel stringline with Katzenberg – Semel – Morton.

We strongly encourage Staff to review the video tape of the Morton approval which we are confident presents a compelling case for Nancy Daly-Riordan to receive equal treatment under the law.

**EXHIBIT 11 (page 1 of 4)**

**CDP 4-99-266-A2 (Daly)**

**Amendment Application**

Mr. Jack Ainsworth  
September 21, 2001  
Page 2 of 2

We have enclosed the following for your review:

- Application for Amendment to Coastal Development Permit
- Appendix B – Local Agency Review Form
- Application Fee Check for \$200.00
- Stamped, addressed envelopes for renotification for all property owners and residents within 100 feet of the development and list of same.
- 2 Sets of plans ('Approved in Concept' by City of Malibu) showing the proposed amendment.
- Copy of original permit no. 4-99-266

Please contact us at (310) 212 – 3200 if you have any questions or require additional information.

Respectfully,

*Craig Knickerbocker* (CK)  
Craig Knickerbocker

Enclosures (6)

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

EXHIBIT 11 (page 2 of 4)

CDP 4-99-266-A2 (Daly)

Amendment Application

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SEP 25 2001

P:02  
4-99-266-A2

STATE OF CALIFORNIA—THE RESOURCES AGENCY

CALIFORNIA

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

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

APPLICATION FOR AMENDMENT TO COASTAL DEVELOPMENT PERMIT



Application for an amendment to a previously issued coastal development permit may be made by submitting this form, completed and signed, together with the materials described below and the application fee.

Pursuant to 14 Cal. Admin. Code Sections 13164 and 13168, materials to be submitted are

1. Two sets of plans showing the proposed amendment; these must have been approved by the local planning agency and stamped with Approval in Concept. Please submit evidence of approval (Approval in Concept form).
2. Stamped, addressed envelopes for renotification of all property owners and residents within 100 feet of the development and list of same. The envelopes must be plain, business size (9 1/2 X 4 1/8), with first class postage. **METERED STAMPED ENVELOPES CANNOT BE ACCEPTED.**
3. A minimum application fee of \$200 or 50% of original filing fee, whichever is greater (based on updated fee schedule).

Upon receipt of the above information, the Executive Director will determine whether the amendment request should be rejected on the basis that the proposed amendment would lessen or avoid the intent of a previously approved permit condition. 14 Cal. Admin. Code Section 13168. If the amendment request is filed, the Executive Director will then determine whether the amendment request is immaterial or material. If the Executive Director finds that the proposed amendment is immaterial, notification is sent to surrounding property owners and the site must be posted with a form which will be sent to you. If no objections are received, the amendment is approved, and you will be sent an amended permit. If objections are received, or if the amendment is determined by the Executive Director to be material, the request will be set for a public hearing. You have the right to request that the Commission make a determination of materiality independent of that previously made by the Executive Director. 14 Cal. Admin. Code Section 13166.

Please provide the information below and on the reverse. If you have any questions, contact this office.

APPLICANT

APPLICANT'S REPRESENTATIVE (If any)

NAME: Nancy M. Daly, Trustee  
of the Nancy M. Daly Living Trust  
ADDRESS: 256 Copa de Oro Road  
Los Angeles, CA 9077  
PHONE: 310 212-3200 ext.

Knickerbocker & Associates  
1218 El Prado, Torrance, CA 90501  
Attn: Craig Knickerbocker

COASTAL PERMIT NUMBER: 4-99-266

DATE OF ISSUANCE: 4-12-2000

PROJECT ADDRESS: 22338 Pacific Coast

EXHIBIT 11 (page 3 of 4)
CDP 4-99-266-A2 (Daly)
Amendment Application

FOR

Date Filed: \_\_\_\_\_

-2-

DESCRIPTION OF PROPOSED AMENDMENT: Amend the existing Coastal  
Development permit to reorient the approved Deck Stringline  
to align with existing bulkhead/seawall corners of Adjacent  
(Katzenberg and Semel) properties.

CERTIFICATION

I hereby certify that I or my authorized representative will complete and post the "Notice of Proposed Permit Amendment" form furnished me by the Commission in a conspicuous place on the development property upon receipt of said notice.

I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or any information subsequently requested may be grounds for denying the application, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Craig Knickerbocker  
Signature of Applicant(s) or Agent

NOTE: If signed by agent, applicant must sign below.

I hereby authorize Knickerbocker & Associates to act as my representative and bind me in all matters concerning this application.

Nancy Daley Pearson  
Signature of Applicant(s)

EXHIBIT 11 (page 4 of 4)
CDP 4-99-266-A2 (Daly)
Amendment Application

**CALIFORNIA COASTAL COMMISSION**

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



October 24, 2001

Craig Knickerbocker  
Knickerbocker & Associates  
1218 El Prado  
Torrance, California 90501

RE: Coastal Development Permit Amendment Application Number 4-99-266-A2  
22338 Pacific Coast Highway, Malibu (Los Angeles County)

Dear Mr. Knickerbocker:

Our office received an application for an amendment to Coastal Development Permit 4-99-266 on September 25, 2001, for the above referenced site. Pursuant to the California Code of Regulations ("CCR"), Section 13166(a), however, an amendment application shall be rejected if the proposed amendment "would lessen or avoid the intended effect of an approved or conditionally approved permit." As the proposed amendment would lessen or avoid the intended effect of at least three special conditions of Coastal Development Permit ("CDP") 4-99-266, our office is rejecting and returning this amendment application.

The proposed amendment would lessen or avoid the intended effect of Special Condition One of CDP 4-99-266, requiring revised plans to be submitted deleting "all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4." In addition, Special Condition 10 of CDP 4-99-266 required that an offer to dedicate a lateral public access easement be recorded from the "ambulatory mean high tide line landward to the approved deck stringline." By requesting that the deck stringline be located further seaward than that which was approved under CDP 4-99-266, the intent of Special Conditions One and 10 would be lessened. Under the proposed amendment, the deck stringline would extend further seaward, resulting in the occupation of additional sandy beach. In addition, the area of the public lateral access easement would likewise change and be diminished under the amendment request. Further, Special Condition 9 of CDP 4-99-266 required a public view corridor of no less than 20 percent of the lineal frontage of the project site. The amendment application submitted illustrates a tennis court and other miscellaneous development and vegetation within the public view corridor, thereby lessening the intent of Special Condition 9. The Superior Court set aside CDP 4-99-266-A1; therefore the only currently effective permit for the project is CDP 4-99-266, which contains Special Condition 9.

EXHIBIT 12 (page 1 of 2)

CDP 4-99-266-A2 (Daly)

Amendment Rejection Letter

Please note that under CCR, Section 13166(a)(1), an applicant may appeal this determination to the Commission. Under Section 13166(a)(1), this appeal "must be submitted in writing and must set forth the basis for the appeal." Additionally, pursuant to this section, the "appeal must be submitted within 10 working days" following the rejection of the amendment application. Further, under this section, if timely submitted, the Executive Director shall then "schedule the appeal for the next commission hearing or as soon thereafter as practicable" and shall provide notice of the hearing to all persons the Executive Director has reason to know may be interested in the application. If the Commission overturns the determination to reject this amendment application, the application shall be accepted for processing as set forth under CCR, Section 13166(c).

Enclosed, please find your application for the amendment. If you have any questions, contact me at our Ventura District office at (805) 585-1800.

Sincerely,



Sabrina Haswell  
Coastal Program Analyst

Enclosure (Coastal Development Permit Amendment Application Number 4-99-266-A2)  
Cc: Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust

EXHIBIT 12 (page 2 of 2)
CDP 4-99-266-A2 (Daly)
Amendment Rejection Letter

# **K** KNICKERBOCKER & ASSOCIATES

• Project Management

• Estate Management

• Owner Representation

• Construction Defect Consulting

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

November 5,

California Coastal Commission  
South Central Coast Area  
Attn: Sabrina Haswell  
89 S. California St., Suite 200  
Ventura, CA 93001

Re: Written Appeal of Staff Determination  
Coastal Development Permit Amendment Application No. 4-99-266-A2  
22338 Pacific Coast Highway, Malibu (Los Angeles County)

Dear Ms. Sabrina Haswell:

We think it is important for you to understand that we have spent over two years changing our plans, at great effort and expense, while the staff regularly informed us that our plans would not be acceptable due to the latest commission changes in policy.

Once we finally arrived at a plan staff could endorse, we were assured by our planner, Steve Hudson, that we would have amendment rights. After spending nearly four months obtaining approvals from the City of Malibu for our Request for Amendment, we were shocked and dismayed to learn that staff could reject our application without a fair hearing. We feel that this is unfair and that we have been misled. Keeping this in mind, we are responding to your letter as required.

Per your rejection letter dated October 24, 2001, we are hereby submitting our written appeal of the staff determination, to the Commission as per CCR, Section 13166(a)(1). As stated in your letter, we respectfully request that the Executive Director place our appeal on the very next Commission hearing agenda.

As we understand your letter, it outlines three reasons for the rejection under Section 13166(a) of the ("CCR"). According to staff, each of the reasons would "lessen or avoid the intended effect of an approved or conditionally approved permit".

Reason #1

The approval "would be lessened" because the approved stringline would be moving farther seaward than the approval allowed.

**EXHIBIT 13 (page 1 of 3)**

**CDP 4-99-266-A2 (Daly)**

**Appeal of Amendment Rejection**

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COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Basis for Appeal:

The original house we owned had a sea wall/stringline at the same location that we are requesting in our appeal. Therefore, we are not requesting any further encroachment than what previously existed. On each neighboring side of our property the Commission previously approved the exact stringline that we are requesting. The Commission also granted the stringline we are requesting on our west property line. Subsequent to our approval, the Commission granted stringline approval to the Peter Morton project that matched our two neighbors and our West End points. This is very odd that there are four neighbors in a row and seven of the eight stringline points are lined up and one single point on the Daly-Riordan property seems to have been very unfairly singled out and pushed landward. (See exhibit attached) If you would be kind enough to take the time to view the enclosed video of the Peter Morton hearing, it is very apparent that several of the Commissioners, including Chairman Wan, seem to agree that we have not been treated fairly and will likely be appealing. If the Commission was able to approve seven of the eight stringline points at the same location, we are confident they will see the unfair treatment and amend our stringline to where it should have been all along.

Reason #2

The approval "would be lessened" because extending the stringline seaward would result in the occupation of additional sandy beach and lessening the public lateral access easement.

Basis for Appeal:

The location we are discussing should not be considered "sandy beach" or "lateral access" as it has been the backyard of a home for at least forty years. It is not fair to take private property through an approval and before the project is even complete make the claim that our appeal would take "sandy beach" and "lateral access" from the public. We have never felt this approval was fair or logical and it is clear that several of the Commissioners are not comfortable with the situation either.

Reason #3

The amendment submitted illustrates a tennis court and vegetation in the public view corridor thereby lessening it's intent.

EXHIBIT 13 (page 2 of 3)

CDP 4-99-266-A2 (Daly)

Appeal of Amendment Rejection

Sabrina Haswell  
November 5, 2001  
Page 3 of 3

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NOV 06 2001

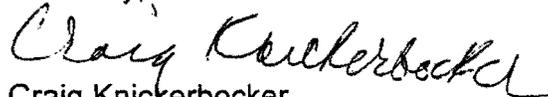
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

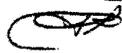
Basis for Appeal:

Our approval did not in any way provide for a public view corridor over the tennis court. If you review our application process you will find that staff clearly told us that it would not be a view corridor if we had a tennis court and therefore we spent a great sum of money to purchase view corridor land to trade for it. It seems to be a far and unreasonable reach to now come back and say that our tennis court is a view corridor. Your records should reveal that we were forced at one time during the application process to delete our tennis court and re-draw our entire project because staff deemed a tennis court in the view corridor to be unacceptable. If staff now claims it is a view corridor, there could be substantial financial ramifications and liabilities the Commission should review.

In conclusion, we encourage you to review the Commission comments on the video tape, review the attached drawing that shows the illogical and unfair stringline determination, and review the history in regard to the staff claim that our tennis court has somehow become a view corridor. We look forward to being on the next possible Commission meeting agenda and please do not hesitate to contact us with any questions or concerns.

Sincerely,



Craig Knickerbocker  
Knickerbocker & Associates 

cc: Mrs. Nancy Daly-Riordan

EXHIBIT 13 (page 3 of 3)
CDP 4-99-266-A2 (Daly)
Appeal of Amendment Rejection



- *Project Management*
- *Estate Management*
- *Owner Representation*
- *Construction Defect Consulting*

## Memorandum

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Date: November 16, 2001  
To: Sabrina Haswell  
From: Teri Ross  
Re: Nancy Daly – Riordan, Permit Application No. 4-99-266-A2

Sabrina,

As promised, I've enclosed a copy of the Peter Morton Coastal Commission hearing of February 2001.

I have cued-it up to Cynthia McClain-Hill who makes very strong statements regarding Nancy Riordan of course coming back to coastal for same treatment.

After viewing this, please forward video to Sara Wan, who expresses great Concern of approving Peter Morton's amendment to his stringline and setting precedent. Ms. Wan also states how important it is that the staff be consistent in their approvals. Clearly, Mrs. Riordan's application has not been given the same treatment.

Also enclosed is the aerial view of the entire stringline as it now stands.

Please call if you have any questions.

Thank you for your time and consideration.

Regards,

Teri Ross for Craig Knickerbocker

Enclosures: 2

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

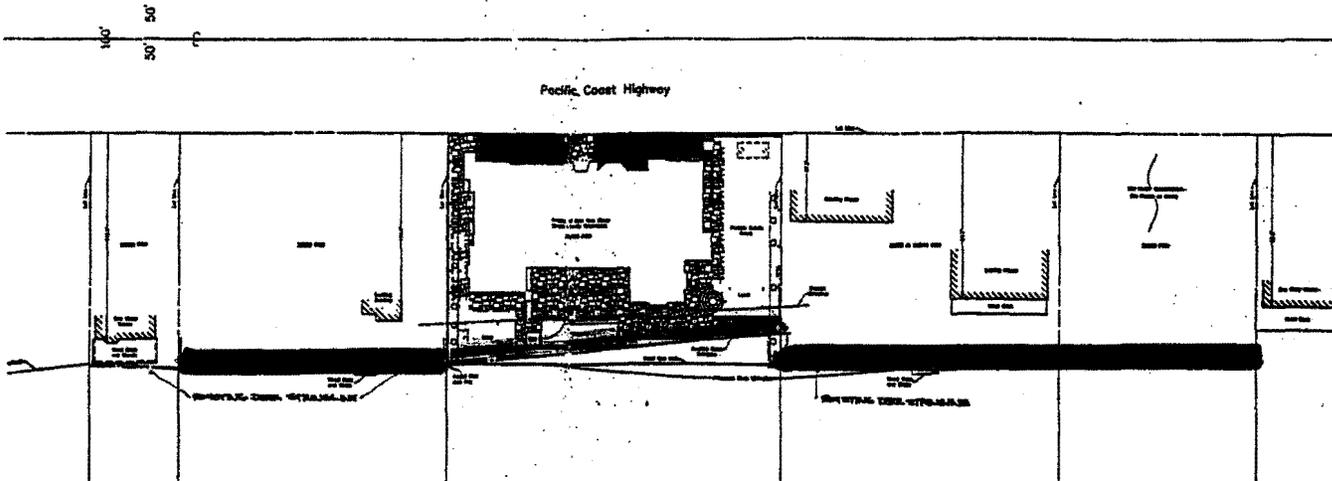
EXHIBIT 14

CDP 4-99-266-A2 (Daly)

Letter to Commission Staff 11/16/01

# Building Set-Back Survey

Date of Survey: May 18, 2001



**KATZENBERG PROPERTY**  
Straight Stringline  
Approved:  
Prior to Daly - Riordan

**NANCY DALY - RIORDAN**  
Ur.eyen Stringline

**SEMEL PROPERTY**  
Straight Stringline  
Approved:  
Prior to Daly - Riordan

**MORTON PROPERTY**  
Straight Stringline  
Approved:  
After Daly - Riordan

Plan Prepared For: The Daly/Riordan Residence  
c/o Baracchini & Associates  
3502 Coast View Drive  
Malibu, CA 90265  
(310) 456-3825

Plan Prepared By: M & M & Co.  
8847 Encino Avenue  
Northridge, CA 91325  
(818) 885-1100  
Michael J. Amoreo, L.S. 5392

**EXHIBIT 15**

**CDP 4-99-266-A2 (Daly)**

**Deck Stringline Submitted by Applicant**