

CALIFORNIA COASTAL COMMISSION

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August 23, 2002

Th. 3b

TO: CALIFORNIA COASTAL COMMISSIONERS
FROM: PETER M. DOUGLAS, EXECUTIVE DIRECTOR
SUBJECT: STAFF RECOMMENDATION ON MAP OF POST-LCP CERTIFICATION JURISDICTION, CITY OF MALIBU
(for Commission consideration at its September 10-13, 2002 meeting)

This recommendation was developed by Jonathan Van Coops, Darryl Rance, and Doug Macmillan, Coastal Program Analysts, Mapping/GIS Unit, working under the direction of Susan Hansch, Chief Deputy Director and Manager - Technical Services Division.

SUBSTANTIVE FILE DOCUMENTS

- 0 National Wetland Inventory Maps, U.S. Department of the Interior, Fish & Wildlife Service, Triunfo Pass, Point Dume, Malibu Beach, and Topanga Quadrangles, 1994.
- 0 Potential Public Trust Land Maps No. 133 through 136 (Triunfo Pass, Point Dume, Malibu Beach, and Topanga Quadrangles), California State Lands Commission, 1979.
US Coast Survey map sheets T-703 (1857) and T-1432-a (1877).
Coastal Commission 1: 12,000-scale Vertical Aerial Photography 1970-2001.
City of Malibu Local Coastal Program, California Coastal Commission, August 2002

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the map prepared by staff showing the areas where the Commission retains permit authority pursuant to Public Resources Code Section 30519(b) and Section 30613, and where appeals of local government coastal development permit approvals are allowed pursuant to P.R.C. Section 30603(a)(1) and (2) within the City of Malibu.

MOTION

Staff recommends that the Commission adopt the following motion:

I move that, for the reasons stated in the staff report and recommendation dated August 23, 2002, the Commission approve the Post-LCP Certification Map prepared by staff for the City of Malibu.

BACKGROUND

After an LCP certification becomes effective, coastal development permit authority within that jurisdiction is largely delegated to the local government. However, pursuant to Section 30519(b) of the Coastal Act, the Commission retains permit authority (with certain exceptions) after LCP certification, over developments occurring on tidelands, submerged lands, and public trust lands. As provided in Section 30613 of the Coastal Act, local jurisdictions may request that primary permit authority in areas subject to the public trust that are filled, developed, and committed to urban uses be transferred to the local government's jurisdiction. The City of Malibu has not made a Section 30613 request as of this date.

In addition to the retained permit jurisdiction, Section 30603 of the Coastal Act defines certain areas and types of development for which approvals by the local government may be appealed to the Commission. Appeal jurisdiction is retained, for example, over development that is within 100 feet of streams or wetlands, on lands subject to the public trust, within 300 feet of the top of the seaward face of coastal bluffs, and between the sea and the First Public Road paralleling the Sea or within 300 feet of the inland extent of the beach or the mean high tide line, whichever is greater. The Commission's regulations provide specific boundary determination criteria for both the geographic post-LCP certification permit and appeal jurisdiction areas. (*See 14 C.C.R. §13577.*)

For jurisdictions with a certified local coastal program, the Commission adopts maps depicting where the Commission retains permit authority and where it has appeal jurisdiction (*See 14 C.C.R. §13576(a)*). This "post-LCP certification map" is intended to assist local governments, applicants, and other interested persons determine jurisdictional issues, but does not supersede Sections 30519(b) and 30603(a) of the Coastal Act which define the Commission's retained original permit and appellate jurisdiction. If, by virtue of cartographic generalization, map scale, changed conditions, or compilation error, the map does not accurately depict conditions on the ground, the Commission's original and appellate jurisdiction is determined by reference to the requirements of the Coastal Act and Commission regulations. The Commission's regulations acknowledge that jurisdiction is ultimately determined by reference to the applicable statutory criteria by requiring post-LCP certification maps to state that the map "may not include all lands where permit and appeal jurisdiction is retained by the Commission" (*See 14 C.C.R. §13576(a)*). These maps may be updated from time to time when there are changed circumstances or where additional information becomes available indicating that the mapped boundaries do not reflect the jurisdictional criteria established in the Coastal Act and the Commission's regulations.

Each map includes the following statement: "This map has been prepared to show where the California Coastal Commission retains permit and appeal jurisdiction pursuant to Public Resources Code Sections 30519(b), 30603(a)(1) and (a)(2) and 30600.5(d). In addition, development may also be appealable pursuant to Public Resources Code Section 30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area

defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated where appropriate and may not include all lands where permit and appeal jurisdiction is retained by the Commission." 14 C.C.R. §13576(a).

Previous Malibu Draft Post-LCP Certification Maps

During the early 1980's the Commission's Technical Services Division began a project to complete Draft Post-LCP Certification Permit and Appeal Jurisdiction maps for all local governments within or partly within the Coastal Zone. The first effort consisted of producing a set of 161 draft maps using the USGS 7.5 minute quadrangle base (scale 1:24,000 or 1 inch equals 2000 feet), and was completed in 1981. The primary purpose of this project was to provide a consistent, *statewide* view of the *draft* permit and appeal boundaries for review by the local government staff, Commission staff, and other interested parties. It was fully anticipated that these maps would be reviewed and revised or refined, as indicated by the map notes, and general correspondence sent out with maps for review. The area now within the City of Malibu, which in 1981 had not yet been incorporated, was covered by map sheets 133 through 136, the Triunfo Pass, Point Dume, Malibu Beach, and Topanga quadrangles. Copies of these regional quad-scale draft maps were distributed for review to the regional commission offices and local governments in April 1981.

STAFF ANALYSIS

The depiction of permit and appeal jurisdiction on the Malibu draft post-LCP Certification map does not appear to present any *major* areas of controversy affecting the map adoption at this time, however, the City has not yet indicated concurrence with the staff recommendation regarding the permit jurisdiction, First Public Road or appeal jurisdiction described below under their respective headings. The actual route of the designated First Public Road paralleling the Sea is described in the section entitled: First Public Road Description.

Permit Jurisdiction

The geographic areas of the Commission's continuing permit jurisdiction in the City of Malibu is delineated so as to include lands lying below Mean High Tide Line (MHTL) and potential public trust lands located at the estuary of Malibu Creek. The sources for the permit boundary as depicted on the draft post LCP Certification map are maps number 133 through 136 from the 1:24,000 scale set showing potential public trust lands prepared for the Coastal Commission by the State Lands Commission staff, the historical US Coast Survey maps T-703 and T-1432-a, and the contemporary USFWS National Wetland Inventory maps for this area. These maps were used to map permit jurisdiction wherever the public trust component is the controlling boundary criterion, however, given the complexity involved in precisely mapping potential public trust boundaries, the delineation may not include all areas subject to the trust. Questions regarding the exact location and extent of public trust lands are referred to the State Lands Commission for determination.

Appeal Jurisdiction

The Coastal Zone extends inland approximately five miles in this part of western Los Angeles County, and the City of Malibu is located entirely within the Coastal Zone. The Commission's appeal jurisdiction areas in the City are generally found along the immediate shoreline and adjacent to bluffs, beaches, wetlands, and intermittent streams. A significant portion of the City lies within an appeal area determined by reference to the location of the First Public Road paralleling the Sea (See Exhibit 2-1 through 2-4).

As with all other coastal cities, the appeal jurisdiction boundary in Malibu is mapped according to the geographic criteria specified in Section 30603(a) of the Coastal Act, and further defined in the Commission's regulations at 14 C.C.R. §13577. Along the shoreline of the ocean, the appeal jurisdiction boundary generally follows the First Public Road, except where the road is situated closer than 300 feet inland from the bluff top or beach. In these locations the boundary is 300 feet from the top of the seaward face of the bluff or the inland extent of the beach, whichever applies. Farther inland, appeal areas are found along coastal streams and wetlands, where the boundaries include lands within 100 feet of the stream banks or upland wetland limits. *See* Pub. Res. Code §30603(a)(1), 14 C.C.R. §13577(i)

First Public Road

The language of 14 C.C.R. Section 13577(i)(1) was intended to ensure that the designated "First Public Road Paralleling the Sea" (FPR) extend inland around water bodies that are considered the "Sea" as defined by P.R.C. Title 14, Section 30115. C.C.R. section 13577 (i)(1)(E), provides that in order for a road to qualify as the First Public Road paralleling the Sea, it must be a road that "does in fact connect with other public roads providing a continuous public access system, and generally parallels and follows the shoreline of the "Sea" so as to include all portions of the "Sea" where the physical features such as bays, lagoons, estuaries, and wetlands cause the waters of the "Sea" to extend landward of the generally continuous coastline."

First Public Road Description

The series of roadways and streets listed below and shown as a component of the Commission's appeal jurisdiction boundary on the attached Exhibit 2-1 through 2-4, constitute the current route of the "First Public Road Paralleling the Sea," for purposes of Public Resources Code (P.R.C.) Sections 30600.5, 30601, and 30603, 30115, and all other applicable provisions of the Coastal Act of 1976. This system of coastal roadways and streets is consistent with, and meets the criteria set forth in California Code of Regulations Section 13577, in particular 13577(i).

From the western City boundary the route designated as the First Public Road paralleling the Sea (FPR) in the City of Malibu follows Pacific Coast Highway east to Broad Beach Road, south on Broad Beach Road to Seafield Drive, west and along Seafield Drive to Broad Beach Road, east

on Broad Beach Road to Pacific Coast Highway, southeasterly on Pacific Coast Highway to Westward Beach Road, southeast and along Westward Beach Road to Birdview Avenue, southeast on Birdview Avenue to Cliffside Drive, northeast on Cliffside Drive to Fernhill Drive, north and along on Fernhill Drive to Wildlife Road, northwest and along Wildlife Road to Zumirez Drive, north on Zumirez Drive to Pacific Coast Highway, east and along Pacific Coast Highway to Malibu Road, east and along Malibu Road to Pacific Coast Highway, and east on Pacific Coast Highway to the eastern City boundary .

NOTE

In some areas parcels are bisected by the appeal jurisdiction boundary. All development proposed within the appeal area defined as appealable is subject to the Commission's jurisdiction. In addition, if a development is proposed partly on the portion of the parcel that forms the basis for geographic appeal jurisdiction, and partly on the remainder of the parcel, and the Commission decides to hear the appeal, then the Commission reviews the action of the local government (section 30603(a)), which encompasses all the development that was authorized in the permit.

Due to the cost of reproduction, full-size copies of Exhibit 2-1 through 2-4, normally mailed to Coastal Commissioners and other interested persons, have not been included with the staff report. Reduced versions of Exhibit 2-1 through 2-4 have been included instead, and copies of the full-size maps will be available for review both at the City of Malibu, and at Coastal Commission offices in San Francisco and Ventura. Full-size maps will also be available for review at the September 10-13, 2002 Commission meeting in Los Angeles.

EXHIBIT 1

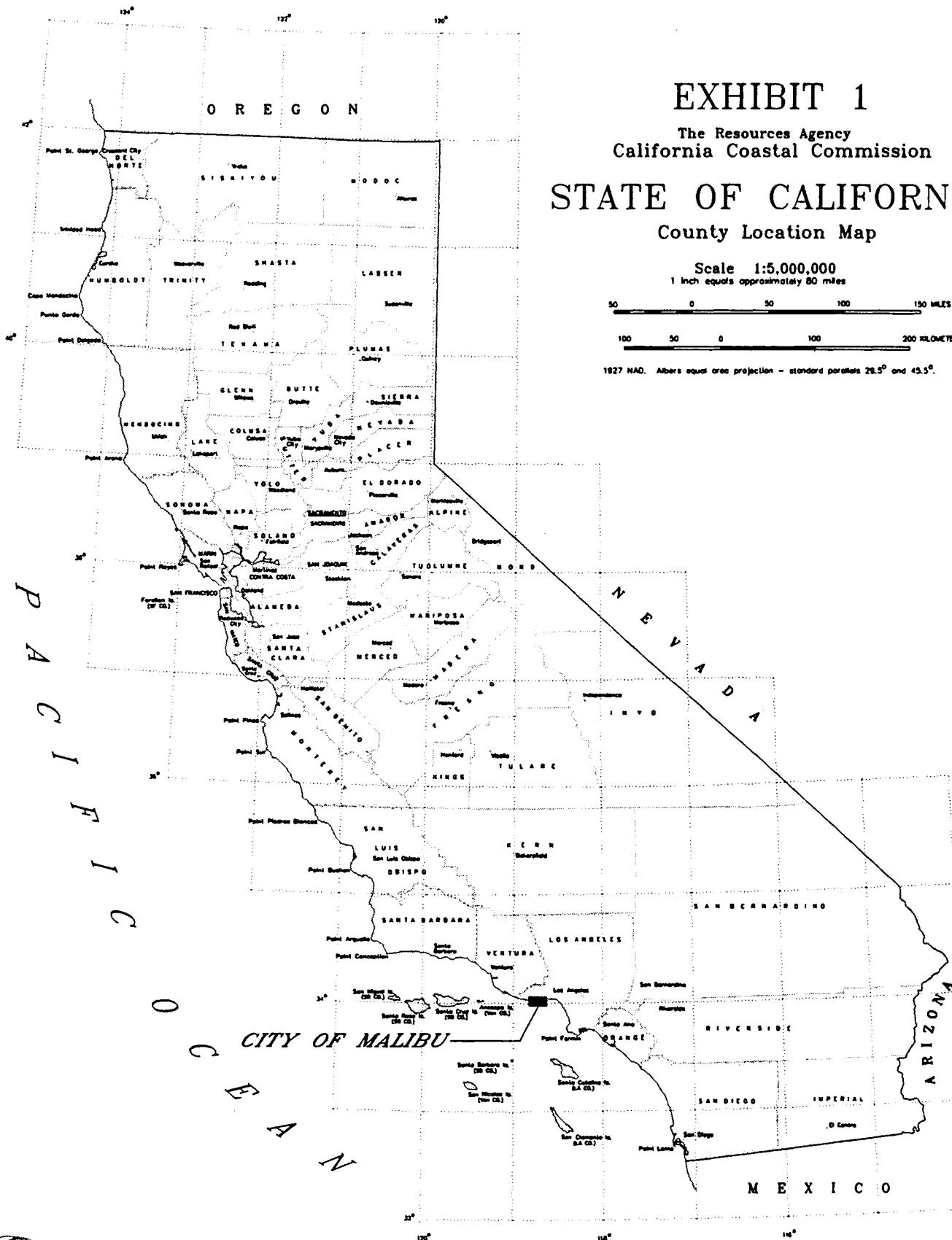
The Resources Agency
California Coastal Commission

STATE OF CALIFORNIA County Location Map

Scale 1:5,000,000
1 inch equals approximately 80 miles

0 50 100 150 MILES
100 50 0 100 200 KILOMETERS

1927 NAD. Albers equal area projection - standard parallels 38.5° and 43.5°.

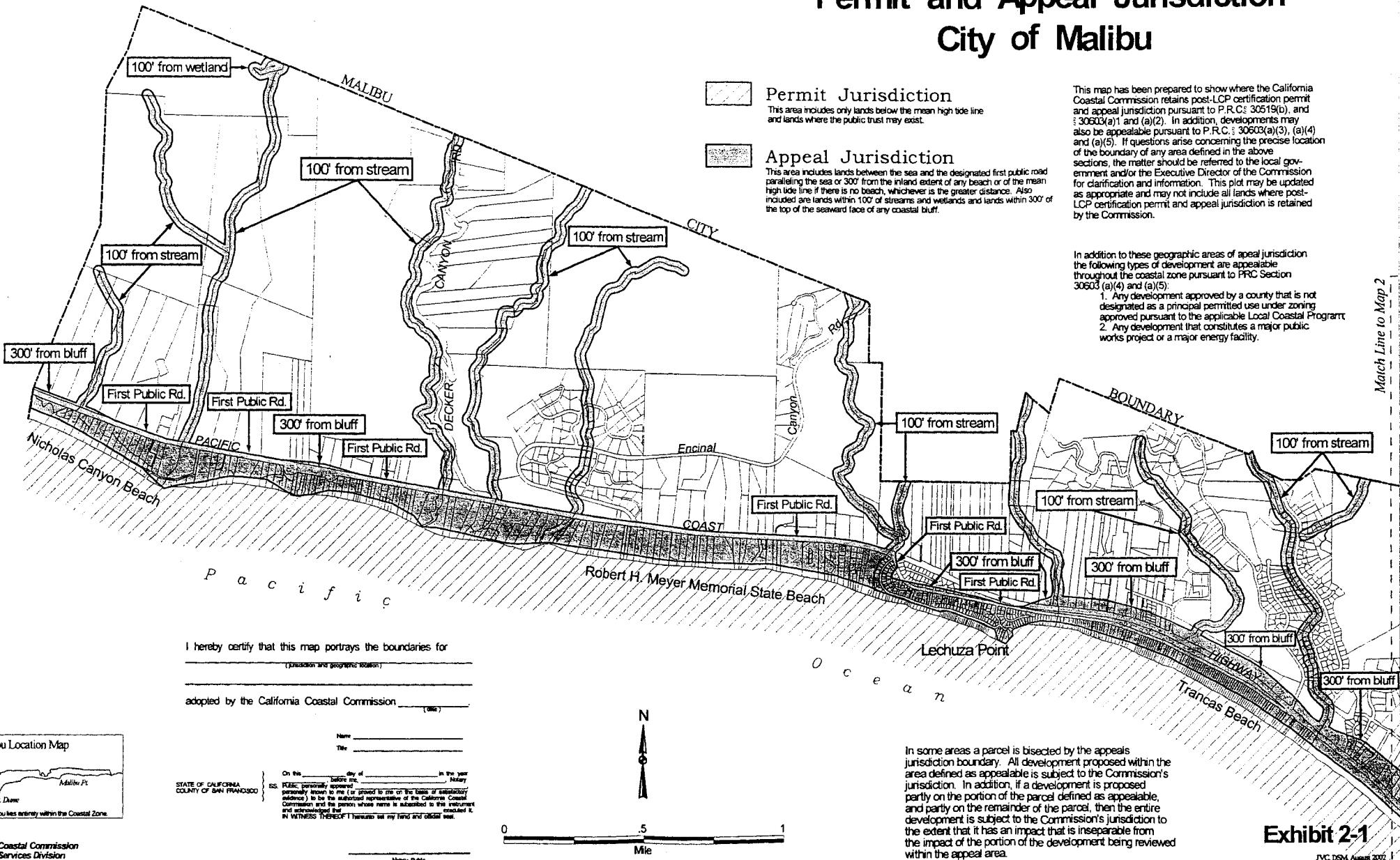


California Coastal Commission
Technical Services Division

Source: Map of the United States, Scale 1:2,500,000, USGS, 1972
PG. 3/98

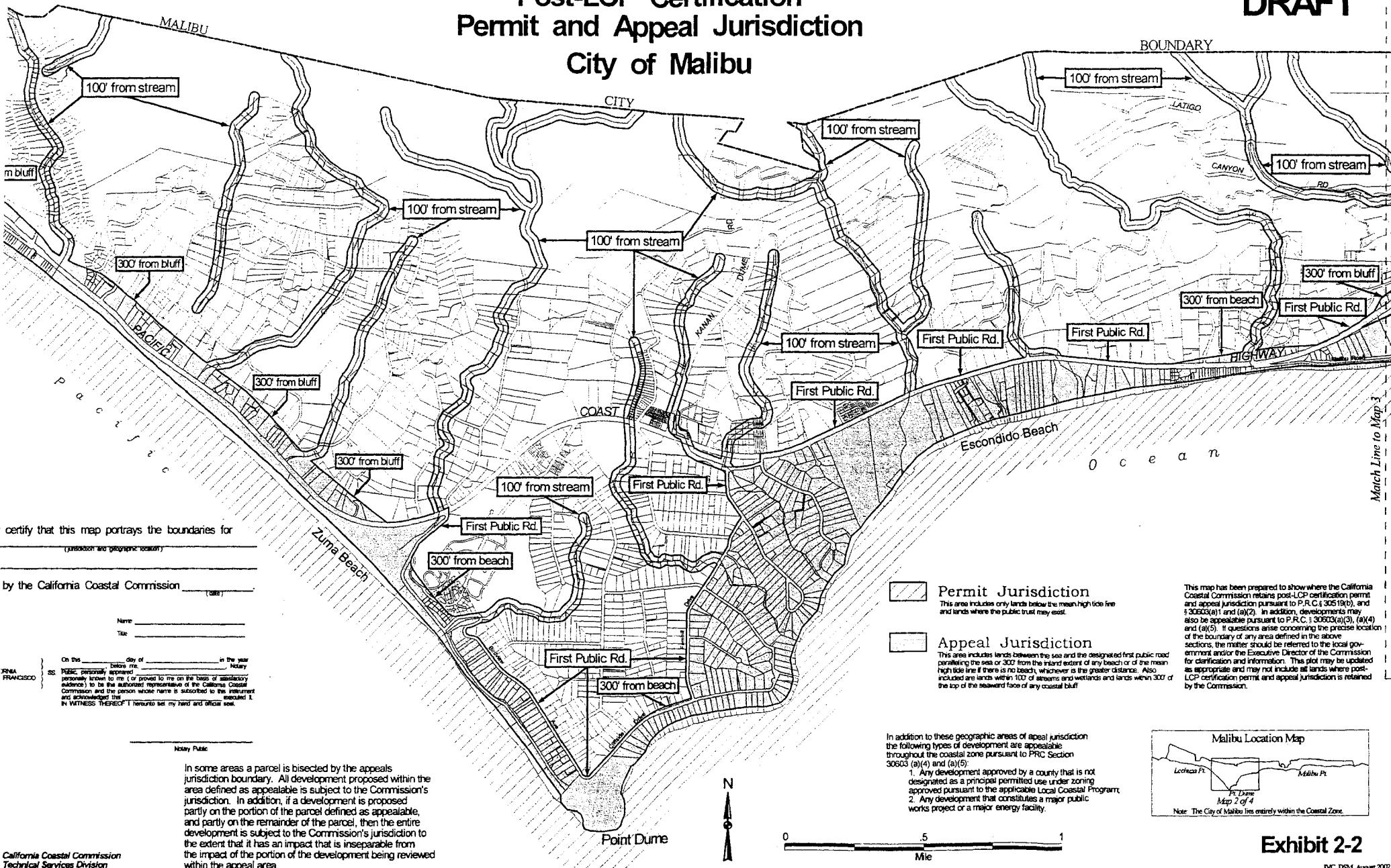
Post-LCP Certification

Permit and Appeal Jurisdiction City of Malibu



DRAFT

Post-LCP Certification Permit and Appeal Jurisdiction City of Malibu



Permit Jurisdiction

This area includes only lands below the mean high tide line and lands where the public trust may exist.

Appeal Jurisdiction

This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any beach or the mean high tide line, whichever is greater. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal bluff.

In addition to these geographic areas of appeal jurisdiction the following types of development are appealable throughout the coastal zone pursuant to P.R.C. Section 30603 (a)(4) and (a)(5):

1. Any development approved by a county that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program;
2. Any development that constitutes a major public works project or a major energy facility.

Exhibit 2-2

JVC, DSM, August 2002

Post-LCP Certification Permit and Appeal Jurisdiction City of Malibu

DRAFT



Permit Jurisdiction

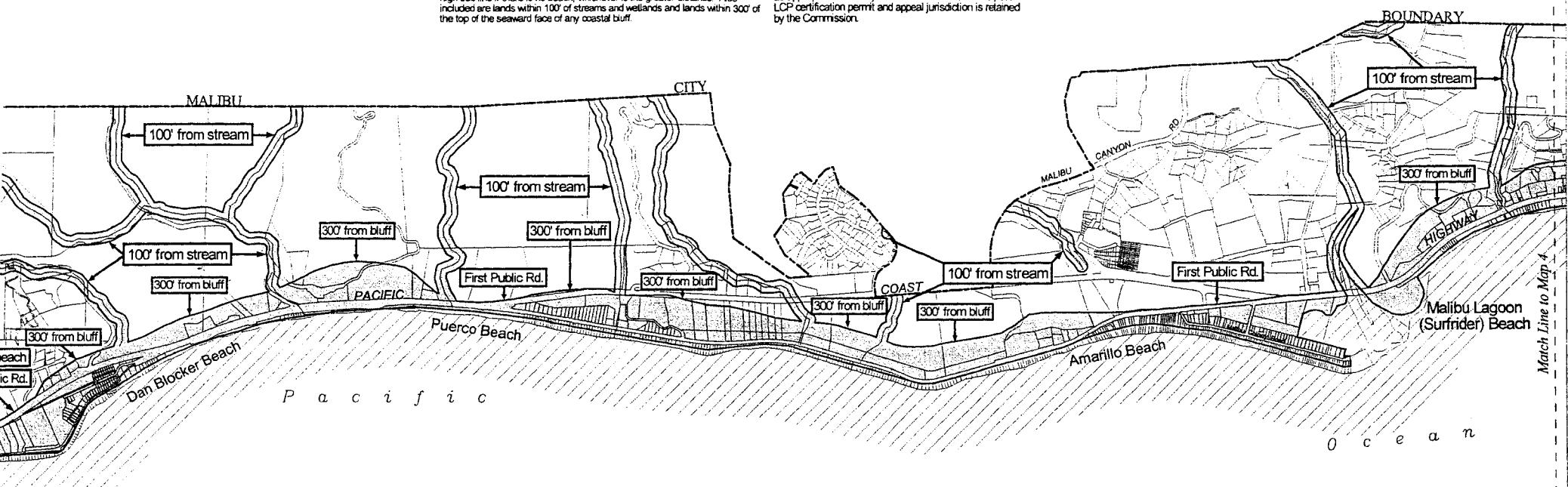
This area includes only lands below the mean high tide line and lands where the public trust may exist.



Appeal Jurisdiction

This area includes lands between the sea or 300' from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal bluff.

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.R.C. § 30619(b), and § 30603(a)(1) and (a)(2). In addition, developments may also be appealable pursuant to P.R.C. § 30603(a)(3), (a)(4) and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plot may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.



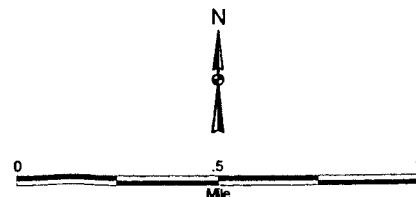
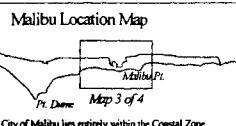
I hereby certify that this map portrays the boundaries for

(Jurisdiction and geographic location)

adopted by the California Coastal Commission (date).

Name _____
Title _____

On the _____ day of _____ in the year _____
I, _____, (print name)
SS. Public personnel, appointed by _____ (name of
personally known to me or I proved to me on the basis of satisfactory
evidence) to be the authorized representative of the California Coastal
Commission, do hereby declare under penalty of perjury that the foregoing
is true and correct to the best of my knowledge and belief.
IN WITNESS THEREOF I hereunto set my hand and official seal.



In addition to these geographic areas of appeal jurisdiction the following types of development are appealable throughout the coastal zone pursuant to PRC Section 30603(a)(4) and (a)(5).

1. Any development approved by a county that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program;
2. Any development that constitutes a major public works project or a major energy facility;

In some areas a parcel is bisected by the appeals jurisdiction boundary. All development proposed within the area defined as appealable is subject to the Commission's jurisdiction. In addition, if a development is proposed partly on the portion of the parcel defined as appealable, and partly on the remainder of the parcel, then the entire development is subject to the Commission's jurisdiction to the extent that it has an impact that is inseparable from the impact of the portion of the development being reviewed within the appeal area.

Exhibit 2-3

Post-LCP Certification Permit and Appeal Jurisdiction City of Malibu



Permit Jurisdiction

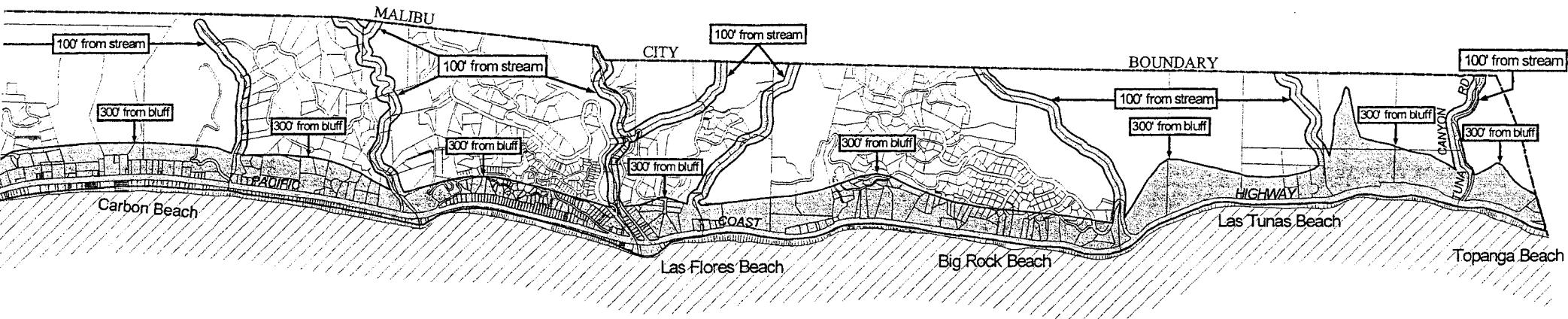
This area includes only lands below the mean high tide line and lands where the public trust may exist.



Appeal Jurisdiction

This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any beach or of the mean high tide line if there is no beach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal bluff.

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.R.C. § 30519(b), and § 30603(a)1 and (a)(2). In addition, developments may also be appealable pursuant to P.R.C. § 30603(a)(3), (a)(4) and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plot may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.



Pacific Ocean

Ocean

I hereby certify that this map portrays the boundaries for

(problem and geographic location)

adopted by the California Coastal Commission _____.

(date)

Name _____
Title _____

On the _____ day of _____ in the year _____
SS. Public, personally appeared _____, who, on the basis of satisfactory
evidence, came to me (or placed) in me on the basis of satisfactory
evidence to me, the undersigned, a Notary Public, State of California,
Commissioner and the person whose name is subscribed to the instrument
and acknowledged that he/she executed it.
IN WITNESS WHEREOF I hereunto set my hand and official seal.

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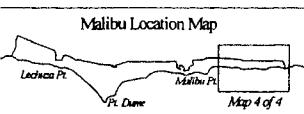
In addition to these geographic areas of appeal jurisdiction
the following types of development are appealable
throughout the coastal zone pursuant to PRC Section
30603 (a)(4) and (a)(5).

1. Any development approved by a county that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program;
2. Any development that constitutes a major public works project or a major energy facility.

In some areas a parcel is bisected by the appeals jurisdiction boundary. All development proposed within the area defined as appealable is subject to the Commission's jurisdiction. In addition, if a development is proposed partly on the portion of the parcel defined as appealable, and partly on the remainder of the parcel, then the entire development is subject to the Commission's jurisdiction to the extent that it has an impact that is inseparable from the impact of the portion of the development being reviewed within the appeal area.

Exhibit 2-4

JVC, DSM, August 2002



STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

California Coastal Commission
Technical Services Division