

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-00-259

APPLICANT: Malibu Beachfront Properties; Ralph Herzig, Ph.D.

AGENT: Susan McCabe, McCabe & Company
Skylar Brown, Architect

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

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

Lot area: (total, both lots)	30,570 sq. ft. (.70 acres)
Building coverage:	8,826 sq. ft.
Pavement coverage:	4,282 sq. ft.
Landscape coverage:	772 sq. ft.
Parking spaces:	27 enclosed; 2 guest

IMPORTANT PROCEDURAL NOTE: The Commission continued this project from the November, 2000 hearing and directed staff to investigate the appropriate seaward extent of development on the site and to resolve concerns about public access easements that may be affected by development of the site. Subsequently, the applicant withdrew and immediately resubmitted the pending application to allow staff time to comply with the

Commission's direction and to confer with the Coastal Conservancy regarding easements owned by the Conservancy that are located on the subject site. The 180th day for Commission action on the pending application was May 27, 2001. On May 7, and prior to the Commission's previously scheduled hearing on this item on May 8, the applicant proposed to extend the Permit Streamlining Act deadline for Commission action on the subject application and staff agreed. The item was therefore postponed at the applicant's request and the extended deadline for Commission action on the subject application is August 13, 2001.

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

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan (LUP); CDP No. P-79-4918 (Felina's); CDP No. P-75-6353 (Hall); Report of Geotechnical Investigation, Proposed Residence, 21202 Pacific Coast Highway, Malibu, prepared by Law Crandall Engineering and Environmental Services, Inc., dated August 4, 1999; State Lands Commission Letter of Review, dated February 17, 2000; Streambed Alteration Agreement No. 5-002-00, Department of Fish and Game, dated April 6, 2000.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with special conditions, including conditions requiring revised plans to relocate the development footprint 43-48 ft. landward from the footprint shown in the applicant's proposed plans. The Motion for Approval is found on Page 3; the Special Conditions begin on Page 4.

At the Commission's November, 2000 meeting the applicant explained that visitor-serving development of the site is not economically feasible, therefore the applicant requests that the Commission approve residential development of the site despite the property's designation as Visitor-Serving Commercial in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). Although the Commission did not vote on the proposed project at that hearing, the consensus of the Commissioners present appeared to be that the residential use could be approved. The Commission directed staff to determine the appropriate footprint for development of the site, in light of coastal access concerns raised at the meeting.

Further staff investigation in response to the Commission's direction indicates that the applicant's plans must be revised to achieve the landward setback and coastal access impact mitigation necessary to address the Commission's concerns. In cases where

recommended project revisions are so substantial that a redesign of the project may be necessary, staff typically recommends denial of the proposed project and provides suggestions which, if implemented, would result in favorable consideration of the project. However, in this case staff has provided a recommendation of approval with special conditions for Commission consideration. Staff believes that if the proposed project is revised to incorporate the recommended special conditions, the project will be consistent with the applicable policies of Chapter 3 of the Coastal Act.

In addition, since the previous staff report was published, staff has conferred further with the staff of Caltrans to refine recommended Special Condition 12. The revised special condition incorporates all of the suggestions made by Caltrans staff to ensure that the impacts of the traffic generated by the proposed project at the affected intersection of Pacific Coast Highway are mitigated consistent with Caltrans' standards.

Staff has also discussed the City of Malibu's rezoning of the subject site to Multi Family Beachfront (MFBF) with City staff, and the background section of the report incorporates additional information that staff has thereby obtained. No new information was obtained from the City staff that affects the recommendation set forth herein. The City's MFBF zoning designation and the City's application of it to the subject site remain uncertified, and the zoning designation has not formed the basis of either the previous or present staff recommendations. However, the background section of the staff report discusses the MFBF zoning designation to provide background on the local government planning context in which this project has arisen.

Correspondence received by staff concerning the proposed project is attached as Exhibit 19. A letter of comment from the Coastal Conservancy is also included in Exhibit 19.

The staff recommends that the Commission adopt the following resolution:

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-00-259 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will

not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. **Assumption of Risk/Shoreline Protection**
 - A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
 1. The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
 2. The applicant acknowledges and agrees to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.

3. The applicant unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
 4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
 5. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-00-259, as shown in its revised location at the 16 ft. elevation contour, as required by Special Condition 3, and as generally shown in Exhibit 4, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicants' entire parcel and an exhibit showing the location of the shoreline protective device approved by this permit. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

2. Project Biological Monitoring and Construction Responsibilities

Prior to the issuance of the coastal development permit, the applicant shall retain the services of a qualified biologist or environmental resource specialist, (hereinafter referred to as the "monitor") with appropriate qualifications, approved by the Executive Director. The monitor approved by the Executive Director shall ensure that all demolition, staging, or construction activities approved by Coastal Development Permit 4-00-259 shall be carried out consistent with the following:

- A. A minimum of two months prior to the commencement of project activities in or adjacent to Las Flores Creek, the designated monitor shall submit a project implementation schedule and mitigation plan designed to avoid or minimize potential impacts to the Tidewater goby, for the review and approval of the Executive Director.

- B. The plan shall provide the monitor will survey the mouth and channelized portion of Las Flores Creek on and adjacent to the project site each day, prior to the commencement of any project activities, for the presence of the Tidewater goby. If the Tidewater goby is present, the monitor shall: (1) notify the Executive Director or the Executive Director's designated representative, and (2) notify the National Marine Fisheries Service (NMFS). If the Tidewater goby is present, no activities on the site shall occur until the monitor or applicant is authorized to proceed by the Executive Director and a representative of NMFS. If authorized to proceed, the applicant shall implement sediment and debris management measures set forth in the approved plan pursuant to (a) above. Such measures shall include, but not be limited to, placement of barriers to exclude fish from disturbance areas, silt fencing, etc.

3. Revised Plans

Prior to the issuance of Coastal Development Permit 4-00-259, the applicant shall submit revised plans for the review and approval of the Executive Director that provide for the following:

- A. Relocation of all structures, including decks, stairways, seawalls, and return walls and other flood control improvements, to a landward location extending no further seaward at any point than the line illustrated in 4a, which is drawn at the 16 ft. elevation contour, thereby setting the seawardmost development footprint as shown on the presently proposed plans back approximately 43 feet on the western side of the subject site and approximately 48 feet on the eastern side of the subject site. Revised plans shall delete the 14 ft. high "privacy" wall adjacent to the westernmost parcel boundary.
- B. The applicant shall submit two (2) sets of revised plans for the construction of a vertical accessway a minimum of five (5) feet wide along the westernmost boundary of the westernmost parcel on the subject site. The vertical accessway shall demonstrate a corridor of public access continuously available from the sidewalk required along Pacific Coast Highway pursuant to Special Condition 5 set forth herein, to the seawardmost extent of the proposed project. In addition, the applicant shall provide written evidence to the satisfaction of the Executive Director that the vertical access construction plans have been reviewed by the California Coastal Conservancy and thereby found to comply with at least the minimum requirements of the Conservancy for provision of year-round public access to the Conservancy's lateral access easement along the sandy beach on the subject site.
- C. The applicant shall submit two (2) sets of revised plans requiring the removal of all portions of the existing rock revetment located seaward of the seawall shown on the applicant's proposed project plans, and clearly showing the demolition and

removal of all residual foundations, supports, walls, or other existing remnant development from previous structures on the subject site.

4. Sign Restriction.

No signs, other than a sign identifying the public vertical coastal accessway required herein, shall be posted on the property subject to this permit unless they are authorized by a coastal development permit or amendment to this coastal development permit.

5. Construction of Sidewalk

Prior to the issuance of the coastal development permit, the applicant shall submit plans (including site plans, elevations, and cross sections, where applicable) for the review and approval of the Executive Director, for construction of a six (6) foot wide public sidewalk placed between Pacific Coast Highway and the development proposed pursuant to Coastal Development Permit No. 4-00-259. The sidewalk improvements referenced herein shall be constructed no later than sixty (60) days after the issuance of the first certificate of occupancy. No encroachments, such as planters, vegetation, or other structures or obstacles, whether permanent or temporary, shall be constructed or placed within the sidewalk.

6. Geology.

All recommendations contained in the geotechnical investigation prepared by Law Crandall Engineering and Environmental Services, Inc., dated August 4, 1999 shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system. Final project 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 satisfaction of 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 construction, grading and drainage. 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.

7. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt shall occur on the beach; b) that all grading shall be properly covered, sand-bagged, and ditched to prevent runoff and siltation; c) that measures to control erosion shall be implemented at the end of each day's work; (d) that no machinery shall be allowed in the intertidal zone at any time, (e) that no construction equipment, materials, or debris shall

be stored or placed at any time in a location subject to wave action; and (f) that any and all debris that results from the activities approved pursuant to Coastal Development Permit 4-00-259 shall be promptly removed from the beach, stream corridor, and construction site, and properly disposed of.

8. Future Improvements

This permit is only for the development described in coastal development permit No. 4-00-259. Pursuant to Title 14 California Code of Regulations Sections 13253 (b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) and (b) shall not apply to the parcels comprising the subject site. Accordingly, any future improvements to the permitted structures shall require an amendment to Permit No. 4-00-259 from the Commission or shall require an additional coastal development.

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

9. Removal of Excavated Material

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

10. Drainage and Polluted Runoff Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs 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.

11. Offer to Dedicate Vertical Public Access and Declaration of Restrictions

Prior to the issuance of the coastal development permit, the applicant shall record an offer to dedicate an easement for vertical public access and passive recreational use along a corridor a minimum of five (5) feet in finished, constructed internal clearance width from the westernmost property line, in favor of the California Coastal Conservancy. The applicant, as landowner, shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the Coastal Conservancy an easement for vertical public access and passive recreational use from Pacific Coast Highway to the lateral access easement owned by the California Coastal Conservancy along the seaward boundary of the subject site, as shown in 4b. The vertical access easement shall run along the westernmost boundary of the westernmost parcel on the subject site. The easement shall be sufficient to provide for the construction of the vertical access improvements required pursuant to Special Condition 3 (Revised Plans) and to provide a continuous public access corridor from Pacific Coast Highway to the mean high tide line of the Pacific Ocean. In addition, the easement shall provide for the placement of a sign easily visible from Pacific Coast Highway identifying the presence of the vertical public accessway to the beach. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property.

The 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 and a map 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.

12. Pacific Coast Highway Intersection Safety Improvements

Prior to the issuance of Coastal Development Permit 4-00-259, the applicant shall agree to prepare and submit for the review and approval of the Executive Director, a plan for safe ingress/egress of traffic turning into the subject site from Pacific Coast Highway or leaving the site and turning onto Pacific Coast Highway (in either direction). The plan shall be prepared by the applicant in consultation with the Caltrans Office of Permits, and shall ensure that ingress and egress from the subject site and adjacent property is managed in a manner that avoids turning conflicts between vehicles accessing or leaving each site, as well as potential conflicts with the safe operation of the intersection and vehicles traveling Pacific Coast Highway. In addition to any improvements that Caltrans may require, such as the striping of lanes, the applicant shall provide left and right turn signal lights to Caltrans' specifications, if Caltrans determines that such signal lights are necessary, for traffic entering the proposed site from Pacific Coast Highway or leaving the proposed project site and turning onto Pacific Coast Highway.

The applicant shall additionally present evidence, in conjunction with the submittal of the plan to the Executive Director, that the applicant has attended a Conceptual Meeting with Caltrans and that Caltrans has reviewed and approved the final plan incorporating changes to the affected intersection of Pacific Coast Highway pursuant to Caltrans' standards.

Should the applicant and the Executive Director fail to agree on the content of a traffic management plan acceptable to the Executive Director, the plan shall be presented to the Coastal Commission for a determination of whether it complies with this Condition.

Any necessary permits or approvals that may be required to construct the required traffic improvements shall be obtained by the applicant, and evidence of such approvals submitted to the Executive Director, prior to construction. Further, the applicant agrees that improvements required by the Caltrans Encroachment Permit shall be installed and approved by Caltrans before construction activities commence.

13. Removal of Rock Revetment

Prior to the commencement of construction of the new development authorized by Coastal Development Permit 4-00-259 (Herzig), the applicant shall submit evidence to the satisfaction of the Executive Director that the rock rip rap presently located on the subject site has been removed and properly disposed. Such evidence shall include photographic documentation of the rock removal and a written statement by the contracting or engineering firm undertaking the work that the rock rip-rap has been removed, the approximate quantity of rock removed, and the disposal location of the rock. Should the disposal site be located in the Coastal Zone, a coastal development permit shall be required.

14. Removal of Excess Graded Material

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

15. Public Access Plan and Construction of Access Improvements

- A. Prior to the issuance of Coastal Development Permit 4-00-259, the applicant shall submit evidence for the review and approval of the Executive Director, two (2) sets of plans for the construction of vertical public access improvements in the easement location set forth in Special Condition 11 herein. The applicant shall additionally submit written evidence to the satisfaction of the Executive Director that the California Coastal Conservancy, as owner of a real property interest in vertical and lateral public access easements on the subject property, has reviewed and approved the final vertical access plans and designs for the construction of a vertical public access easement on the westernmost boundary of the westernmost parcel on the subject site. The Coastal Conservancy's review shall include a determination that the vertical access easement improvements are sufficient to connect the vertical easement with the lateral public access easement across the subject site that is also owned by the Coastal Conservancy.
- B. Prior to commencement of any other construction-related activities authorized herein, the applicant shall construct the vertical accessway in the location of the vertical easement required pursuant to Special Conditions 3 and 11 set forth herein. The applicant shall submit evidence to the Executive Director's satisfaction that the vertical access improvements have been constructed and that the final construction has been verified in writing as satisfactory by the California Coastal Conservancy.

16. Lot Tie Condition

Prior to issuance of Coastal Development Permit No. 4-00-259, the applicant shall provide evidence that both of the subject lots identified herein by assessor's parcel numbers 4451-00-900 and 4451-001-901 (formerly identified in County Assessor records

as APN 4451-001-027 and 4451-001-028) and shown in Exhibit 3 have been tied together in accordance with the requirements of Los Angeles County and that both lots shall thereafter be held as one single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, development, taxation or encumbrance and that the single parcel created herein shall not be divided or otherwise alienated from the combined and unified parcel.

17. Cumulative Impacts – Transfer of Development Credits

Prior to the issuance of the Coastal Development Permit, the applicant shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to the issuance of this permit, the applicant shall provide evidence to the Executive Director that the development rights for residential use on legally buildable parcels have been retired in the Malibu/Santa Monica Mountains Coastal Zone for the proposed condominiums tied to the formula of one Transfer of Development Credit (TDC) for each 2,500 square feet of gross living area, less the two existing legal lots. The method used to extinguish the development rights shall be either:

- (a) Transfer of development credit transaction;
- (b) participation along with a public agency or private non-profit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

18. Timing of Construction

Grading or construction within or adjacent to the floodplain of Las Flores Creek shall not be undertaken during the rainy season, defined as November 1 through March 31, annually.

19. Limited Term for Shoreline Protective Structure: Deed Restriction

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

- A. The applicant acknowledges that the purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on site and that no shoreline protective device is required to protect the residence authorized by this

permit. If the proposed septic system is replaced or abandoned for any reason (including the installation of a sewer system along Pacific Coast Highway), then a new coastal development permit for the shoreline protective device authorized by Coastal Development Permit 4-00-259 shall be required. If a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the septic system, then the shoreline protective device authorized by this permit shall be removed.

- B. The document 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 Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

20. Lighting Restrictions-Las Flores Creek Channel

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT No. 4-00-259, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which specifies that no exterior night lighting whatsoever shall be directed toward the Las Flores Creek corridor east of the subject development. Outdoor night lighting elsewhere on the subject site that may direct light toward the Las Flores Creek corridor shall be the minimum necessary, consistent with safety requirements, shall be of low intensity, at low height and shielded, and shall be downward directed to minimize the nighttime intrusion of the light from the project into the sensitive habitat areas. The document shall run with the land for the life of the structures approved in these permits, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interests being conveyed.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Background; Project Description

The proposed project is located on two beachfront lots—one, a vacant lot that was the site of the Albatross Restaurant until it burned down in the 1993 Malibu fire, and the other a lot that is comprised almost entirely of a channelized portion of Las Flores Creek—off Pacific Coast Highway, on La Costa Beach, within the City of Malibu.

According to the applicant, the subject property was acquired after it was seized by the federal government. The applicant has recounted a long history of neglect of the

property and the failure of various businesses attempted on the site in the past. The applicant proposes to convert the site from the Visitor-Serving Commercial designation applied to the site in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP), to multi-unit residential (8 condominiums).

The applicant proposes to adjust the lot lines between two adjacent beachfront lots and to construct eight two-story, 27 ft. high above existing grade, residential condominium units totaling approximately 19,000 sq. ft., a stairway to the beach, a 14 ft. high "privacy" wall along the westernmost parcel boundary, flood control improvements to widen the channel of Las Flores Creek by approximately 20 feet, a seawall, a return wall, 29 paved parking spaces, a new septic disposal system, to demolish and remove residual debris from the remaining foundation of a previously burned structure, and to grade 1,000 cu. yds. of material (all cut and export) at 21200 and 21202 Pacific Coast Highway, in Malibu.

Land Use Density Applicable to the Site

According to the applicant, the City of Malibu discouraged him from rebuilding a restaurant and/or small hotel on the subject site (where a restaurant was formerly located) and created a new general plan designation and zone district, called Multi-Family Beach Front (MFBF), and applied the new designation and zoning to the subject site to resolve the matter of providing a use of the site acceptable to both the applicant and the City. According the correspondence dated May 4, 2001 received by Commission staff from the City's Planning Director, the MFBF zoning designation (adopted in 1996) uses the following "Lot Development Criteria":

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

In a subsequent telephone conversation with Commission staff, City staff explained that item 4 above (units per lot) is based on an analysis of the gross acreage of a parcel under consideration—not net acreage. City staff have further explained that the City only deducts road rights-of-way from the gross acreage of a parcel in applying MFBF performance standards, and does not deduct areas of a parcel under consideration that contain access easements in public ownership, deed restricted areas, flood zones, or stream channels (even in the case of Las Flores Creek) wave uprush areas, or any other applicable setbacks such as front and sideyards setbacks that generally inform a typical density analysis.

Therefore, it is clear that the City of Malibu did not approve 8 condominium units on the subject site on the basis of any interpretation of net acreage.

The applicant had previously explained to Commission staff that the subject property was the only site to which the new zoning designation was originally applied, and also indicated that the MFBF general plan and zoning designation were initiated and developed specifically for application to the subject site. Although City staff contacted by staff are unsure of whether that may have been true at that time, City staff have explained that the designation and zoning have since been applied to many other beachfront properties. However, City staff have also confirmed that the parcels that are the subject of Coastal Development Permit Application No. 4-00-259 (Herzig) are the only vacant land that the City has applied the MFBF designation to, and thus the subject site is apparently the only site that has actually been evaluated by the City for local permit approvals of new development under the MFBF designation.

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

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

The adjacent, upcoast (westerly) parcel contains a pre-Coastal Act condominium development (constructed in 1972) on a little over one-half of an acre of land. That site, which is the most representative of nearby residentially designated parcels of the conditions found on the subject site, is designated 9A, Residential, 6-8 units per acre, on the certified LUP map. The map was certified after the condominiums were constructed. The original condominium construction is thought to have included 8 units, however there is some evidence in the TRW microfiche records that unauthorized further divisions of some of the condominium units may have been occurred since the original construction, thereby increasing the number of units. The most recent Commission files pertaining to the adjacent condominiums suggest that as many as 11 units exist there now; the applicant's plans assert that the number is 14. Regardless, the Coastal Commission did not approve the number of condominiums on that site, or their location seaward of the wave uprush zone, and in certifying the LUP, the Commission determined that the appropriate density of development for that site is a maximum of 6-8 units per acre.

In addition to considering the density of development that is appropriate for the site, the Commission has identified a development setback (further discussed below) to establish a development envelope for the subject site. By this method, the Commission has arrived at an overall analysis of the subject site to establish criteria for the identification of

a development envelope consistent with the policies of the Coastal Act, rather than approaching the problem solely from a density analysis perspective.

This approach takes into consideration the change of use from visitor-serving commercial to residential, and the many constraints that affect the available development area of the site, as discussed in more detail in the remainder of this report. Recognizing that the development setback and coastal access impact mitigation requirements will require a redesign of the project, the Commission by this approach extends maximum flexibility to the applicant in redesigning the project, provided that the redesign is consistent with the requirements established herein.

As the result, the revised plans required by Special Condition 3, further explained below, do not restrict the specific density the applicant must comply with, but instead requires the redesigned project to fit within the development envelope established by the landward setback discussed below in conjunction with various street and sideyard setbacks and access requirements applicable to the site.

To apply the 9A-Residential density standard (6-8 dwelling units per acre (dua)) identified above, and to thus arrive at a number of units that could be constructed on the subject site by that measure, the Commission must first determine the net square footage available for development.

According to the applicant, the combined area of the two parcels is 30,570 gross sq. ft., or about three-fourths of an acre. The applicant's plans state that Parcel 1, the upcoast or westernmost of the two parcels, contains 17,820 sq. ft. of gross area and 15,400 sq. ft. of net area, and that Parcel 2, the downcoast or easternmost parcel, contains 12,750 sq. ft. of gross area and 9,220 sq. ft. of net area.

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

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

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

The staff estimate of 18,000 net sq. ft. (equal to .413 acres) yields a total of between 2.48 to 3.30 units, maximum, for the combined parcels. The staff estimate has not taken into consideration the net area reduction that results from the application of the development setback line shown in Exhibit 4a and discussed below. If consideration of the proposed project were undertaken by the Commission **strictly on an allowable** density basis only, instead of the overall development envelope analysis set forth herein, it appears that no more than two units would likely result as the acceptable number for the net lot acreage.

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

Seaward Extent of Development Envelope

The Commission directed staff to evaluate the appropriate seaward extent of the proposed project, and related vertical and lateral public access issues, particularly in consideration of the fact that a boundary line agreement was reached between the downcoast property owners of Duke's Restaurant, and the State Lands Commission. In addition, staff determined that the upcoast development adjacent to the subject site is also pre-Coastal Act development that appears to extend seaward of the area of tidal influence on this portion of La Costa beach.

The applicant asserts that because the proposed project is infill development, the project should be entitled to the full benefit of the seawardmost stringline drawn between the corners of the structures situated on the nearest adjacent lots. Such a stringline yields a development footprint that extends development on the subject site seaward of the wave uprush zone. The applicant further asserts that he has a "grandfathered" right to rebuild the previous footprint of the burned structure that once existed on site and extended to approximately the stringline. This is accurate provided that the applicant rebuilds the same kind and intensity of development that previously existed, pursuant to the provisions of the Coastal Act. The applicant has only indicated interest, however, in construction of a residential development on the subject site. (The applicant has also stated that the City of Malibu will not support a restaurant on the site. The applicant has not indicated whether the City will support construction of a restaurant/hotel or small hotel development on the subject site.) Unless the applicant proposes to return to the previous visitor-serving development that once extended to approximately the stringline that the applicant presently seeks the benefit of, any "entitlement" to that previous footprint is irrelevant to the present analysis, which is an analysis of new development on the subject site pursuant to the requirements of the Coastal Act.

Therefore, the proposed change in land use requires the Commission to consider the proposed project as new development on a vacant parcel, thereby voiding any previous entitlement to a former development footprint that might otherwise apply.

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

Patterns of wave action apparent on the subject site indicate that a significant amount of the older fill material was likely placed seaward of the mean high tide line, and thus on public trust lands. Erosion from wave action has affected the site, eroding the fill material back to approximately the 16 ft. elevation contour, except where remnant structural pads and walls, and the residual asphalt apron are located. This erosion pattern indicates that these relict structures function as a seawall and that wave action regularly affects the site in the area showing the erosion profile that starts at approximately the 16 ft. elevation contour. In addition, a rock revetment has been placed along the front of the subject site (no permit history for the revetment exists) and further inhibits wave action on the site. Without these artificial impediments to wave uprush, it appears that the zone of tidal influence would extend significantly further seaward than it presently reaches.

Substantial evidence demonstrates that historic mean high tidelines shown on the applicant's plans have moved significantly further landward. This evidence includes: 1) the on-site erosional pattern described above, 2) the observations of site conditions at various tidal stages by staff on numerous site visits, 3) the testimony of others who use the vertical public access corridor in Las Flores Creek regularly, 4) the presence of substantial marine algal growth on the rocks comprising the rock revetment located at the foot of the area proposed by the applicant for the construction of a seawall (indicating inundation by seawater for substantial periods of time on a daily basis), and 5) the determination by the State Lands Commission that the adjacent (downcoast) Duke's Restaurant complex occupies state tidelands. Thus, it is evident that the most landward mean high tide line (1928) mapped on the applicant's plans has moved significantly landward from that location.

The 16 ft. elevation contour demarks the present landward extent of regular wave action, but it is only a conservative marker of the true area of wave uprush that will be established further landward if the rock revetment seaward of the relic concrete and asphalt is removed, and the remnant concrete and walls eliminated. Once these structures, which are acting as a seawall, are removed – the area of tidal influence will move further landward.

La Costa beach is a narrow, eroding beach that is presently barely accessible even at low tides in the area of the applicant's parcel, depending on seasonal and annual conditions. In light of the generally accepted predictions for continued global warming and associated sea level rise, the pattern of shoreline erosion and the landward advance of the mean high tide line will likely continue, and potentially will accelerate. Thus, the trend toward the landward encroachment of tidal influence and the resultant loss of sandy beaches and beach access is unlikely to be reversed in the future.

In addition to these factors, the development located on the adjacent parcels is situated seaward of the areas of tidal influence. As noted, the condominiums upcoast are pre-Coastal Act development and extend further seaward than would be approved by the Commission under the policies of Chapter 3 of the Coastal Act. As stated previously, Duke's Restaurant on the downcoast adjacent parcel is clearly located seaward of the mean high tide line. The revetment in front of Duke's Restaurant renders the area impassible to the public at all but the lowest low tides, which may occur on only a few days per year. In addition, Exhibits 2 and 3b illustrate that the structures upcoast from the referenced condominium complex west of the subject site, and the structures downcoast from Duke's Restaurant, east of the subject site, are set back much further landward than either of these developments. Thus, even if the condominiums and Duke's Restaurant were not located within the area of tidal influence, a stringline drawn from these structures would nevertheless derive a falsely seaward-extending line of development when considered in the context of the overall shoreline.

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

Thus the patterns of adjacent development and associated encroachment into the public trust tidelands discussed above argue against the use of a stringline analysis as the appropriate planning tool to determine the most seaward extent of development that is appropriate on the subject site. The Commission has noted in past deliberations and

actions that the stringline used to evaluate infill development does not bind the Commission in anomalous circumstances where the use of the stringline measured from the nearest applicable adjacent corners of development on neighboring lots encourages the seaward location of development as opposed to simple infill development.

These factors suggest that a landward setback of the proposed project is necessary to avoid adverse impacts on the public trust lands and public access and recreation that will otherwise result from the seaward encroachment of the project as presently proposed.

In summary, a stringline analysis ~~is not an appropriate indicator~~ of the seaward extent of the subject site that new development should be authorized to occupy. First, the profile of the coastline along the point dividing La Costa Beach from Las Flores Beach is unique. The coastline juts anomalously far seaward at this location, near the mouth of Las Flores Creek, and was the site of extensive fill placement during the construction of Pacific Coats Highway. The placement of the highway construction fill material further exaggerated this seaward displacement. Second, the development on each side of the subject site is placed much further seaward than would be approved by the Commission if proposed today. The pre-Coastal Act Duke's Restaurant, downcoast, extends onto state tidelands and was the subject of a protracted dispute between the owners and the State Lands Commission. A settlement was eventually reached, allowing Duke's to retain development seaward of the mean high tide line; however, the use of such a point to establish a development stringline for the adjacent parcel is not appropriate. Finally, the pre-Coastal Act condominiums located upcoast of the subject site are placed further seaward than would be approved today, and the development immediately upcoast from the condominiums, and downcoast from Duke's Restaurant, is situated in each case significantly further inland than either the condominiums or Duke's Restaurant. For these reasons, a typical infill stringline analysis does not apply to the facts and unique circumstances of the subject proposal.

The setback line to the 16 ft. elevation contour shown on the applicant's proposed plans (see Exhibit 3a, 4, and 4a) will result in a landward development setback of approximately 43 ft. on the western side of the subject parcel and approximately 48 ft. on the eastern side of the subject parcel, ~~as measured~~ from the development footprint presently shown on the applicant's proposed plans. This setback is more appropriate than a simple stringline analysis for the reasons set forth above, and because this setback is based on site-specific evidence of coastal action and resultant erosion patterns, among other factors. Thus the setback to the 16 ft. elevation contour corresponds to the physical characteristics, location, and patterns of wave action on the actual site, rather than to an arbitrarily located line between drawn between invalid points on adjacent sites.

Setback allows reasonable use of property

As noted, the applicant is opposed to any setback requirement from the stringline drawn between the condominiums next door (upcoast), and Duke's Restaurant. However, it is

important to consider that the applicant is not requesting development of one parcel only in this application. The applicant proposes to combine the development potential of two parcels under one ownership to achieve a doubling of allowable density under the agreement for spot-zoning of the site that the applicant negotiated with the City of Malibu. The difficulty with this method of arriving at a density is that the City has allowed a total of 8 units by authorizing a lot line adjustment that combines one parcel with developable area with a second parcel with almost no developable area, and then redivides the sum to achieve "two" developable parcels and a resultant doubling of density. The proposed lot line adjustment is therefore a redivision of land, rather than a simple lot line adjustment such as might be undertaken to resolve the encroachment of a structure over a neighbor's property line, for example.

The Commission's method of evaluating appropriate densities for particular parcels is different from the method used by the City. As described in detail previously, the Commission applies the density of an appropriate land use designation based on the net acreage or area of the lands in question. By this method, the net area available on the subject site, even with the combination of the two parcels, yields 2 units to 4 units, maximum.

In addition to this calculation of maximum appropriate density for the lands in question, the Commission recognizes the public access implications of the landward extent of tidal influence on beachfront sites. Combining these concerns, the Commission finds that in the case of this application, a way to resolve defining an appropriate development envelope is to establish a setback line (at the 16 ft. elevation contour, as discussed previously), rather than establishing a rigid number of units that may be developed under this application. This setback from the seaward extent of development presently proposed by the applicant (between 43 and 48 feet further landward than the applicant's present plans located the development footprint) allows the applicant to redesign the proposed project to achieve whatever configuration of units is feasible consistent with the restricted development envelope and coastal access mitigation requirements established by the Commission, in addition to the requirements of other applicable special conditions.

The Commission notes that because the applicant's proposal will encroach into the vertical access easement owned by the Coastal Conservancy along the eastern boundary of the westernmost parcel, an alternative vertical access easement is required along the western boundary of the westernmost parcel. (See letter submitted by the Conservancy, in Exhibit 19). The applicant's available development envelope must, therefore, take into consideration the alternative vertical access easement as well as the landward development setback line.

In contrast to the Commission's calculation of an appropriate development envelope on the subject site, the applicant argues that buildout to the stringline between Duke's Restaurant and the adjacent condominiums is essential to the proposed project and that the project should be entitled to the benefit of such a stringline so that 8 condominiums can be constructed on site, all with blue water coastal views. The Commission notes,

however, that while the applicant may have entitlement to some development on the westernmost parcel, or to rebuild the previously burned-out hotel/restaurant complex, the easterly (downcoast) parcel is essentially a flood channel and the applicant has not submitted any information to establish significant development rights on that parcel. It is possible that considered separately, for health and safety reasons and inability to meet basic performance standards for development, that the parcel is virtually unbuildable. Moreover, the Coastal Conservancy has notified the Commission that construction of development cantilevered over the Conservancy's vertical access easement in the stream corridor would be an unacceptable encroachment upon the Conservancy's easement. Therefore, any entitlement the applicant may have to development of the subject site may be limited to the development envelope definable on the western (upcoast) parcel considered as a stand-alone site.

The Commission further notes that a lot line adjustment is solely a discretionary action and that land owners have no entitlement to the redivision of land, particularly where such redivision may double the intensity of development that would otherwise be allowed (as is the case under the City of Malibu's lot line adjustment, which creates a second parcel for development consideration that would not otherwise exist).

Further, and as noted previously, the applicant's assertion that he is entitled to construct 8 condominium units on the subject site is derived primarily from the unique zoning district created and applied to the site by the City of Malibu. The City's development of the multi-family beachfront residence general plan designation and zone district, and the redesignation of this site from the certified Visitor Serving Commercial designation, and associated rezoning to the (then) new Multi-Family Beach Front zone district, was not undertaken in consultation with the Commission or staff, and is not certified, nor was the lot line adjustment (a redivision of land) and consequent doubling of approved residential development on the subject site by the City of Malibu undertaken in consultation with the Commission or staff. Commission staff has also confirmed that the conversion to multi-family residential use was not undertaken in consultation with Caltrans, despite associated impacts to the intersection at Pacific Coast Highway for ingress/egress. The Negative Declaration processed by the City for the subject lot line adjustment and rezoning indicates that the proposed project's traffic impacts were considered to be less than significant. Caltrans, on the other hand, has notified Commission staff that the traffic impacts of the proposed project on Pacific Coast Highway appear to be potentially significant and will definitely impact the Rambla Pacifico/Pacific Coast Highway intersection.

In addition, even by the City's standards, the applicant's proposed lot line adjustment effectively doubles the density that could otherwise be developed on the subject site. This is because even though the City staff has clarified that although the Multi-Family Beachfront zoning designation permits a maximum of 4 units per lot (or 5 with inclusion of an affordable housing unit, which is not proposed by the applicant), or one unit per 1,885 sq. ft. of gross parcel area, the applicant must still fit the allowable density on the net acreage of a site subject to the MFBF zoning. Although it is not clear why the City would

elect to consider allowable densities on a gross area basis, rather than the typical net acreage basis, and the City staff could not offer an explanation for this component of the zoning designation, it is nevertheless obvious that the downcoast parcel containing Las Flores Creek has barely enough buildable area outside of the flood channel to provide for one unit, and the associated parking, septic disposal, setbacks, etc., that must also be considered in final planning approval, even under the City's standards (see Exhibit 3).

Therefore, in authorizing the lot line adjustment shown in Exhibit 3, the City has essentially subdivided the existing developable parcel (technically constituting a land redivision, rather than a simple lot line adjustment) to take developable area from the upcoast parcel for the benefit of the virtually unbuildable parcel downcoast, and thereby facilitating a density of 8 units rather than the 4 or possibly 5 units, that could otherwise have been constructed. This illustrates that although on paper the applicant might qualify under the City's MFBF standards for a 4-unit condominium development on each lot, it is unlikely that final planning approval would have been secured consistent with applicable planning requirements and health and safety requirements, for 4 units on the downcoast parcel (Las Flores Creek) without the land redivision approved by the City and proposed by the applicant in this application.

Moreover, as noted above, the Coastal Conservancy opposes the cantilevered construction of development above the ten (10) ft. wide vertical access easement owned by the Conservancy along the present parcel boundary on the western (upcoast) side of Las Flores Creek. Development of that parcel, even with only one unit, would almost certainly require cantilevering of the subject structures over the channel. Such cantilevering is considered by the Conservancy to be a trespass upon the vertical access easement owned by the Conservancy.

Thus, a development setback to the present area of tidal influence – the 16 ft. elevation contour (shown in Exhibits 3a and 4a)—in conjunction with approval of the proposed lot line adjustment—offers the applicant a beneficial use of a highly constrained site, and one that was acquired by the applicant with full knowledge of these constraints, but protects the public interest in access to the sandy beach in an area where the beach is eroding and already subject to significant periods of daily tidal inundation.

Public Coastal Access Concerns

The Coastal Conservancy owns an unimproved ten (10) ft. wide public vertical easement along the upcoast property line west of Las Flores Creek, which intersects a lateral public access easement traversing the subject parcels that is also owned by the Coastal Conservancy. The Coastal Conservancy has confirmed that the acceptances of these offers-to-dedicate public coastal access easements were recorded against the title to the subject lands in 1982. There are also recorded deed restrictions for lateral and vertical public access recorded against the title to the subject lands; the vertical easement is located on the downcoast (eastern) side of Las Flores Creek, adjacent to the parcel containing Duke's Restaurant and the lateral access easement is located in approximately the same location as the Conservancy's lateral access easement.

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

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

For the reasons discussed in the sections that follow, therefore, the Commission finds that the applicant's proposal can only be approved with revised plans to address the appropriate setbacks and public access mitigation measures made necessary by the site-specific conditions and the pattern of existing development in the nearby area.

B. Shoreline Protective Devices; Geologic Stability

The proposed project includes the deepening of the foundation of an existing seawall that is presently approximately 4 feet high above existing grade and approximately 95 ft. long, and the construction of a return wall that also doubles as the proposed flood control channel wall that would parallel the western bank of the channelized Las Flores Creek corridor. The return wall would extend significantly further seaward than the seawall, as shown in Exhibit 4. The applicant has submitted evidence that the proposed seawall is necessary to protect the proposed septic disposal system from wave attack. The septic disposal system is located as far landward as is feasible under the applicant's present proposal.

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

There applicant states that the shoreline protective device is necessary to comply with minimum plumbing code requirements for the protection of a septic disposal system in the proposed location. There is evidence that such development has the potential to adversely impact natural shoreline processes. Therefore, it is necessary to review the proposed project for its consistency with Sections 30235, 30250(a), and 30253 of the Coastal Act and with past Commission action.

Section 30235 of the Coastal Act states:

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

Section 30253 of the Coastal Act states:

New development shall:

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

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

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

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

Wave Uprush

Although the proposed structure will be located landward of the 1928 mean high tide line, site specific evidence of erosion due to wave action at approximately the 16 ft. elevation contour shown on the applicant's plans indicates that the wave uprush zone affecting the site has moved significantly landward from that of 1928. The applicant's coastal engineer has indicated that although the proposed project would be constructed seaward of the maximum wave uprush limit, the condominiums will be supported by a concrete friction pile and grade beam foundation system and will not require any form of shoreline protection to ensure structural stability. In addition, the proposed project includes the installation of a new bottomless sand filter septic system. The Commission notes that the proposed septic system is located as far landward as feasible. However, the seaward extent of the septic system and leachfield will still be within the wave uprush limit and will require a shoreline protection device to ensure the stability of the system. Therefore, the Commission notes that the proposed bulkhead is necessary to protect the proposed septic system and leachfield from wave uprush and erosion.

In addition, the flood channel of Las Flores Creek bounds the eastern side of the subject site. The portion of the flood control wall proposed by the applicant that parallels the portion of the site containing the septic disposal system is necessary to protect the septic system from flooding and erosion.

Based on the above discussion, the Commission finds that the proposed bulkhead is required to protect the septic system that will service the proposed condominium development. The Commission further finds that the proposed bulkhead and that portion of the flood control channel/return wall that will be located adjacent to the septic disposal system will be subject to wave or stream channel action during storm and high tide events. Therefore, the following discussion is intended to evaluate the impacts of the proposed bulkhead and return walls on the beach, based on the information which the applicant has submitted to identify the location of the structure and on shoreline geomorphology.

Beach Scour

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

The applicant's coastal engineering consultant indicates that the proposed bulkhead and flood control/return walls will be located seaward of the maximum wave uprush limit and will, therefore, periodically be subject to wave action. In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering: "Seawalls usually cause accelerated erosion of the beaches fronting them and an increase in the transport rate of sand along them."¹ In addition, experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement regarding the adverse effects of shoreline protective devices:

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

¹ "Saving the American Beach: A Position Paper by Concerned Coastal Geologists," Skidaway Institute of Oceanography, March 1981, page 4.

wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.²

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

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

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall, rapidly remove sand from the beach.³

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

Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring . . . Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.⁴

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

Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide enough sacrificial sand during storms to

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

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

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

provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms.⁵

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

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

As set forth previously, the subject site is located on La Costa Beach, which is a narrow and eroding beach. The applicants' coastal engineering consultant has indicated that the proposed seawall and return wall will be acted upon by waves during storm conditions. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a bulkhead and return walls on the subject site, then the subject beach would also accrete at a slower rate. The Commission notes that many studies performed on both oscillating and eroding beaches have concluded that a loss of beach occurs on both types of beaches where a shoreline protective device exists. Therefore, the Commission notes that the proposed bulkhead and return walls, over time, will result in potential adverse effects to the beach sand supply, resulting in increased seasonal erosion of the beach, and longer recovery periods.

In addition, the impacts of potential beach scour are important relative to beach use for two primary reasons. Public access is one major concern. The subject property contains both a public vertical access easement and a lateral access easement owned by the Coastal Conservancy. If the beach scours at the base of the seawall, even minimal scouring in front of seawall and flood control/return wall that will extend an additional 65 ft. (approximately) further seaward than the seawall on the eastern side of the proposed project. This wall doubles as a flood control channel extension for Las Flores Creek, but will act as a return wall/groin on the beach. The second impact relates to the potential turbulent ocean condition that may be created. Scour at the face of a seawall and the deflection of wave energy off the return wall will result in greater interaction with the wall and, thus, make the ocean along this stretch of La Costa Beach more turbulent than it would be normally be along an unarmored beach area. Thus, the Commission has

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

ordinarily required that shoreline protection devices be located as far landward as possible, in order to reduce adverse effects from scour and erosion. In the case of this project, the Commission notes that the proposed seawall will be located as far landward as feasible in order to provide protection for the proposed septic system, which has also been located as far landward as feasible, in order to minimize adverse effects from scour and erosion. The return wall, however, extends an additional approximately 65 feet further seaward than the seawardmost extent of the proposed seawall. The applicant has not submitted any coastal engineering data to analyze the affects of this structure on shoreline processes; however, staff notes that the wall will channelize and focalize the mouth of Las Flores Creek and serve as a return wall on that portion of the sandy beach. The return wall will have end scouring effects and will also affect the distribution of sediments flowing from Las Flores Creek. In addition, as noted in the background section of this report, there is ample site-specific evidence to conclude that the area of beach that will be occupied by the proposed return/flood control wall is situated within the area that is subject to tidal inundation, and this the structure will be located within the area subject to a lateral access easement owned by the Coastal Conservancy. This aspect of the proposed project will be addressed in the next subsection.

As discussed above, the Commission notes that the new seawall and septic system will be located as far landward as possible. However, the Commission further notes that the purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on site and that no shoreline protective device is required to protect the residence authorized by this permit. If the septic system approved under this permit were replaced or abandoned, however, then the seawall and return walls approved under this permit to protect the septic system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating the shoreline protective device further landward. Additionally, any future improvements to the proposed seawall that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access.

Therefore, to ensure that the proposed project does not result in new future adverse effects to shoreline sand supply and public access and that future impacts are reduced or eliminated Special Condition 19 (Limited Term for Shoreline Protective Device) requires the applicant to record a deed restriction which provides that a new coastal development permit for the shoreline protective device authorized this permit shall be required if the proposed septic system is replaced or abandoned for any reason (including the installation of a sewer system along Pacific Coast Highway) and that if a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the septic system, then the shoreline protective device authorized by this permit shall be removed. Special Condition 1 (Assumption of Risk) also prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device.

In addition, in past permit actions, the Commission has required that all new development on a beach, including the construction of new single family residences or shoreline protection devices, provide for lateral public access along the beach in order to mitigate adverse effects to public access from increased beach erosion. In this case, the Commission notes that the Coastal Conservancy has accepted offers to dedicate both lateral and vertical public access easements on the subject site. The Coastal Conservancy staff have notified Commission staff verbally that the applicant's proposal will impair their easements and that they oppose the cantilevering of condominiums over the flood channel wall, and therefore potentially over their vertical, or relocated vertical access easement that is presently shown on documents submitted by the applicant as lying along the westernmost bank of the Las Flores Creek Channel. The Coastal Conservancy staff have indicated that they would favorably consider an alternative vertical access easement along the westernmost boundary of the westernmost subject parcel. The applicant has conceptually indicated that a vertical access easement of at least five (5) feet in width could be accommodated within the subject parcel on the Unocal Gasoline Station side (the western parcel boundary). Special Conditions 3, 11, and 15 implement the implementation of this alternative vertical access easement to mitigate the impacts of the proposed project upon the Conservancy's existing vertical access easement. The Commission notes that the lateral public access easement provides for public access to the area of the sandy beach 25 feet landward of the ambulatory mean high tide line. As noted previously, there is ample site specific evidence indicating that the mean high tide line location, while not specifically determined by the State Lands Commission on the subject site, has moved significantly landward of the 1928 mean high tide line. As further noted above, a landward setback line is necessary to avoid the seaward encroachment of development beyond the wave uprush area that would deprive the public of the right to use this easement for public access. Special Condition 3 (Revised Plans) requires the applicant submit revised project plans to setback all components of the subject development to the 16 ft. elevation contour shown on the applicant's proposed plans, including the return wall.

End Effects

End scour effects involve the changes to the beach profile adjacent to the shoreline protection device at either end. One of the more common end effects comes from the reflection of waves off of the shoreline protection device in such a way that they add to the wave energy which is impacting the unprotected coastal areas on either end. In addition, the Commission notes that the literature on coastal engineering repeatedly warns that unprotected properties adjacent to any shoreline protective device may experience increased erosion. Field observations have verified this concern. Although it is difficult to quantify the exact loss of material due to end effects, in a paper written by Gerald G. Kuhn of the Scripps Institute of Oceanography, it is concluded that erosion on properties adjacent to a rock seawall is intensified when wave runup is high.⁶

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

An extensive literature search on the interaction of seawalls and beaches was performed by Nicholas Kraus in which he found that seawalls will have effects on narrow beaches or beaches eroded by storm activity. His research indicated that the form of the erosional response to storms that occurs on beaches without seawalls which are adjacent to beaches with seawalls is manifested as more localized toe scour, with end effects of flanking and impoundment at the seawall.⁷ Dr. Kraus' key conclusions were that seawalls could be accountable for retention of sediment, increased local erosion and increased end erosion. Kraus states:

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

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

Results to date indicate that erosion at the ends of seawalls increases as the structure length increases. It was observed in both the experimental results and the field data of Walton and Sensabaugh (1978) that the depth of excess erosion is approximately 10% of the seawall length. The laboratory data also revealed that the along-coast length of excess erosion at each end of the structure is approximately 70% of the structure length.⁸

A more comprehensive study was performed over several years by Gary Griggs, which concluded that beach profiles at the end of a seawall are further landward than natural profiles.⁹ This effect appears to extend for a distance of about six-tenths of the length of the seawall and represents both a spatial and temporal loss of beach width directly attributable to seawall construction. These end effects would be expected only when the seawall was exposed to wave attack. Under equilibrium or accreting beach conditions, this scour will likely eventually disappear during post-storm recovery. The Commission

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

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

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

notes that end effect erosion may be minimized by locating a proposed shoreline protection device as far landward as possible in order to reduce the frequency that the seawall is subject to wave action. In the case of this project, the Commission notes that the proposed seawall will be located as far landward as feasible consistent with the need to protect the proposed septic disposal system. However, the flood control channel/return wall will be located almost 65 feet further seaward than the seawardmost extent of the proposed seawall. The applicant has not submitted coastal engineering plans for the return wall or any analysis of why the wall is necessary for the proposed project. In addition, Special Condition 3 (Revised Plans) requires the applicant to relocate the proposed development, including the return wall, to a location no further seaward than the a16 ft. elevation contour shown on the proposed plans, to minimize the adverse effects to shoreline sand supply from end effects.

Seaward Encroachment

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

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

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

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

An analysis of pre-Coastal Act documents, including aerial photographs and maps, indicates that the form of the coastline containing Duke's Restaurant downcoast, the adjacent condominium complex upcoast, and the applicant's proposed site extends significantly further seaward than the up- and down-coast shoreline beyond these sites. This is partly because due to the natural contours of the shoreline but also partly due to

the placement of large quantities of artificial fill generated by the grading and construction of Pacific Coast Highway. This portion of the coastline juts considerably further seaward than is typical of the adjacent coastline in this area, but the effect is nevertheless exaggerated by the placement of the artificial fill.

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

In summary, a stringline analysis is not an appropriate indicator of the seaward extent of the subject site that new development should be authorized to occupy. First, the profile of the coastline along the point dividing La Costa Beach from Las Flores Beach is unique. The coastline juts prominently seaward at this location, near the mouth of Las Flores Creek, and was the site of extensive fill placement during the construction of Pacific Coats Highway, further exaggerating this seaward displacement. Second, the development on each side of the subject site is placed much further seaward than would be approved by the Commission if proposed today. The pre-Coastal Act Duke's Restaurant, downcoast, extends onto state tidelands and was the subject of a protracted dispute between the owners and the State Lands Commission. A settlement was eventually reached, allowing Duke's to retain development seaward of the mean high tide line; however, the use of such a point to establish a development stringline for the adjacent parcel is not appropriate. Finally, the pre-Coastal Act condominiums located upcoast of the subject site are placed further seaward than would be approved today, and the development immediately upcoast from the condominiums, and downcoast from Duke's, is situated in each case significantly further inland than either the condominiums or Dukes. For these reasons, a typical infill stringline analysis simply does not apply to the facts and unique circumstances of the subject proposal. Therefore, the Commission requires Special Condition 3 (Revised Plans) to setback the proposed development to a line no further seaward than the 16 ft. elevation contour.

In addition, an unauthorized rock revetment is located along the beach on the subject site, seaward of the proposed seawall. The rocks take up sandy beach area, and the applicant has represented to staff that the consulting coastal engineer determined that the rocks were not necessary from a shoreline protection perspective and could be removed. Therefore, to ensure that all development on site is located consistent with the setback line required in the final project plans revised pursuant to the requirements of Special Condition 3, the Commission requires Special Conditions 3 and 13 to implement

the removal of the revetment. In undertaking these measures, the Commission also requires that the applicant undertake construction in accordance with the requirements of Special Condition 7 (Construction Responsibilities and Debris Removal). Special Condition 8 requires the applicant to obtain a coastal development permit for all development that might otherwise be exempt from permit requirements to ensure that such development is considered pursuant to Coastal Act policies concerning shoreline protective devices and coastal hazards, and to ensure that there is no future encroachment seaward of the development authorized herein.

SEA LEVEL RISE...

Geologic Recommendations

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

The Commission finds it necessary to impose Special Condition 6 (Geologic Recommendations) to ensure that the consultant's recommendations are included in the final project plans and designs.

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

C. Public Access

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

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

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

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

Section 30220 of the Coastal Act states:

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

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

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

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential effects on shoreline sand supply and public access in contradiction of the policies set forth under Sections 30211 and 30221 of the Coastal Act. The proposed project is located on La Costa Beach, just upcoast from Las Flores Beach, and a vertical public access easement transects the two subject parcels, which are under the same ownership. The Coastal Conservancy owns the vertical access easement and a lateral access easement that traverses the beachfront area of both parcels. The language of the lateral access easement states that it is comprised of the area measured 25 ft. landward from the Mean High Tide Line, but that public access shall not come

closer than within five (5) feet of any structure. This means that to ensure that the proposed new development does not impair the area subject to this easement, new development must be located at least thirty ft. landward of the Mean High Tide Line.

The State Lands Commission has not made a formal determination of where the Mean High Tide Line is on the subject parcel. The State Lands Commission has a specific process for undertaking such a determination, which requires a minimum of several years of mean high tide line survey data, collected at prescribed seasonal windows, annually.

Although the 1928 Mean High Tide Line marked on the applicant's plans is the landward most mean high tide line identified by the applicant, as noted in previous sections substantial site specific evidence indicates that the area of tidal influence is substantially further landward than was the case at the time of the 1928 MHTL survey.

Previous sections of this report detail the site specific evidence that the MHTL has moved significantly further landward than the 1928 MHTL. The Commission has also established elsewhere in these findings a landward development setback to the 16 ft. elevation contour on the applicant's proposed plans. This setback represents a landward setback of the applicant's proposed development footprint (other than the return wall, which as proposed extends further seaward than the proposed condominiums) by 43 feet on the western side of the subject site, to 48 feet on the eastern side of the proposed development, in the area adjacent to Las Flores Creek. This setback is approximately 60 feet landward from the 1928 MHTL shown on the applicant's proposed plans.

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

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

that goes seaward through the process known as accretion and landward through the process known as erosion.

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

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

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

As stated previously, the proposed project includes the construction of a flood control channel wall that will also serve as a return wall on the western side of Las Flores Creek. The applicant additionally proposes to construct a seawall at approximately the 16 ft. elevation contour (the same contour the Commission has herein determined to be the development setback line for purposes of revised plans, Special Condition 3). The return wall extends almost 60 feet further seaward than the bulkhead, however, crossing even the 1928 MHTL at the furthest seaward point.

The Commission notes that interference with shoreline processes by a shoreline protective device or return wall has a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, which result from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand, as shore material is no longer available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect that this has on the public is a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by causing accelerated and increased

erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline, eventually affecting the profile of a public beach. Fourth, if not sited as far landward as possible, in a location that insures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate wave energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

In past permit actions, the Commission has required ~~new shoreline protection~~ devices to be located as far landward as possible in order to reduce adverse effects on sand supply and public access from the development. In the case of this project, the Commission notes that the new bulkhead and septic system will be located as far landward as possible. However, the Commission further notes that the proposed flood channel/return wall proposed seawall will result in the seaward extension of development beyond that necessary for the construction of the subject condominiums. Special Condition 3 (Revised Plans) requires the deletion of that portion of the return wall that extends beyond the seaward footprint of the proposed seawall. In addition, this portion of the return wall appears to be proposed within the Coastal Conservancy's vertical public access corridor and further, bisects the Conservancy's public lateral access easement corridor. No construction is authorized within these easements, thus Special Condition 3 requires the deletion of this portion of the return wall/flood channel wall from the applicant's plans.

Even with the deletion of the portion of the applicant's plans that extends seaward of the 16 ft. elevation contour, the implementation of the remainder of the flood channel improvements proposed by the applicant, which will widen the Las Flores Creek channel by approximately 20 feet, combined with the applicant's lot line adjustment and construction design, may seriously impair or preclude altogether the use of—the Coastal Conservancy's vertical accessway along the western side of Las Flores Creek.

For this reason, Special Conditions 3 (Revised Plans), 11 (Offer to Dedicate Vertical Public Access), and 15 (Public Access Plan and Construction of Access Improvements) are necessary. Special Condition 11 requires the applicant to record an offer to dedicate a new vertical access corridor along the westernmost boundary of the applicant's parcel that will allow for the establishment of a finished, constructed easement corridor at least five (5) feet in width. Special Condition 15 requires the applicant to obtain Coastal Conservancy review and approval of the associated access plan, and to construct the improvements to the vertical accessway prior to commencement of any other construction-related activity. In addition, Special Condition 3 requires the applicant to delete a proposed 14 ft. high "privacy" wall shown on the applicant's plans in the general location of the new vertical public access easement. Any fence or other barrier structure in this area must be shown in the vertical access construction plan required by Special Condition 15 and must be compatible with the provision of public access and the

protection of public coastal views within the visual corridor required on beachfront parcels.

In addition, to ensure that the proposed improvements for vehicle ingress and egress associated with the gated site do not impair public access to the vertical and lateral access easements owned by the Conservancy, or the new vertical access easement and improvements required by the applicable special conditions set forth herein, the Commission finds it necessary to impose Special Condition 5 (Construction of Sidewalk). The Commission has imposed this condition routinely in past permit actions authorizing construction along Pacific Coast Highway – the primary public access transportation route in Malibu. The high speed, heavy traffic along Pacific Coast Highway, which will be increased by at least six vehicle trips per day per unit constructed on the site according to the calculations performed by the City of Malibu, creates a safety hazard for pedestrians seeking to use the onsite public accessways to the La Costa Beach area of the coast. Special Condition 5 will mitigate the impacts of the proposed project upon public coastal access by providing a safe landing point along Pacific Coast Highway and better managing conflicts between cars turning in and out of the subject site, and pedestrians accessing the vertical public accessway on the site.

Traffic congestion at the intersection of Pacific Coast Highway and the subject site, which is also opposite the junctions of Rambla Pacifico Road, and the adjacent Las Flores Canyon Road, may increase potential hazards to drivers and pedestrians seeking coastal access on or near the subject site. Special Condition 12 requires the applicant to coordinate the provision of traffic signals, lane striping and any other measures that Caltrans may find necessary to ensure the safe operation of the intersection in light of the additional traffic generated by the applicant's proposed project.

To ensure that the proposed project does not result in new future adverse effects to public access, Special Condition 8 requires the applicant to record a deed restriction that would prohibit any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit if such activity extends the seaward footprint of the subject shoreline protective device, and further requires the applicant to obtain a coastal development permit for future development that would otherwise be exempt from further review pursuant to the Coastal Act and the Commission's administrative regulations. Such further review by the Commission or Commission staff will ensure that future development does not adversely affect the public access easements or improvements that traverse the subject site.

Likewise, the Commission further notes that the purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on the subject site and that no shoreline protective device is required to protect the residence authorized by this permit. If the septic system approved under this permit were replaced or abandoned, then the bulkhead and return walls approved under this permit to protect the septic system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating it further

landward. As a result, Special Condition 19 requires the applicants to record a deed restriction that provides that a new coastal development permit for the shoreline protective device authorized this permit shall be required if the proposed septic system is replaced or abandoned for any reason (including the installation of a sewer system along Pacific Coast Highway) and that if a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the septic system, then the shoreline protective device authorized by this permit shall be removed.

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

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

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

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

The applicant's project, as proposed would potentially build over, or encroach upon the Coastal Conservancy's vertical access easement on the western side of Las Flores Creek. The Conservancy staff has notified Commission staff of their objection to the cantilevering of the proposed condominiums over the channel of Las Flores Creek and over their vertical access easement. The Conservancy has provided a letter regarding the impacts of the proposed project on the Conservancy's access easements (Exhibit 19). To mitigate the adverse impacts to the Conservancy's ten (10) ft. wide vertical access easement, Special Conditions 3, 11, and 15 require the provision of an alternative five (5) ft. wide vertical access easement – and construction of the improvements necessary to open that easement—along the westernmost boundary of the applicant's site (on the Unocal gasoline station/adjacent condominium side of the property, upcoast). The narrower corridor is necessary to fit the easement into the triangular site which is most constrained at the Pacific Coast Highway entrance, but the additional mitigation provided by the actual construction of the vertical easement, which would then provide relatively reliable public access to the Conservancy's lateral public access easement along the subject site, and to approximately one mile of La Costa beach, upcoast.

In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. The Commission has determined, therefore, that to ensure that the applicant clearly understands that such postings are not permitted without a separate coastal development permit, it is necessary to impose Special Condition 4 to ensure that similar signs are not posted on or near the proposed project site and that a coastal development permit or amendment to this coastal development permit shall be required prior to the posting of signs on the subject property. The Commission finds that if implemented, Special Condition 4 will protect the public's right of access to the sandy beach below the mean high tide line. The Commission notes that Special Condition 11 (Vertical Access Easement) specifically allows for the posting of signs identifying the presence of the public vertical access corridor on the subject parcel at a location visible from Pacific Coast Highway.

The construction activities authorized in this permit action may cause temporary disturbance within the area of public access easements on site. To ensure that obstructions of public access, and potential hazards to pedestrians using public accessways are avoided, Special Conditions 7 (Construction Responsibilities and Debris Removal) and 9 (Removal of Excavated Material) are necessary. Fully implemented, these conditions will ensure that debris and graded materials are promptly and properly removed from the site and properly disposed of, and that management of the site and related construction activities is undertaken in a way that does not result in hazards to beach users.

For all of these reasons, therefore, the Commission finds that as conditioned, the proposed project is consistent with Sections 30210, 30211, 30212, and 30220 of the Coastal Act.

D. Environmentally Sensitive Habitat Area

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states that:

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

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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

In addition, the Coastal Act defines environmentally sensitive habitat areas (ESHAs) as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. Section 30240 of the

Coastal Act permits development in areas that have been designated as ESHA only when the location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value.

The portion of Las Flores Creek within the applicant's property is both channelized and highly disturbed and does not presently support riparian habitat. During times of significant waterflow in the stream channel, however, the federally endangered Tidewater goby could potentially be present. To minimize the potential for adverse impacts to sensitive resources, including goby populations that may be present at the time the applicant exercises this permit, Special Condition 18 (Timing of Construction) requires that grading or construction within the floodplain of Las Flores Creek not be undertaken during the rainy season, defined as November 1 through March 31, annually. In addition, Special Condition 2 (Biological Monitoring and Construction Responsibilities) requires preconstruction monitoring of the flood channel for the presence of the Tidewater goby, and requires the notification of the Executive Director and the National Marine Fisheries Service (NMFS) if the fish is detected. The special condition authorizes the applicant to proceed with construction in such case only with the consent of the Executive Director and NMFS, and in conjunction with the implementation of an approved implementation schedule and mitigation plan to avoid or minimize impacts upon the Tidewater goby.

In addition, the applicant has obtained a Streambed Alteration Agreement from the State Department of Fish and Game which contains detailed conditions regarding construction practices within the stream corridor.

The Commission further requires the applicant to implement construction management and debris and excess cuttings removal practices consistent with limiting the potential discharge of materials and sediments into the stream corridor. These requirements are set forth in Special Conditions 7 and 9.

Finally, although the channelized portion of Las Flores Creek does not presently support significant vegetation, the waterway may still be used seasonally for resting or feeding by migratory waterfowl and other wildlife. Night lighting of the corridor would disturb roosting waterfowl and potentially interrupt the use of the corridor by wildlife. To ensure that such disturbance is not allowed, Special Condition 20 prohibits any exterior night lighting from being directed into the stream corridor from the condominiums constructed on the subject site adjacent to the corridor.

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

E. Visual Resources

Section 30251 of the Coastal Act states:

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

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

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

In this case, the applicant proposes to construct 8 two-story condominiums on two combined vacant beachfront parcels, one containing Las Flores Creek. As stated above, Coastal Act Section 30251 requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The Commission notes that the construction of new residential development provides for the opportunity to

enhance public views, where such views have been significantly degraded by past development, through the creation and maintenance of public view corridors, consistent with Section 30251 of the Coastal Act. In past permit actions, the Commission has found that new residential development, such as the proposed project, should be designed to provide for a public view corridor of no less than 20 percent of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway, as seen in CDP 4-99-154 (Montanaro), CDP 4-99-153 (Ioki), and CDP 4-99-155 (Ioki). In the case of the proposed project, the Commission notes that the subject site (both parcels combined) is approximately 104 feet in width, thus the applicable public view corridor would be just over 20 feet in width. The width of the Las Flores Creek channel that remains open to public view (after subtracting the portion of the channel overhung by the cantilevered condominium construction proposed by the applicant) is approximately 28 feet in width.

The applicant proposes to construct a fourteen (14) ft. high "privacy" wall on the westernmost (upcoast) boundary of the subject site. This wall will interfere with public coastal views to and along the coast from Pacific Coast Highway, which is designated as a scenic coastal highway, and will be located within the view corridor provided by the side yard setback and required by the policies of the certified Malibu/Santa Monica Mountains Land Use Plan, which the Commission has relied on for guidance in evaluating development in the Malibu area. Special Condition 3 (Revised Plans) requires the applicant to delete this wall from the project plans, thereby rendering the project consistent with the Coastal Act policies protective of public coastal views.

To ensure that public coastal views will be protected, Special Condition 16 requires the applicant to provide evidence that the two individual parcels upon which the total project will be constructed have been tied together to ensure that no additional divisions of land or separate conveyances result in a further reduction of the view corridor established within the Las Flores Creek Channel.

Therefore, the Commission finds that the proposed project, as conditioned above, is consistent with Section 30251 of the Coastal Act.

F. Water Quality

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

Section 30231 of the Coastal Act states:

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

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

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

Such cumulative impacts can be minimized through the implementation of drainage and polluted runoff control measures. In addition to ensuring that runoff is conveyed from the site in a non-erosive manner, such measures should also include opportunities for runoff to infiltrate into the ground. In order to ensure that adverse effects to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the applicants to incorporate filter elements that intercept and infiltrate or treat the runoff from the site. This plan is required pursuant to Special Condition 10 (Drainage and Polluted Runoff Control Plan). Such a plan will allow for the infiltration and filtering of runoff from the developed areas of the site, most importantly capturing the initial, "first flush" flows that occur as a result of the first storms of the season. This flow carries with it the highest concentration of pollutants that have been deposited on impervious surfaces during the dry season. Additionally, the special condition requires the applicant to monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

Finally, the applicant proposes to construct a new 6,000 gallon septic system. In order to reduce the size of the required leachfield for the proposed septic system and to allow the system to be located as far landward as possible, the applicant proposes to install an alternative bottomless sand filter septic system. This system is also designed to produce treated effluent with reduced levels of organics, biochemical oxygen demand, and total

suspended solids, while occupying only 50 percent of the area which would otherwise be required for a conventional septic system and leachfield. As proposed, the septic system will be located as landward as possible. In addition, the applicant has also submitted approval from the City of Malibu Environmental Health Department stating that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum health code standards for septic systems have been found protective of coastal resources and take into consideration aspects such as the percolation capacity of soils along the coastline and the depth to groundwater.

The Commission has found in past permit actions that conformance with the provisions of the plumbing, health, and safety codes is protective of resources and serves to minimize any potential for wastewater discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with Section 30231 of the Coastal Act.

G. Cumulative Impacts of New Development

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

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

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

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

As described previously, the proposed project includes the construction of an 8-unit multi-family residential development on two existing parcels. The Coastal Act requires that new development, including subdivisions and multi-family projects, be permitted only where public services are adequate and only where public access and coastal resources will not

be cumulatively affected by such development. The proposed development is located on the coastal terrace at the base of the Santa Monica Mountains where the most extensive infrastructure and services are found. In past permit actions, the Commission has looked to the land use designations of the Malibu/Santa Monica Mountains Land Use Plan for guidance on the maximum density and intensity of land use that may be permitted in any particular area.

While the LUP is no longer legally binding within the City of Malibu, the land use designations are instructive on the level of density that the Commission has previously found to meet the Chapter 3 policies of the Coastal Act. In this case, the LUP designates the proposed project site for "Visitor Serving Commercial", uses. As such, the LUP does not establish any residential density range for the proposed project site. The Commission may look to residential densities for properties in the surrounding area for guidance. In this case, the property directly adjacent to the west (upcoast) of the project site is designated for the Residential IVa Category, which allows 6 to 8 dwelling units per acre. Further west, a long stretch of the beachfronting lots are designated for the Residential IIIb category, which allows 4-6 dwelling units per acre. East (downcoast) of the proposed project site, the adjacent property is designated for "Visitor-serving Commercial" use. Beyond that parcel further downcoast, several beachfront parcels are designated Residential IVc which allows 10-20 dwelling units per acre. Further east (downcoast) is an area of parcels designated Residential IVb (8-10 units per acre). The proposed project includes 8 units totaling approximately 19,000 sq. ft. of development. As described above, the Commission finds it necessary to establish a maximum development footprint for the project in order to ensure that the development provides adequate setback from State lands and to minimize impacts from wave hazard. As the project is modified to satisfy this requirement (Condition No.3, Revised Plans), it is likely that the total number of units may be fewer than the eight now proposed.

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

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86,

(Malibu Pacifica); 5-83-43 (Heathercliff); 5-83-591 (Sunset-Regan); and 5-85-748, (Ehrman & Coombs); 5-90-103 (Solar Systems Specialists); 4-91-755 (Lunita Pacifica); 4-91-754 (Trancas Town); and 4-98-281(Cariker). The TDC program has resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a). The Commission has found that the retirement of lots through TDC program, is a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a) of the Coastal Act.

The applicants propose to subdivide two parcels of land into eight multi-family residential condominium units. The subject two parcels are existing legal parcels. Therefore, no cumulative impact mitigation requirements shall be imposed as a condition of approval of this permit regarding the legality of the existing parcels. However, the proposed project will result in the creation of additional multi-family units with an incremental contribution to cumulative impacts such as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation. Therefore, the Commission determines that it is necessary to impose a TDC requirement on the project, in order to insure that the cumulative impacts of the creation of additional multi-family units are adequately mitigated. Through past permit actions, the Commission has established that one transfer of development credit must be provided for each multi-family unit (minus the number of existing parcels comprising the project site), unless the units are less than 2,500 sq. ft. in size. In that case, the TDC requirement is calculated on the basis of one TDC per 2,500 sq. ft. of gross structural area of living space.

This permit has, therefore, been conditioned (Special Condition No. 17) to require the applicant to mitigate the cumulative impacts of the subdivision of this property, either through purchase of TDCs or participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. The number of TDCs to be retired must be based on the total number of units included in the revised project, as modified in accordance with Special Condition No. 3. The Commission finds that only as conditioned, is the proposed project is consistent with Section 30250 of the Coastal Act.

H. Local Coastal Program

Section 30604 of the Coastal Act states:

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

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

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

I. CEQA

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

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

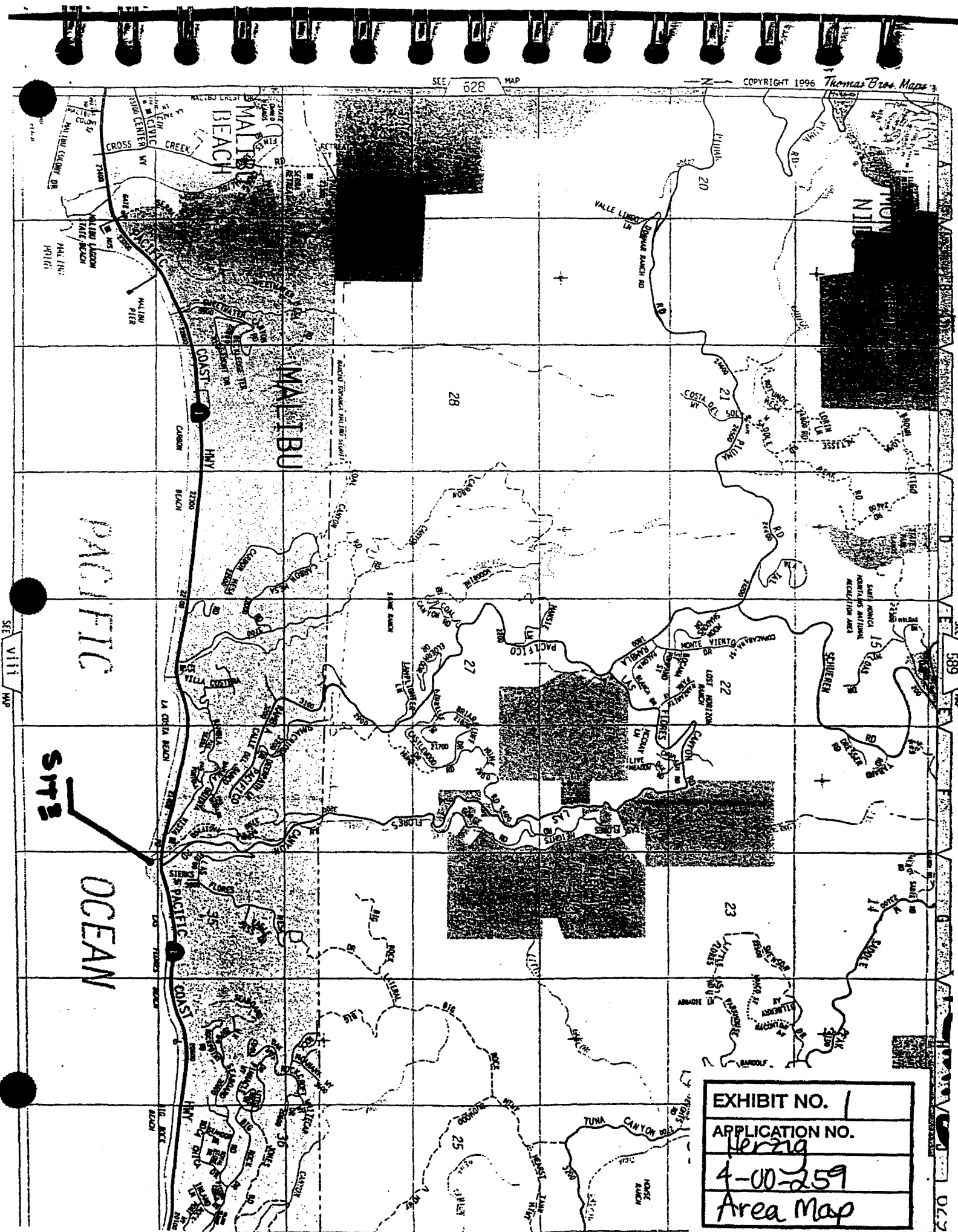


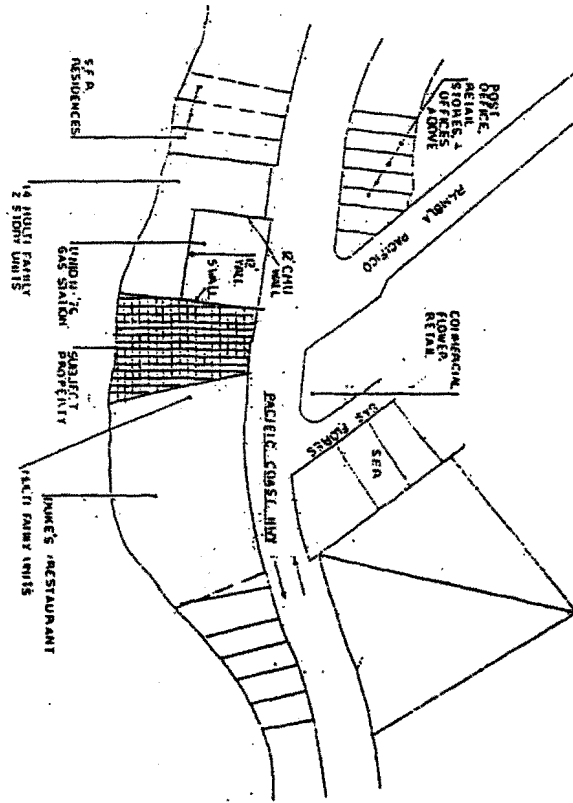
EXHIBIT NO. 1
APPLICATION NO. Herzig
4-00-259
Area Map

O C E A N U S

VICINITY MAP
1"=100'-0"



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



O C E A N U S SKYLAR BROWN:
2100 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90263
ONE SYCAMORE MEADOWS DRIVE MALIBU, CALIF.

EXHIBIT NO. 2
APPLICATION NO. *Herzog*
4-00-259
Adjacent Develop.

ITEM 7

PREPARED FOR: MALIBU BEACHMENT PROTECTION
ON OCTOBER 1998: THE INFORMATION FROM THE
NOV. 1998: CHURCH INVESTIGATION
REPORT THE MALIBU BEACHMENT

DATE	DESCRIPTION	AMOUNT	BALANCE
1	100.00	100.00	100.00
2	100.00	200.00	200.00

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 317. COST: _____
 318. OTHER: _____
 319. SIGNATURE: _____
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SCALE 1"=8'

Proposed Property Line

Existing Property Line

Per Applicant Encroachment

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A

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4

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FYI

EXIT

APF

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1071

EXHIBIT NO. 3

APPLICATION NO.

4-00-259

Lot Line Adjustment

E.A.P. New York
10-9, 2-7-68
- GARDNER - FBI
FBI NEW YORK

NY - 100

$$v_E = z/101$$



2

$\{ = \text{stream corridor}$ applicant's representation
with vertical

Pacific Coast Highway



Bridge over PCH

Las Flores Creek

EXISTING CONDITIONS PLAN

Duke's Restaurant

Palm trees

16' elev. contour

Revetment

Remnant foundations

Pacific Ocean

↑ adjacent Unocal Station

↑ adjacent condos

EXHIBIT NO. 3a
APPLICATION NO. Herzig
4-00-259
Existing Conditions

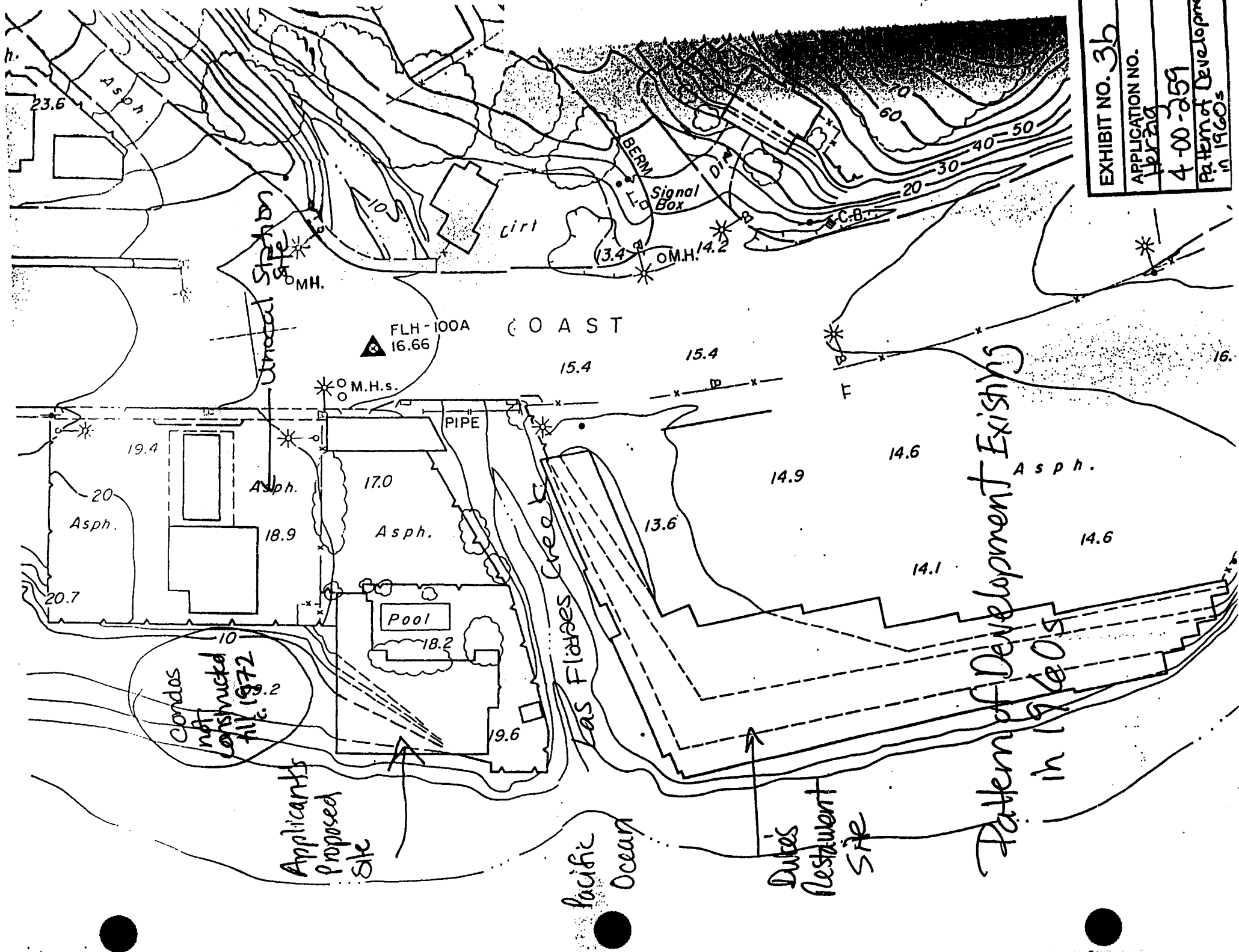


EXHIBIT NO. 3b
APPLICATION NO. 4-00-259
Pattern of Development in 1960s

PACIFIC COAST HIGHWAY

Pacific Coast Highway

LEGEND
2' DRAIN
2' DRAIN
2' DRAIN
TOTAL 2' DRAIN
2' DRAIN
2' DRAIN

SITE PLAN - A-1-0

SECTION
1/2" = 1'



Las Flores Creek

elevation contour

proposed seawall

seawall to be setback to development line, Spec. Cond. 3
See also Ex. 4a

stairs to beach

rock revetment

rock revetment

Pacific Ocean

OCEANUS

SKYLAR BROWN: ARCHIT

EXHIBIT NO. 4

APPLICATION NO.

Herzig

4-00-259

Site Plan

↑ condominiums (adjacent)

Duke's Restaurant ↑

Pacific Coast Hwy.



← Illustration of vertical access easement on western parcel boundary.

(not to scale)

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

Las Flores Creek

bulkhead

Pacific Ocean

EXHIBIT NO 4b

APPLICATION NO.

Herzog

4-00-259

new vertical public access corridor

O C E A N U S

3108 BYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA 90263 310-457-9110
SKYLAR BROWN: ARCHITECT

3108 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90263

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
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31	32	33	34	35	36	37	38	39	40

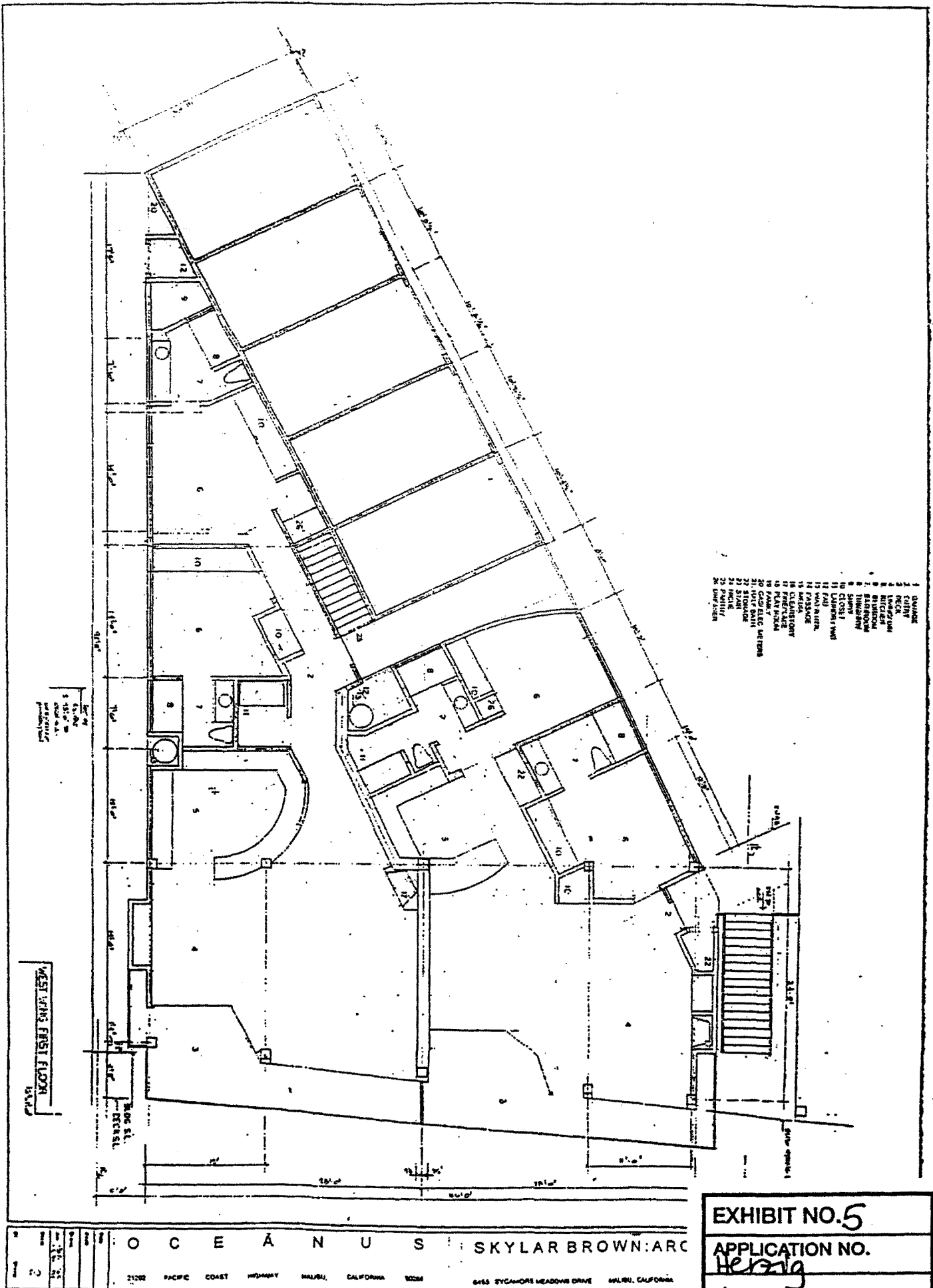
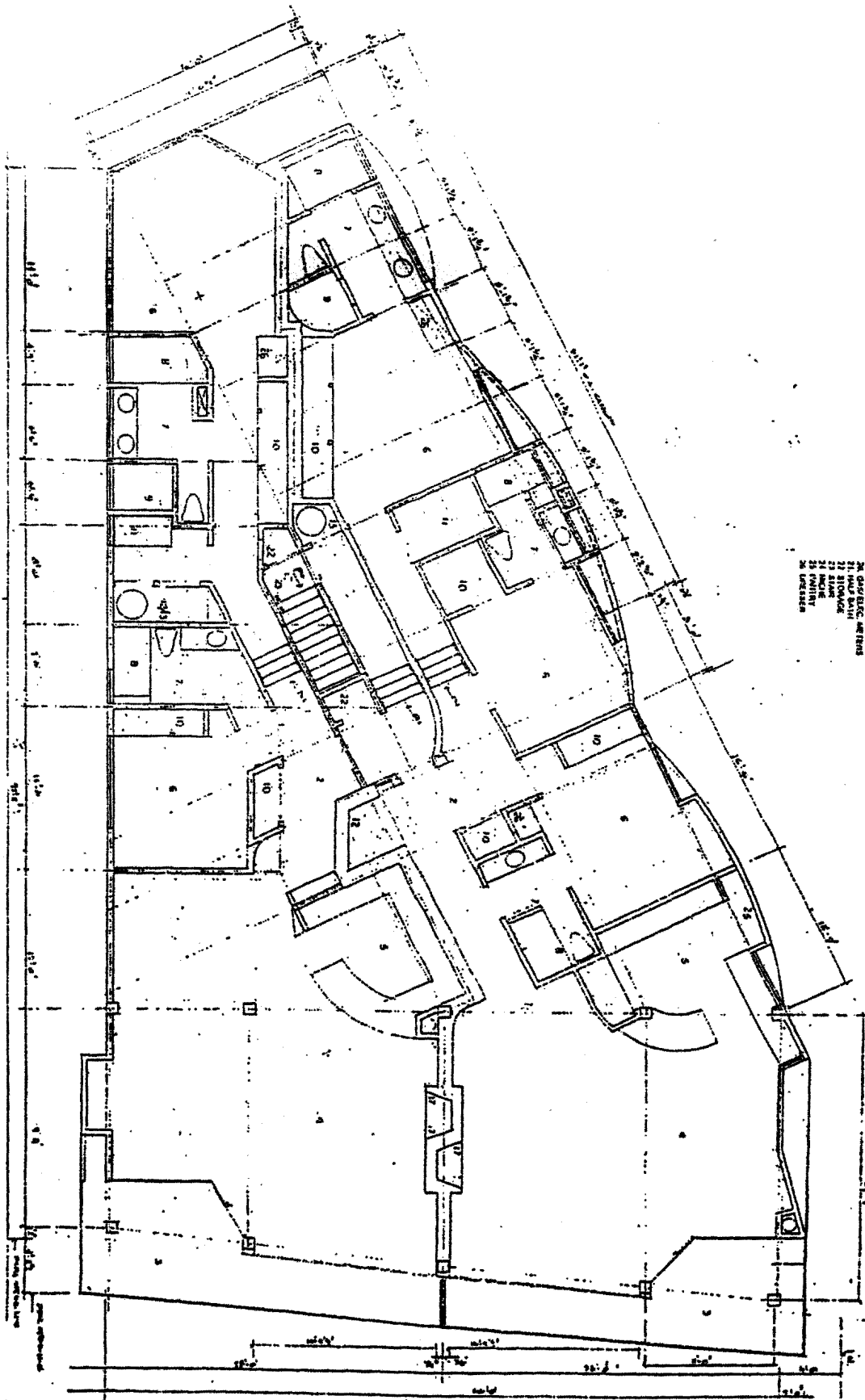


EXHIBIT NO.5

APPLICATION NO.

Herzig
4-00-259
West Wing 1st Flr

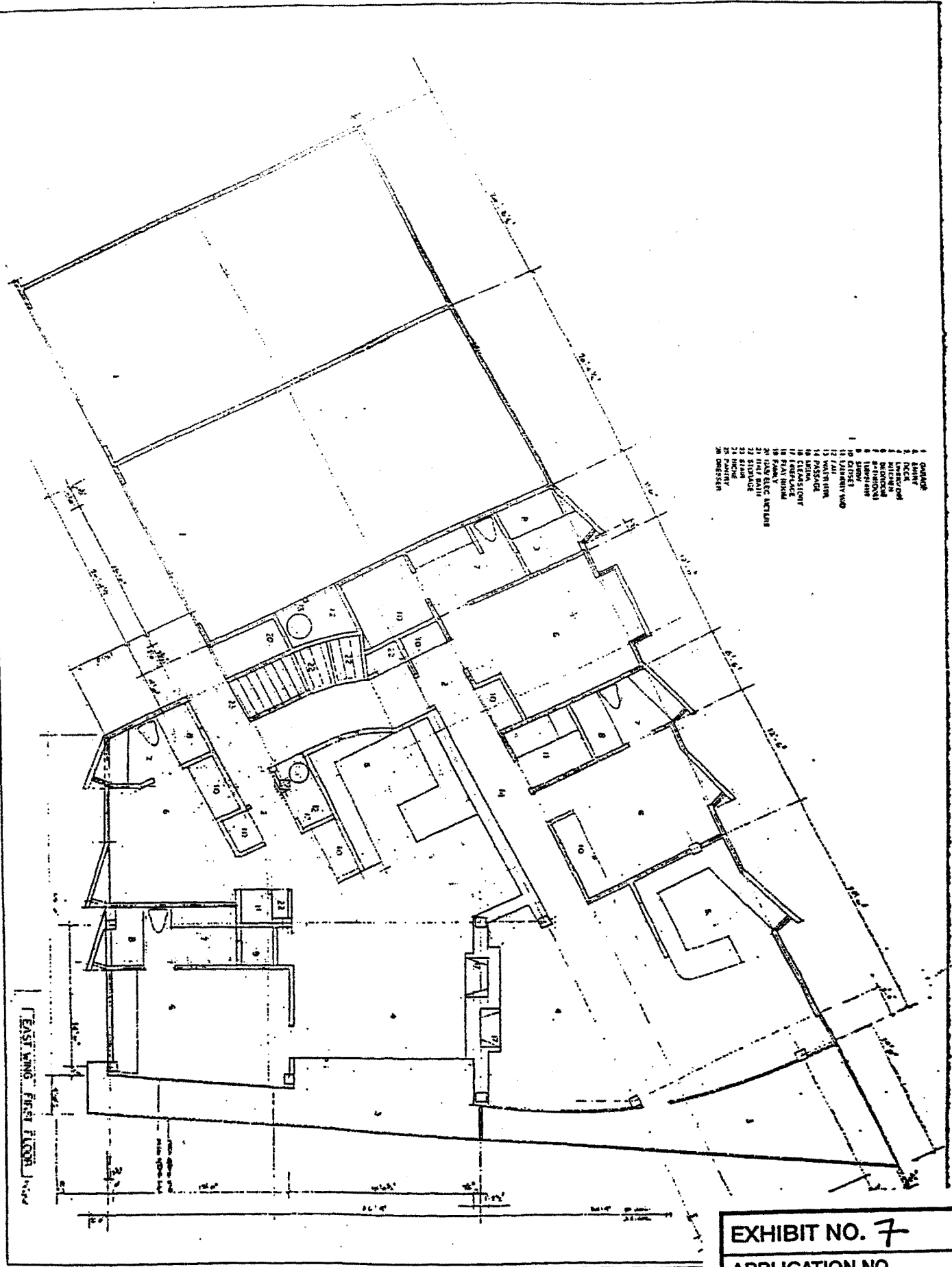


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WEST WING 2ND FLOOR

OCEANUS SKYLAR BROWN:ARC
 2120 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90262 5425 SYCAMORE HILLS DRIVE MALIBU CALIFORNIA

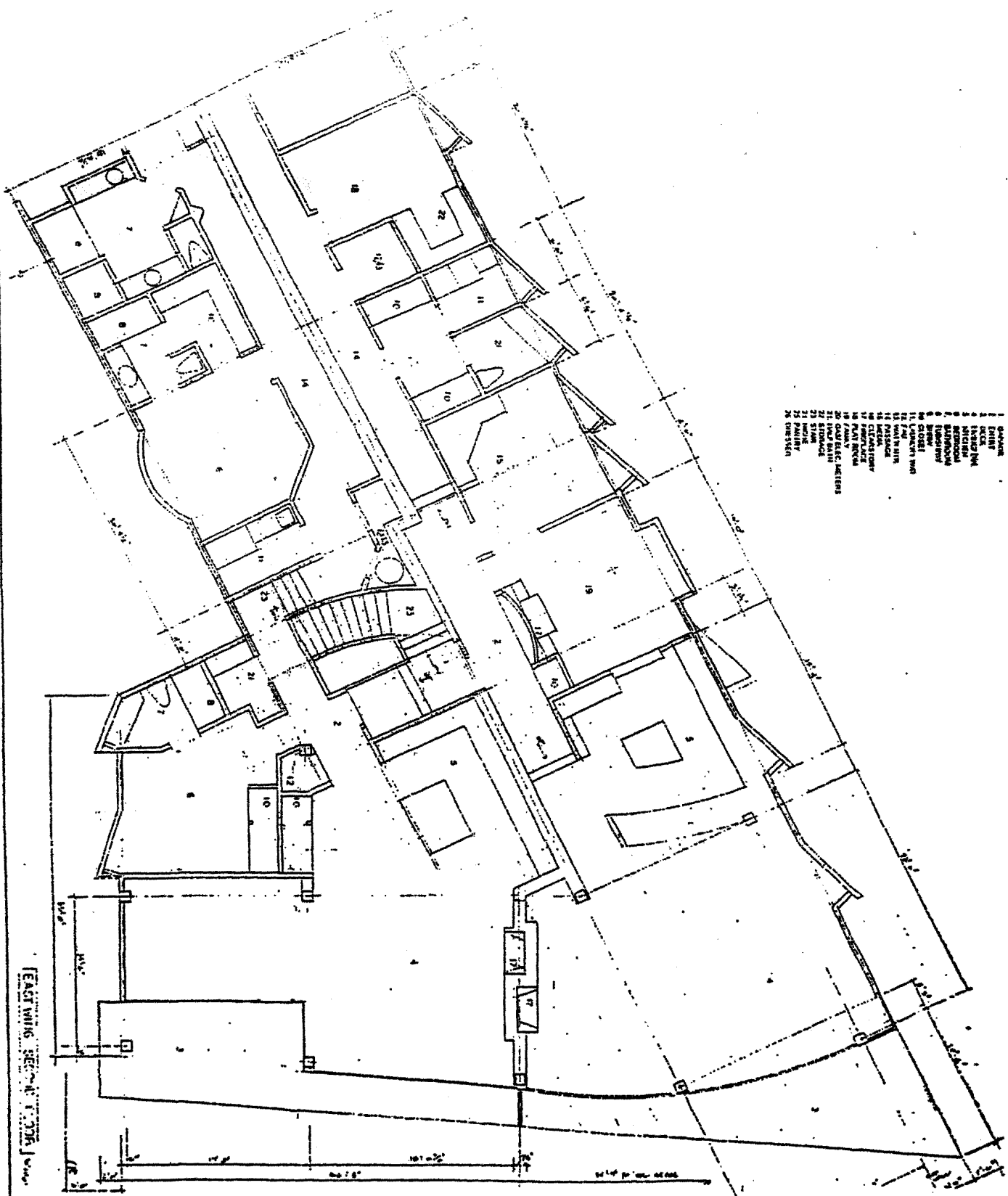
EXHIBIT NO. 6
 APPLICATION NO. *Hertzig*
 4-00-259
 West Wing 2nd Flr



EAST WING FIRST FLOOR

OCEANUS SKYLAR BROWN:ARC
2120 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90265 6465 STYCAMORE MEADOWS DRIVE MALIBU CALIFORNIA

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

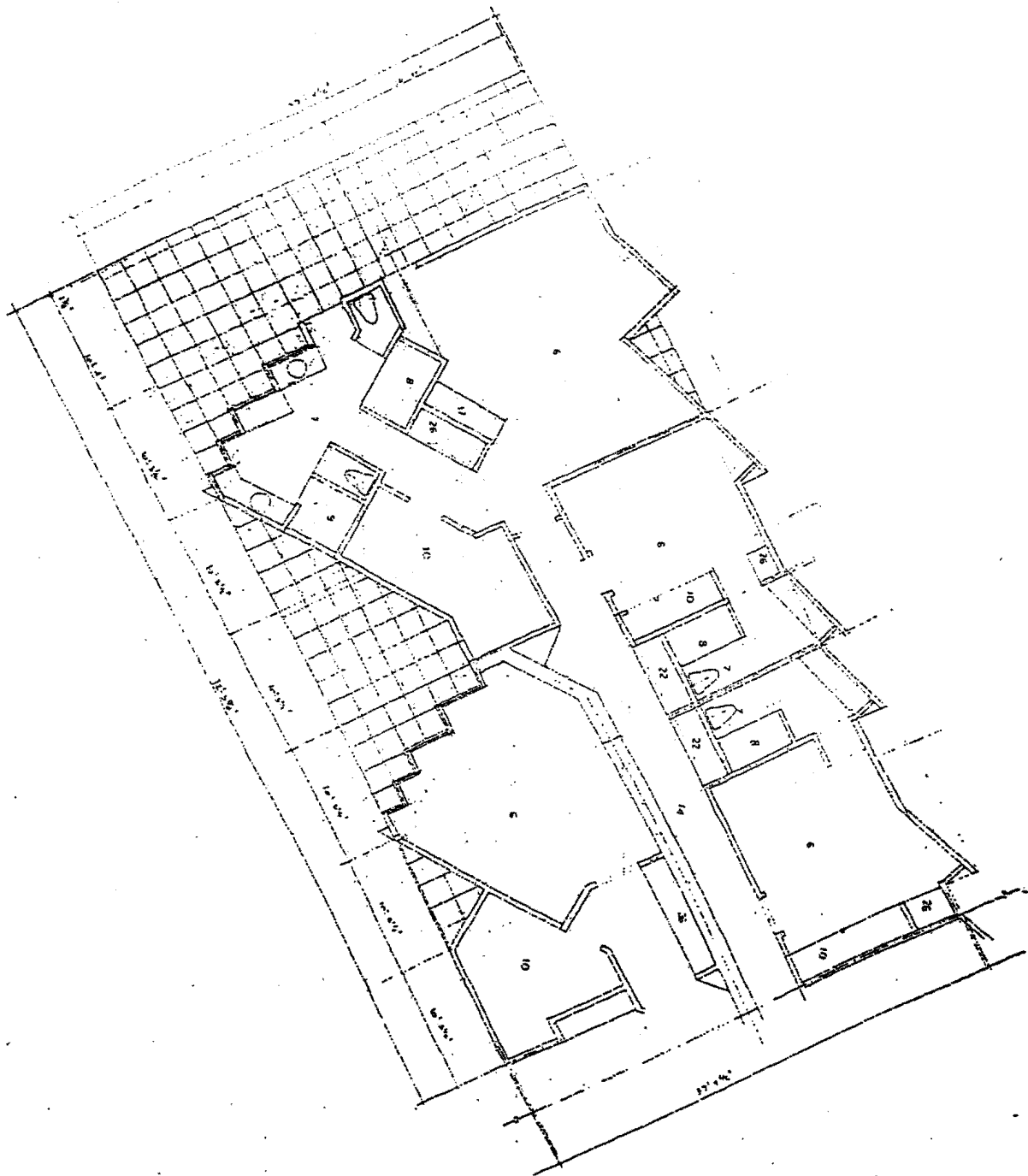


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EAST WING SECTION 1-2026

OCEANUS SKYLAR BROWN: ARCHITECT
 21200 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90266
 9455 STYCAMORE MEADOWS DRIVE MALIBU CALIFORNIA

EXHIBIT NO. 8
APPLICATION NO. Herzog
4-00-259
East Wing 2nd Floor



EAST WING SECOND FLOOR

- 1. ENTRANCE
- 2. OFFICE
- 3. OFFICE
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OCEANUS SKYLAR BROWN: A

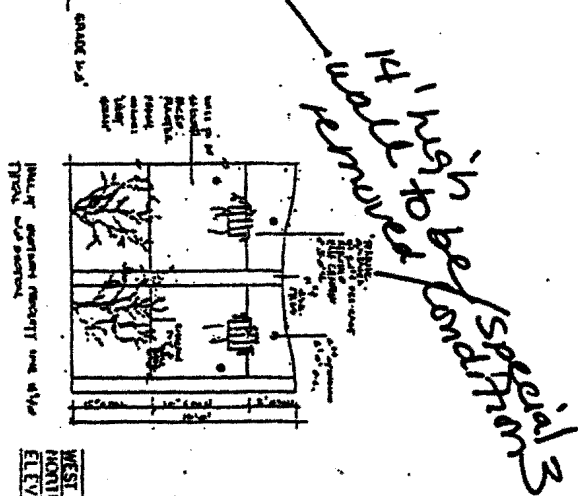
21702 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90261 6455 BYCAMORE MEADOWS DRIVE MALIBU CALIFORNIA

EXHIBIT NO. 9

APPLICATION NO. Herzig

East Wing 2nd Flr

4-00-259

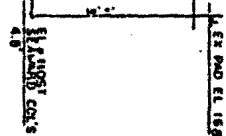


IMPLY significant majority and also
that no action

WEST VIRTS
MONTH
ELEV

O C E A N U S

PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90263



WEST WIND
SOUTH
ELEV

SKYLAR BROWN:A

8454 SYCAMORE MEADOWS DRIVE HAWAII, CALIF.

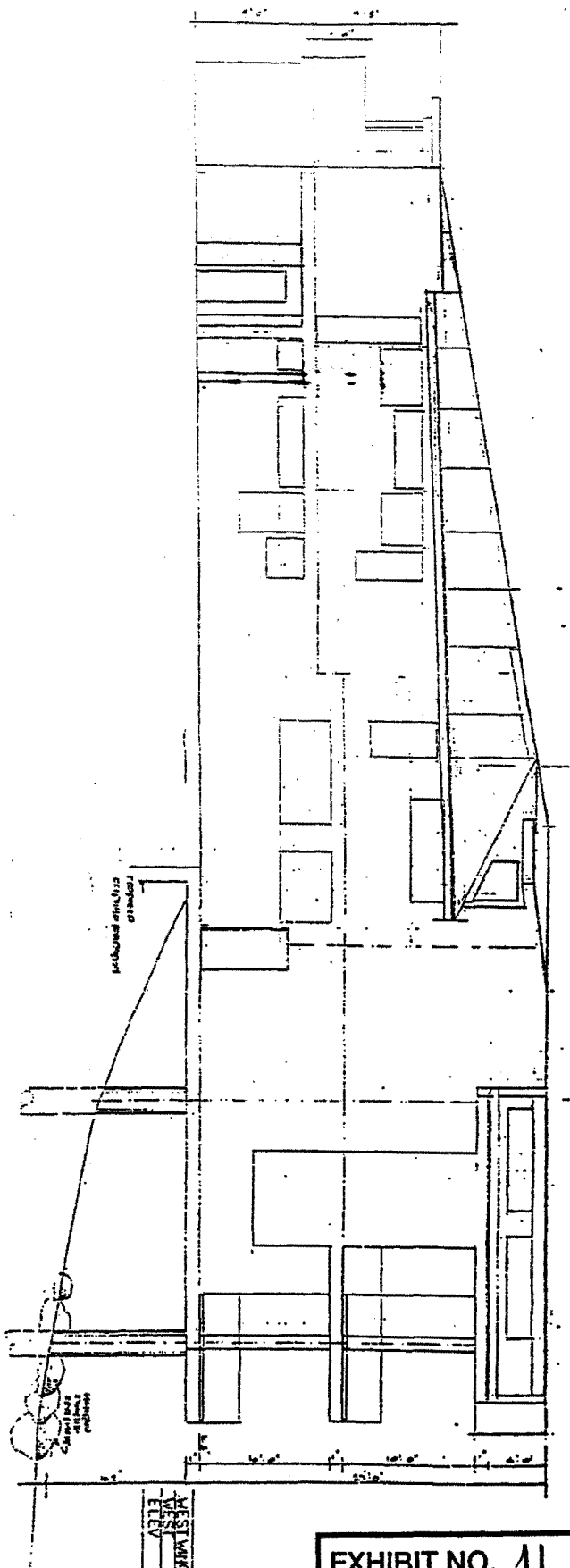
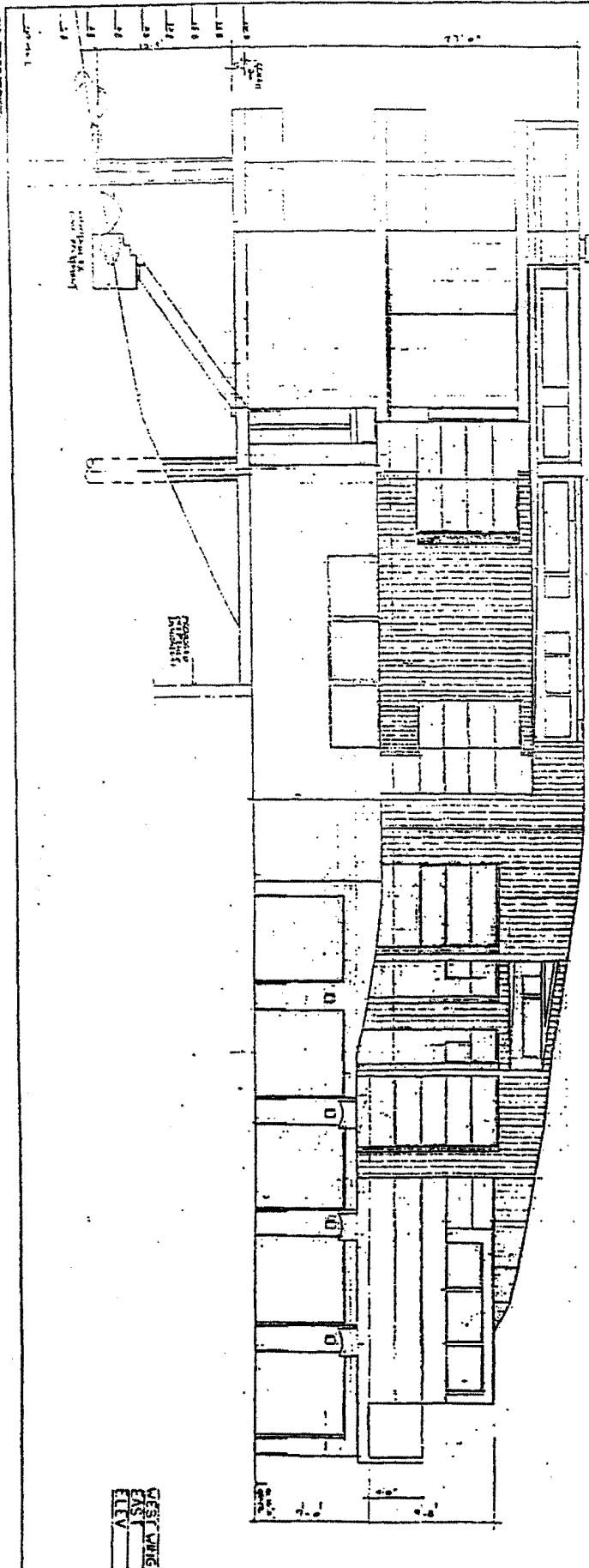
EXHIBIT NO. 10

APPLICATION NO.

Herzig

4-00-257

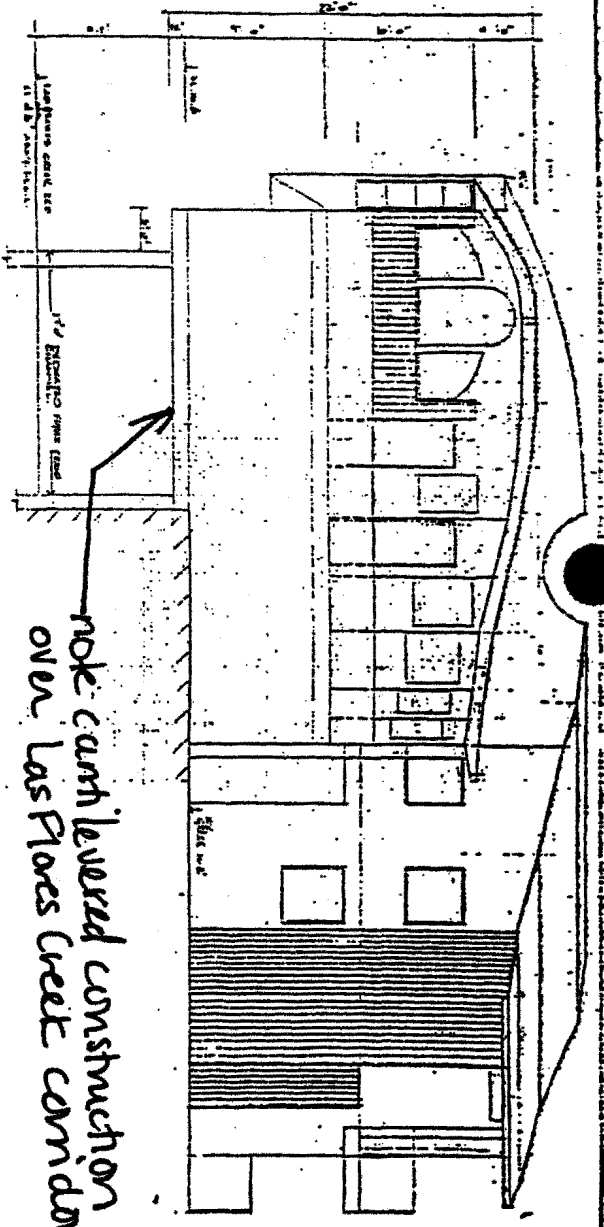
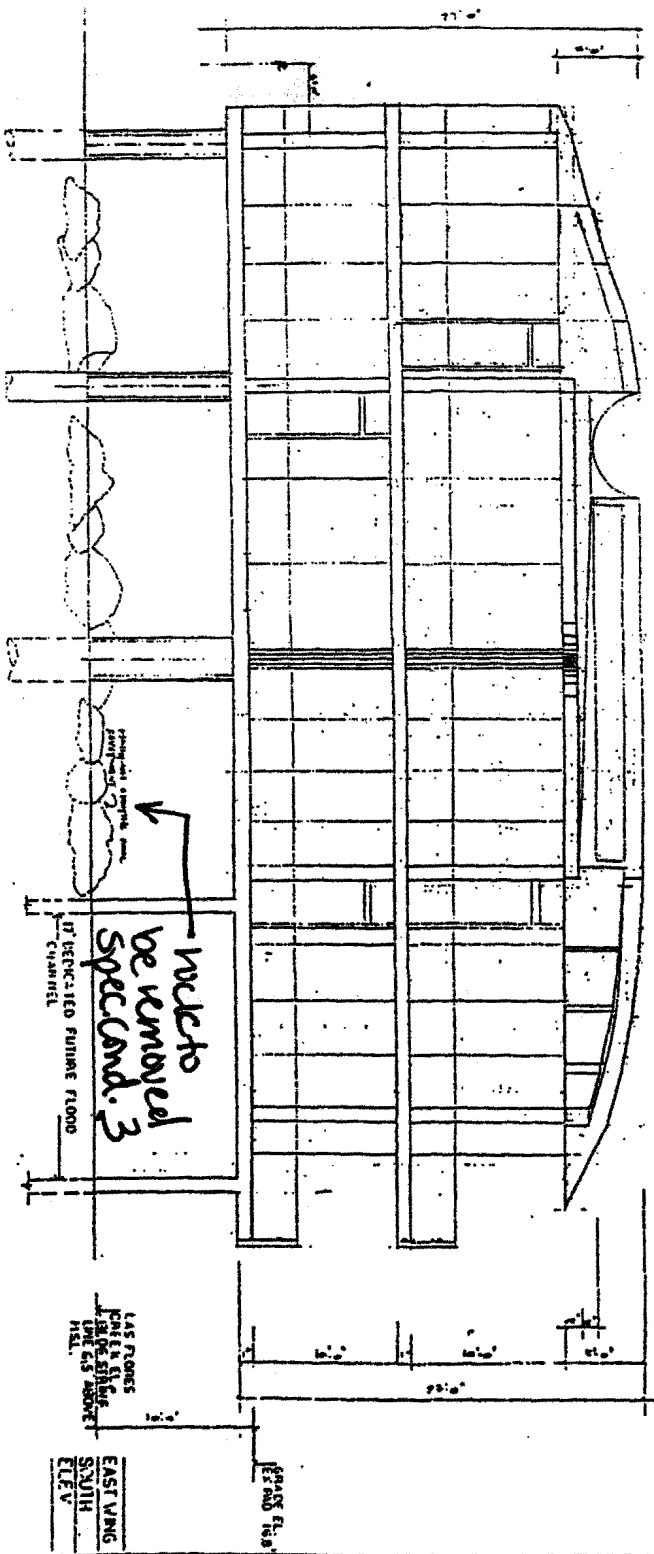
West Wing
South Elevation



OCEANUS SKYLAR BROWN: AR

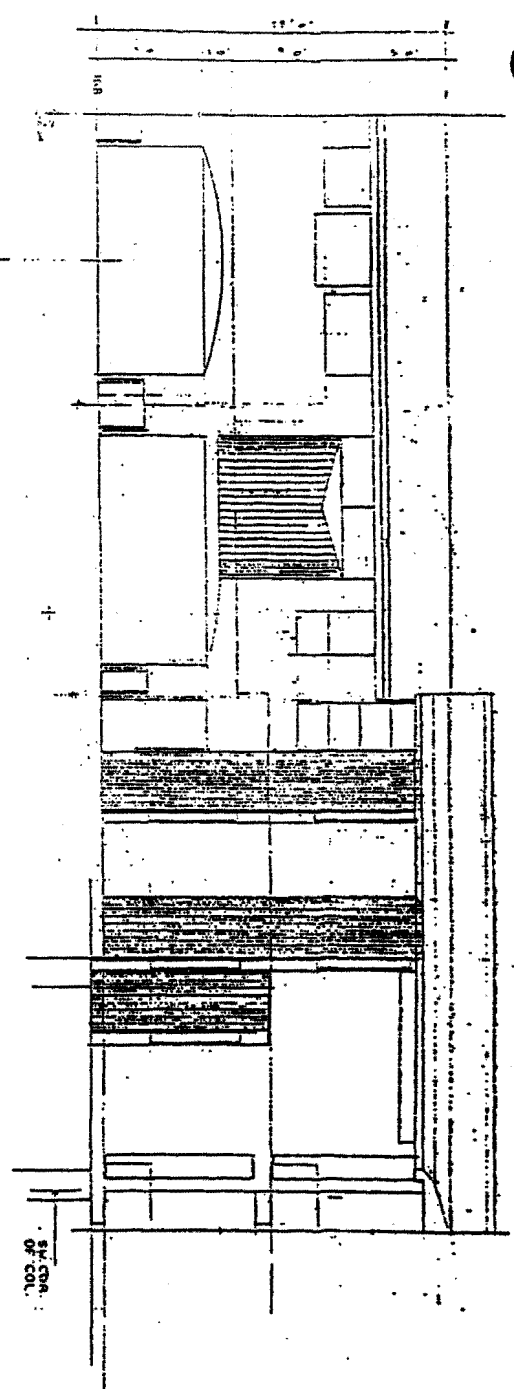
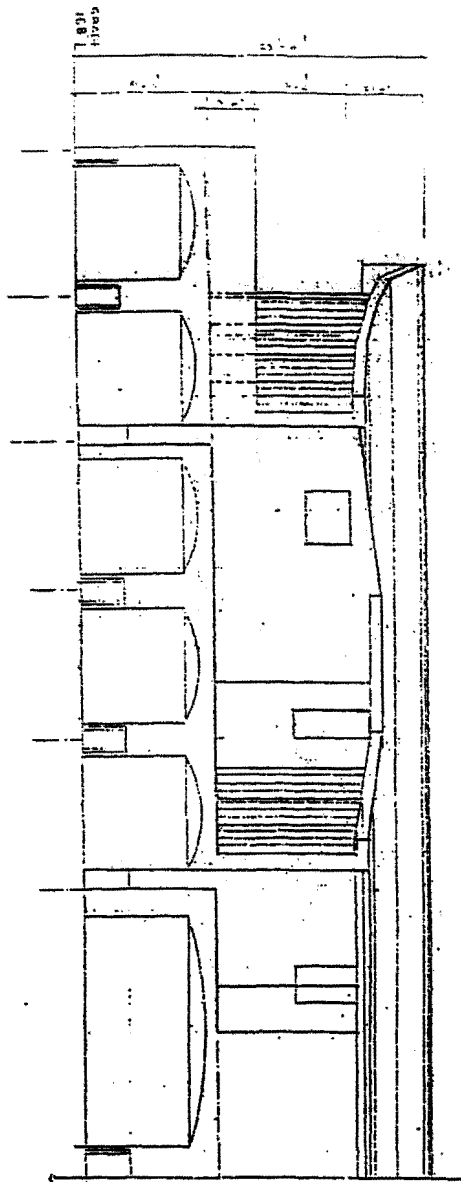
1122 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90262 4433 SYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

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



O C E A N U S SKYLAR BROWN
 11202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 3466 SYCAMORE MEADOWS DRIVE MALIBU, CA

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



EAST WING
ELEV.

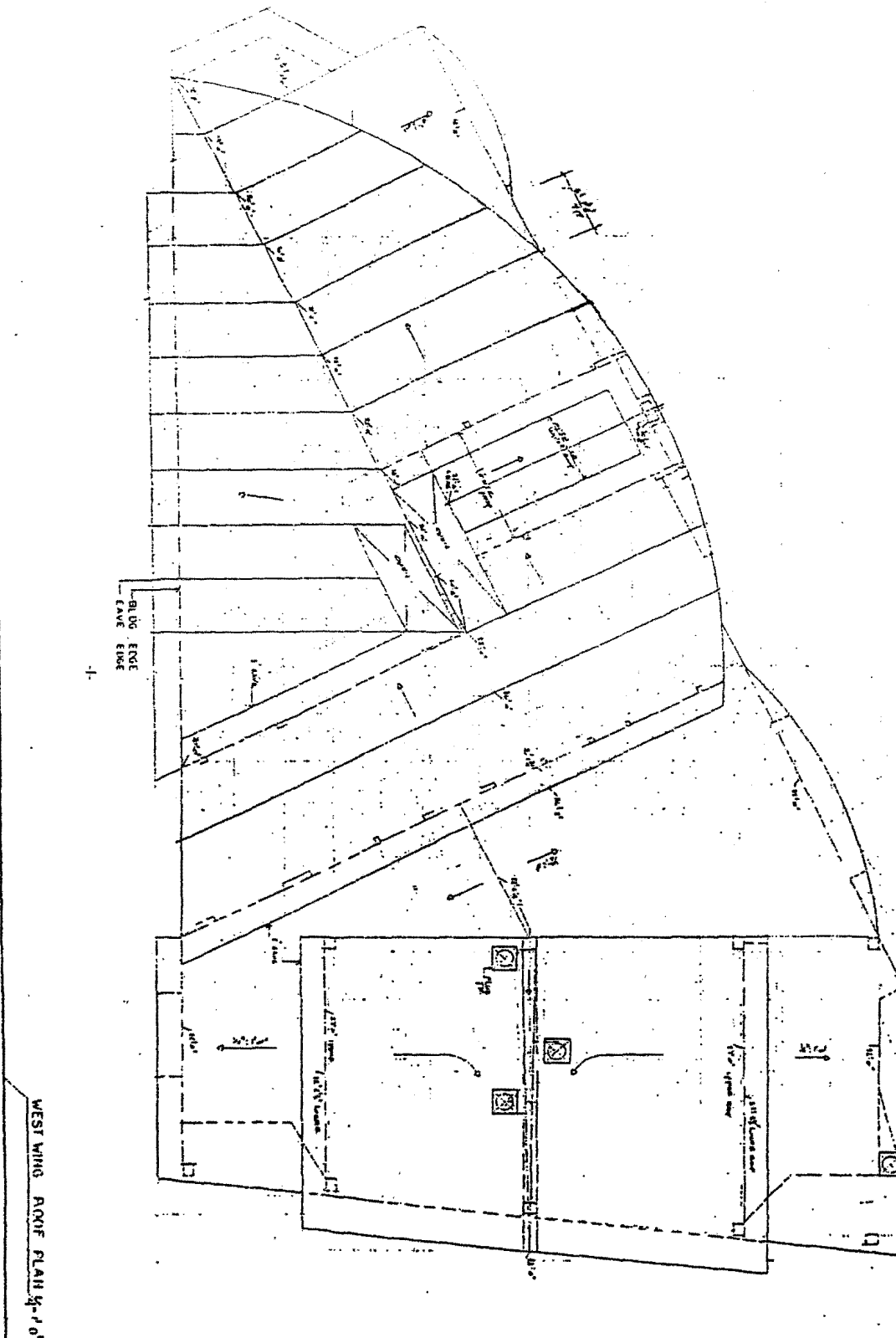
EAST WING
ELEV.

OCEANUS SKYLAR BROW
2120 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90265
BASE: SYCAMORE MEADOWS DRIVE MALIBU

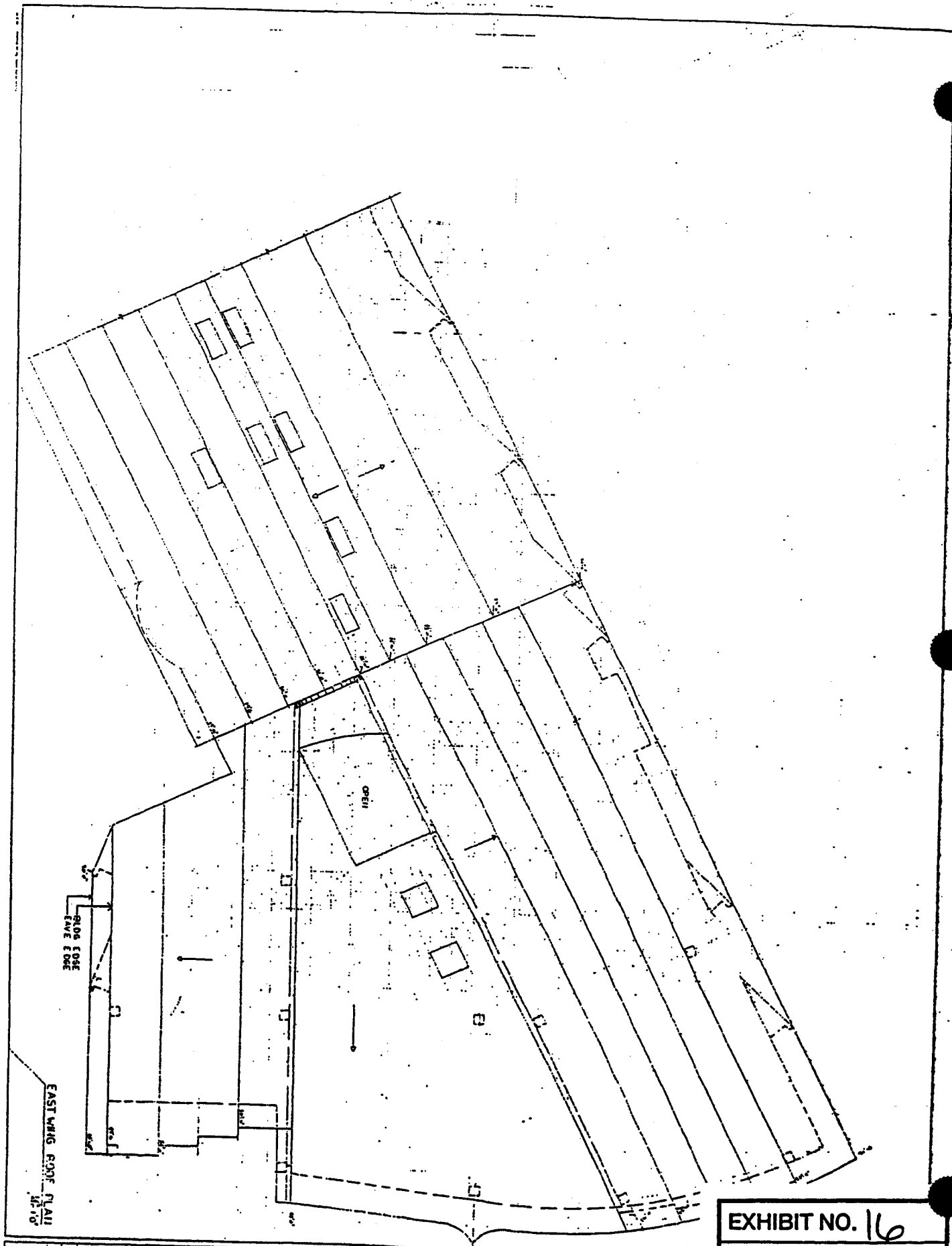
EXHIBIT NO. 14

APPLICATION NO.

Herzig
4-00-259
East Wing



21322	PACIFIC	COAST	HIGHWAY	MALIBU,	CALIFORNIA	90295	8485	STYCAMORE	MENDOCINO	DRIVE	MALIBU,	CALIF.
<div style="display: flex; justify-content: space-between;"> <div> <p>SKYLAR BROWN: A</p> <p>12</p> </div> <div> <p>EXHIBIT NO. 15</p> <p>APPLICATION NO.</p> <p>Herzig</p> <p>4-00-259</p> <p>West Wing</p> <p>Roof Plan</p> </div> </div>												



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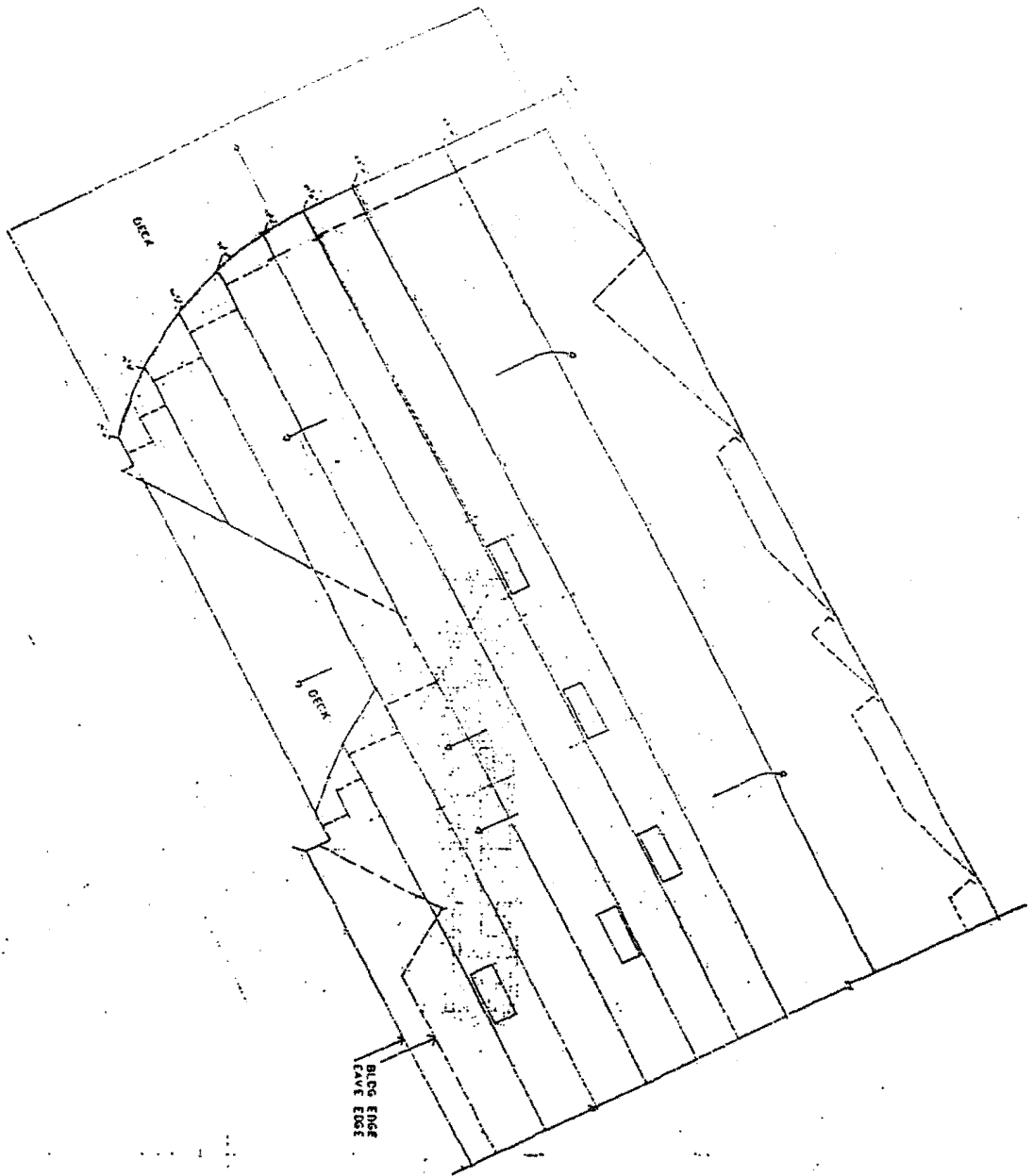
EXHIBIT NO. 16

APPLICATION NO.

Herzig

4-00-259

East wing



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

O C E A N U S SKYLAR BROWN: A
 21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 8455 SYCAMORE MEADOWS DRIVE MALIBU, CALIF

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

STATE OF CALIFORNIA

GRAY DAVIS, Governor

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



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

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

February 17, 2000

File Ref: SD 98-09-22.2

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

Dear Mr. Herzig:

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

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

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

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

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

2 pages

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

Ralph B. Herzig

2

February 17, 2000

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

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


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

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

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

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

Sincerely,



ROBERT L. LYNCH, Chief
Division of Land Management

cc: Craig Ewing, City of Malibu



May 1, 2001

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

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

Dear Ms. Wan:

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

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

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

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

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

7 pages


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

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

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

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

Sincerely,



Joan Cardellino
Access Program Manager



SIERRA
CLUB
FOUNDED 1892

Anges Chapter

May 7, 2001

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

re: Application No. 4-00-259

TU 14j

Dear Chair Wan and Commissioners:

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

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

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

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

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

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

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

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

Sincerely,

Patricia [Signature]

EX 19

Wetlands Action Network

protecting & restoring wetlands along the Pacific Migratory Pathways

May 7, 2001

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

re: Application No. 4-00-259

TU 14j

Dear Chair Wan and Commissioners:

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

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

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

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

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

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

Maria Chavez

Wetlands Action Network

EX-19

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

Melanie Hale
California Coastal Commission, Ventura Office

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

Dear Ms. Hale:

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

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

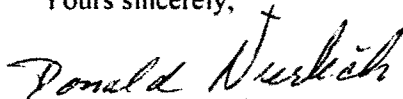
I am opposed to the development as I understand it, because the space is too small for a multiunit project. On the other hand, if I understand correctly, the developer has proposed to construct an access path to the beach on the existing easement. This being the case, I could see the virtue of a smaller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

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

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

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

Yours sincerely,



Donald Nierlich
L.A. County Coastwalk

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In Memoriam
Harry Barovsky
Honorary Mayor
2000

PLANNING DEPARTMENT

City of Malibu

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

May 4, 2001

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

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

Dear Mr. Timm,

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

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

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

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

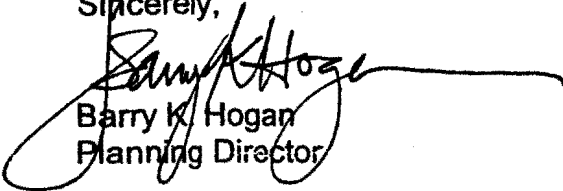
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Coastal Commission Staff Report (21200 and 21202 Pacific Coast Highway)

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

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

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

Sincerely,



Barry K. Hogan
Planning Director

cc: Peter Douglas
Chuck Damm
Ralph Herzig