

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:



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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO. 4-00-259

APPLICANT: Malibu Beachfront Properties (Ralph Herzig)

AGENTS: Susan McCabe, Alan Block, Skylar Brown

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

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

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

IMPORTANT PROCEDURAL NOTE: The applicable extended Permit Streamlining Act deadline for Commission action on this application is August 13, 2001; therefore the Commission must act on CDP Application No. 4-00-259 at the scheduled August 10, 2001 hearing.

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

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

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

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.

Summary of Staff Analysis

Staff recommends approval of the proposed project with special conditions, including conditions requiring either a) revised plans to relocate the development footprint 30 feet landward from the 1928 Mean High Tide Line (MHTL) shown on the subject plans—a setback that would require the applicant to relocate the proposed seaward development footprint of the condominiums landward a distance of approximately nine (9) feet on the upcoast side of the project and approximately twenty-one (21) feet on the downcoast side of the proposed project (adjacent to Las Flores Creek), or b) the condition also provides that the applicant may alternatively elect to request a new MHTL survey of the subject site by the California State Lands Commission, which would establish an alternative line of reference for the required landward setback of 30 feet from the resultant MHTL.

Change of land use from Visitor Serving Commercial to Multi-Unit Beachfront Residential (MFBF)

At the Commission's November 2000 meeting the applicant explained that visitor-serving development of the site (examples include a hotel, restaurant, a combination of these, or a convenience store) is not economically feasible, therefore the applicant requests that the Commission disregard the designation of the site as Visitor-Serving Commercial in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) and instead approve multi-unit residential development of the site.

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

The applicant thereafter withdrew the pending application to allow staff time to confer with the Coastal Conservancy regarding vertical and lateral public access easements owned by the Conservancy on the subject site and to develop a recommendation regarding applicable special conditions of approval.

Previous Commission direction to staff

Subsequently the staff prepared a recommendation for the Commission's May 8, 2001 meeting. The item was postponed, however, at the applicant's request before the hearing and was subsequently heard by the Commission at the Commission's June 15, 2001 meeting. The Commission heard testimony concerning the proposed project at the June meeting but continued the item from the June hearing and specifically directed staff to: 1) Determine the extent of landward setback that may be necessary to protect the Conservancy's 25 ft. wide lateral public access easement across the seaward portion of the subject site, which is ambulatory with the Mean High Tide Line, and 2) Evaluate the project's adverse impacts on the Conservancy's existing vertical access easement along the eastern boundary of the applicant's most westerly (upcoast) parcel, (on the upcoast side of Las Flores Creek), and recommend potential mitigation measures.

Coastal Conservancy's position - vertical and lateral access easements

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

The Conservancy's July 18 letter to the applicant's attorney explains the Conservancy's position concerning the public access easements the Conservancy owns on the subject site. With regard to the vertical access easement, the letter states:

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

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

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

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

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

Thus, the Conservancy has indicated its position with respect to the locations and potential adverse impacts of the applicant's proposed project on the Conservancy's vertical and lateral public access easements on the subject site. The Conservancy has also indicated its position regarding mitigation required for the adverse impacts that the project would pose on the Conservancy's vertical access easement.

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

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

Therefore the assertion of the applicant's attorney at the previous hearing that the 25 ft. easement must be referenced strictly from the 1969 MHTL is incorrect. That the line moves with the ambulatory tide line is clear from the text of the applicable recorded easement. The applicant's attorney asserted at the previous hearing on this matter that an "Exhibit C" to the recorded lateral access easement proves that the 1969 MHTL is established as a fixed line from which to interpret the inland extent of the Conservancy's 25 ft. lateral access easement.

An examination of the referenced "Exhibit C" reveals that it is nothing more than a photocopy of an assessor's parcel map and shows the approximately 26 properties that line Pacific Coast Highway upcoast from and including the applicant's site. The map has no indicated scale, and an assessor's parcel map scale is too small for interpretation of easements in any case (the applicant's entire property is reduced to about one inch in size at such a scale). The 1969 MHTL shown in the referenced exhibit appears to be illustrative only, as evidenced by the fact that the same map and MHTL indicator appears in the assessor parcel map pages for the subject site many years subsequent to the 1981 recordation of "Exhibit C" according to the Commission's records. A copy of "Exhibit C" is included in Exhibit 23 and a comparative example of an assessor's map book page for the same location in a different year, with the same MHTL illustration, is shown in Exhibit 24.

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

Applicant's additional claims and representations

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

Claim that La Costa is an accreting beach

With respect to item 1) above, site-specific information has been recorded by staff and reported in letters submitted to the Commission and included in Exhibit 19, and reported by at least one neighbor residing in the upcoast condominiums located immediately adjacent to the subject site (Scott Haller, personal communication with Commission staff), and shown in aerial photographs of the site in Commission archives, that demonstrates that the applicant's parcel is regularly subject to wave action (or is in the "swash zone" as coastal engineers refer to the area routinely affected by tidal action) and shows coastal erosion patterns caused by wave energy as high as the 16 ft.

elevation contour shown on the applicant's project plans. A neighbor of the proposed project site residing in the immediately adjacent upcoast condominiums has contacted staff by telephone on two occasions to report that the area beneath the condominiums is typically subject to wave uprush and tidal coverage at least part of each day for most of the year, consistent with staff observations on numerous site visits.

Nevertheless it is true and has been reported by staff in previous reports, and in correspondence submitted to the Commission by interested parties, that a beach builds at the mouth of Las Flores Creek and along the subject site during the less turbulent conditions of the summer months. Sand is deposited during the summer season by waves and by longshore currents and is not removed by storm wave action during that time. But at times of peak deposition this portion of La Costa Beach is still a relatively narrow strip of sand. Therefore, if there is, as the applicant contends, a long-term accreting pattern established for this beach, it is proceeding at an almost imperceptibly slow rate.

Implication for lateral access easement of applicant's claim beach is accreting

The point the applicant is attempting to make is that the Conservancy's lateral access easement should, according to the applicant, be interpreted by the Commission as moving steadily seaward in similar fashion to the supposedly accreting beach. The applicant believes that the Commission should therefore conclude that approving the development in the location presently proposed would not interfere with public lateral access because the beach seaward of the project is widening with each passing year. Neither the Coastal Conservancy (Exhibit 19) nor the Commission staff agree with this conclusion.

To the contrary, the Conservancy staff has repeatedly stated in correspondence with the applicant (see Exhibit 19) and in testimony at the June 15, 2001 public hearing on this application that the Conservancy believes that the proposed project will adversely affect the vertical and lateral access easements owned by the Conservancy on the subject site.

The Commission's senior coastal engineer, Lesley Ewing, has evaluated the two page letter signed by the applicant's consulting coastal engineer and submitted by the applicant as an Exhibit to a document of over 100 pages also submitted the day of the June 15, 2001 hearing (Exhibit 22). Ms. Ewing's memorandum (Exhibit 21) concludes that the applicant's engineer relies as evidence of a pattern of beach accretion on a draft study prepared for the City of Malibu in 1992 by Moffatt and Nichol Engineers, that was never published in final form nor peer-reviewed, to the knowledge of staff. The draft report contains hand-drawn, relatively crude draft illustrations of coastal process data charted in a cut-and-paste manner below a roughly correlating map of the Malibu coastline. In addition, the Commission's coastal engineer raises questions about the completeness of the data set relied on in the draft report and notes that significant coastal engineering studies published since the Moffatt and Nichol report neither

reference the report nor concur with the conclusion the applicant has drawn from it that the downcoast portion of La Costa Beach displays a long-term accreting trend.

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

For these reasons, staff does not accept the applicant's claim that the portion of La Costa Beach near the applicant's site is accreting. Neither the Conservancy nor Commission staff find it valid to apply such a claim as guidance in interpreting the Conservancy's lateral access easement on the subject site.

Additional effects of sea level rise

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

For this reason, the Conservancy's interpretation of its lateral access easement as being ambulatory and extending as far as 25 feet inland from the 1928 MHTL (the most landward MHTL recognized by the State Lands Commission to date) is consistent with current projections by the Federal Emergency Management Agency (FEMA) for shoreline retreat due to future sea level rise.

Any MHTL survey is a "snapshot" in time

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

The terms of the lateral access easement owned by the Conservancy specifically note the ambulatory nature of the MHTL, from which the easement is measured at any given time.

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

Staff has not identified any convincing evidence that La Costa Beach is accreting, but finds at least equally compelling evidence that the beach is either oscillating in relative equilibrium over time, or eroding. Therefore, in light of reduced sand supplies in the overall sand budgets state wide that are attributable to shoreline armoring and stream alteration, and the widely accepted predictions that sea level rise is a near-certainty in the future, the staff recommends, and the Conservancy concludes, that the Conservancy's lateral access easement should be interpreted to extend 25 ft. plus a 5 ft. privacy buffer, for a total of 30 ft., landward of the landwardmost MHTL (1928) acknowledged by the State Lands Commission.

Disaster replacement with Visitor-Serving Commercial use

With regard to the applicant's attorney's third assertion listed above—that is, his stated contention at the last hearing that the applicant could simply invoke the disaster replacement provisions of the Coastal Act and rebuild on the subject site without seeking further permits from the Commission-- is irrelevant to the Commission's consideration of this coastal development permit. The applicant's attorney continues to raise this argument with the Coastal Conservancy, however, in letters provided to staff by the Conservancy and included in Exhibit 19.

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

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

Nor do the disaster replacement provisions contained in the Coastal Act give the applicant any particular precedence on the use of state lands, whether those lands are under the control of the State Lands Commission or whether they are accepted

easements that are under the control and purview of the State Coastal Conservancy. There is nothing about the disaster replacement provisions in the Coastal Act that in any way abrogates any of those legal rights with respect to public lands.

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

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

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

If the applicant is now prepared to testify that a rebuild of a visitor-serving commercial use of the site is feasible after all, and that the applicant is prepared to pursue such a use of the site in the future, a question as to the validity of the previous testimony is raised. That question has not been addressed by staff in the recommendations set forth in this staff report—which is based on the direction previously given to staff by the Commission at the November, 2000 hearing after the applicant testified that he could not feasibly develop any visitor serving use of the site.

There are two other points staff seeks to address in this section:

The first point covered below addresses the applicant's assertion that he has an entitlement, or justified expectation that the Commission should allow him to construct eight large condominiums (averaging 2,500 sq. ft. per unit, with at least one unit that exceeds 3,000 sq. ft.) with blue water views on the subject site, even if such construction encroaches into the Conservancy's easements.

The second point addressed below concerns the applicant's assertion that the certified Land Use Plan somehow requires the construction of a multi-unit residential development on the subject site as a matter of policy (the policy cited by the applicant is LUP Policy 271, reproduced in pertinent part in Exhibit 25), and that a density analysis for development of lands under the LUP is always undertaken on the basis of gross,

rather than net, acreage. The applicant further contends that a density should be established for the site based on an analysis that reasons backwards from the constructed densities of pre-Coastal Act development adjacent to, or near, the subject site – rather than the proper method of applying the densities established within the certified LUP for the designations applied to these lands when the LUP was certified by the Commission.

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

The staff notes that the applicant purchased the subject site in 1996 after the property had been seized by the federal government (according to the applicant). The site purchased by the applicant was well known to be subject to an unusual number and degree of natural hazards, was encumbered by publicly recorded easements held by the State Coastal Conservancy, and had a long history of business failures prior to the applicant's purchase. The applicant states that at the time he acquired the property, it contained only the burned out remnants of a former restaurant structure that had not been operated successfully and had been abandoned many years before the 1993 fire (in 1978, according to the applicant).

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

While the applicant claims the site totals 30,570 sq. ft. in gross area, approximately 12,000 sq. ft. of that area is occupied by the Las Flores Creek corridor draining across the site, and public access easements owned by the state. The easterly parcel claimed as a separate parcel by the applicant is comprised almost entirely of the creek's flood channel. There is no evidence that the parcels were ever considered separate legal parcels before the applicant applied for, and received, a Conditional Certificate of Compliance from the City of Malibu. The City of Malibu staff indicate that the certificate was issued to secure a development package with the applicant that would require the applicant to pay for, and construct, flood control improvements in Las Flores Creek that would reduce flooding on parcels acquired by the City of Malibu upstream.

The site was not zoned for residential use when the applicant acquired it – it was zoned and designated (under the certified Malibu/Santa Monica Mountains Land Use Plan) for Visitor-Serving Commercial use. According to the applicant, while still in escrow to buy the property in 1996, the applicant worked out the equivalent of a development agreement with the City of Malibu wherein in exchange for substantially increased development entitlements from the City, the applicant would pay for and build flood control improvements for the City's benefit within the Las Flores Creek channel.

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

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

1 According to the applicant and City of Malibu staff, the City developed the MFBF designation/zoning to provide a negotiated land use for the applicant's site. Though the City has applied the MFBF zoning elsewhere within the City, according to staff, the applicant's parcel is the only vacant property to which it has been applied. The MFBF zoning designation allows up to 4 units per parcel provided the parcel has the minimum gross area of 5,000 sq. ft. and allows one unit per every 1,885 sq. ft., up to four (4) units maximum, per parcel. This method of calculating acceptable land use densities for a particular site, without consideration of the net developable area of the site, contrasts sharply with the Commission's long established method of using net acreage when evaluating the land use density that may be authorized for a specific site. By use of the City's gross acreage method, however, the applicant secured conceptual approval to construct 4 condominium units on the upcoast parcel (the parcel with most of the developable area) and conceptual approval to construct 4 condominium units on the downcoast Las Flores Creek parcel. The City's rather unique application of its MFBF zoning allowed this result — that a virtually undevelopable flood channel would qualify for four (4) condominium units simply because the City issued a Conditional Certificate of Compliance for the flood channel parcel and because the parcel happens to contain approximately 12,750 sq. ft. of gross area. It is interesting to note that the City's MFBF ordinance states that 1,885 sq. ft. of lot area is required per unit. By that standard the applicant did not have enough net lot area to qualify for more than one unit (though perhaps the City only relies on gross area — even in a flood channel — to satisfy this standard). The applicant's plans for the proposed lot line adjustment state in the upper right corner that the flood control parcel (identified as "Parcel 2") contains 9,220 sq. ft. of net area. Staff is unable to verify this assertion of net area on Parcel 2—staff calculates that at most there may be between 2,000—2,500 sq. ft. of net area, total, based on the location of the existing flood channel wall. In any case it is clear that the implementation of construction of the approved four (4) condominium units credited to Parcel 2 (stream channel) could never have been realized on the ground except that by obtaining a Conditional Certificate of Compliance for the flood channel as a separate parcel, the applicant was able to demonstrate "lot legality" for that parcel as a separate parcel for the first time, and to thereby secure a "lot line adjustment" (more properly called a redivision and functioning as a split of the upcoast lot) from the City. The resultant redivision cannibalized the upcoast parcel to secure enough developable area

Thus, through a series of land use authorizations facilitated and approved by the City without consultation with the Commission staff or with the Coastal Conservancy as an owner of a real property interest in the subject parcels, the potential use of the site was ultimately transformed into the proposal before the Commission in the pending application. According to the Coastal Conservancy, there is no record that they were ever notified of any of the hearings held on these matters, prior to City action, either by the City of Malibu or by the applicant.

In addition to the natural hazards that may affect the site, the applicant has recounted for staff a long history of business failures, bankruptcies, and criminal action against previous owners and/or operators of businesses on the subject site. The applicant had no reason to believe, at the time of property purchase, that the Commission would authorize a permit for a residential use of a site designated previously by the Commission for Visitor-Serving Commercial use in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). There was no reason for the applicant to believe at the time of his acquisition of the property that any permits would ever be approved by the Commission for development within the Las Flores Creek corridor, or that the Commission would approve the land redivision necessary to secure a doubling of density allowed on the balance of the subject lands in a manner similar to the City's approval under the uncertified MFBB zoning.

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

As noted above, the applicant's attorney asserted on the applicant's behalf, in a lengthy document submitted to staff for the first time on the day of the Commission's previous June 15, 2001 hearing on this application, that density under the certified LUP is always calculated on the basis of gross acreage--not net acreage. This is patently false. As the Commission is well aware, the Commission has consistently relied on net acreage in establishing the number of units that could be constructed on a site pursuant to the

to actually construct the 4 units authorized on paper for the flood control channel. Thus, the City effectively redivided the subject lands and facilitated a doubling of density that would not have otherwise occurred on the subject lands. To further facilitate the arrangement (which ultimately resembles a negotiated development agreement more than anything else), the City also authorized various variances and secondary approvals to allow a portion of the parking for one set of condominiums to be constructed on the adjacent parcel. The benefit for the City of all of this, according to the applicant, is that the City receives flood control improvements in Las Flores Creek at no cost to the City and which benefit the City's upstream properties, and the City also avoids the development of a visitor-serving commercial use of the subject lands, which the City opposes.

certified LUP designation. As a practical matter, it makes little planning sense to authorize more units for development on any site than the net (usable) area of the site can accommodate.

As addressed more thoroughly in the background section of this report, the staff has been unable to confirm the applicant's representations of the net area, measured in square feet, in the stream channel parcel. According to the calculations summarized on the applicant's plans, the pre-lot line adjustment flood channel parcels contains 12,750 sq. ft. of gross (total) area and 9,220 sq. ft. of net (usable) area. Staff calculations estimate that the net area of the flood control parcel cannot be more than 2,000 to 2,500 sq. ft. The applicant's lengthy submittal to the Commission and staff at the previous hearing has not addressed this disparity, which was discussed in detail in the previous staff report prepared for that hearing.

The applicant also submitted its own comparative "density analysis" for surrounding sites in the documents delivered at the June 15, 2001 hearing. The so-called "density analysis" had never been previously submitted to staff. Subsequent evaluation of the analysis by staff indicates that the applicant prepared the density analysis purporting to dispute the staff analysis in the published staff report by establishing the existing pre-Coastal Act development density on surrounding sites, extrapolating a resultant density based on the total size of the lots containing the referenced development, and thereby reasoning backwards to a false "comparative" land use density that obscures the accurate density analysis performed by staff in accordance with the Commission's practices. The density analysis performed by staff relies on an application of the densities set forth for the subject lands in the certified LUP, applied to the net acreage available on the subject lands, consistent with long-established Commission guidance and practices.

In addition, the applicant incorrectly cited at the previous hearing a provision of the certified LUP (Policy 271 in pertinent part, shown in Exhibit 26) that the applicant asserted proved that the LUP requires the development of multi-unit residential development on infill properties in Malibu. Policy 271 addresses new development policy concerning the LUP map, and states (in the pertinent part cited by the applicant, which is specific to development along the Pacific Coast Highway Corridor:

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

(from Page 61 of the certified LUP)

This policy statement simply establishes that new development along the Pacific Coast corridor should reflect the integrated mixed-uses found in the area, and would presumably thereby include visitor serving commercial uses consistent with surrounding

sites and the former (restaurant) use of the site (there are restaurants, gas stations, commercial developments, apartments, and condominiums all within immediate walking distance of the subject site) as well as other potential uses. With regard to multiple units, the policy only states that where such infill development is contemplated for residential use on vacant lots, the residential use should be for multiple units (rather than single family residences). The policy does not direct, as the applicant asserts, that all infill development along the Pacific Coast Highway corridor be multiple unit residential. That the applicant's conclusion is incorrect is further demonstrated by the fact that the LUP maps specifically designate certain lands—including the applicant's subject property-- along the highway corridor for uses other than residential.

Recommended planning solution acceptable to Conservancy

These issues notwithstanding, in light of the clarifications the Conservancy has provided since the last hearing concerning its vertical and lateral access easements on the subject site, adverse impacts the project poses to these easements, and mitigation measures acceptable to the Conservancy, the staff has developed a planning solution to the overall situation. The main recommendation of staff to accomplish this solution is for approval with a special condition for revised plans (in addition to other special conditions set forth in the following sections) to:

- a) set the line of the seaward development envelope back 30 feet landward of the 1928 MHTL or from such other MHTL as the applicant may secure in a new MHTL survey requested from and prepared by the State Lands Commission (for the 25 ft. wide easement plus 5 ft. privacy buffer to any structure in addition to that, called for in the lateral access easement); and
- b) require the dedication and improvement of an alternative vertical public access easement at least five feet wide in finished internal clearance, along the westernmost boundary of the subject site.

These two components form the core of the staff's recommended planning solution for development on the subject site that staff believes is consistent as conditioned with the applicable policies of Chapter 3 of the Coastal Act.

In light of these clarifications concerning the Conservancy's easements requested by the Commission at the previous hearing, and to further the collaborative resolution of the access issues of concern to the Conservancy and others, Commission staff has revised the previous staff recommendation. The previous recommendation included a landward setback of the proposed project's seawardmost footprint to approximately the 16-ft. elevation contour shown on the applicant's proposed plans. The revised recommendation only requires a landward setback of 30 feet from the 1928 MHTL, in accordance with the Coastal Conservancy's requirements and the Conservancy's interpretation of its lateral access easement set forth in the Conservancy's letter of July 18, 2001 discussed above (Exhibit 19). This setback is significantly less than the

previously recommended setback to the 16 ft. elevation contour (which is approximately 59 ft. landward from the 1928 MHTL).

The current staff recommendation virtually halves the previous setback recommendation in an attempt to provide an overall resolution of the problems posed by development of the site as proposed. The new vertical accessway that the applicant has offered will provide significant public access benefits that would result from the dedication, construction, and opening to the public of an improved public accessway on the upcoast boundary of the subject site (on the Unocal side). Such an accessway would offer public access to the sandy beach and to upcoast stretches of La Costa Beach that are otherwise unreachable when floodwaters fill the Las Flores Creek channel during the winter.

The accessway would provide public access to stretches of La Costa Beach that can otherwise only be accessed via the Zonker Harris Accessway located over two miles upcoast, and physical barriers exist to continuous downcoast access from that vertical accessway.

Alternative access to La Costa Beach from downcoast is only available at Moonshadow's Restaurant, over a mile downcoast from the applicant's site. That access to La Costa Beach is blocked at all but the lowest tides for a few days per year by the rock revetment seaward of Duke's restaurant on the downcoast side of Las Flores Creek, and by the waters of Las Flores Creek during high winter flows.

These limitations underscore the benefits of the improved alternative vertical accessway conceptually agreed to by the applicant, and explain why a reduced lateral access easement setback (as compared with the setback previously recommended by staff to approximately the 16 ft. elevation contour on site) is recommended as an acceptable solution by staff-- in consultation with the Conservancy.

Staff believes the combination of a 30 ft. setback from the 1928 MHTL and the dedication and improvement of a new, 5 ft. wide vertical accessway on the upcoast side of the site, resolving as it does the Coastal Conservancy's concern that the project will otherwise adversely affect publicly owned vertical and lateral access easements on the site, together with the other recommended special conditions of approval, provides a planning solution consistent with the applicable policies of Chapter 3 of the Coastal Act.

Conclusion

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 for alternatives or changes to the proposed project 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. The recommendation relies primarily on setbacks to

establish an acceptable development envelope that allows the applicant to redesign the proposed project to achieve the maximum number of units, or to construct larger, but fewer units, as desired. 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.

The applicant has stated in a letter to the Conservancy dated July 23, 2001 that the recommended setback of 30 feet from the 1928 MHTL would deprive him of at least sixty percent (60%) of his condominium square footage. Staff has performed a preliminary analysis of the site plans that concludes that if the setback is implemented, the applicant's proposed square footage of approximately 19,000 sq. ft. (excluding decks, according to the applicant) would be reduced by approximately 5,000 sq. ft., or just over twenty-five percent (25%).

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

Correspondence received by staff concerning the proposed project is attached as Exhibit 19, commencing with letters from the Coastal Conservancy and the applicant.

The staff recommends that the Commission adopt the following resolution (which is also set forth on Page 2 of this report for the Commission's convenience:

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 U.S. Fish and Wildlife Service (USFWS). 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 the USFWS. 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 two sets of revised plans for the review and approval of the Executive Director that provide for the following:

- A. Relocation of all proposed structures, including decks and stairways, to a landward location extending either:
- 1) No further seaward at any point than a line at least 30 feet landward of the 1928 Mean High Tide Line (MHTL) as shown in Exhibit 4a, thereby setting the seawardmost development footprint as shown on the presently proposed plans back approximately 13 feet on the westerly portion of the subject site and up to approximately 22 feet on the easterly portion of the subject site; or
 - 2) No further seaward at any point than a line at least 30 feet landward of a new Mean High Tide Line certified by the California State Lands Commission and prepared by the State Lands Commission at the request of the applicant for the purpose of satisfying this Special Condition, and undertaken solely at the applicant's expense; and
- B. Relocation of the bulkhead shown in Exhibits 4 and 4b to a continuous line at approximately the 16 ft. elevation contour, thereby redesigning the uneven footprint of the bulkhead as presently proposed; and
- C. Deletion of all portions of the flood channel wall labeled as "semi-open" leaving only caissons necessary for support of the approved structures remaining in the widened flood channel; and

- D. Delete any and all portions of the proposed flood channel wall extending seaward of the bulkhead relocated at a line representing approximately the 16 ft. elevation contour pursuant to subparagraph B of this Special Condition, above; and
- E. Deletion of the 14 ft. high "privacy" wall adjacent to the westernmost parcel boundary and replacement with a concrete wall no higher than 6 ft. above grade at any point, constructed along the downcoast boundary of the new constructed vertical public accessway required pursuant to Special Conditions 3, 11 and 15 set forth herein. The construction of the wall shall not commence before the construction of the adjacent vertical accessway is undertaken. The concrete wall may be topped with a visually permeable fence constructed of wrought iron or other similar material of a height of not more than 6 ft., for a total combined height of not more than 12 ft.; and
- F. Construction of a vertical accessway a minimum of five (5) feet wide in finished clearance width 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 have been found by the Conservancy to comply with at least the Conservancy's minimum requirements for the provision of year-round public access to the Conservancy's lateral access easement along the sandy beach on the subject site.
- G. Final revised plans must be certified by the applicant's coastal engineer as providing for a minimum elevation on the underside of the structure of more than 16.8 feet above existing grade in all areas seaward of the proposed bulkhead (located at approximately the 16 ft. contour on the applicant's proposed plans).
- H.. The removal of all portions of the existing rock revetment located seaward of the bulkhead shown on the applicant's proposed project plans, and clearly showing the demolition and removal of all residual foundations, supports, walls, or other structures or debris remaining from previous structures on the subject site.

The development shall be constructed in compliance with the approved plans.

4. Sign Restriction.

Prior to sale of any condominium unit, the applicant shall install a sign easily visible from Pacific Coast Highway identifying the presence of the vertical public accessway to the beach required by this Permit, and shall install a sign at the foot of the vertical accessway, on the seaward exit to the beach, identifying the public lateral access

easement along the subject site. Prior to the installation of the signs, the applicant shall obtain the Executive Director's approval of the content and format of such sign(s). No other signs 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 two sets of 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 public sidewalk improvements shall traverse the entire frontage of the street side of the project site except where shown to be infeasible for public safety reasons, to the satisfaction of the Executive Director. The sidewalk improvements referenced herein shall be constructed and opened to the public no later than sixty (60) days after the issuance of the first certificate of occupancy. No encroachments, whether temporary or permanent, such as planters, vegetation, or other structures or obstacles, 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 that: a) no stockpiling of dirt shall occur on the beach; b) all grading shall be properly covered, sand-bagged, and ditched to prevent runoff and siltation; c) measures to control erosion shall be implemented at the end of each day's work; (d) no machinery shall be allowed in the intertidal zone at any time, (e) no construction equipment, materials, or debris shall be stored or placed

at any time in a location subject to wave action; and (f) 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 permit.

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. Grant of Easement for Vertical Public Access and Declaration of Restrictions

Prior to the issuance of the coastal development permit, the applicant shall record a grant of easement to the Coastal Conservancy 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. The applicant, as landowner, shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably granting 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 Exhibit 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. The document shall provide that the grant of easement shall not be used or construed to allow anyone, prior to improvement of the easement, 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 easement shall run with the land in favor of the People of the State of California, binding all successors and assignees.

The recording document shall include legal descriptions and a map of both the applicant's entire parcel(s) and the easement area.

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 traffic analysis 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 traffic analysis shall be prepared by the applicant in consultation with the Caltrans Office of Permits, and shall provide measures acceptable to Caltrans to ensure that ingress and egress from the subject site 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 met 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 that may be required by Caltrans in an Encroachment Permit for the project shall be installed and approved by Caltrans before other construction activities at the site commence, except for construction of vertical accessway improvements.

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 at any point landward of the bulkhead location authorized in Special Condition 3 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 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 Conditions 3 and 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 authorized herein, but no later than one year from the issuance of Coastal Development Permit 4-00-259 or within such additional time as the Executive Director may authorize for good cause, the applicant shall construct the vertical accessway, without a gate, but including such signage as authorized by the Executive Director in consultation with the Coastal Conservancy, 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 merged 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 a transfer of development credit transaction.

18. Timing of Construction

Grading or construction activities of any kind 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.

21. Evidence of Permits and Approvals

Prior to the commencement of construction authorized pursuant to Coastal Development Permit 4-00-259, the applicant shall submit evidence to the Executive Director's satisfaction that the applicant has obtained all necessary permits or approvals from the Army Corps of Engineers, an updated Streambed Alteration Agreement from California Department of Fish and Game, a consultation with National Marine Fisheries Service concerning the construction in Las Flores Creek and potential impacts to the Tidewater Goby, and any necessary permits or approvals from the Regional Water Quality Control Board. Written evidence that a permit or consultation is not required by any listed agency shall be considered satisfactory compliance with this condition as applicable to that agency.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description, Setting, and Background

All substantive information set forth in the staff summary is hereby incorporated by reference.

The proposed project site is beachfront property bounded on the north by Pacific Coast Highway (between Rambla Pacifico Road and Las Flores Road), bordered on the east by Las Flores Creek and the parcel containing Duke's Restaurant, and on the west by

the Unocal Service Station adjacent to Pacific Coast Highway at the front of the adjacent parcel and by a condominium development with 11-14 units on the seaward portion of the adjacent lands. The site opens to the Pacific Ocean on the southerly boundary.

The California Coastal Conservancy owns a 10 ft. wide vertical access easement and a 25 ft. wide lateral public access easement on the subject site. Both easements were accepted by the Conservancy in 1982 and evidence of the Conservancy's acceptance of the easements is publicly recorded.

The developable area of the subject site is located just west (upcoast) of Las Flores Creek. The subject parcels contain the channelized portion of Las Flores Creek that exits to the Pacific Ocean at the foot of the property. Immediately upcoast of the subject site is La Costa Beach. The closest upcoast vertical access easement is over two miles upcoast, at Zonker Harris Accessway, but public access from that point downcoast to the subject site is limited by physical impediments to pedestrians. The nearest downcoast accessway is at Moonshadows Restaurant, approximately one mile from the subject site; however, access to the upcoast area from Moonshadows is severely limited by a large revetment in front of Duke's Restaurant, located immediately downcoast of Las Flores Creek. The Duke's revetment is only passable on a few days of the year, at the lowest low tides.

The proposed project is located on two beachfront lots—one, a vacant lot that was the site of the previously abandoned Albatross Restaurant until the building burned down approximately 8 years ago, according to the applicant, 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.

The second (Las Flores Creek) lot, identified as "Parcel 2" in the applicant's submittal, does not appear to have been considered a separate legal lot for any practical purpose until the applicant acquired it in 1996, due to the fact that it is essentially only the flood channel.

The applicant obtained a Conditional Certificate of Compliance from the City of Malibu for this lot, however, upon agreement with the City that the applicant would pay for and construct flood control easements within the channel that the City needs to control flooding on property it purchased immediately upstream from the subject site, along Las Flores Creek on the inland side of Pacific Coast Highway.

The City subsequently developed a new zone district --the Multi-Family Beachfront (MFBF) zoning--and applied the zoning to the applicant's site, despite the site's designation for Visitor-Serving Commercial use in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). The rezoning of the project was undertaken by the City without consultation with the Commission or staff and is uncertified.

After rezoning the subject lands to MFBF, the City processed a redivision of the two lots that secured developable area for the resultant reconfigured lot within the stream channel. The effect of the redivision was essentially to split the one developable lot through the "lot line adjustment" and to thereby double the density that the applicant might otherwise have received approval for under the City's zoning ordinances.

The City's MFBF zoning (uncertified by the Commission) offers up to 4 condominium units per lot without regard to net developable area. Thus the applicant secured City approval to build 4 condominium units on a lot that is essentially a flood channel, and prone to extreme flooding conditions and hazards. The applicant must secure the proposed redivision of land, also conceptually approved by the City in the development agreement, to actually *fit* the condominiums onto dry land, however.

The City's zoning and redivision of the subject properties, therefore, effectively *doubles* the density of condominiums that can be built on the parcel(s). At the time the applicant acquired the site from the federal government, however, it contained only the burned remnant foundation of the old restaurant that previously occupied the site, and a flood channel. The site was designated for Visitor Serving Commercial use under the certified LUP and in the City's zoning applicable to the site at that time. That the site would ultimately be redivided and authorized by the City for intensive residential development is a result subsequent to the purchase that could not have been anticipated by the applicant as the basis for the investment. The nature of the extreme hazards that affect the site (primarily during the winter storm season) were known to any prospective purchaser of the site exercising due diligence in inspecting the site and evaluating the site's history. In addition, the site was zoned for visitor serving commercial use at the time the applicant purchased the subject property. The applicant has claimed that this use is not economically infeasible to construct on the subject site; however the restriction on the use of the site at the time of purchase was easily verified in the records of Los Angeles County, the City of Malibu, or the Coastal Commission.

It was also a matter of public record at the time the applicant acquired the site that the California Coastal Conservancy owns two public access easements on the site: one, a vertical access easement, occupies a ten (10) foot wide corridor along the upcoast side of Las Flores Creek, and the other, a twenty-five (25) foot wide lateral access easement (and subject to a five (5) ft. privacy buffer) is designated in the Offer-to-Dedicate accepted by the Conservancy as:

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

The applicant reports that he acquired the subject property after a fire destroyed the old restaurant and after the property 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 testified to the Commission in November, 2000 that visitor-serving commercial uses of the property are financially infeasible from his perspective. The applicant therefore 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 seeks Commission approval to redivide the two adjacent beachfront lots via a lot line adjustment that divides the developable parcel with the virtually unbuildable parcel that is the flood channel of Las Flores Creek. The applicant proposes 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, a retaining wall extending along Las Flores Creek seaward of the proposed bulkhead; 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.

A small beach forms adjacent to proposed project location during the summer months near the mouth of Las Flores Creek and erodes away during the winter storm season. The observations of Commission staff and others, the patterns of erosion on the site, the reports of neighbors residing in the upcoast condominiums, and aerial photographs from the Commission archives indicate that wave action regularly affects the site to approximately the 16 ft. elevation contour shown on the applicant's plans. A remnant foundation from the previous structure functions as a seawall where its footprint still exists and prevents the corresponding degree of erosion evident on the upcoast beachfront portion of the site.

The applicant presented a brief letter from his coastal engineer as an attachment to a document presented to staff on the day of the last hearing (June 15, 2001). The engineer's letter disagrees with the staff conclusion in the previous staff report that the beach adjacent to the site is eroding (Exhibit 22). Since that hearing, the Commission's senior coastal engineer has reviewed the relevant coastal processes literature available for the Malibu area, and the Commission's aerial photograph archives, and concludes that there are substantial indications that the beach adjacent to the site may be eroding. (see Exhibit 21). There is not, however a conclusive, unilateral trend established in the literature and short-term, seasonal patterns of summer beach building and winter beach loss also affect the beach profile on site at any given time. What is clear is that whatever the trend, it is extremely slow in the area of the subject site, where the beach is narrow or nonexistent for much of the year, but builds into a sandy beach after the forces of the winter storm season subside.

In addition, the long term implications of the widely recognized trend toward future (and potentially accelerating) sea level rise suggest that there will be increased erosional pressure on most of the southern California shoreline as the result. For example, maps and studies published by the Federal Emergency Management Agency and the Environmental Protection Agency during the past two years indicate that the shoreline could retreat significantly along many portions of the southern California coast due to predicted sea level rise.

Thus, while experts may disagree on the trends and extent of change affecting this stretch of La Costa Beach, increasing channelization of streams and placement of shoreline protective devices along the California shoreline has reduced the natural discharge of beach building materials contributed by streams and rivers and by eroding bluffs. The supply of sand has thus been reduced overall and the trend toward shoreline armoring has not been significantly slowed or reversed. These factors, combined with sea level rise, suggest that even if a slight accreting (building) trend has occurred on La Costa Beach in the past (though staff analysis does not support this conclusion), new evidence and patterns of coastal development portend increased coastal erosion and the inland movement of the shoreline in the future.

In addition, while the applicant now claims that the beach on the subject site is accreting, the landwardmost Mean High Tide Line (MHTL) accepted on site by the California State Lands Commission is the 1928 MHTL. While any one MHTL is only a snapshot in time, and the MHTL varies by day, month, season, and year, and in response to storm wave activity and sediment flows in the adjacent Las Flores Creek, the variability of the MHTLs, and the presence of the 1928 MHTL landward of where the applicant claims the MHTL reaches now, combined with the potential shoreline erosion in the future described in this report, indicates that there is a strong likelihood that the MHTL will retreat again to the 1928 line, if it is not doing so already.

The matter of the potential inland extent of the MHTL over the long term, and the ambulatory nature of the MHTL is not simply an academic debate. It informs the Coastal Conservancy's interpretation of the inland extent of the setback of the applicant's proposed development footprint that is necessary to protect the lateral access easement owned by the Conservancy since 1982 across the seaward portion of the site. The Conservancy's position regarding the location of its lateral access is set forth in a letter dated July 18, 2001 contained in Exhibit 19. The letter states in pertinent part excerpted in the staff summary section that the Conservancy believes that development any further seaward than a setback 30 feet landward from the 1928 MHTL would interfere with the Conservancy's lateral public access easement.

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 sideyard 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 only, 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 settlement of the matter of the revetment seaward of Duke's restaurant extending beyond the MHTL was reached between the downcoast property owners of Duke's Restaurant, and the State Lands Commission. In addition, staff determined that the upcoast development adjacent to the subject site is also pre-Coastal Act development that appears to extend seaward of the "swash zone," or area subject to tidal influence on this portion of La Costa beach, particularly during winter months.

The applicant asserts that because the proposed project is infill development, the project should be entitled to the full benefit of the seawardmost stringline drawn between the corners of the structures situated on the nearest adjacent lots. Such a stringline yields a development footprint that extends development on the subject site seaward of the "swash zone" visible on the subject site in aerial photographs and verified by staff on a number of site visits. The applicant 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 assertion is addressed in more detail in the staff summary incorporated here by reference. The potential for a disaster rebuild of the former restaurant notwithstanding, the applicant has testified to the Commission that a visitor serving commercial use of the subject site is totally infeasible. Unless the applicant has reconsidered the feasibility issue favorably for visitor serving commercial development, the subject of a potential disaster rebuild on the site is moot.

For these reasons, therefore, unless the applicant elects to withdraw the presently pending application for the development of a multi-unit residential project, and return to the Commission subsequently with a proposal for a visitor-serving use, the applicant otherwise has no special "entitlement" to construct the new development presently proposed by the applicant on that footprint previously occupied by the former, burned out restaurant structure. Thus the disaster rebuild potential of the site is irrelevant to the present analysis, which is an analysis of new development on the subject site pursuant to the requirements of Chapter 3 the Coastal Act.

Pre-Coastal Act documents, including aerial photographs and maps on file in the Commission archives and in the office of the State Lands Commission, show that the form of the coastline containing Duke's Restaurant, the applicant's proposed site, and the upcoast adjacent condominium development extends significantly further seaward than the up- and down-coast shoreline on either side of this area. This profile may be attributed to the natural contours of the shoreline but is also partially due to the

placement of large quantities of artificial fill generated by the grading and construction of Pacific Coast Highway. The placement of highway construction cuttings thus pushed the coastline significantly further seaward than the natural contour previously extended, exaggerating the atypical seaward extent of the immediate area. This fill is also highly prone to erosion, as evidenced by the placement by Duke's Restaurant of a massive rock revetment in front of that development, and by the erosion patterns evident on the subject site.

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

Staff has gathered substantial evidence that indicates that the zone of tidal influence on the subject site is landward of the applicant's proposed development footprint. This evidence, though disputed by the applicant, includes: 1) the on-site erosional pattern described above, 2) the observations of site conditions by staff at times of varying tides and over numerous site visits, 3) the correspondence of others who use the vertical public access corridor in Las Flores Creek regularly (see Exhibit 19), the presence of substantial cover by marine algal growth on the rocks comprising the rock revetment and cobble located landward of the applicant's proposed development footprint (indicating inundation by seawater for substantial periods of time on a daily basis), and 5) the settlement entered into by the State Lands Commission with the owners of the adjacent (downcoast) Duke's Restaurant complex to resolve what the State Lands Commission asserted was the occupation of state tidelands by the Duke's revetment.

The downcoast portion of La Costa Beach is a narrow beach that staff believes is either oscillating in equilibrium or eroding at a slow rate. The applicant asserts that he should receive the benefit of a traditional stringline analysis for the subject site despite the fact that the stringline would be established by the footprint of the condominiums upcoast, which are pre-Coastal Act development and extend further seaward than would be approved by the Commission under the policies of Chapter 3 of the Coastal Act and despite the fact that there is substantial evidence in the records of the State Lands Commission to indicate that Duke's Restaurant, which would establish the downcoast stringline, may extend seaward of the Mean High Tide Line. Moreover, the structures on the next lots beyond the immediately adjacent lots, both up- and down- coast, are set back significantly landward than the condominiums and Duke's restaurant. 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. As discussed above, Exhibits 2 and 3b illustrate that the structures upcoast from the referenced condominium complex west of the subject site, and the structures downcoast from

Duke's Restaurant, east of the subject site, are set back much further landward than either of these developments. Thus, even if the condominiums and Duke's Restaurant were not located within the area of tidal influence, 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 the relationship of such development to areas of the shoreline subject to tidal influence argue against the use of a stringline analysis as the appropriate planning tool to determine the most seaward extent of development that is appropriate on the subject site. The Commission has noted in past deliberations and actions that the stringline used to evaluate infill development does not bind the Commission in anomalous circumstances where the use of the stringline measured from the nearest applicable adjacent corners of development on neighboring lots encourages the seaward location of development as opposed to simple infill development.

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

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

As noted in the conclusion of the staff summary incorporated by reference, and set forth on pages 15 and 16 above, a planning solution to address the specific concerns of the Coastal Conservancy and Commission regarding adverse impacts that the applicant's proposed project would have on vertical and lateral public access on the subject site has been developed. The necessary project revisions to accomplish the landward setback of the proposed project's seaward footprint, to delete structures seaward of the applicant's proposed bulkhead, to remove the remnant foundations and rock revetment, and to construct an alternative vertical public accessway on the upcoast portion of the applicant's site are set forth specifically in Special Condition 3 (Revised Plans), and fully implemented, would appear to resolve the concerns raised by the Commission.

The revised plans do not specify a number of condominiums that may be constructed on the site. By instead revising the proposed project's development envelope pursuant to Special Condition 3 to mitigate the adverse impacts upon the Coastal Conservancy's vertical and lateral access easements that would otherwise result from the construction of the project as proposed, the Commission offers the applicant the maximum possible flexibility to redesign the site for the applicant's benefit, consistent with the applicable special conditions.

The applicant has stated to the Coastal Conservancy in correspondence dated July 23, 2001, that the proposed inland setback to 30 feet inland from the 1928 MHTL will cause the loss of sixty percent (60%) of the proposed project. Commission staff has evaluated this claim and determined that the loss of square footage that will result is approximately 25% (approximately 5,000 sq. ft. of the 19,000 sq. ft. structural area—not including decks—represented as the project total by the applicant). It appears that the loss could be made up somewhat by a more efficient redesign of the project. In addition, by not specifying a mandatory maximum density for the site (the project description limits the applicant to a maximum of eight (8) units) the Commission provides the applicant with the option of retaining eight slightly smaller units (the presently proposed units average more than 2,500 sq. ft. per unit – and one presently proposed condominium unit is larger than 3,000 sq. ft.) or developing fewer, but more luxurious units as the applicant chooses.

To demonstrate that the Commission's requirement for revised plans offers the applicant a substantial use of the subject property that exceeds what he would otherwise have been entitled to on the subject site, the Commission has evaluated the result of a density analysis that would otherwise have been applied by the Commission in evaluating the number of approvable units for the subject site.

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 development of the site that the applicant negotiated with the City of Malibu (explained in detail in the staff summary incorporated by reference). 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—basically a lot split—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 (30 feet inland from the 1928 MHTL, 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 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, which is based primarily on the Coastal Conservancy's direction as to the setback necessary to protect the Conservancy's real property ownership interest in public access easements on the 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 along the seaward edge of the site, all with blue water coastal views. The Commission notes that while the stringline analysis is a useful tool to evaluate infill development where it is applicable, it nevertheless does not, even in those instances, establish a binding line of development entitlement on the lands to which it is applied. The stringline analysis is simply an analytical tool, and as explained above, is not an appropriate planning tool to apply to the subject site for the reasons discussed.

The land redivision proposed by the applicant as part of this coastal development permit application is not the applicant's entitlement by right. 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 for the reasons explained previously and in the staff summary incorporated herein effectively divides one developable parcel to create a second parcel for development consideration where none would 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. Specific concerns expressed by Caltrans have been incorporated into Special Condition 12, which Caltrans staff has reviewed and found acceptable.

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. The Conservancy has determined that construction of an alternative vertical public accessway on the upcoast vertical boundary of the subject site, to a minimum finished width of 5 ft., would mitigate these impacts to the Conservancy's vertical access easement adequately.

Thus, a development setback to a line 30 feet landward of the 1928 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, while nevertheless protecting the public ownership interest in access to the sandy beach.

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 verbally or in writing 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 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 if conditioned to require revised plans (Special Condition 3) to address the appropriate setbacks, design changes, and public access mitigation measures necessary to achieve consistency with the Chapter 3 policies of the Coastal Act.

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 discussed previously in this report indicates that a significant area landward of the applicant's proposed project is regularly located within the "swash zone" and exposed to wave action. The applicant's coastal engineer has indicated that although the proposed project would be constructed seaward of the maximum wave uprush limit, the condominiums will be supported by a concrete friction pile and grade beam foundation system and will not require any form of shoreline protection to ensure structural stability. In addition, the proposed project includes the installation of a new bottomless sand filter septic system. 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."² In addition, experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement regarding the adverse effects of shoreline protective devices:

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

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

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

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.⁴

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

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

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

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

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

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

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

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 perhaps arguably oscillating or eroding beach (for a discussion of the conclusions of the applicant's coastal engineer and the Commission's senior coastal engineer, see the staff summary section incorporated herein and Exhibits 21 and 22).

The applicants' coastal engineering consultant has indicated that the proposed seawall and return wall will be acted upon by waves during storm conditions. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a bulkhead and return 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 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 affect coastal processes in this area in unpredictable ways. 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, the Coastal Conservancy has determined that the proposed project will adversely affect the lateral public access easement owned by the Conservancy unless the proposed project's seaward footprint is set back at least 30 ft. landward from the 1928 MHTL, as required by Special Condition 3.

End Effects

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

An extensive literature search on the interaction of seawalls and beaches was performed by Nicholas Kraus in which he found that seawalls will have effects on narrow beaches or beaches eroded by storm activity. His research indicated that the

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

form of the erosional response to storms that occurs on beaches without seawalls which are adjacent to beaches with seawalls is manifested as more localized toe scour, with end effects of flanking and impoundment at the seawall.⁸ Dr. Kraus' key conclusions were that seawalls could be accountable for retention of sediment, increased local erosion and increased end erosion. Kraus states:

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

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

Results to date indicate that erosion at the ends of seawalls increases as the structure length increases. It was observed in both the experimental results and the field data of Walton and Sensabaugh (1978) that the depth of excess erosion is approximately 10% of the seawall length. The laboratory data also revealed that the along-coast length of excess erosion at each end of the structure is approximately 70% of the structure length.⁹

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

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

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

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

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 flood channel/return wall and private beach stairs (which are located within the wave uprush zone identified by the applicant's coastal engineer and seaward of the proposed bulkhead) to a landward location no further seaward than the applicant's proposed bulkhead, as revised pursuant to Special Condition 3.

Seaward Encroachment

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

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

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

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

Sea level has been rising slightly for many years. In the Santa Monica Bay area, the historic rate of sea level rise has been 1.8 mm/yr. Or about 7 inches per century.¹¹ Sea

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

level rise is expected to increase by 8 to 12 inches in the 21st century.¹² There is a growing body of evidence that there has been a slight increase in global temperatures and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Mean water level affects shoreline erosion in several ways and an increase in the average sea level will exacerbate all of these conditions.

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

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

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

Therefore, if new development along the shoreline is to be found consistent with the Coastal Act, the most landward location must be explored to minimize wave attack with

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

higher wave forces as the level of the sea rises over time. Shoreline protective devices must also be located as far landward as feasible to protect public access along the beach.

The 16-foot contour line is the approximate boundary line between the sandy beach and the historic upland fill area of the site. Siting the proposed development behind the 16-foot contour elevation will ensure that development will not be sited directly on the sandy beach which is directly affected by wave action on a regular basis. In addition, siting the proposed development landward of the 16-foot contour elevation will minimize future adverse impacts relative to public access, the beach profile or morphology, and hazards that may result from a rising sea level. Therefore, the Commission finds that Special Condition 3 is required which will set the proposed development back to a line no further seaward than the 16 foot elevation contour. The proposed seawall is located at the 16-foot elevation and is setback as far landward as is feasible given the size and setback requirements for the proposed septic system.

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.

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

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

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

accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

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

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

As stated previously, the proposed project includes the construction of a flood control channel wall that will also serve as a return wall on the western side of Las Flores Creek. The applicant additionally proposes to construct a seawall at approximately the 16 ft. elevation contour in accordance with the recommendations of the applicant's consulting coastal engineer. The return wall extends almost 60 feet further seaward than the bulkhead, however, crossing even the 1928 MHTL—the landwardmost MHTL shown on the applicant's plans or accepted by the State Lands Commission for La Costa Beach—at its most seaward extent.

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 approximately 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 redesign a proposed 14 ft. high "privacy" wall shown on the applicant's plans in the general location of the new vertical public access easement. The redesign would include up to a 6 ft. high concrete wall with an additional 6 ft. high wrought iron or other visually permeable fence atop the concrete wall, for a total height of 14 ft. above grade. 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. Special Condition 4 does authorize the placement of signage identifying the vertical and lateral public access easements on the subject site, however.

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

result in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

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

The applicant proposes to construct a fourteen (14) ft. high "privacy" wall on the westernmost (upcoast) boundary of the subject site. This wall will interfere with public coastal views to and along the coast from Pacific Coast Highway, which is designated as a scenic coastal highway, and will be located within the view corridor provided by the side yard setback and required by the policies of the certified Malibu/Santa Monica Mountains Land Use Plan, which the Commission has relied on for guidance in evaluating development in the Malibu area. Special Condition 3 (Revised Plans) requires the applicant to redesign this wall as described previously (maximum of 6 ft. of concrete wall topped by up to an additional 6 ft. of visually permeable fencing, such as wrought iron, for a total maximum height of 12 ft. above grade) 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 are 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

TDC-type transaction. 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.

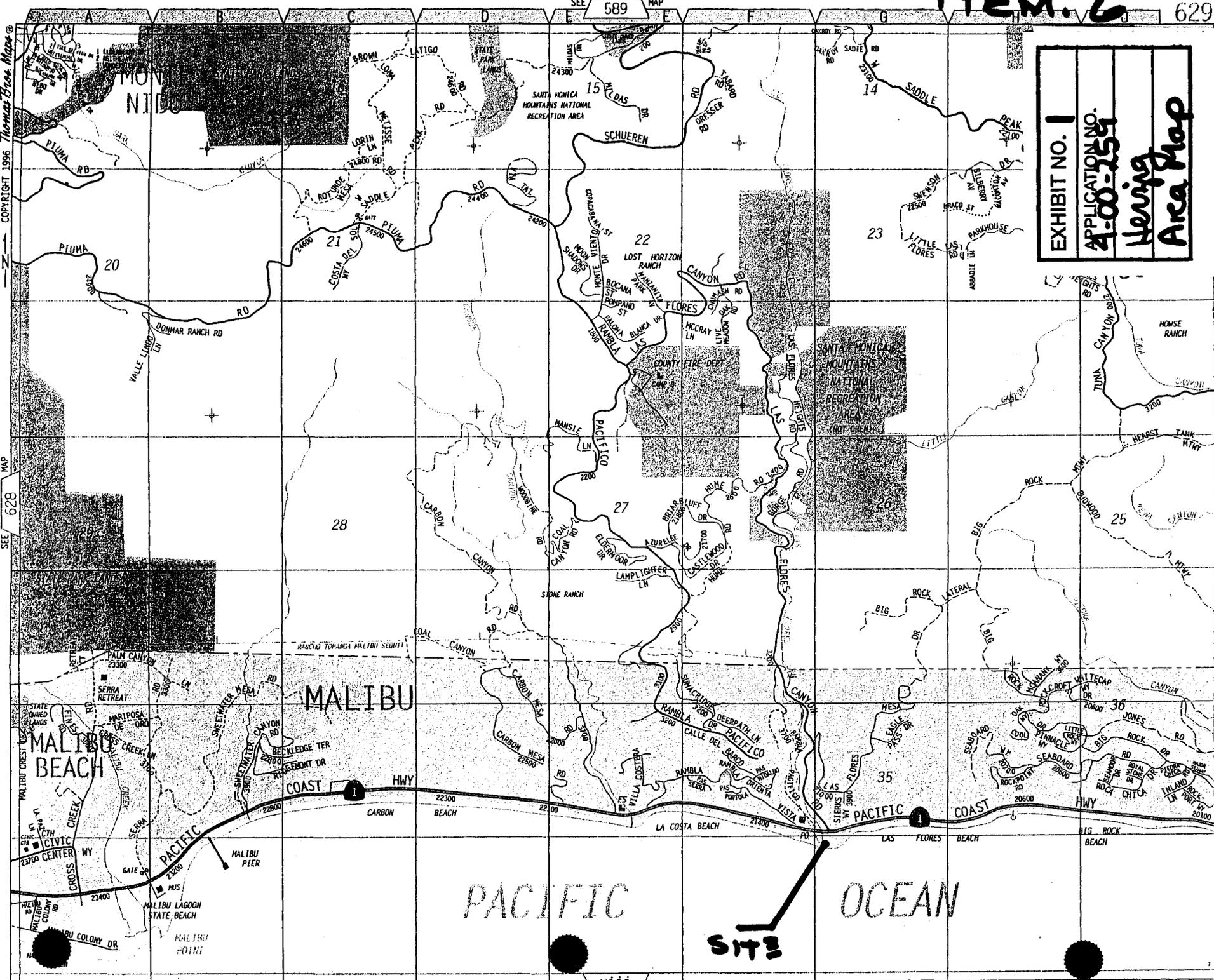
The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned,

has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

COPYRIGHT 1996 Thomas Bros. Maps

SEE 628 MAP

| |
|--------------------------|
| EXHIBIT NO. 1 |
| APPLICATION NO. 4-00-254 |
| Herwig Area Map |



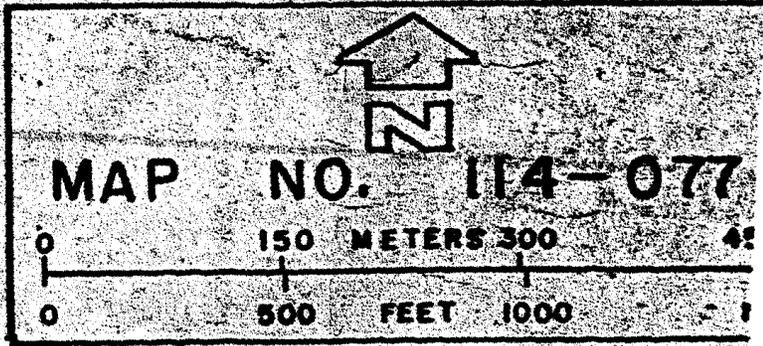
PACIFIC

OCEAN

SITE



9A ↑ subject site

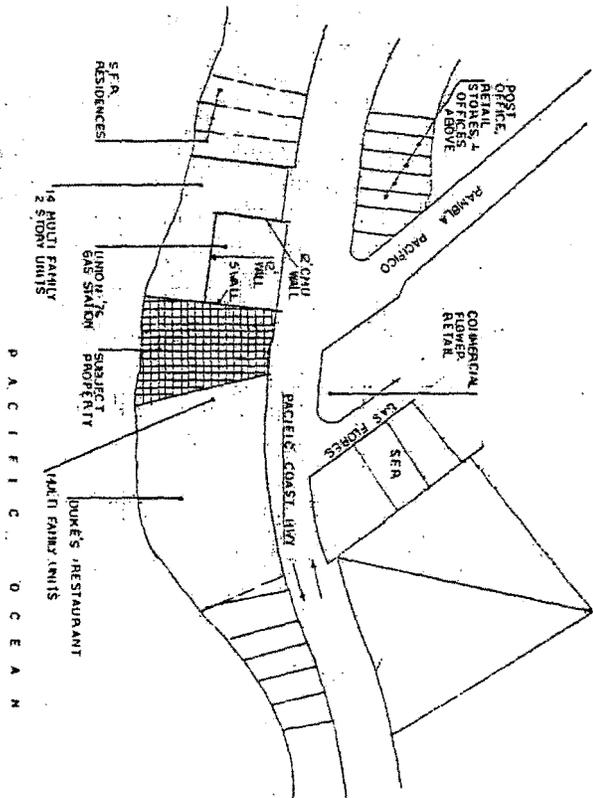


LUP MAP Designations

EXHIBIT NO. 2
APPLICATION NO. 4-00-259
LUP Map Designations

O C E A N U S

VICINITY MAP
1" = 100'-0"



| | | | | | | | | |
|-------|---------|-------|---------|---------|------------|-------|----------------------------|----------------|
| 21202 | PACIFIC | COAST | HIGHWAY | MALIBU, | CALIFORNIA | 90286 | 655 SYCAMORE MEADOWS DRIVE | MALIBU, CALIF. |
|-------|---------|-------|---------|---------|------------|-------|----------------------------|----------------|

O C E A N U S SKYLAR BROWN:

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

ITEM 7

Pacific Coast Highway



↑ adjacent Unocal Station

Bridge over PCH

Las Flores Creek

EXISTING CONDITIONS PLAN

Duke's Restaurant

↑ Duke's Restaurant ↓

↑ adjacent condos

Palm trees

16' elev. contour

14

12

10

Revetment

remnant foundations

80

00

800

1928 MHTL

1969 MHTL

Pacific Ocean

PACIFIC

OCEANUS

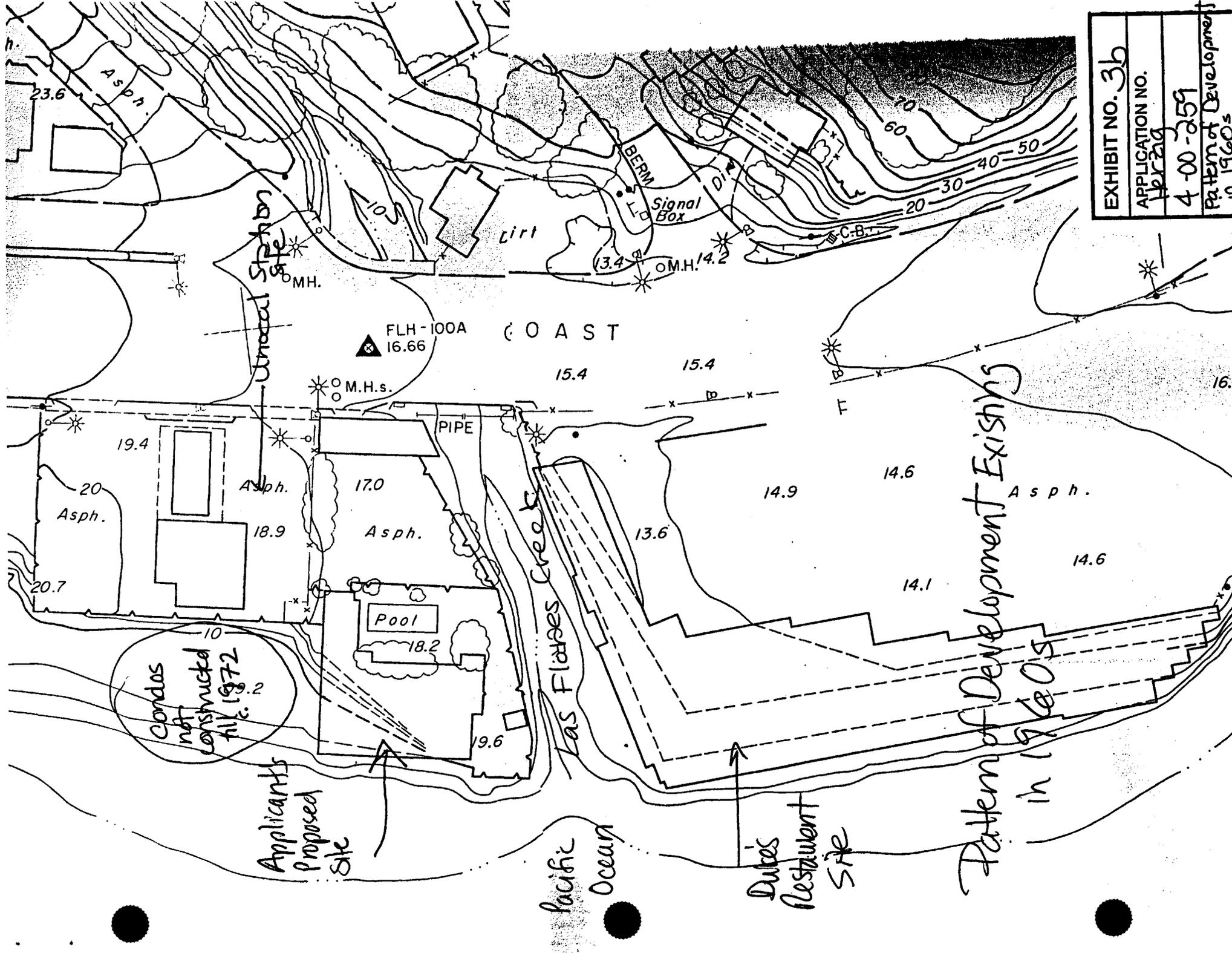
6155 SYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

SKYLAR BROWN, ARC

21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265

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

| |
|----|
| 15 |
|----|



| |
|------------------------------------|
| EXHIBIT NO. 3b |
| APPLICATION NO. FLC 219 |
| 4-00-259 |
| Pattern of Development in 1960s |

PACIFIC COAST HIGHWAY

LOT LINE ADJUSTMENT MAP NO.

PREPARED FOR: HALLAM DEVELOPMENT CORPORATION
 BY: [Name] [Date]

EXISTING ZONING

APPROVED: [Name] [Date]

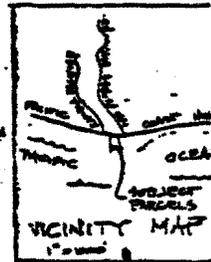
LOT AREA: [Value] [Unit]

| AREA | AREA | AREA |
|------|------|------|
| 1 | 2 | 3 |
| 4 | 5 | 6 |

LEGEND

- 1. [Symbol] [Description]
- 2. [Symbol] [Description]
- 3. [Symbol] [Description]
- 4. [Symbol] [Description]
- 5. [Symbol] [Description]
- 6. [Symbol] [Description]
- 7. [Symbol] [Description]
- 8. [Symbol] [Description]
- 9. [Symbol] [Description]
- 10. [Symbol] [Description]
- 11. [Symbol] [Description]
- 12. [Symbol] [Description]
- 13. [Symbol] [Description]
- 14. [Symbol] [Description]
- 15. [Symbol] [Description]
- 16. [Symbol] [Description]
- 17. [Symbol] [Description]
- 18. [Symbol] [Description]
- 19. [Symbol] [Description]
- 20. [Symbol] [Description]

1. [Text]
2. [Text]
3. [Text]
4. [Text]
5. [Text]
6. [Text]
7. [Text]
8. [Text]
9. [Text]
10. [Text]
11. [Text]
12. [Text]
13. [Text]
14. [Text]
15. [Text]
16. [Text]
17. [Text]
18. [Text]
19. [Text]
20. [Text]



Unocal Station

Cordas

Parcel 1 "After"

Parcel 2 "After"

New Proposed Lot Line

Existing Lot Line

10 ft. wide vertical access easement
 (remaining foundation & wall)

Stream Corridor Barrier

Existing

Jakes

Jakes Station

EXHIBIT NO. 3C

APPLICATION NO.

4-00-259

Lot Line Adjustment

{ } = Stream Corridor
 [Hatched] = vertical access easement

DATE: 2/10/99

INT. 5

PACIFIC COAST HIGHWAY

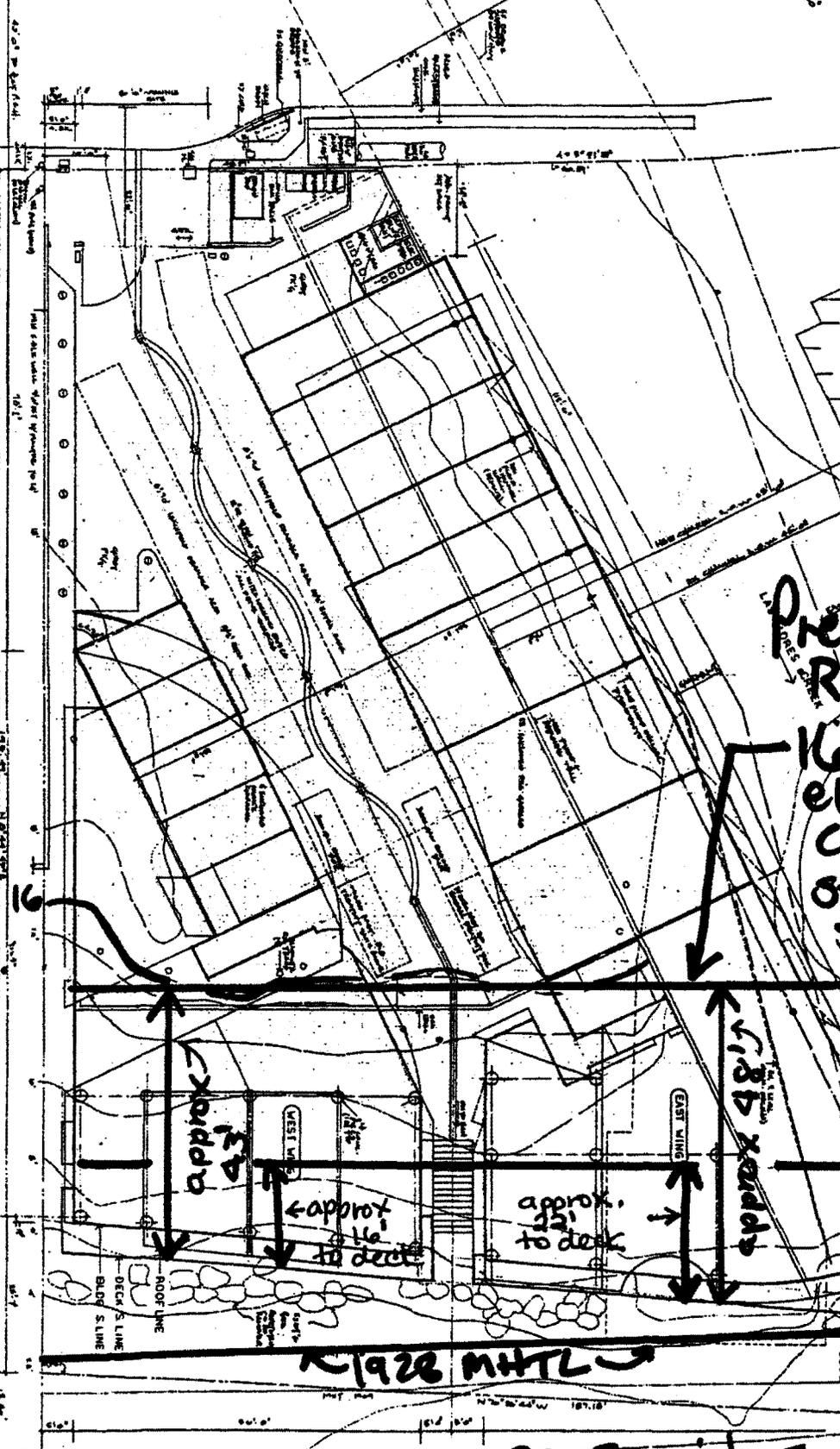
2 LOTS 4 UNITS PER LOT
3 UNITS 3BDRMS, 4 PARKG. SPC.
TOTAL ENCLOSED 2 GUEST
5 P.C.

MULTI FAMILY AND
DUNES RESTAURANT

Previously
Recommended
16 ft.
elevation
contour
structural
setback

Presently
Recommended
setback
(30 ft. inland from
1928 MHTL)

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



see Special
Condition 3

SKYLAR BROWN: ARCHITECT
6-455 SYCAMORE MDWS 311 45 610 MALIBU CA 90265

8/2/17

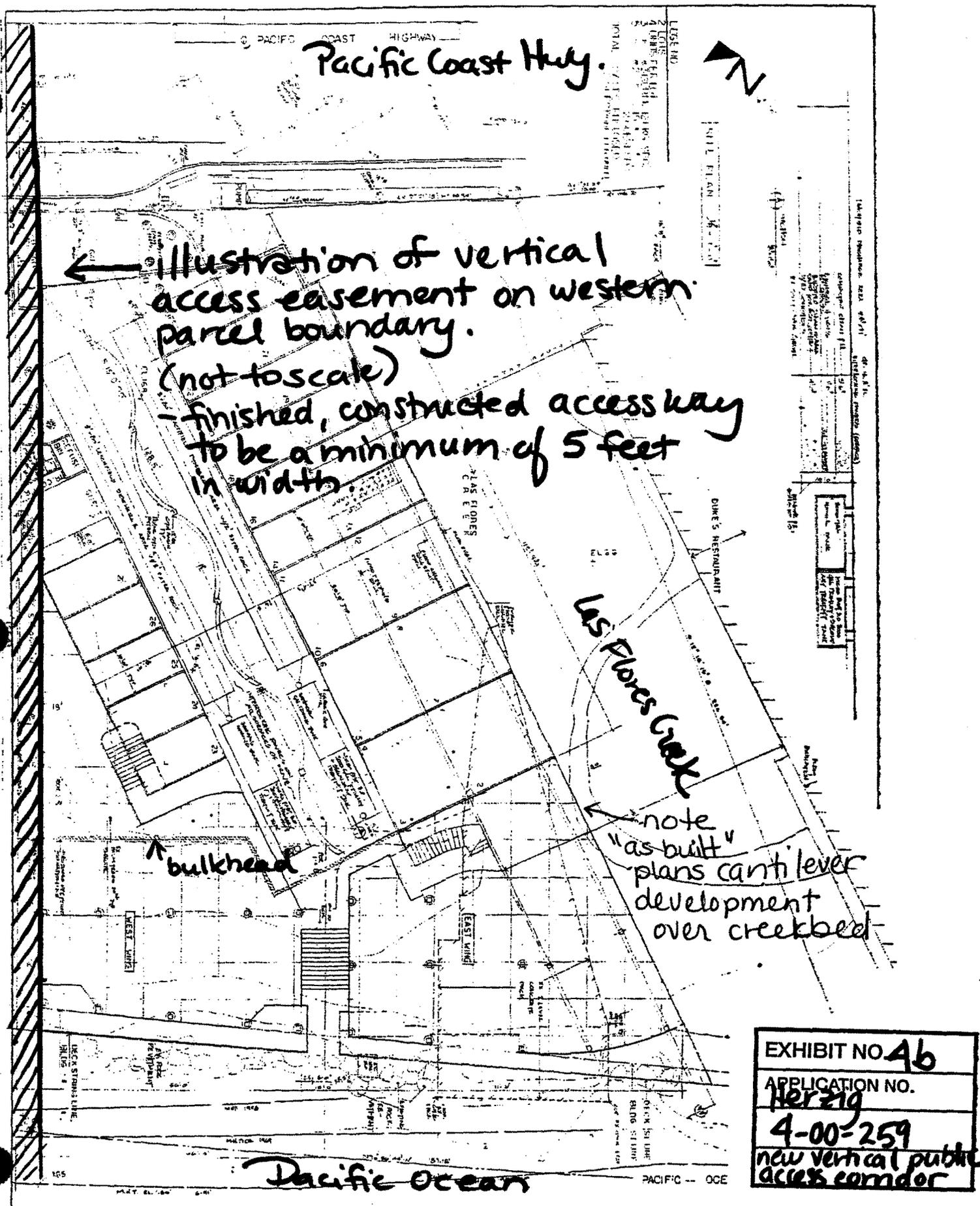
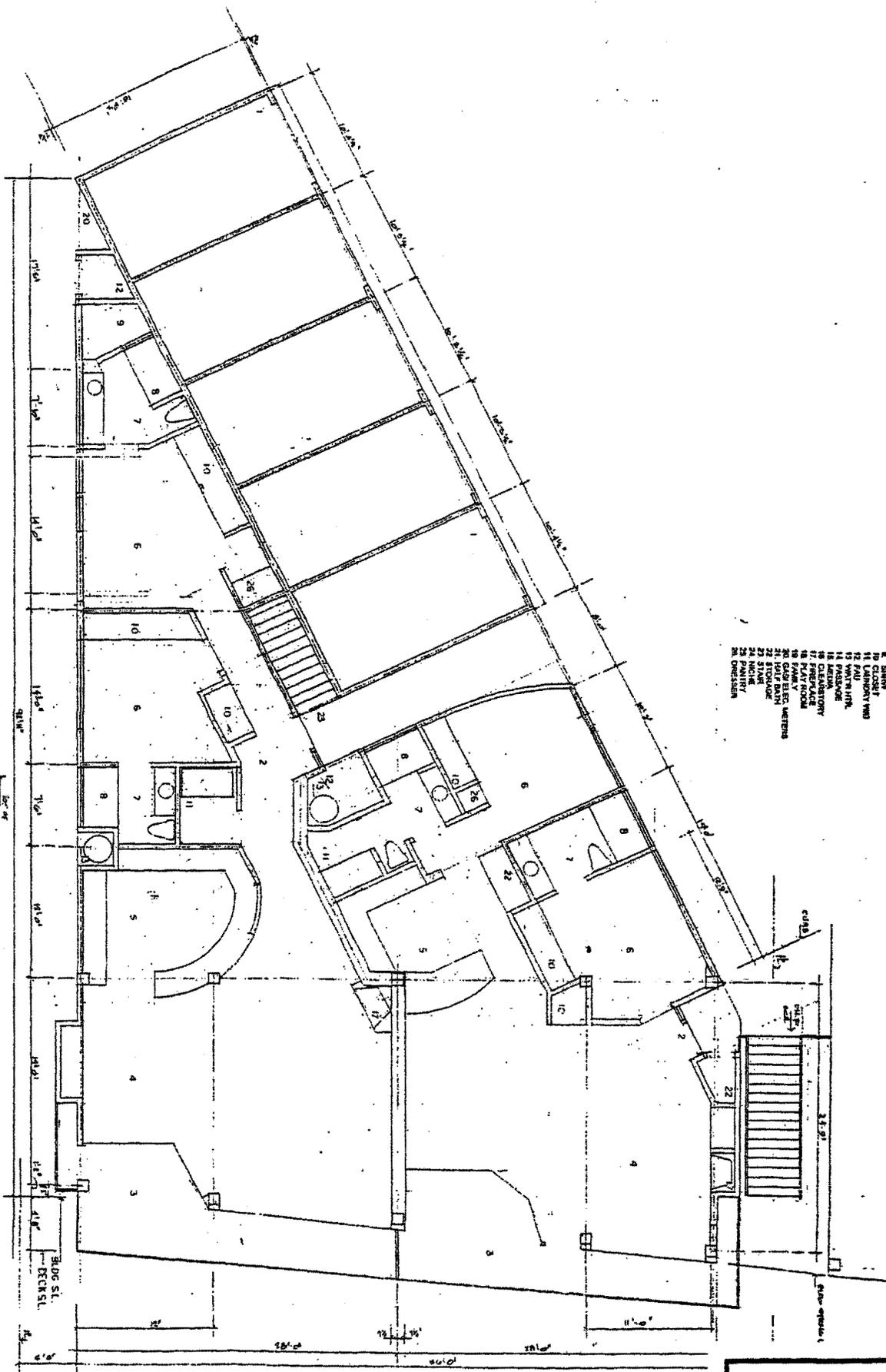


EXHIBIT NO 4b

APPLICATION NO. Herzig

4-00-259

new vertical public access corridor



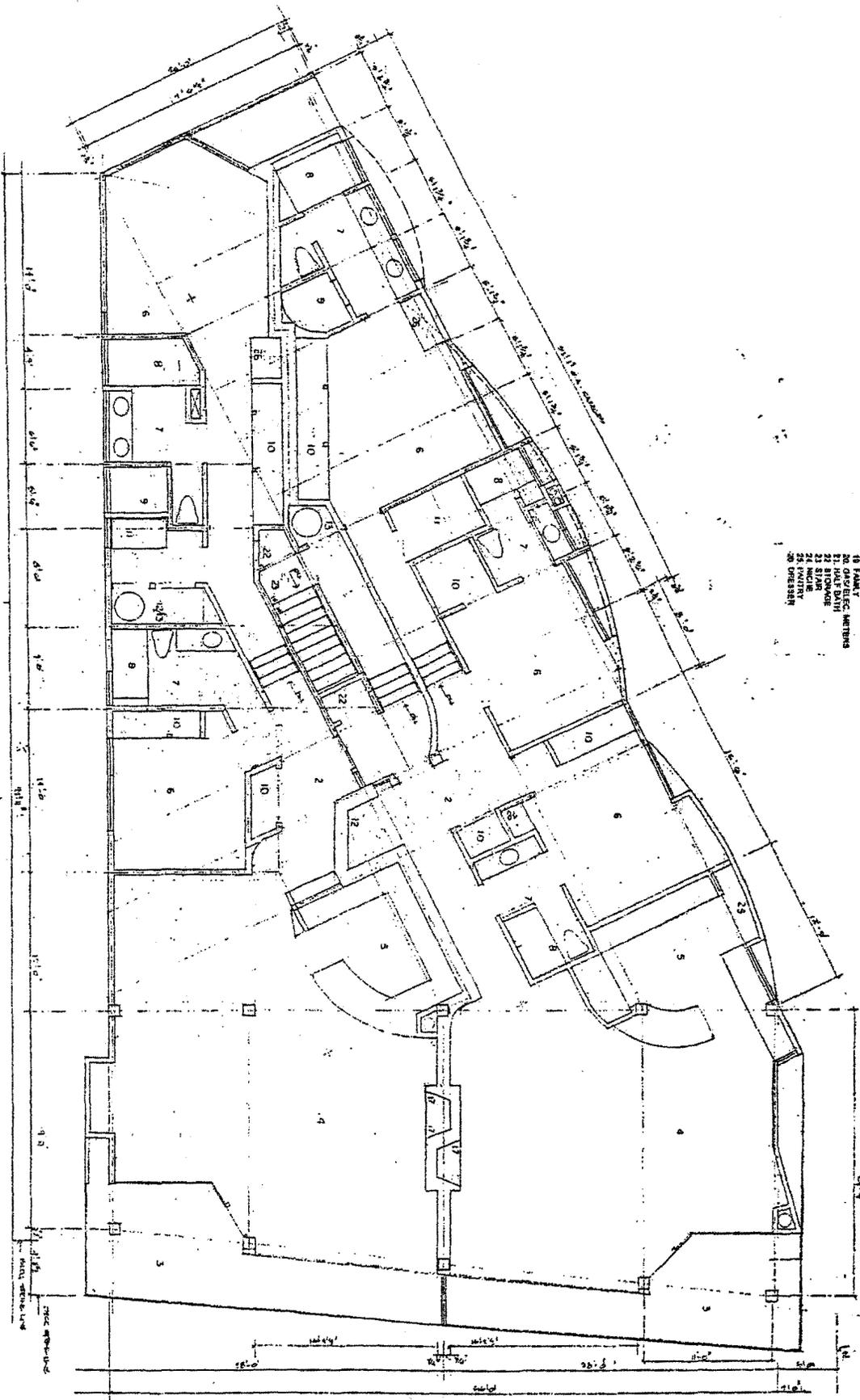
- 1 GARAGE
- 2 ENTRY
- 3 LIVING
- 4 LIVING/DIN
- 5 KITCHEN
- 6 BREAK ROOM
- 7 OFFICE
- 8 OFFICE
- 9 OFFICE
- 10 OFFICE
- 11 OFFICE
- 12 OFFICE
- 13 OFFICE
- 14 OFFICE
- 15 OFFICE
- 16 OFFICE
- 17 OFFICE
- 18 OFFICE
- 19 OFFICE
- 20 OFFICE
- 21 OFFICE
- 22 OFFICE

NOT TO SCALE
 1/8" = 1'-0"
 ALL DIMENSIONS IN FEET AND INCHES
 UNLESS OTHERWISE NOTED

WEST WING FIRST FLOOR
 1/4" = 1'-0"

OCEANUS SKYLAR BROWN:ARC
 21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90266 4455 STAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

EXHIBIT NO. 5
 APPLICATION NO. Herzig
 4-00-259
 West Wing 1st Flr



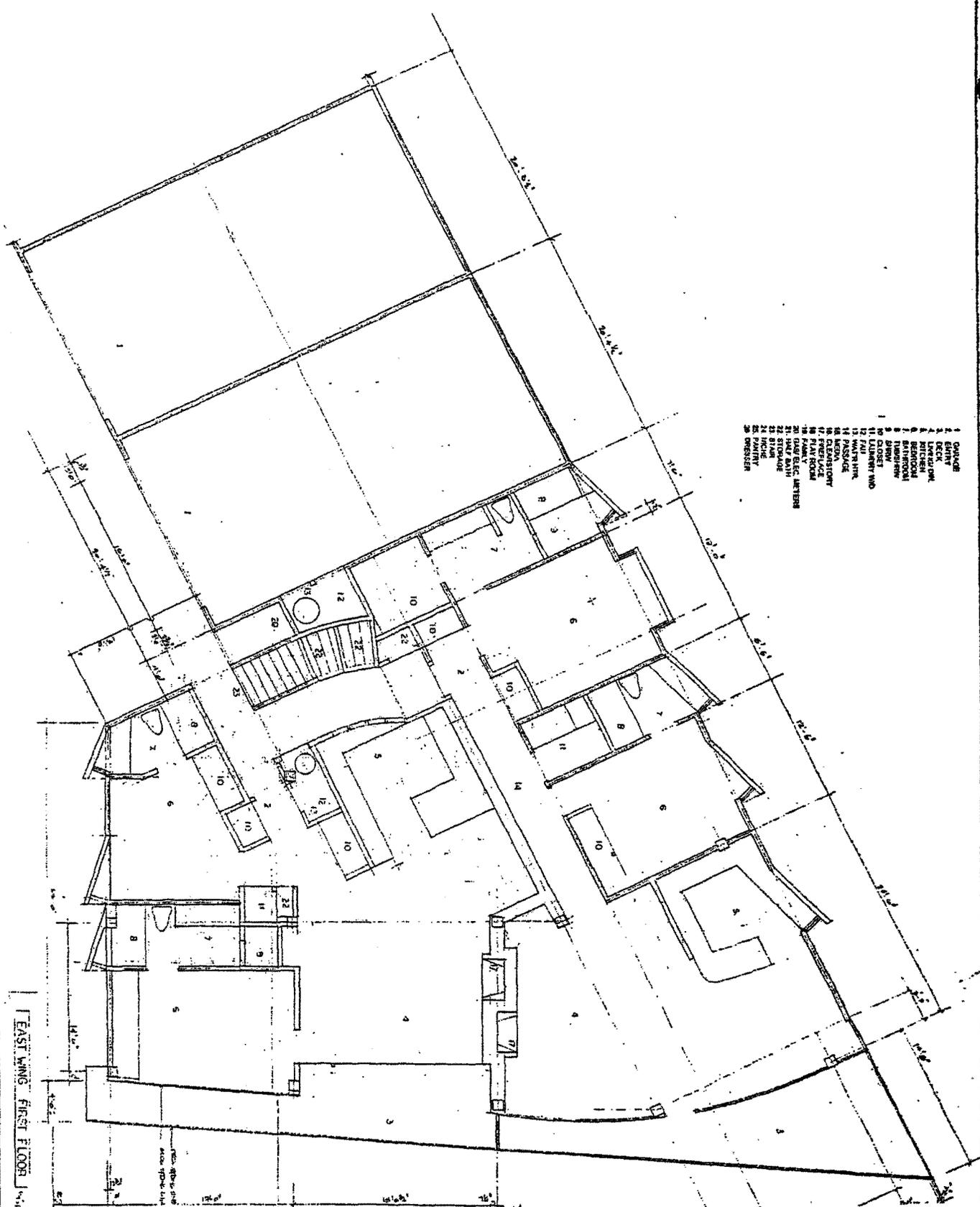
- 1 GARAGE
- 2 ENTRY
- 3 LIVING DIN
- 4 KITCHEN
- 5 BATH
- 6 BATH
- 7 BATH
- 8 BATH
- 9 BATH
- 10 BATH
- 11 BATH
- 12 BATH
- 13 BATH
- 14 BATH
- 15 BATH
- 16 BATH
- 17 BATH
- 18 BATH
- 19 BATH
- 20 BATH
- 21 BATH
- 22 BATH

WEST WING SECOND FLOOR

OCEANUS SKYLAR BROWN:ARC
 21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 8458 SYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

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

- 1 GARAGE
- 2 HALL
- 3 DECK
- 4 LIVING RM.
- 5 KITCHEN
- 6 BATHROOM
- 7 BATHROOM
- 8 HALLWAY
- 9 STAIR
- 10 CLOSET
- 11 CLOSET W/O
- 12 PAT. WALK
- 13 PAT. WALK
- 14 HALL
- 15 HALL
- 16 CLEARANCE
- 17 CLEARANCE
- 18 PAT. WALK
- 19 PAT. WALK
- 20 PAT. WALK
- 21 PAT. WALK
- 22 STAIR
- 23 STAIR
- 24 HALL
- 25 HALL
- 26 HALL
- 27 HALL
- 28 HALL
- 29 HALL
- 30 HALL

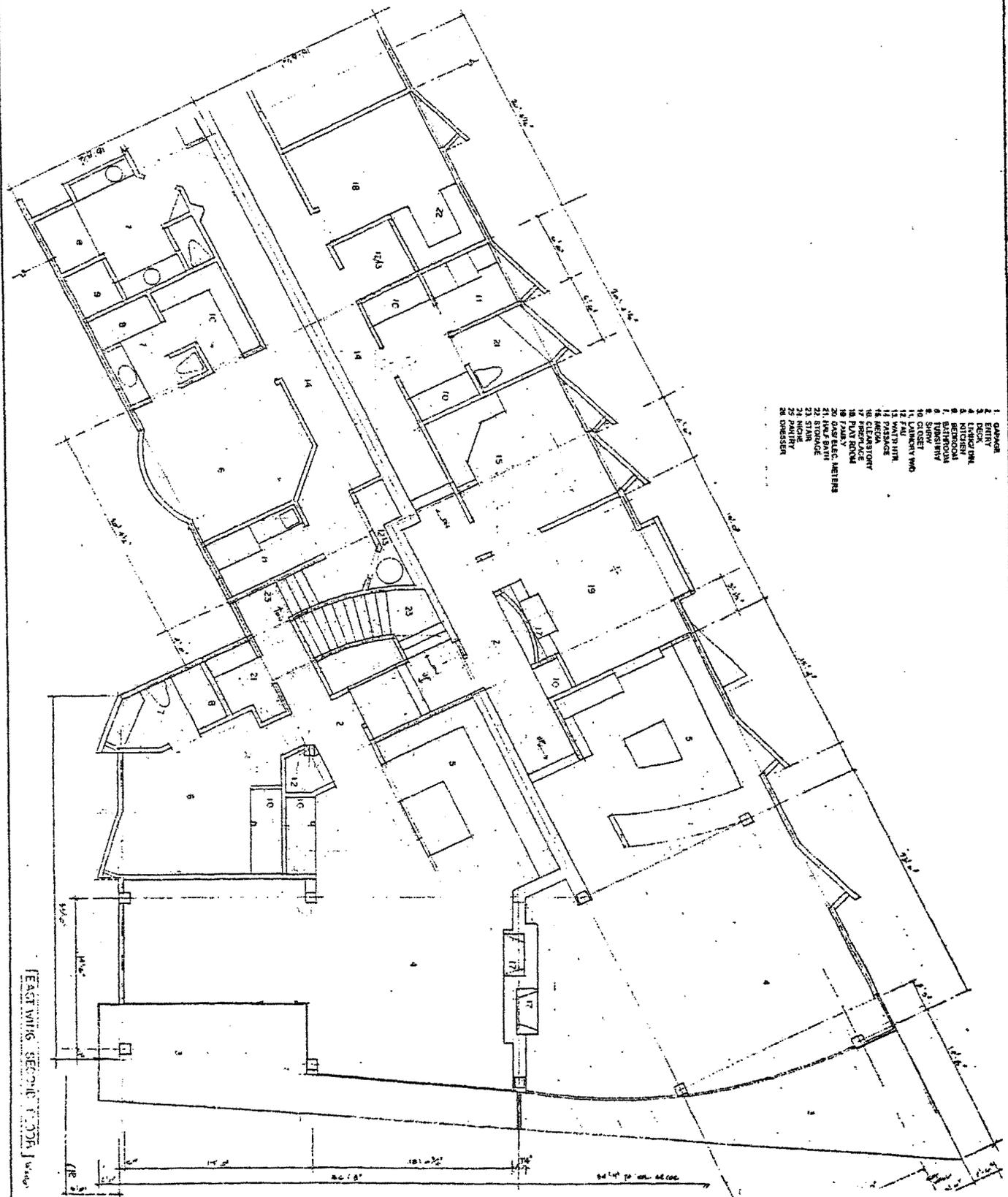


EAST WING - FIRST FLOOR

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

O C E A N U S SKYLAR BROWN:ARC
 21202 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90268
 8485 SYCAMORE MEADOWS DRIVE MALIBU CALIFORNIA

| | | |
|-----|----------|----------------------|
| NO. | DATE | DESCRIPTION |
| 1 | 10/1/88 | ISSUED FOR PERMITS |
| 2 | 10/15/88 | REVISED PER COMMENTS |
| 3 | 10/20/88 | REVISED PER COMMENTS |
| 4 | 10/25/88 | REVISED PER COMMENTS |

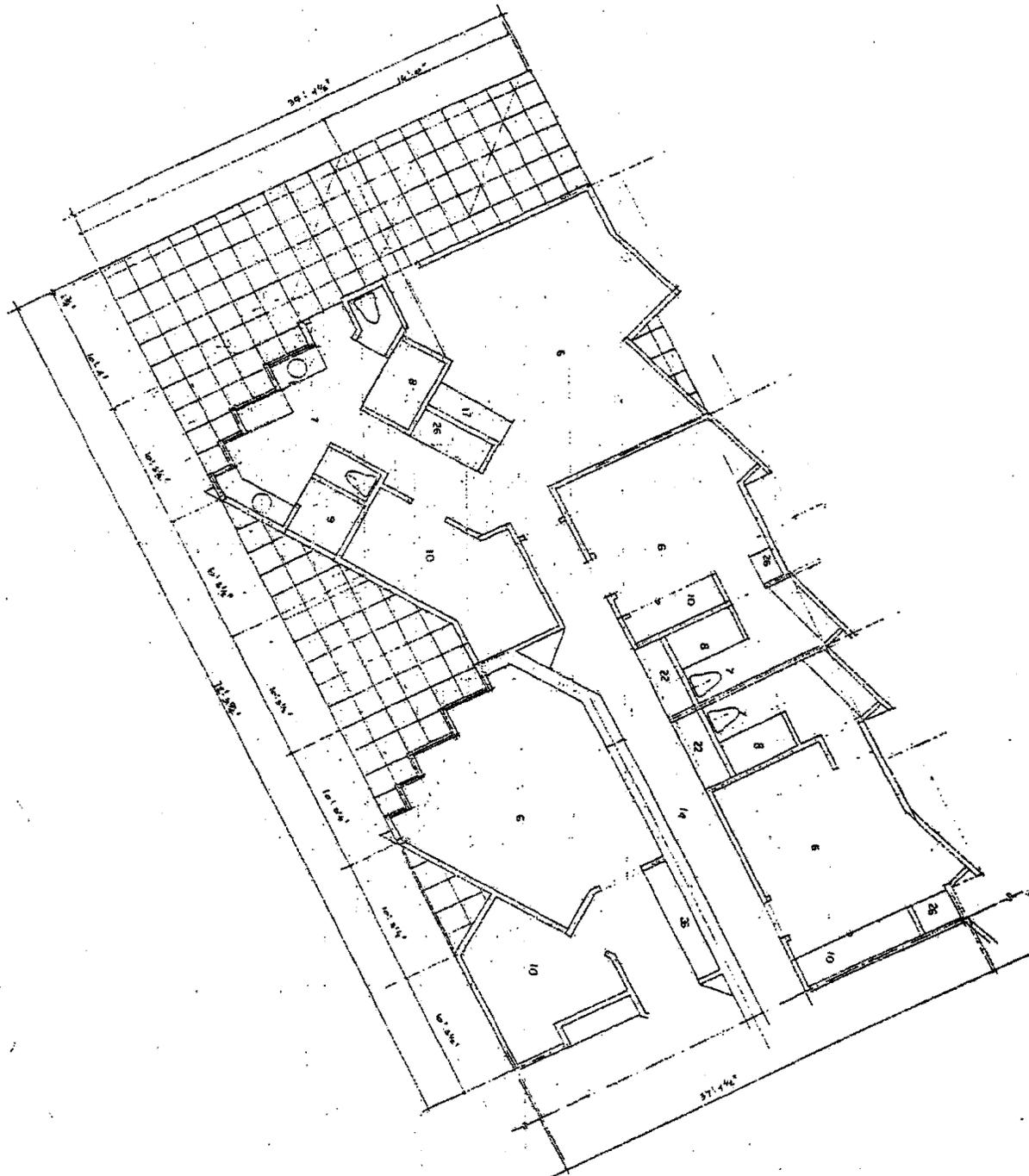


- 1 GARAGE
- 2 ENTRY
- 3 DESK
- 4 OFFICE
- 5 KITCHEN
- 6 BEDROOM
- 7 BATH
- 8 HALL
- 9 SHOWER
- 10 CLOSET
- 11 HALL
- 12 HALL
- 13 HALL
- 14 HALL
- 15 HALL
- 16 HALL
- 17 HALL
- 18 HALL
- 19 HALL
- 20 HALL
- 21 HALL
- 22 HALL
- 23 HALL
- 24 HALL
- 25 HALL
- 26 HALL

EAST WING SECOND FLOOR

OCEANUS SKYLAR BROWN:ARC
 21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265
 103 Sycamore Meadows Drive Malibu, California

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

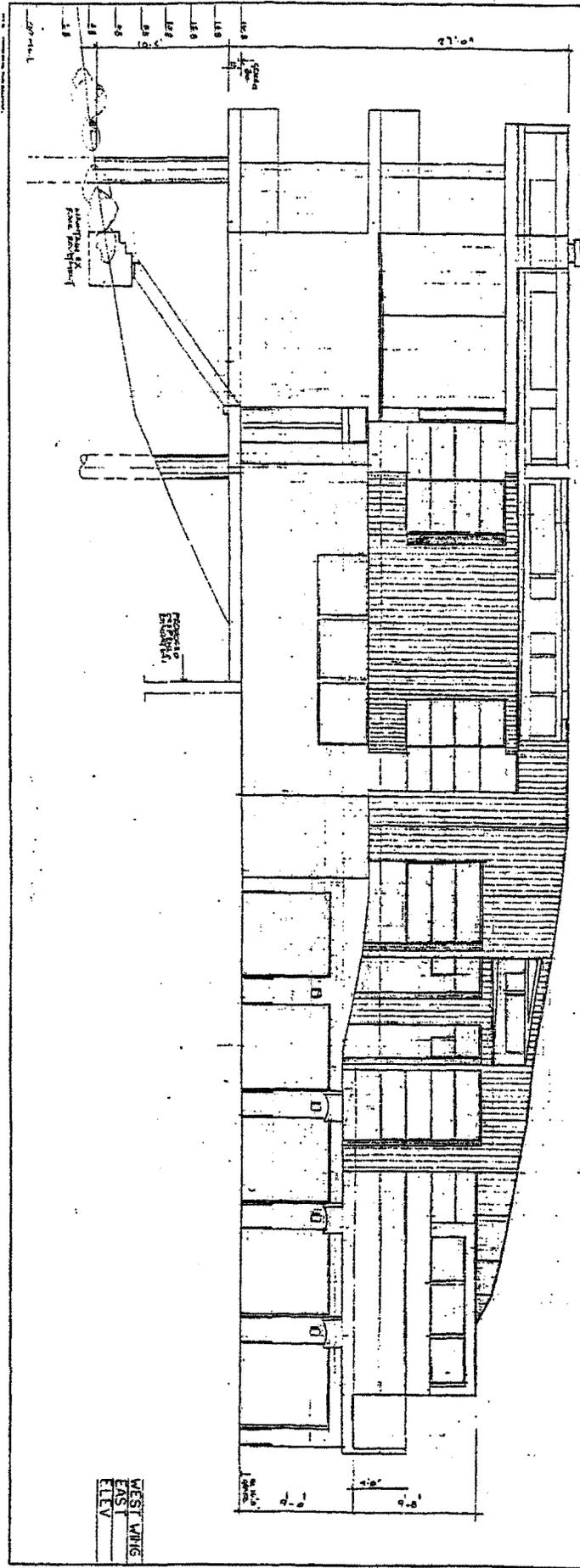


EAST WING SECOND FLOOR

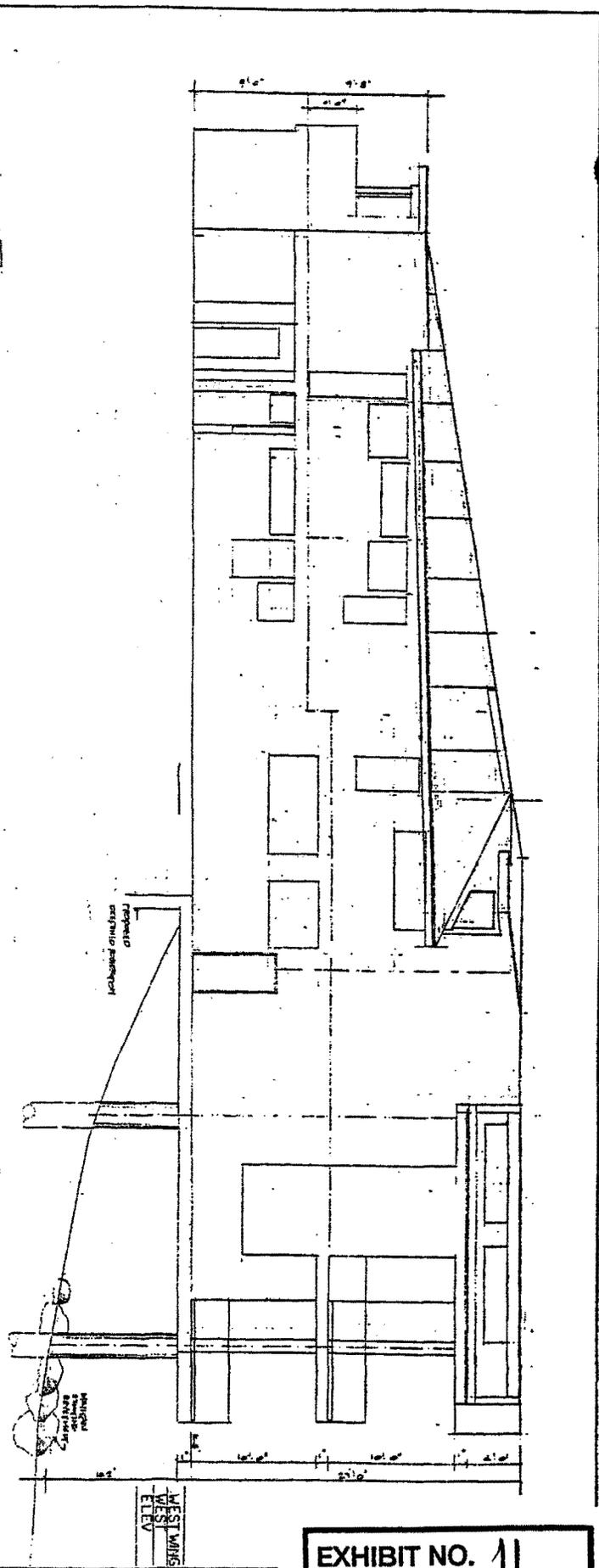
- 1 GYMNASIUM
- 2 GYMNASIUM
- 3 GYMNASIUM
- 4 LIVING DIN
- 5 KITCHEN
- 6 BREAK ROOM
- 7 RESTROOM
- 8 TUBS
- 9 SHOWER
- 10 CLOSET
- 11 CLOSET
- 12 CLOSET
- 13 CLOSET
- 14 CLOSET
- 15 CLOSET
- 16 CLOSET
- 17 CLOSET
- 18 CLOSET
- 19 CLOSET
- 20 CLOSET
- 21 CLOSET
- 22 CLOSET
- 23 CLOSET
- 24 CLOSET
- 25 CLOSET
- 26 CLOSET
- 27 CLOSET
- 28 CLOSET

OCEANUS SKYLAR BROWN: A
 21002 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 6455 SYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

EXHIBIT NO. 9
 APPLICATION NO. Herzig
 East Wing 2nd Flr
 4-00-259



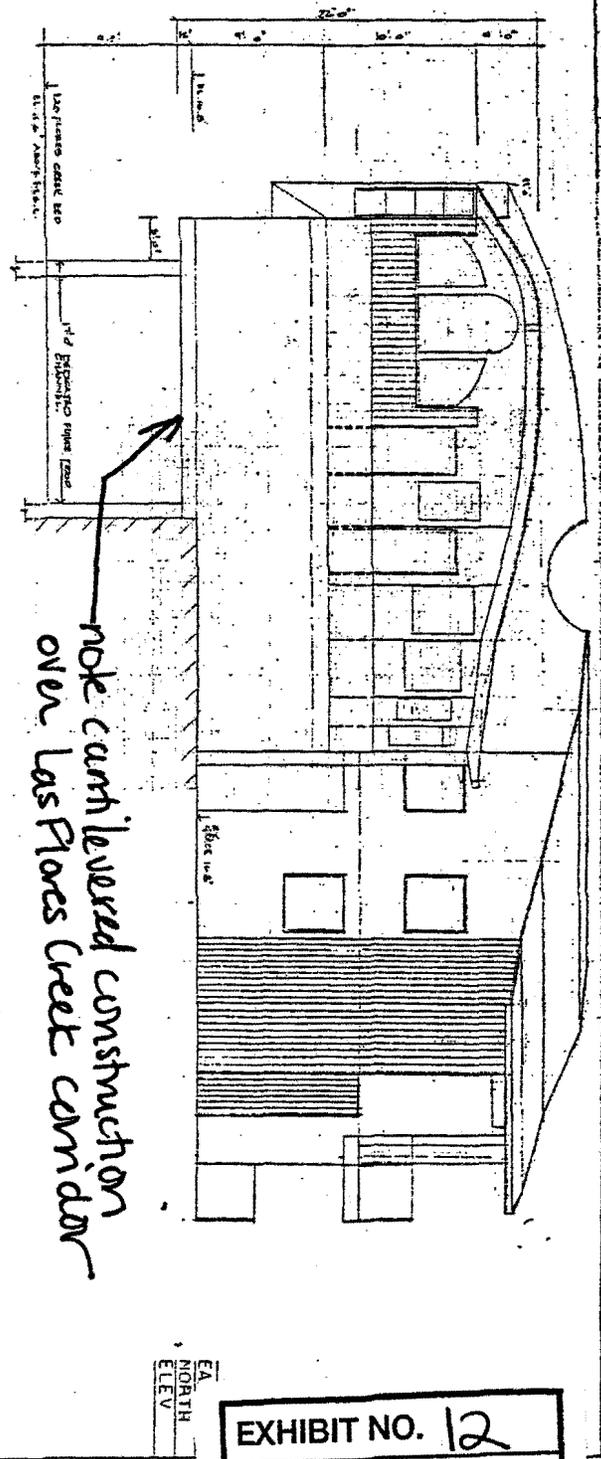
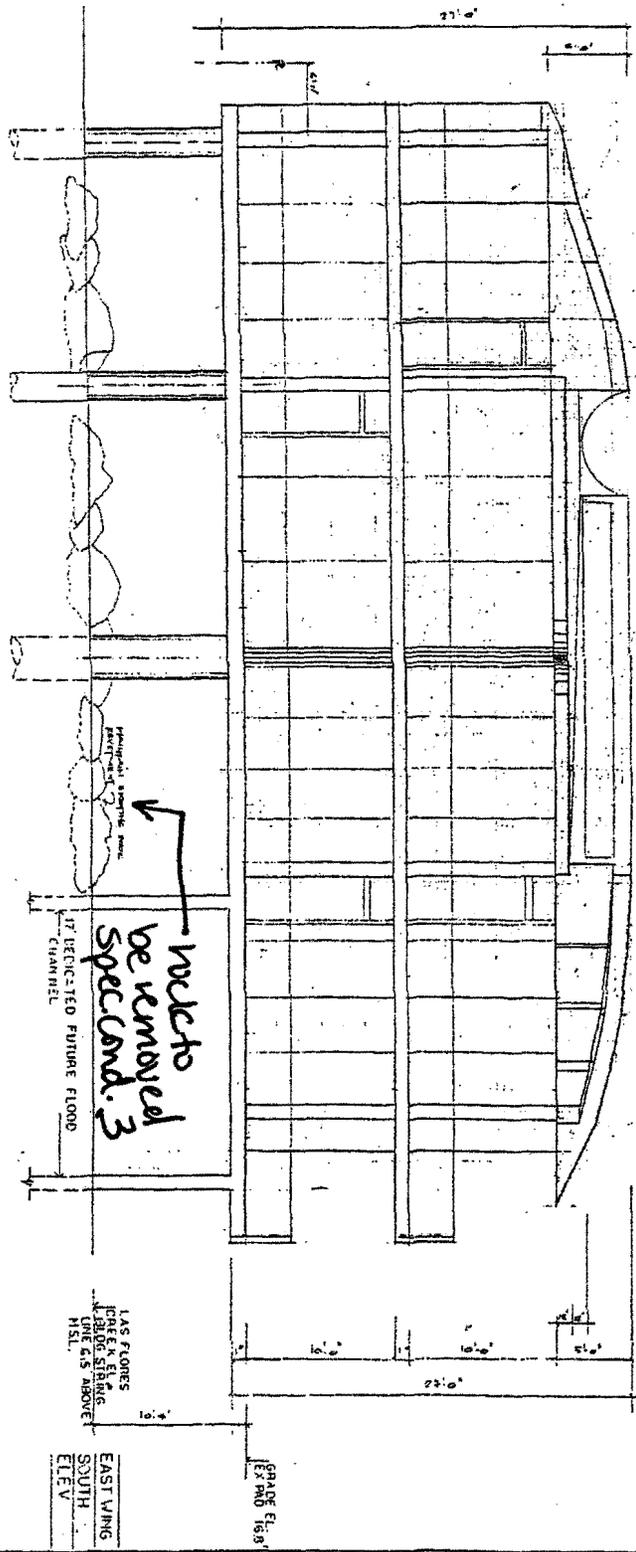
WEST WING
EAST
ELEV.



WEST WING
WEST
ELEV.

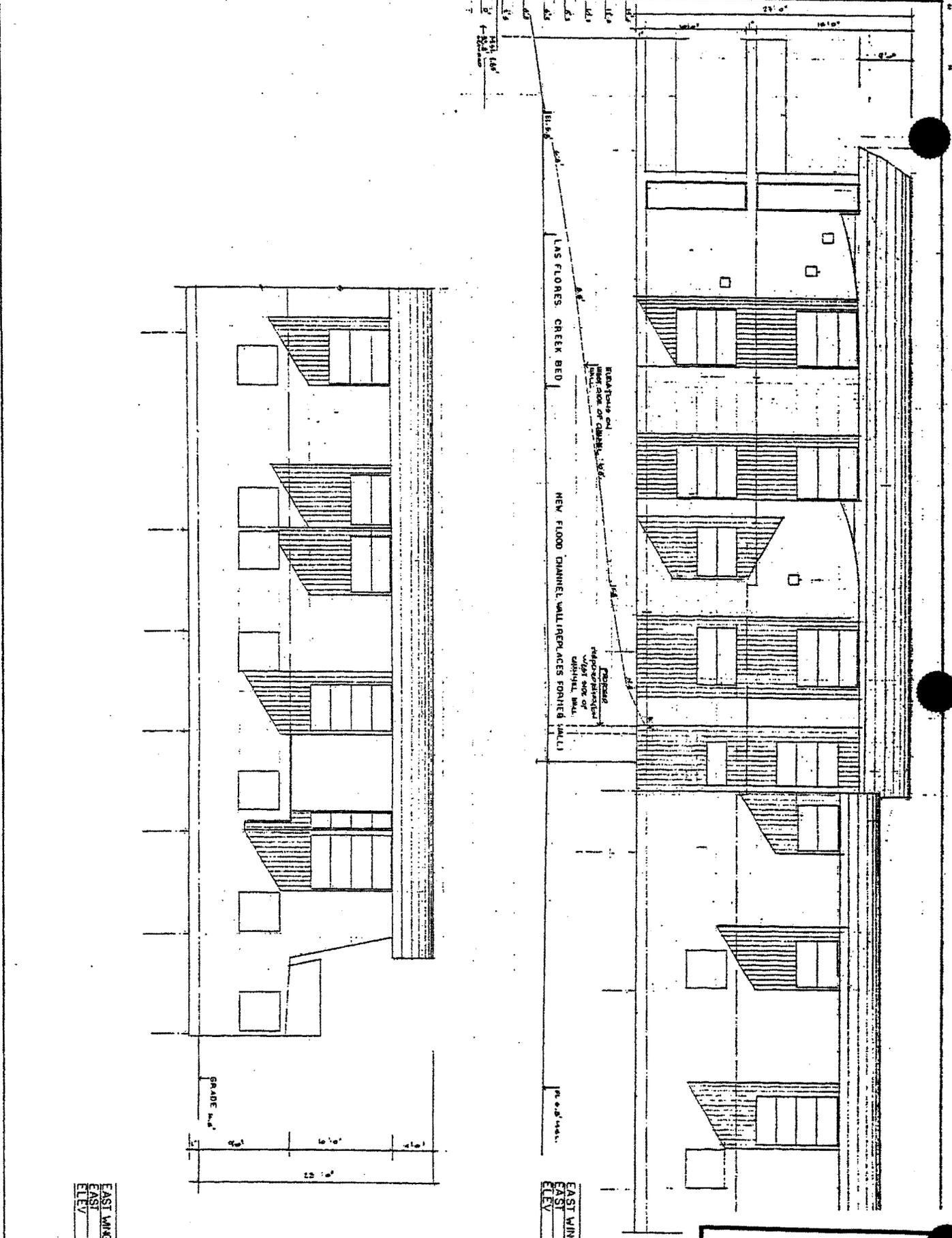
O C E A N U S SKYLAR BROWN:AR
 21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 4483 SYCAMORE MEADOWS DRIVE MALIBU, CALIFORNIA

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



O C E A N U S SKYLAR BROWN
 21222 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90263 8466 SYCAMORE MEADOWS DRIVE MALIBU, CA

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

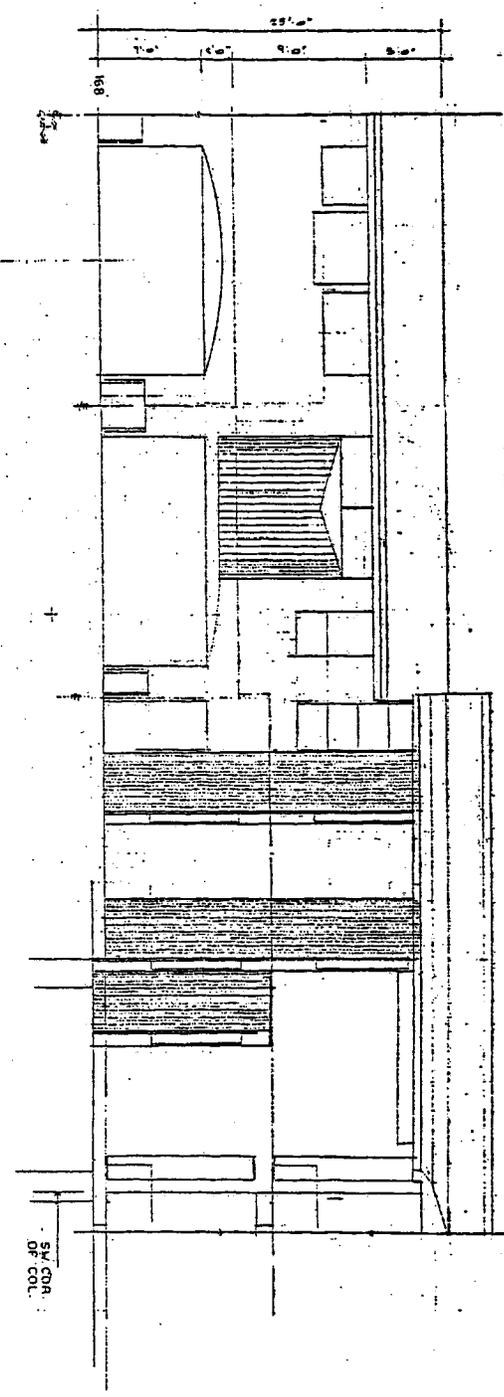
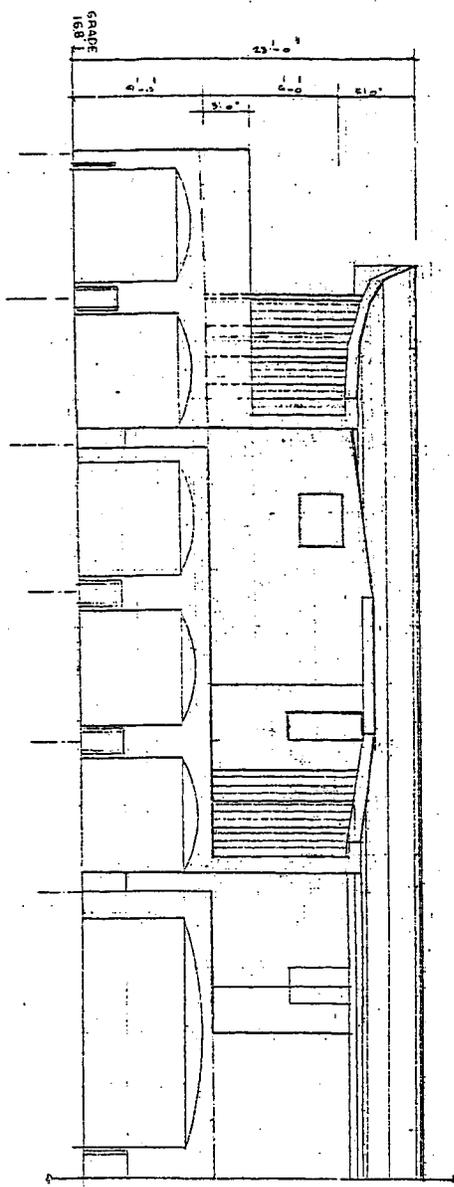


EAST WING
EAST
ELEV

EAST WING
EAST
ELEV

OCEANUS SKYLAR BROWN
21202 PACIFIC COAST HIGHWAY MALIBU CALIFORNIA 90265 5456 STYCAMORE MEADOWS DRIVE MALIBU CALIF

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



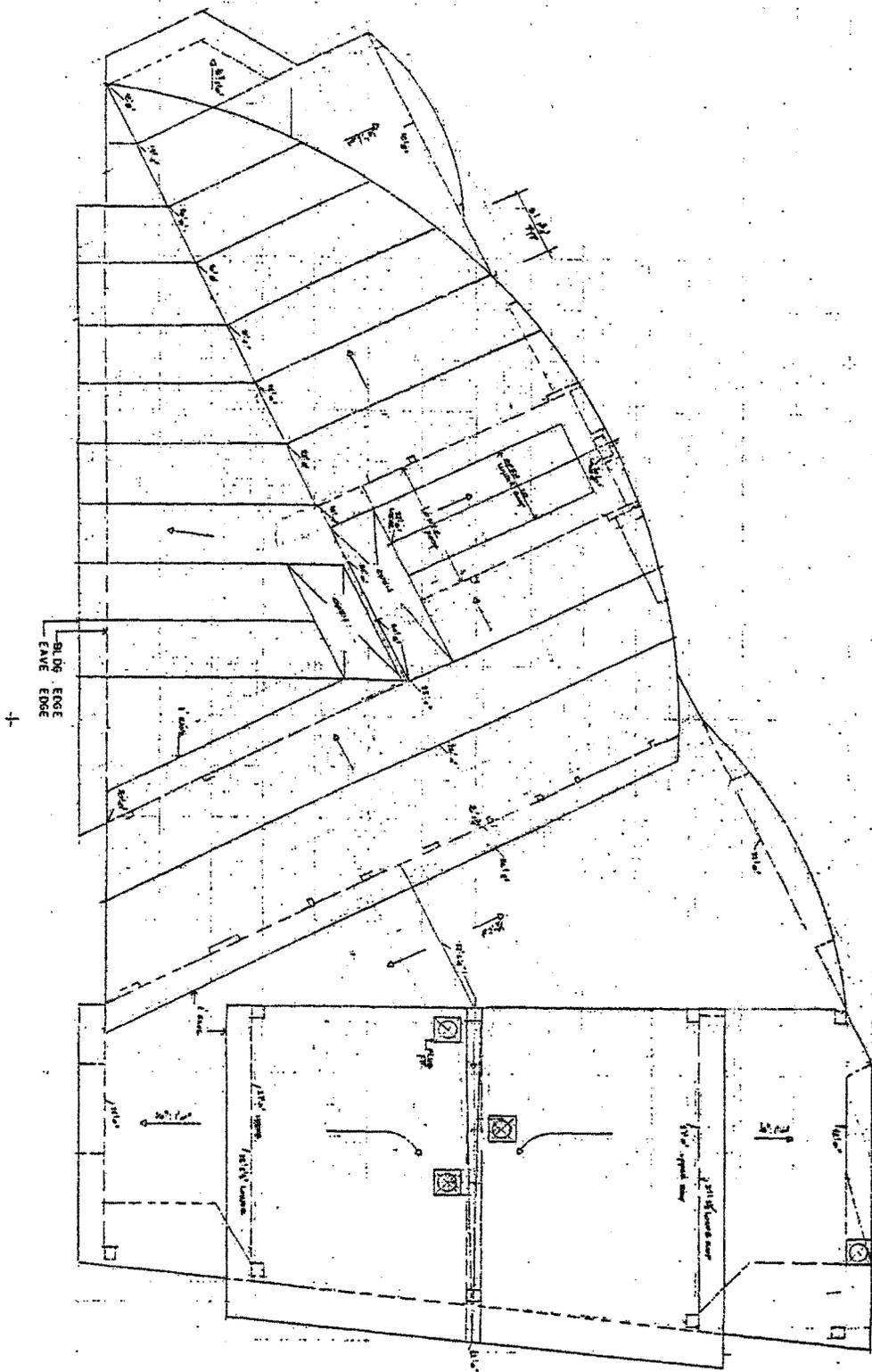
EAST WING
WEST
ELEV

WEST
ELEV

O C E A N U S SKYLAR BROW
21202 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90226 8450 SYCAMORE MEADOWS DRIVE MALIBU

EXHIBIT NO. 14
APPLICATION NO. Herzig
4-00-259
East Wing

10 1000000

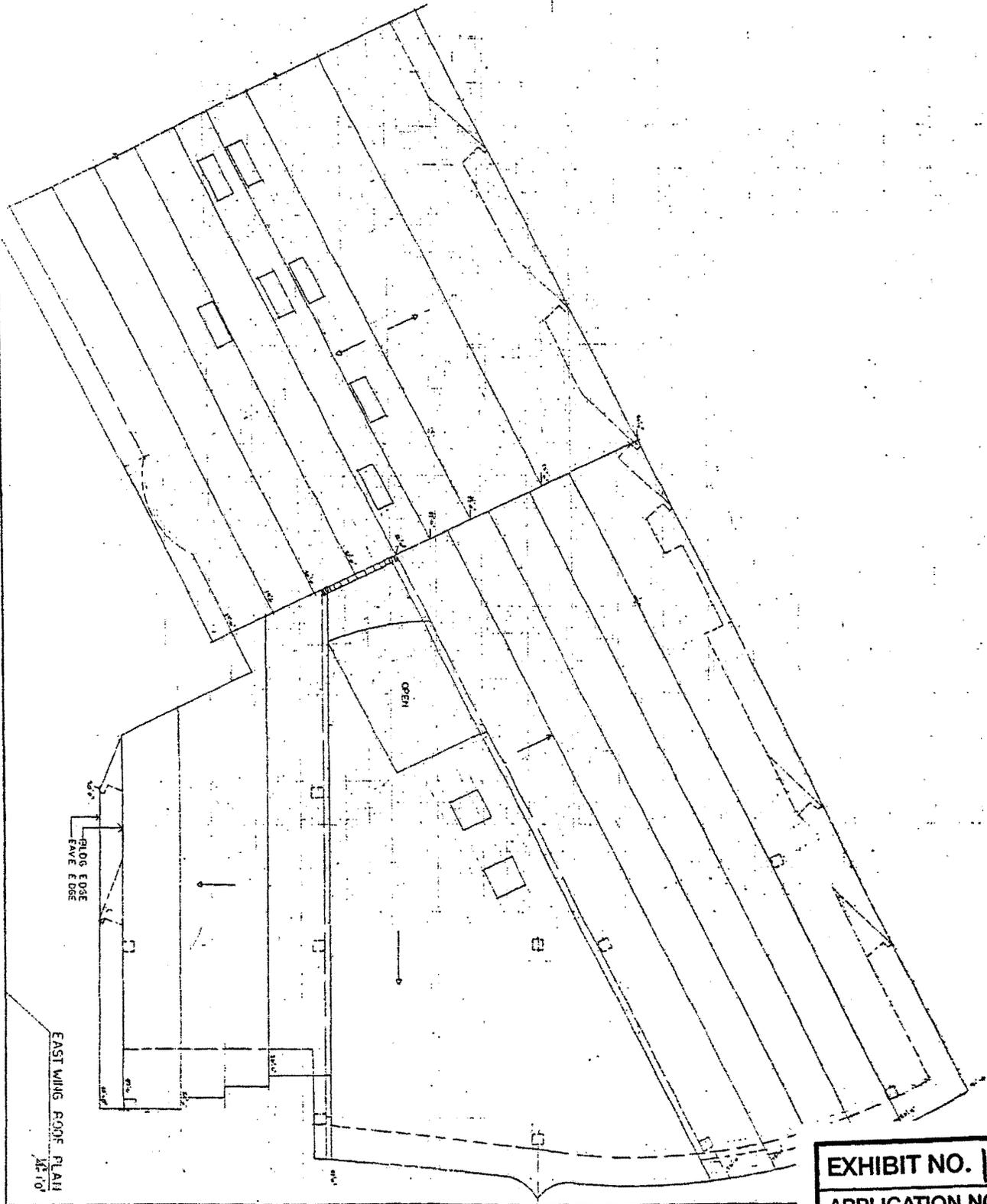


WEST WING ROOF PLAN 1/4" = 1'-0"

| | | |
|-----|------|-------------|
| NO. | DATE | DESCRIPTION |
| 12 | | |

21252 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 SKYLAR BROWN: A 4455 SYCAMORE MEADOWS DRIVE MALIBU, CALIFO

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

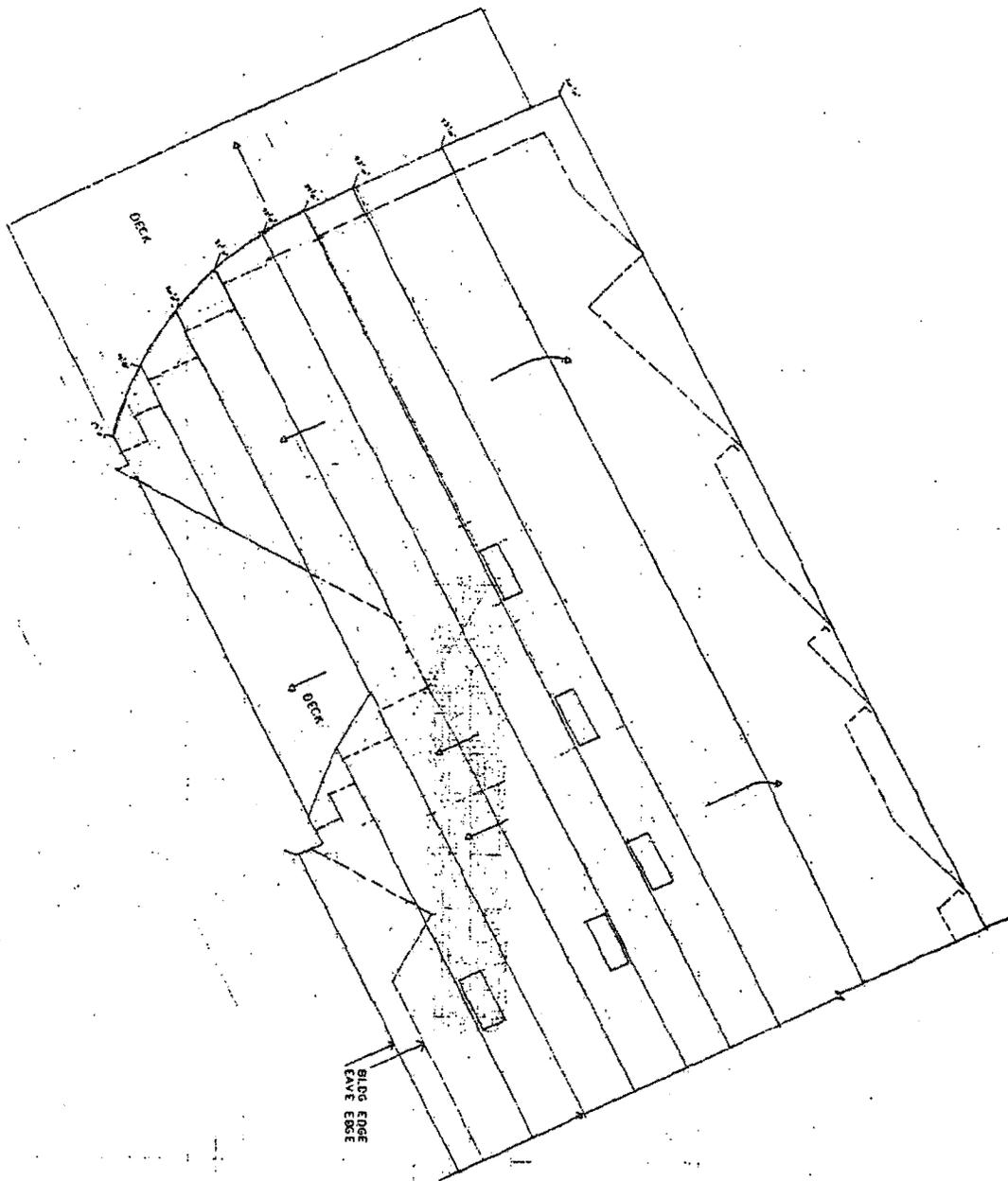


ROOF EDGE
EAVE EDGE

EAST WING ROOF PLAN
1/2\"/>

| | |
|---------|----|
| DATE | |
| BY | |
| CHECKED | |
| NO. | 13 |
| REV. | |
| DATE | |

| |
|---------------------------|
| EXHIBIT NO. 16 |
| APPLICATION NO. Herzig |
| 4-00-259 |
| East wing Roof Plan |



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

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

OCEANUS SKYLAR BROWN: A
 21222 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90266 4455 SYCAMORE MEADOWS DRIVE MALIBU, CALIFOR

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

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| Herzig |
| State Lands letter |

Ralph B. Herzig

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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

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

July 18, 2001

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

Re: Proposed development at 21200 and 21202 Pacific Coast Highway

Dear Mr. Block:

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

The Vertical Access Easement:

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

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

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

2930 Broadway, 11th Floor
Oakland, California 94612-2530
510-286-1015 Fax: 510-286-0470



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

The Lateral Access Easement:

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

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

Best regards,


Joan Cardellino
Access Program Manager

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

Letter/
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| Coastal Conservancy letter 7/18/01 |
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LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

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

E-MAIL: alan@arblock.com
TELEPHONE (310) 552-3335
TELEFAX (310) 552-1950

ALAN ROBERT BLOCK
OF COUNSEL
MICHAEL N. FRIEDMAN

July 23, 2001

VIA FAX & FIRST CLASS MAIL

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

Re: Coastal Development Permit (CDP) Application No. 4-00-021 (Herzig)
Project Addresses: 21200 & 21202 Pacific Coast Highway, Malibu

Dear Ms. Cardellino:

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

Vertical Access

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

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

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EXHIBIT NO. 19
APPLICATION NO. 4-00-259 Herzig
Letter from Applicant to Conserv.

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

Page 2

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

Lateral Access

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"[N]o coastal development permit shall be required pursuant to this chapter for. . .[t]he replacement of any structure . . . destroyed by a disaster. The replacement structure shall . . . not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure."

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

Conclusion

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

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

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

Exhibit 19
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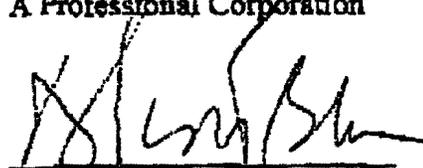
Joan Cardellino.
Re: CDP Application No. 4-00-021 (Herzig)
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a sit-down meeting and a review of the plans would be helpful, we are most interested in proceeding. Thank you for your courtesy and review of this proposal.

Very truly yours,

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



ALAN ROBERT BLOCK

cc: Ralph Herzig
Susan McCabe
Elana Egger, Esq.

Exhibit 19
Letter - Page 5 of 5

ap # 4-00-259

7E

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

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

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

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

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

Unknown Author: Exhibit 19 Delivered to Staff Table
6/15/01 msl

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

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

THANKYOU

Exhibit 19
Page 2/2



May 1, 2001

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

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

Dear Ms. Wan:

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

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

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

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

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

C a l i f o r n i a S t a t e C o a s t a l C o m m i s s i o n

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| 4-00-259 |
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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

Angeles 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,

Rainaldia

Wetlands Action Network

protecting & restoring wetlands along the Pacific Migratory Pathways

May 7, 2001

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

re: Application No. 4-00-259

TU 14j

Dear Chair Wan and Commissioners:

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

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

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

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

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

We would prefer to see this land acquired by FEMA (Federal Emergency Management Act) funds or Southern California Wetlands Recovery project funds and placed into public ownership so that beach access can be maintained and enhanced and coastal wetland restoration can take place. However, if this is not possible, the public access and underlying land-use 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 Lianis

Signature

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

Melanie Hale
California Coastal Commission, Ventura Office

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

Dear Ms. Hale:

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

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

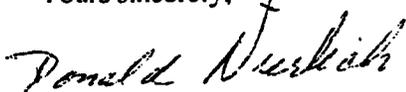
I am opposed to the development as I understand it, because the space is too small for a multiunit project. On the other hand, if I understand correctly, the developer has proposed to construct an access path to the beach on the existing easement. This being the case, I could see the virtue of a smaller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

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

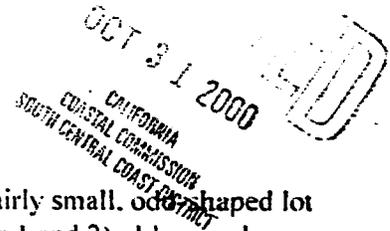
Further, the need for additional room on the beach is made even greater and more visible by the very large apartment building and its armoring rocks adjacent on the north-west of the project site at the back of the service station (5). The building is on piles and extends over the surf at all but low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

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

Yours sincerely,



Donald Nierlich
L.A. County Coastwalk





In Memoriam
Harry Barovsky
Honorary Mayor
2000

PLANNING DEPARTMENT

City of Malibu

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

RECEIVED
MAY 14 2001
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

May 4, 2001

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

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

Dear Mr. Timm,

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

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

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

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

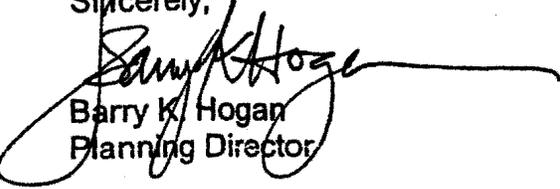
City of Malibu - Planning Department
Coastal Commission Staff Report (21200 and 21202 Pacific Coast Highway)

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

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

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

Sincerely,



Barry K. Hogan
Planning Director

cc: Peter Douglas
Chuck Damm
Ralph Herzig

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

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

E-MAIL alanblock@pacbell.net
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

June 8, 2001

From: *Alan Block*
JUN 15 2001
Received at Commission Meeting

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

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

Project Addresses: 21200 & 21202 Pacific Coast Highway, Malibu

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

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

Dear Commissioners:

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

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

*Letter /
18 pages*

| |
|---------------------------------|
| EXHIBIT NO. 19 |
| APPLICATION NO. 4-00-259 Herzig |
| Letter from Alan Block |
| Herzig Attorney |

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

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Project Background

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff's Recommended Special Conditions

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

The Applicant's Contentions

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

Special Condition Nos. 3A and 16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"[N]o coastal development permit shall be required pursuant to this chapter for . . . [t]he replacement of any structure . . . destroyed by a disaster. The replacement structure shall . . . not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure."

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

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

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

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

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

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

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

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

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

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

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

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

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June 8, 2001

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

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

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

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

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

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

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

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

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

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[Emphasis added]

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

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

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

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

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Page 15

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

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

"Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms to the Chapter 3 policies of the Coastal Act. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. *While the County prepared and certified LUP is no longer legally effective in the newly incorporated city of Malibu, the previously certified LUP continues to provide guidance as to the types of uses and resource protection needed in the Malibu area in order to comply with Coastal Act policy.*"

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

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

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

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

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

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

Special Condition Nos. 3B, 11 and 15

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

Ek. 19

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Director and the California Coastal Conservancy.

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

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

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

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

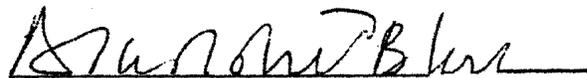
Conclusion

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

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

Very truly yours,

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


ALAN ROBERT BLOCK

cc: Commissioners
Ralph Herzig
Susan McCabe

Ex. 19

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
10000 BOULEVARD, SUITE 3107
450
BEACH, CALIFORNIA 90801
590-5071 (714) 846-0648



COASTAL DEVELOPMENT PERMIT

Application Number: P-79-4918

Name of Applicant: Felina's Inc.

3212 Nebraska Avenue, Second Floor, Santa Monica, CA

90404

Permit Type: Emergency
 Standard
 Administrative

Development Location: 21202 Pacific Coast Highway, Malibu, CA

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

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

See attached Page 3 for conditions.

29 PAGES TOTAL

| |
|---------------------------------|
| EXHIBIT NO. 20 |
| APPLICATION NO. 4-00-259 Permit |
| Access Easement Documents |

Condition/s Met On _____ By ADH kph

II. The South Coast Commission finds that:

A. The proposed development, or as conditioned:

1. The developments are in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976.
2. If located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.
3. There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this Commission under the power granted to it which would substantially lessen any significant adverse impact that the development, as finally proposed may have on the environment.

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

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

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

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

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

M. J. Carpenter
M. J. Carpenter
Executive Director

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

(date)

John T. Hall
(signature)

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

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

2: limiting the use of the second story of the structure to restaurant storage and other ancillary restaurant uses but in no case open for public use unless pursuant to a permit from this Commission or its successor agency and

3. the applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access to the shoreline. (such easement shall be along the eastern boundary of the property in Las Flores Creek). Such easement shall be free of prior liens or encumbrances except for tax liens and shall extend from Pacific Coast Highway to the mean high tide line. Pursuant to Public Resources Code Section 30212, any public agency or private association accepting such dedication may limit public use to pedestrian, viewing and tideland access and recreation, and shall assume responsibility for maintenance and liability. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 25 years, such period running from the date of recording.

* * *

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
444 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1430
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 844-0648



FILE COPY

NOTICE OF PUBLIC HEARING

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

Said public hearing is scheduled on the April 23, 1979

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

*** as submitted by Felina's Incorporated

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

at 21202 Pacific Coast Hwy., Malibu

Said agenda public hearings will commence at 4:00 p.m.

on April 23, 1979

at Torrance City Council Chambers

3031 Torrance Blvd., Torrance

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

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


M. J. Carpenter
Executive Director

*** FOR APPLICANT ONLY.....

COPY OF THIS NOTICE IS TO BE POSTED ON SUBJECT PROPERTY

767A

(over) EXHIBIT "B"

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
600 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 844-0648

**NOTICE OF PROPOSED PERMIT CONDITIONS**

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

PROJECT DESCRIPTION:

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

CONDITION:

See attached page 3.

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

Date: April 2, 1979

M.J. Carpenter
Executive Director

MJC:cw

32278

EXHIBIT "B"

Conditions:

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

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

* * *

EXHIBIT B

81- 279808

verified

RECORDATION REQUESTED BY AND MAIL TO:

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

OFFER TO DEDICATE

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

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

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

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

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

VI. WHEREAS, a Coastal Development Permit No. P-79-4916 was granted on April 23, 1979 by the Commission subject to the following condition:

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

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

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

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This copy is subject to recordation laws

CHICAGO TITLE

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

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

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

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(This area for official approval only)

CHICAGO TITLE

11498

for said easement.

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

DATED: October 11, 1979

FELINA'S INC.

By *[Signature]*
President & Sec.

By _____

ESTATE OF ELOISE BURNETT

By *James M. Parker*
Executor

ALBATROSS HOTEL, INC.

By *James M. Parker*
President

By *Sally T. Parker* Sec.

81- 279808

81- ~~279808~~ -4-

81- 279808 (TM)
~~81- 271895~~

STATE OF CALIFORNIA }
COUNTY OF Los Angeles } ST.

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

WITNESS my hand and official seal.

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

OFFICIAL SEAL
MADLINE E. SELLS
NOTARY PUBLIC CALIFORNIA
100 N. 11th Street, 101
LOS ANGELES, CALIFORNIA
My Commission Expires May 26, 1983

(This area for official notarial seal)

CHICAGO TITLE

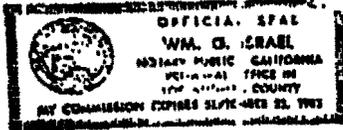
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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

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

WITNESS my hand and official seal.



Wm G Israel

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

On October 24, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared James M. Parker, known to me to be the Executor of the Estate of Eloise M. Burnett and acknowledged to me that he executed the within instrument as such executor.

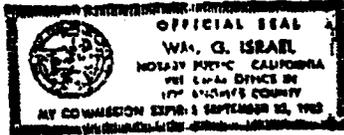
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CHICAGO TITLE

1981

WITNESS my hand and official seal.



W. G. Israel

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

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

- 5 A -

~~81-271635~~ 81-279808

LOS ANGELES TITLE

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

9 Dated: March 11, 1981

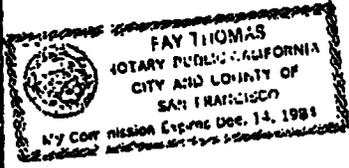
Cynthia K. Long
CYNTHIA K. LONG, Notary Public
 California Coastal Commission

13 STATE OF CALIFORNIA
 14 COUNTY OF SAN FRANCISCO

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

21 Witness my hand and official seal.

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



COURT PAPER
 STATE OF CALIFORNIA
 STD 113 - 050 (5/79)

61- 279809

81- 271085

CHICAGO TITLE

8186021651

T-554 P.10/16 F-680

PARCEL 1:

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

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

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

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

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

EXHIBIT "A"

~~81-279808~~

81-279808

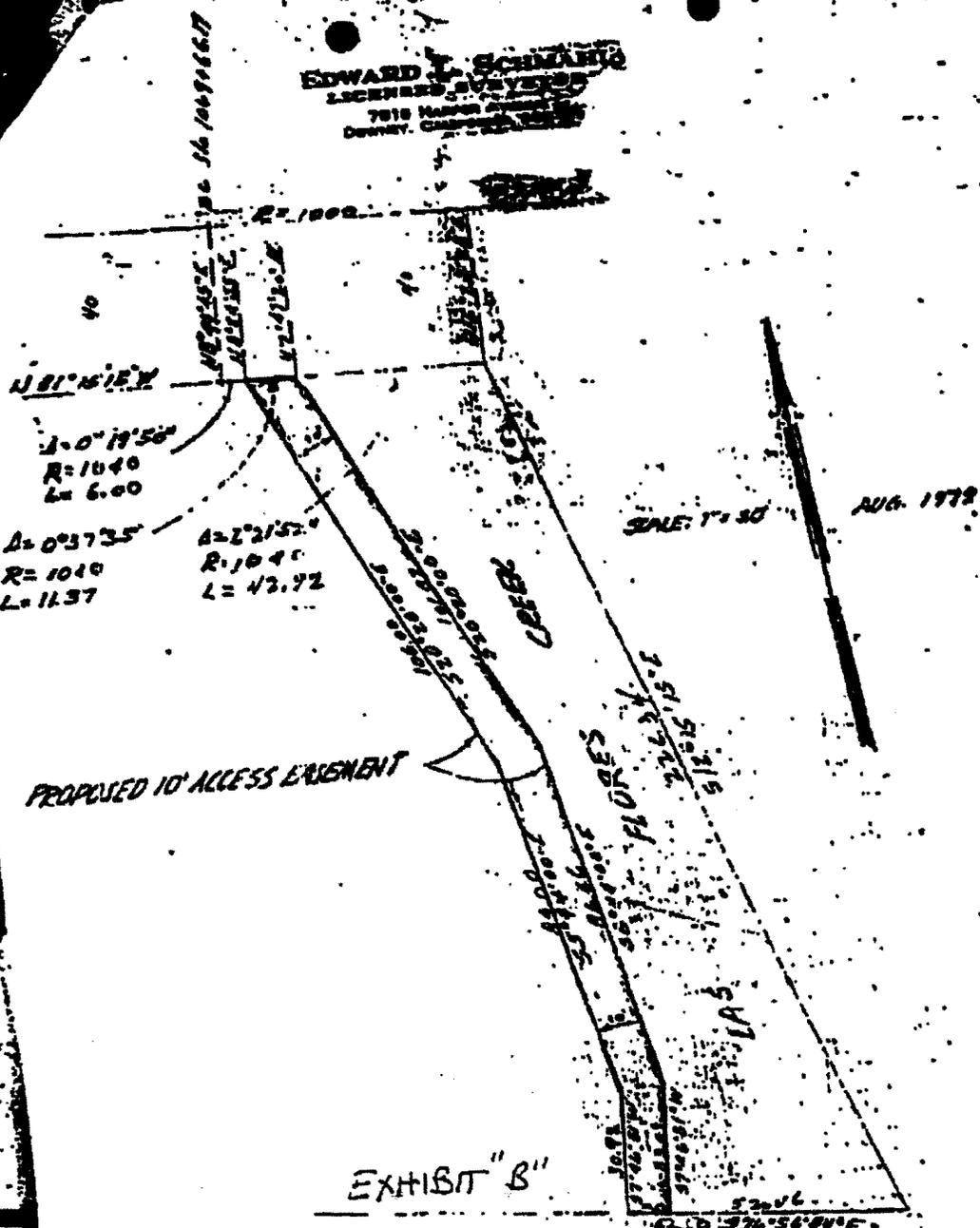
~~81-279808~~

CHICAGO TITLE

MAY 19 81

EDWARD L. SCHMARTZ
LICENSED SURVEYOR
7818 HANCOCK AVENUE
DENVER, COLORADO 80231

STATE OF COLORADO
COUNTY OF DENVER



PACIFIC
81-279809

81-279809

PARCEL 2:

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

Beginning at a point in the Southerly line of the 80 foot strip of land described in the deed from T. R. Calvaladar, et al, to the State of California, recorded in Book 15228, Page 342, Official Records, said point of beginning being South 8°44'45" West 40 feet and North 81°15'15" West 0.27 feet from the Engineer's Center Line Station 1069 plus 66.17 at the Easterly extremity of that certain center line course described in said deed as South 81°15'15" East 325.85 feet, said point of beginning being also the Northeastly corner of the parcel of land described in the deed from Marblehead Land Co. to Eugenie Stocking Kilbourne, recorded in Book 17284, Page 390, Official Records; thence South 81°15'15" East 0.27 feet along the Southerly line of said 80 foot strip to the beginning of a tangent curve concave Northerly with a radius of 1040 feet, thence Easterly 60.99 feet, more or less, along the arc of said curve to the Northwestly corner of the parcel of land described in the deed from Marblehead Land Company to Harrison X. Symmes, et ux, recorded in Book 17580, Page 258, Official Records; thence South 12°15'15" East along the Westerly line of said last mentioned parcel to a point in the ordinary high tide line of the Pacific Ocean; thence Westerly along said tide line to the intersection of said tide line with that line which bears South 12°15'15" East from the point of beginning; thence North 12°15'15" West to the point of beginning, said last mentioned course being along the Easterly line of said Eugenie Stocking Kilbourne parcel heretofore mentioned.

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

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

EXHIBIT "A"

~~81-271685~~

81- 279808

~~81-271685~~

CHICAGO TITLE

001981

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

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA.

MAR 19 1981 AT 8 A.M.

Recorder's Office

FREE

12

IRREVOCABLE OFFER TO DEDICATE

- I. WHEREAS, FELINA'S, INC., A CALIFORNIA CORPORATION is the Lessee of the real property located at 21202 Pacific Coast Highway, Malibu, California, legally described as particularly set forth in attached Exhibit A hereby incorporated by reference, and hereinafter referred to as the "subject property"; and
- II. WHEREAS, the estate of ELOISE M. BURNETT and ALBATROSS HOTEL, INC., a Corporation, are the record owners of the property leased by Felina's Inc. described above; and
- III. WHEREAS, the California Coastal Commission, South Coast Regional Commission, hereinafter referred to as "the Commission", is acting on behalf of the People of the State of California; and
- IV. WHEREAS, the People of the State of California have a legal interest in the lands seaward of the mean high tide line; and
- V. WHEREAS, pursuant to the California Coastal Act of 1976, the owner applied to the Commission for a coastal development permit for a development on the real property ; and

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

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

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

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

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

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

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

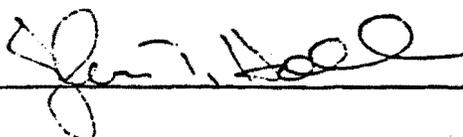
NOW THEREFORE, in consideration of the granting of permit no. P-79-4918 to the owners by the Commission, the owners hereby offer to dedicate to the People of California an easement in perpetuity for the purposes of allowing the public to walk, sit, swim and otherwise use a 25 ft. wide strip of beach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

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

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

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

FELINA'S INC.

By 

By President & Secretary

ESTATE OF ELOISE BURNETT

By James M. Parker
Testamentary Executor

ALBATROSS HOTEL, INC.

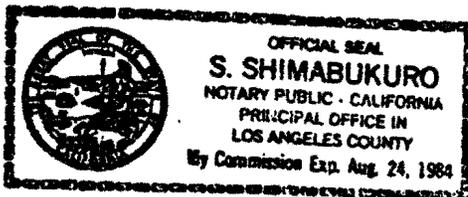
By James M. Parker
President & Secretary

By _____

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

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

WITNESS my hand and official seal.

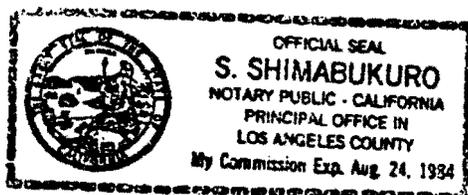


S. Shimabukuro
S. Shimabukuro

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

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

WITNESS my hand and official seal.

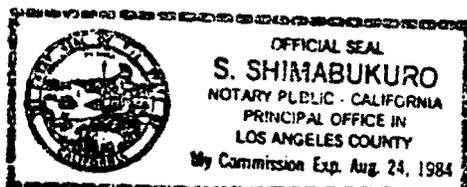


S. Shimabukuro
S. Shimabukuro

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

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

WITNESS my hand and official seal.



S. Shimabukuro
S. Shimabukuro

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

Dated: March 11, 1981

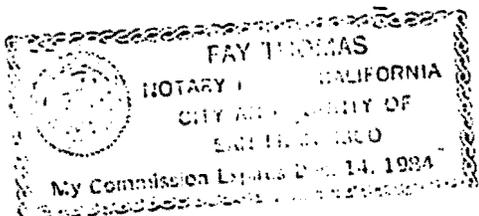
Cynthia K Long
CYNTHIA K LONG, LEGAL COUNSEL
California Coastal Commission

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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

Witness my hand and official seal.



Fay Thomas
Notary Public in and for said
County and State

81- 279809

PARCEL 1:

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

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

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

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

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

EXHIBIT "A"

S1-279000

PARCEL 2:

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

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

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

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

EXHIBIT "A"

81- 279809

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

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

* * *

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

Exhibit "C"

81- 279809



PARCEL MAP

P.M. 22-74

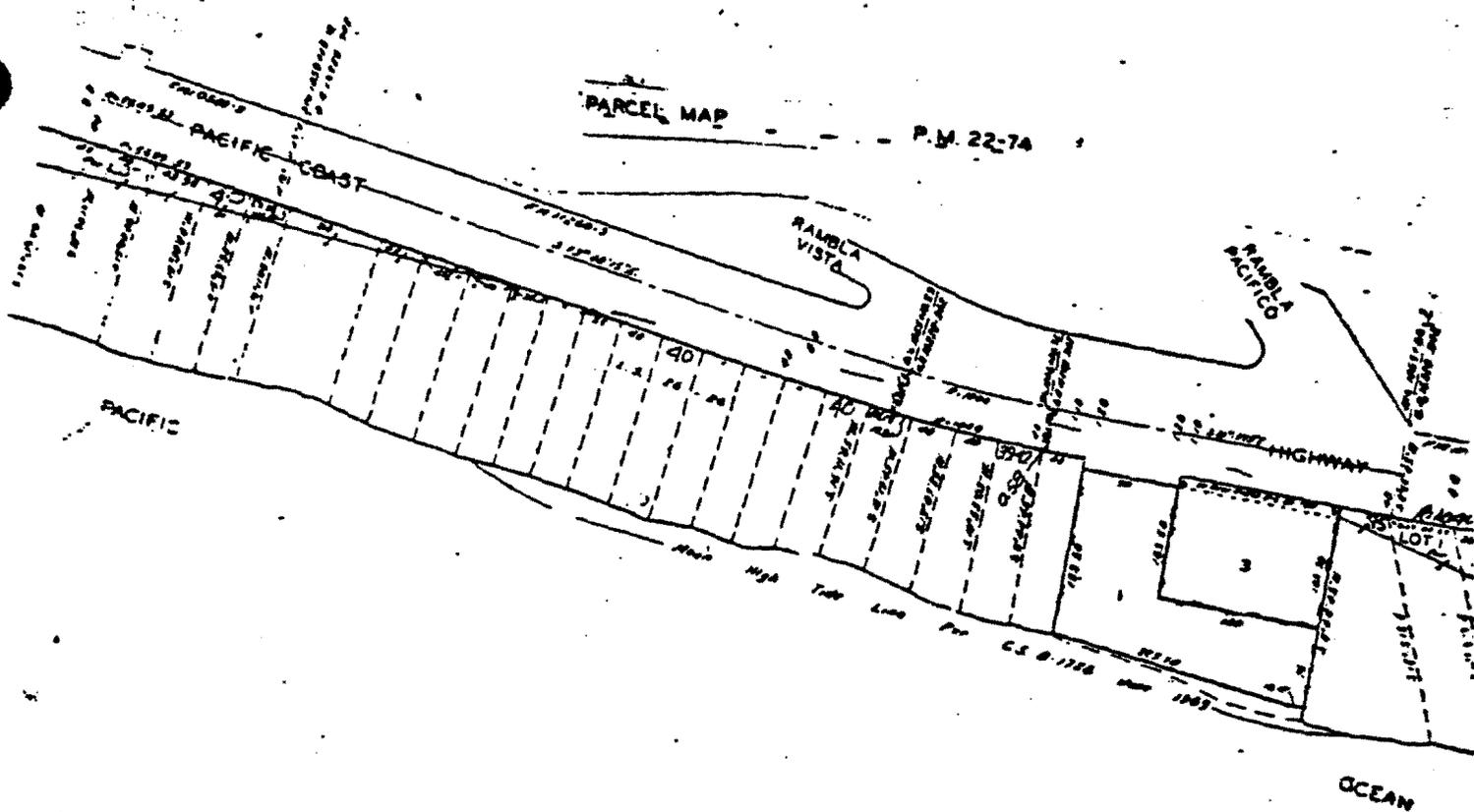


Exhibit "C"

81- 279809

CALIFORNIA COASTAL COMMISSION

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

EXHIBIT NO. 21

APPLICATION NO.
4-00-259 (Herz16)Memorandum
Prepared by
Commission's
Sr. Coastal Engineer

July 18, 2001

TO: Melanie Hale, Supervisor, Ventura Office

6 pages

FROM: Lesley Ewing, Sr. Coastal Engineer *Lesley Ewing*

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

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

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

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

Project Setting, Littoral Processes and Sediment Budget

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

Exhibit "C"

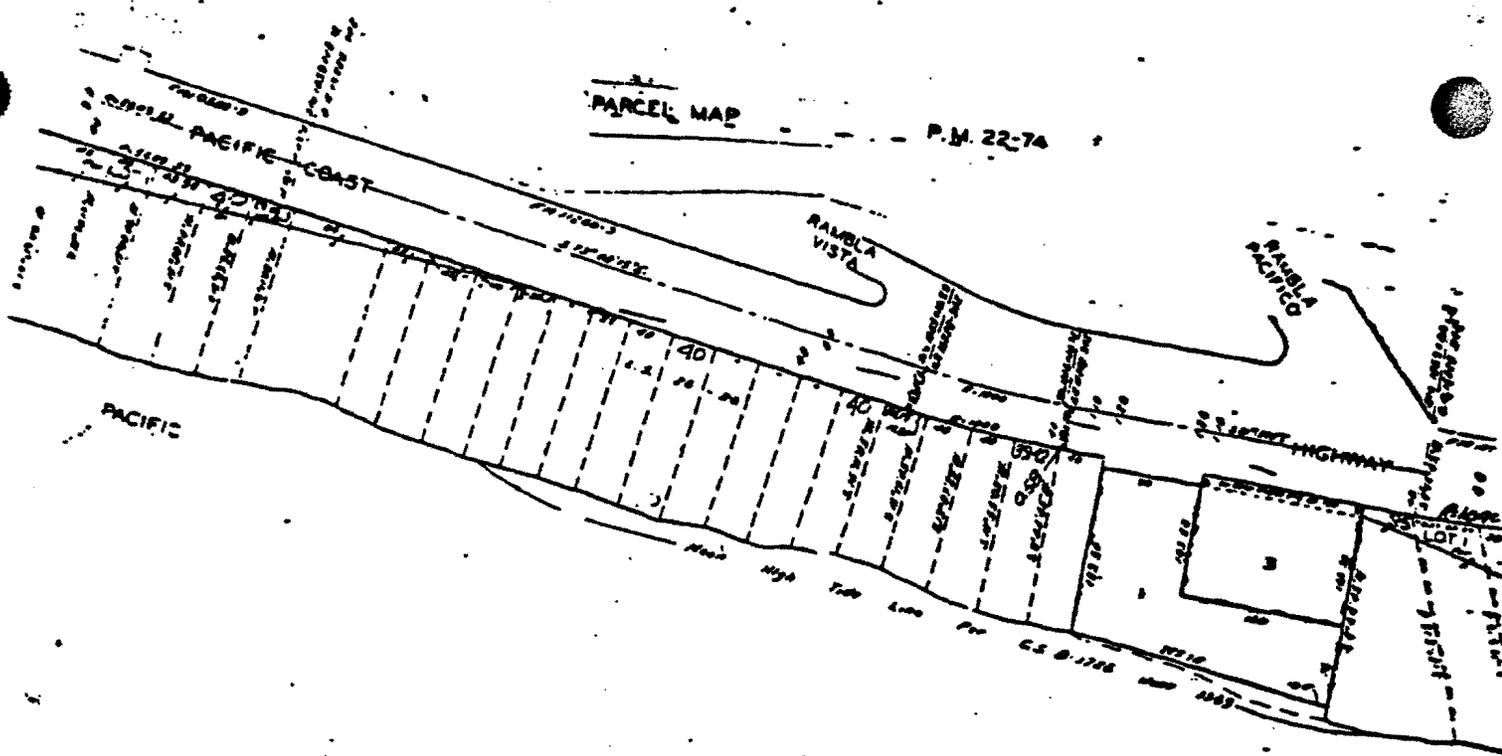
Page 1 of 2

| |
|------------------------------------|
| EXHIBIT NO. 23 |
| APPLICATION NO. 4-00-259 (King) |
| "Exhibit C" |
| |

81- 279809

Page 2 of 2

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



subject site → OCEAN

Exhibit "C"

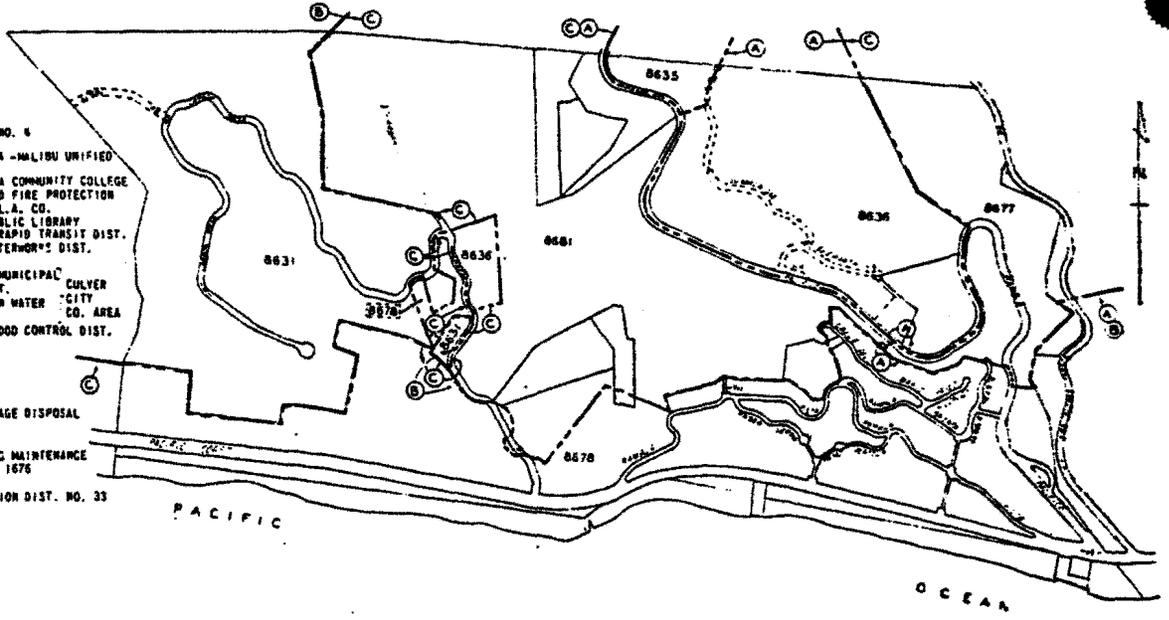
81-279809

4451 0
 SCALE: 600'

TAX MAP AREA
 8631 8636 8678
 8635 8677 8681

- ROAD DIST. NO. 4
- SANTA MONICA - MALIBU UNIFIED SCHOOL
- SANTA MONICA COMMUNITY COLLEGE
- CONSOLIDATED FIRE PROTECTION DIST. OF L.A. CO.
- ALL L.A. CO. PUBLIC LIBRARY
- IN SO. CALIF. RAPID TRANSIT DIST.
- L.A. CO. WATERWORKS DIST. NO. 29
- WEST BASIN MUNICIPAL WATER DIST.
- CULVER CITY METROPOLITAN WATER DIST.
- L.A. CO. FLOOD CONTROL DIST.

- Ⓐ MALIBU GARBAGE DISPOSAL DIST.
- Ⓑ CO. LIGHTING MAINTENANCE DIST. NO. 1676
- Ⓒ CO. SANITATION DIST. NO. 33

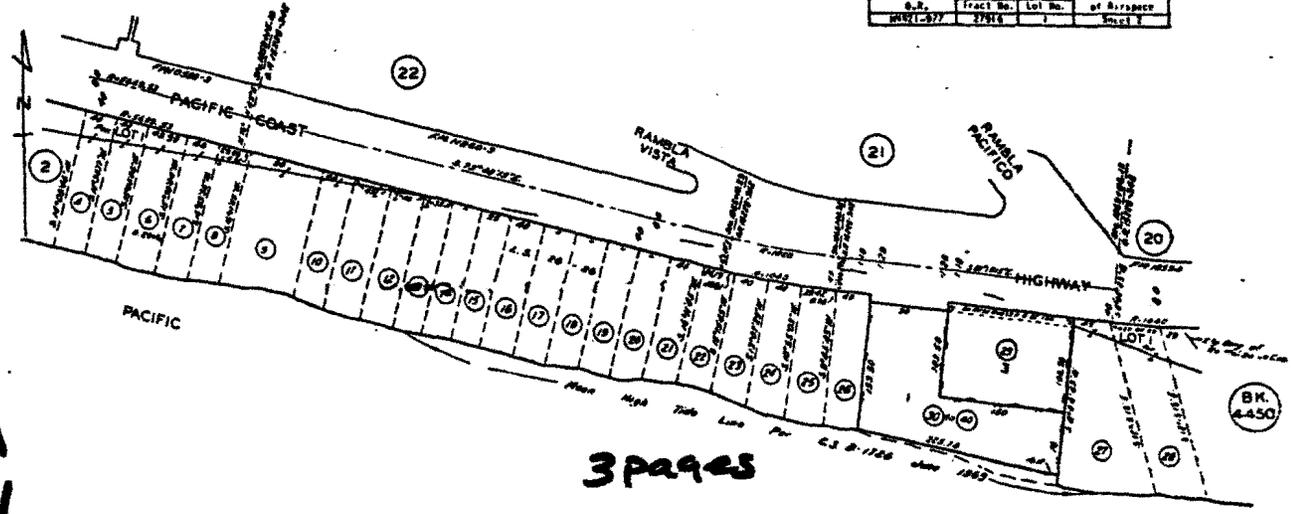


CODE INDEX BOOK 4451

ASSESSOR'S MAP COUNTY OF LOS ANGELES

4451 1
 SCALE 1" = 100'

| Condominium S.R. | Common Area | Fract No. | Lot No. | Subdivision of Acreage |
|------------------|-------------|-----------|---------|------------------------|
| 0001-077 | 27916 | 1 | | Sheet 1 |



3 pages

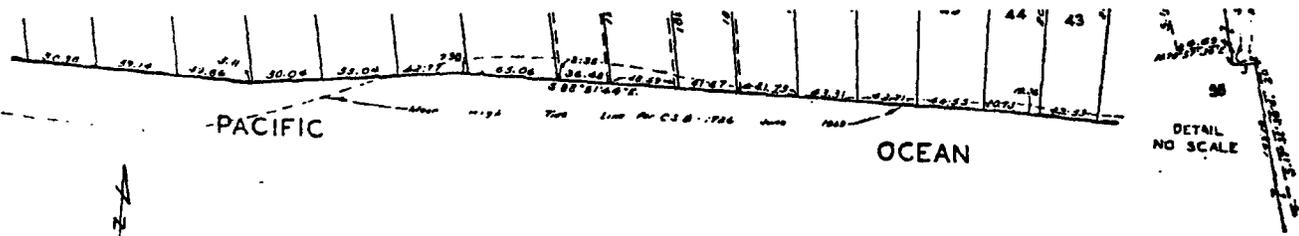
EXHIBIT NO. 24
 APPLICATION NO. 4-00-259 Her216
 Example Assessor's Map
 Pages of same site
 (other years)

CODE 8678

LAND OF MATTHEW KELLER IN THE RANCHO TOPANGA MALIBU SEQUIT R.F. 534
 CONDOMINIUM TRACT NO 27916 .. MB 830-23

FORM PREP. ASSMT 561 4451-348.35

ASSESSOR'S MAP COUNTY OF LOS ANGELES CA



PACIFIC

OCEAN

DETAIL
NO SCALE

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

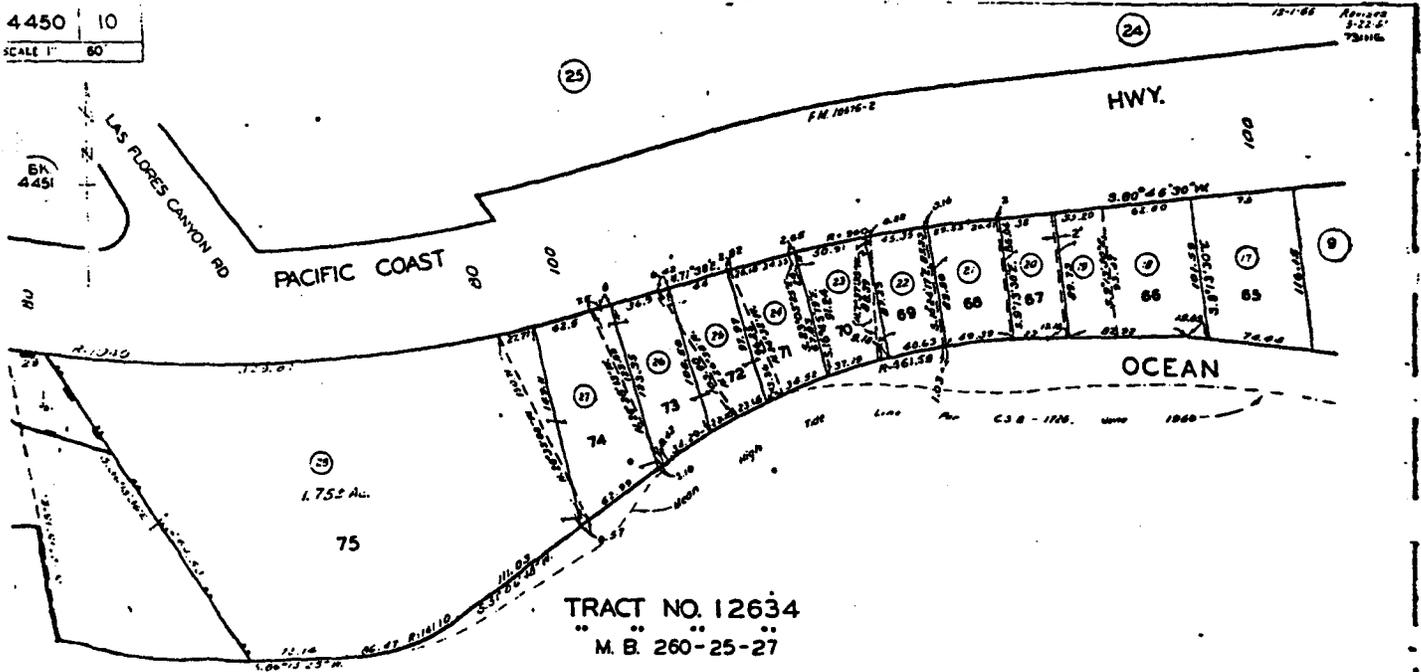
CODE
8678

FOR PREV. ASSMT SEE
1244

COUNTY OF LOS ANGELES, CALIF.

ANIMONICHE PUBLISHERS, INC.
P. O. BOX 2048, MALIBU, CALIFORNIA 90265
Phone Los Angeles: 363-1444 or 470-7111
FAX: 310-261-0000

4450 10
SCALE 1" = 80'



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

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

CODE
8678

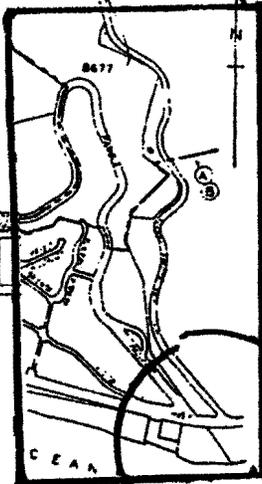


FOR PREV. ASSMT SEE

5 1077

COUNTY OF LOS ANGELES, CALIF.

EX 24 A2



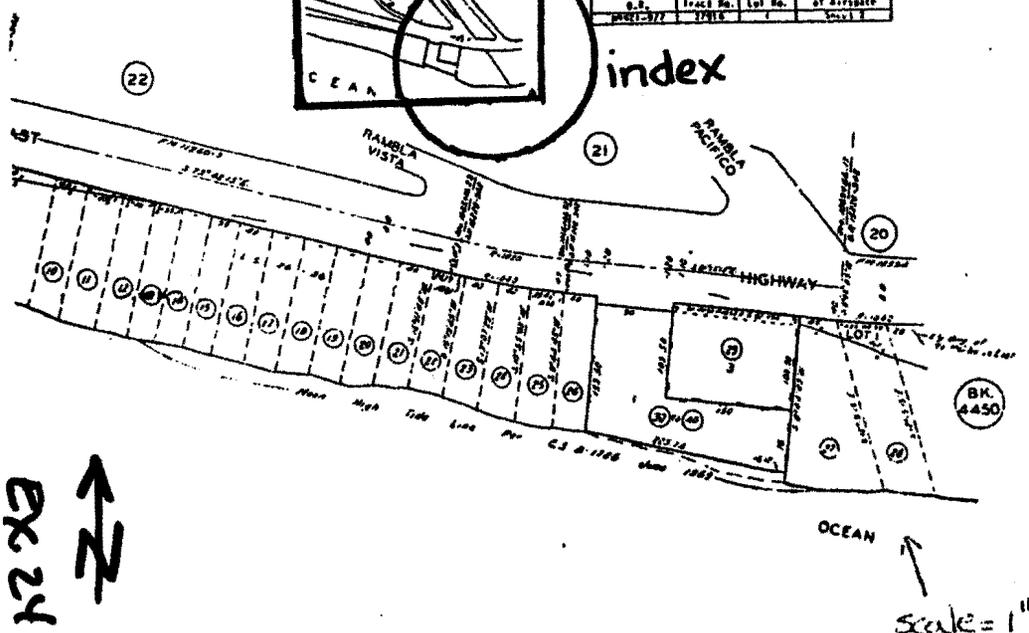
**CODE INDEX
BOOK 4451**

ASSESSOR'S MAP
COUNTY OF LOS ANGELES CALIF.

The assessment of lands in the following Common Plan G.S. Map includes all rights and interests in the common areas as set forth in deeds of record.

| Common Plan G.S. | Common Area | Submission of Assessment |
|------------------|-------------|--------------------------|
| 1991-177 | TRAIL | Scale 1" |

index



EX 24 R.F. 3

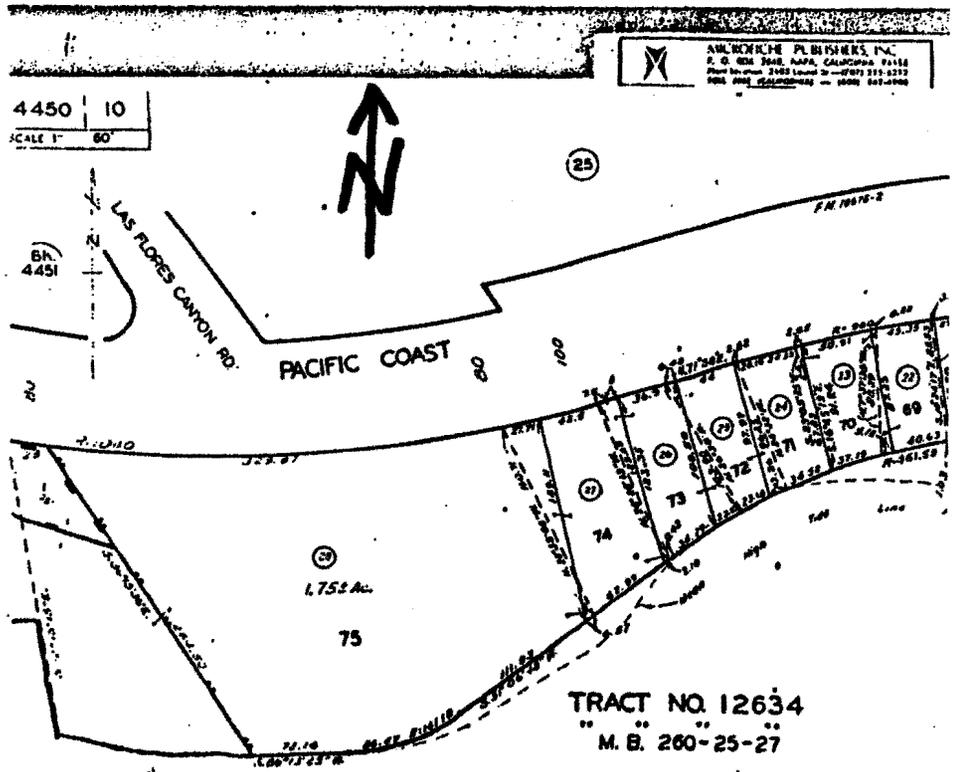
MATTHEW KELLER IN THE RANCHO TOPANGA MALIBU SEQUIT R.F. 534
INDOMINIUM TRACT NO. 27016 M.B. 830 23-24

PARCEL MAP P.M. 22-74

ASSESSOR'S MAP COUNTY OF LOS ANGELES CA

CODE 8678

FOR PREV ASSMT SEE 1-154



ALBION PLANNERS, INC.
P. O. BOX 2048, ALBA, CALIFORNIA 94118
Phone Number: 2462 Local 2-4471 215-6732
FAX: 2462 Local 2-4471 215-6732

4450 10
SCALE 1"=60'

CODE 8678

PACIFIC
scale = 1"=60'

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

5 1077

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

(e) Pacific Coast Highway Corridor

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

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

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

(2) Rural Villages

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

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| EXHIBIT NO. 26 |
| APPLICATION NO. 4-00-259 Home |
| LUP pg. 61 |
| Portion of Policy 271 |

