

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Commission Action:



## RECORD PACKET COPY

### STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-01-217

**APPLICANTS:** Paul Kempin

**PROJECT LOCATION:** 32804 Pacific Coast Highway, City of Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construction of a two-story, 18 foot high, 4,340 sq. ft. single family residence, with attached two-car garage, basement, spa, septic system, turnaround, driveway expansion, restoration of riparian vegetation and 1,055 cu. yds. of grading (1,020 cu. yds. cut, 35 cu. yds. fill).

<b>Lot area:</b>	94,090 square feet
<b>Building coverage:</b>	2,106 square feet
<b>Pavement coverage:</b>	3,826 square feet
<b>Landscape coverage:</b>	5,222 square feet
<b>Unimproved:</b>	83,749 square feet

**LOCAL APPROVALS RECEIVED:** City of Malibu Planning Department, Approval in Concept, May 9, 2002; County of Los Angeles Fire Department (Access), Approval in Concept, December 3, 2002; City of Malibu Environmental Health, Approval in Concept, February 21, 2002; City of Malibu Biology Review, Approval in Concept, November 19, 2000; City of Malibu Geology Review, Approval in Concept, May 1, 2002; County of Los Angeles Fire Department, Fuel Modification Plan, Preliminary Approval, November 14, 2001.

**SUBSTANTIVE FILE DOCUMENTS:** Certified Malibu Local Coastal Program; "Geotechnical Site Investigation Including Percolation Feasibility, Parcel Adjacent to 32800 Pacific Coast Highway, Encinal Bluffs Area, Malibu, County of Los Angeles, California," by Gorian & Associates, Inc., September 18, 1989; "Fault Investigation, 32804 Pacific Coast Highway, Malibu, California," by Gorian & Associates, Inc., February 10, 1994; "Comments regarding Stability of Proposed Building Pad, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., December 21, 2000; "Synopsis of Bluff Retreat Rates, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., July 11, 2001; "Geotechnical Update, Proposed Single Family Residence, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., March 18, 2002; "Geotechnical Responses to City of Malibu Review Letter, Proposed Single Family Residence, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., April 15, 2002; Soil Percolation Test Report, David L. Riggle, Consulting

Environmental Health Specialist, November 30, 1993; Coastal Development Permit No. 4-94-145; Coastal Development Permit No. 4-92-234; Coastal Development Permit No. 5-90-1034.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **approval** of the proposed project with thirteen (13) special conditions regarding conformance with geologic recommendations; erosion control, drainage and polluted runoff control plans; landscaping plans; spa drainage and maintenance; on-site wastewater treatment system requirements; assumption of risk; future development restriction; disposal of excavated material; structural appearance; no future bluff or shoreline protective device; restoration/revegetation plan; lighting restriction; and deed restriction.

### **I. STAFF RECOMMENDATION**

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-01-217 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, although not in conformity with the provisions of the City of Malibu certified Local Coastal Program, can be approved to avoid an impermissible taking of private property. 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 permittees 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

### III. **SPECIAL CONDITIONS**

#### 1. **Plans Conforming to Geologic Recommendations**

All recommendations contained in the submitted geologic report "Geotechnical Update, Proposed Single Family Residence, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., March 18, 2002 and in all reports referenced therein shall be incorporated into all final design and construction including foundations, construction, grading, and drainage. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to foundations, construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require an amendment to the permit or a new Coastal Development Permit.

#### 2. **Erosion Control, Drainage and Polluted Runoff Control Plans**

Prior to issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director; a) a ***Local Storm Water Pollution Prevention Plan (SWPPP)*** to control erosion and contain polluted runoff during the construction phase of the project; and b) a ***Water Quality Mitigation Plan (WQMP)*** for the management and treatment of post-construction storm water and polluted runoff. The plans shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works, and include the information and measures outlined below.

- a) ***Local Storm Water Pollution Prevention Plan***, for the construction phase of the project shall include at a minimum the following:

- Property limits, prior-to-grading contours, and details of terrain and area drainage
  - Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations
  - Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)
  - Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed
  - Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction.
  - Details pertaining to the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.
  - Information on potential flow paths where erosion may occur during construction
  - Proposed erosion and sediment prevention and control BMPs, both structural and non-structural, for implementation during construction, such as:
    - Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
    - Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.
    - Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
    - Prevent blowing dust from exposed soils.
  - Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:
    - Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials.
    - Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies.
    - Provide sanitary facilities for construction workers.
    - Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.
- b) **Water Quality Management Plan**, for the management and treatment of post construction storm water and polluted runoff shall at a minimum include the following:
- Site design, source control and treatment control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
  - Pre-development peak runoff rate and average volume
  - Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
  - Potential flow paths where erosion may occur after construction

- Expected post-development peak runoff rate and average volume from the site with all proposed non-structural and structural BMPs
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Measures to treat, infiltrate, or filter runoff from impervious surfaces (e.g., roads, driveways, parking structures, building pads, roofs, patios, etc.) on the subject parcel(s) and to discharge the runoff in a manner that avoids erosion, gullyng on or downslope of the subject parcel, ponding on building pads, discharge of pollutants (e.g., oil, heavy metals, toxics) to coastal waters, or other potentially adverse impacts. Such measures may include, but are not limited to, the use of structures (alone or in combination) such as on-site desilting basins, detention ponds, dry wells, biofilters, etc.
- A long-term plan and schedule for the monitoring and maintenance of all drainage-control devices. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.
- Post-construction Treatment Control BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour storm event for volume-based BMPs and/or the 85<sup>th</sup> percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs.

### 3. Landscaping and Fuel Modification Plans

Prior to issuance of a coastal development permit, the applicants shall submit two sets of landscaping and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping plans shall be reviewed and approved by the geotechnical engineering and geologic consultant to ensure that the plans are in conformance with the consultant's recommendations. Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated. The plans shall incorporate the following criteria:

#### A. *Plant Species*

1. Plantings shall be native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site, except as noted in (A)(3) below. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.
2. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants

for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu's Invasive Exotic Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.

3. Non-invasive ornamental plants may be permitted in combination with native, drought-tolerant species within Zone A, required for fuel modification nearest approved residential structures.

**B. Timing of Landscaping**

1. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
2. The building pad and all other graded or disturbed areas on the subject site shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence.

**C. Landscaping Coverage Standards.**

Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.

**D. Fuel Modification**

The final landscaping and fuel modification plan shall use no permanent irrigation systems and shall minimize the removal of native vegetation while providing for fire safety and shall be reviewed and approved by the Forestry Division of the County of Los Angeles Fire Department. The final landscaping and fuel modification plan shall be consistent with the restoration/revegetation plan required by **Special Condition Eleven (11)** below

**E. Landscaping Maintenance**

The use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance shall be prohibited, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.

**4. Spa Drainage and Maintenance**

Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval of the Executive Director, a written spa maintenance plan, that contains an agreement to install and use a no chlorine or low chlorine purification system. The plan shall identify methods of spa maintenance that will ensure that any runoff or drainage from the spa will not include excessive amounts of chemicals that may adversely affect water quality or

environmentally sensitive habitat area. In addition, the plan shall, at a minimum prohibit discharge of chlorinated or non-chlorinated spa water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters. The Permittees shall undertake development and maintenance in compliance with this spa maintenance agreement and program approved by the Executive Director. No changes shall be made to the agreement or plan unless they are approved by the Executive Director.

## **5. On-Site Wastewater Treatment System Requirements**

A. Prior to issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director a report and plans verifying that the proposed OSTS, to the maximum extent feasible, complies with the siting, design, installation, operation and maintenance requirements for OSTSs set forth in sections 18.4, 18.7 and 18.9 of the Malibu LIP. The report and plans shall be prepared by a qualified professional and approved by the City's Environmental Health Department and shall also comply with the requirements set forth in 1-4 below.

1. The residence shall use low-flow plumbing fixtures, including flow-restricted showers and ultra-low flush toilets. The residence may not use garbage disposals.
2. The septic system shall use an effluent filter in the septic tank.
3. The septic system shall use a pressure dosing system.
4. The applicant shall locate the proposed septic system soil absorption system (i.e., leachfield) as close to the applicant's property line as possible, to maximize the distance between the soil absorption system and the creek. The applicant shall seek a variance from any otherwise applicable City requirements to allow this.

B. Prior to the receipt of the certificate of occupancy for the residence, the applicant shall submit for the review and approval of the Executive Director verification that they have obtained a valid Renewable Operating Permit from the City for the proposed OSTS, that will remain in effect for only three years, and that will require re-evaluation of the system prior to renewal. The operating permit shall comply with all of the operation, maintenance and monitoring provisions applicable to "alternative or enhanced" OSTSs contained in section 18.4, 18.8 and 18.9 of the Malibu LIP. The applicant shall conduct inspection and maintenance of the septic system every three years and shall submit a report to the City and the Commission describing the inspection and maintenance conducted, evaluating the condition of the system, and identifying additional maintenance and/or modifications that should be conducted to ensure that the system continues to operate properly. The applicant shall conduct any additional maintenance that is recommended in a timely manner. If any modifications to the septic system are recommended, the applicant shall apply to the Commission for a permit amendment seeking authorization for such modifications.

## **6. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and

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

#### **7. Future Development Restriction**

This permit is only for the development described in coastal development permit 4-01-217. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit 4-01-217. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit 4-01-217 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

#### **8. Disposal of Excavated Material**

Prior to issuance of a 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. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.

#### **9. Structural Appearance**

The color of the structure and roof permitted hereby shall be restricted to a color compatible with the surrounding environment (white tones shall not be acceptable). All windows shall be comprised of non-glare glass.

#### **10. No Future Bluff or Shoreline Protective Device**

A. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 4-01-217 including, but not limited to, the residence, garage, foundations, decks, spa, driveway, turnaround, landscaping, and septic system, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235. By

acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence, garage, foundations, decks, spa, driveway, turnaround, landscaping, and septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above or any public health risks. The permittee shall commence removal of the threatened development within sixty (60) days following Commission approval of the subject amendment unless the Executive Director authorizes additional time for good cause and shall expeditiously complete such removal. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit and shall be completed with sixty (60) days of approval of the permit, unless the Executive Director authorizes additional time for good cause.

- B. In the event the edge of the bluff recedes to within ten (10) feet of the foundation elements of the residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed civil engineer with experience in coastal processes and certified engineering geologist retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure and shall complete the measures approved in the permit amendment expeditiously.

#### **11. Restoration / Revegetation Plan**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final restoration plans. The plan shall include a landscaping and erosion control plan prepared by a qualified habitat restoration consultant. The landscaping and erosion control plan shall make use of no permanent irrigation systems. The landscaping and erosion control plan shall be reviewed and approved by the consulting civil and geotechnical engineers to ensure that the plan is in conformance with the applicable recommendations regarding slope stability. The restoration and revegetation plan shall include, but not be limited to, the following criteria:

- (a) A revegetation program, prepared by a qualified habitat restoration consultant, that utilizes only native riparian plant species that are consistent with the surrounding native plant community. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements that will be necessary, including a detailed irrigation plan. The plan shall also specify performance standards to judge the success of the restoration effort. The revegetation plan shall identify the species, location, and extent of all plant materials and shall use a mixture of seeds and container plants to increase the potential for successful revegetation.

The plan shall include a description of technical and performance standards to ensure the successful revegetation of the restored slope. A temporary irrigation system may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil and geotechnical engineers, but in no case shall the irrigation system be in place longer than two (2) years.

- (b) The restoration plan shall be implemented within three hundred and sixty (360) days of the issuance of this permit. Revegetation shall provide ninety percent (90%) coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. The Executive Director may extend this time period for good cause. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements.
- (c) A monitoring program, prepared by a qualified environmental resource specialist. The monitoring program shall demonstrate how the approved revegetation and restoration performance standards prepared pursuant to section (b) above shall be implemented and evaluated for compliance with this Special Condition. The program shall require the applicant to submit, on an annual basis for a period of five years (no later than December 31<sup>st</sup> each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the restoration plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the plantings. If these inputs are required beyond the first four (4) years, then the monitoring program shall be extended for a sufficient length of time so that the success and sustainability of the project is ensured. Successful site restoration shall be determined if the revegetation of native plant species on-site is adequate to provide ninety percent (90%) coverage by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation.
- (e) At the end of the five year period, a final detailed report shall be submitted, for the review and approval of the Executive Director, that indicates whether the on-site landscaping is in conformance with the revegetation / restoration plan approved pursuant to this Special Condition. The final report shall include photographic documentation of plant species and plant coverage. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental restoration program to compensate for those portions of the original plan that were not successful. The revised, or supplemental, restoration program shall be processed as an amendment to this Coastal Development Permit.

## 12. Lighting Restriction

- A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

- (1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
- (2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
- (3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

### **13. Deed Restriction**

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. Project Description and Background**

The applicants are proposing to construct a two-story, 18 foot high, 4,340 sq. ft. single family residence, with attached two-car garage, basement, spa, septic system, turnaround, driveway expansion, restoration of riparian vegetation and 1,055 cu. yds. of grading (1,020 cu. yds. cut, 35 cu. yds. fill) (**Exhibits 5-11 and 14**).

The approximately 2.16 acre project site extends from Pacific Coast Highway to the Pacific Ocean in the western portion of the City of Malibu, Los Angeles County (**Exhibit 1**). The

irregularly shaped lot contains an approximately 8,000 sq. ft. building pad, constructed prior to the effectiveness date of the Coastal Act. The narrow building pad is located on the top of an east-west trending spur ridge of an approximately 110 foot high coastal bluff. The site is unusual in that coastal bluffs descend from the bluff top on three sides. To the south, a steep bluff face descends from the bluff top to the beach, and to the north and west, the bluff descends to a coastal canyon containing a blue line stream. An existing building pad is located in the canyon immediately west of the subject site (CDP 4-01-147, Hennesy). With the exception of the building pad area, the lot consists entirely of the bluffs, canyon slopes, and sandy beach. Access to the lot is taken from an existing driveway on an adjacent property. A private easement, created prior to the effectiveness date of the Coastal Act, descends from the bluff top to the beach and is developed with a railroad-tie stairway. The site was historically developed with a small beach cottage on the lower bluff face, which was removed sometime between 1973 and 1986 (**Exhibits 3-4**).

The bluffs to the north, south, and west of the bluff top contain native coastal bluff scrub vegetation, including Giant Coreopsis (*Coreopsis gigantea*). The riparian canyon north of the bluff top contains both non-native and native vegetation, including California Sycamore (*Platanus racemosa*). Both areas are mapped environmentally sensitive habitat areas (ESHA) in the Malibu LCP (**Exhibits 2-4**). The riparian canyon contains a stream shown as an intermittent blue line stream on the Triunfo Pass 7 1/2 minute USGS quadrangle.

The Commission has previously approved development on the subject site. Coastal Development Permit 4-94-145 allowed construction of a two story, 28 ft. high, 3,700 sq. ft. single family residence with 2-car garage, septic system, driveway paving, and 100 cu. yds. of grading in approximately the same location as the currently proposed project. The project was not constructed and the permit has expired (**Exhibit 15**).

The proposed project will be not be visible from Pacific Coast Highway, a designated scenic highway in the City of Malibu LCP, but will be visible from public viewing areas, including El Pescador State Beach. The Cultural Resources Sensitivity Map indicates that an archaeological survey has been conducted on the subject parcel and no evidence of a site was found.

On September 13, 2002, the Commission adopted the Malibu Local Coastal Program (LCP). The subject permit application was filed prior to the date the LCP was adopted and therefore remains under the jurisdiction of the Commission. Prior to the adoption of the LCP the standard of review for permit applications in Malibu were the chapter three policies Coastal Act. After the adoption of the LCP the standard of review for permit applications is the LCP.

## **B. Hazards and Geologic Stability**

The proposed development is located on a coastal bluff top lot in Malibu, an area generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to Malibu include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and bluff top development that are applicable to the proposed development:

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states in pertinent part that 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, 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.***

In addition, the following LUP policies are applicable in this case:

- 3.1 ***New development that requires a grading permit or Local SWPPP shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.50. Any landscaping that is required to control erosion shall use native or drought-tolerant non-invasive plants to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.***
- 4.2. ***All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.***
- 4.4. ***On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.***
- 4.5. ***Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.***
- 4.6. ***Grading and/or development-related vegetation clearance shall be prohibited where the slope exceeds 40 percent (2.5:1), except that driveways and/or utilities may be located on such slopes, where there is no less environmentally damaging feasible alternative means of providing access to a building site, provided that the building site is determined to be the preferred alternative and consistent with all other policies of the LCP.***
- 4.10. ***New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.***
- 4.15. ***Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired provided that such repair and maintenance do not increase the extent of nonconformity of the structure. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements comply with the current standards and policies of the LCP and do not increase the extent of nonconformity***

*of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not be permitted unless such structures are brought into conformance with the policies and standards of the LCP.*

- 4.27.** *All new development located on a blufftop shall be set back from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.*
- 4.28.** *In addition to the bluff edge setback requirements all swimming pools shall contain double wall construction with drains and leak detection systems.*
- 4.42.** *As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.*
- 4.45.** *New development shall minimize risks to life and property from fire hazard through:*
- *Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;*
  - *Siting and designing development to avoid hazardous locations;*
  - *Incorporation of fuel modification and brush clearance techniques in accordance with applicable fire safety requirements and carried out in a manner which reduces impacts to environmentally sensitive habitat to the maximum feasible extent;*
  - *Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;*
  - *Use of fire-retardant, native plant species in landscaping.*
- 4.49.** *Applications for new development, which require fuel modification, shall include a fuel modification plan for the project, prepared by a landscape architect or resource specialist that incorporates measures to minimize removal of native vegetation and to minimize impacts to ESHA, while providing for fire safety, consistent with the requirements of the applicable fire safety regulations. Such plans shall be reviewed and approved by the Forestry Division.*
- 6.29.** *Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:*

- *Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.*
- *Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.*
- *Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.*
- *Lawn shall not be located on any geologically sensitive area such as coastal blufftop.*
- *Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.*

The project site is an irregularly shaped parcel that consists of coastal bluffs, a coastal canyon, and a narrow building pad constructed on the bluff top. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. In addition, the bluff to the north and west of the site is subject to erosion due to bluff top sheet flow and undercutting by the blue line stream located at the base of the bluff. Further, due to geologic structure and soil composition, these bluffs are susceptible to surficial failure, especially with excessive water infiltration. As discussed below, the consulting geologists for the proposed project estimate that the bluff to the south of the building pad has been retreating at a rate of 2-3 inches per year. The consulting geologists have also noted the occurrence of surficial slumping northeast of the building pad, as well as a landslide at the base of the southern bluff.

The Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazard. In addition, the LCP requires a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. The LCP requires all new development to be set back from the coastal bluff edge a sufficient distance to be safe from erosion. The minimum required setback is 100 feet, or 50 feet if recommended by the City Geologist and where a geological safety factor of 1.5 can be met for the 100 year economic life of the structure.

The applicant has submitted numerous geologic reports that discuss geologic hazards, site stability, and bluff retreat rates ("Geotechnical Site Investigation Including Percolation Feasibility, Parcel Adjacent to 32800 Pacific Coast Highway, Encinal Bluffs Area, Malibu, County of Los Angeles, California," by Gorian & Associates, Inc., September 18, 1989; "Fault Investigation, 32804 Pacific Coast Highway, Malibu, California," by Gorian & Associates, Inc., February 10, 1994; "Comments regarding Stability of Proposed Building Pad, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., December 21, 2000; "Synopsis of Bluff Retreat Rates, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., July 11, 2001; "Geotechnical Update, Proposed Single Family Residence, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian &

Associates, Inc., March 18, 2002; "Geotechnical Responses to City of Malibu Review Letter, Proposed Single Family Residence, 32804 Pacific Coast Highway (Parcel #4), City of Malibu, County of Los Angeles, California" by Gorian & Associates, Inc., April 15, 2002). The April 15, 2002 and December 21, 2000, and July 19, 2000 reports by Gorian and Associates, Inc. provide stability analyses of the subject property, including cross-sections illustrating the location of static geologic safety factors. The cross sections and accompanying analysis indicate that the structure will be founded to depths that provide at least a 1.5 factor of safety.

The Gorian and Associates, Inc. report dated March 18, 2002 concludes:

***As stated in previous correspondence, it is our professional opinion, based on subsurface data and stability analyses presented in the referenced GAI reports, the proposed residential structure and associated improvements within the subject property will be stable when building and drainage improvements are completed in accordance with our geotechnical recommendations. Construction of the residence will improve the stability of the property; not destabilize it.***

Staff notes that in order to achieve the required 1.5 factor of safety, the structure must be set back approximately 21 feet (as scaled from the plans in the April 15, 2002 Gorian report) from the southern (coastal) bluff edge. The proposed setback from this bluff edge is 25 feet.

Commission Staff Geologist Mark Johnsson has reviewed the slope stability analyses presented in the Gorian and Associates, Inc. reports and concurs with the consulting geologists' determination that an adequate factor of safety exists, at present, for the proposed residence.

However, erosion of the bluff faces over the 100 year economic life of the property will alter the stability of the site and cause the location of the 1.5 factor of safety line to retreat. In order to assure stability over the 100-year life of the property, a development setback line must be established that places the proposed structures a sufficient distance from the marginally stable bluffs to assure its safety, and that takes into account bluff retreat over the life of the structures, thus assuring the stability of the structures over their design life.

To ensure that new development will not be endangered by bluff retreat, Policy 4.27 of the Malibu LCP requires all new development to be set back at least 100 feet from the coastal bluff edge. Under Policy 4.27, this setback may be reduced to 50 feet if recommended by the City Geologist, and if it can be demonstrated that the development will maintain an adequate factor of safety for its 100 year economic life.

In this case, the proposed residence is located approximately 20 to 25 feet from the southern coastal bluff edge, approximately 55 feet from the western bluff edge, and for the northern bluff ranges from approximately 8 feet from the bluff edge to 5 feet beyond the bluff edge, according to the applicant's interpretation of the top of slope (**Exhibit 12**). However, this interpretation appears to place the top of slope below the bluff edge as defined in the Malibu LCP. The Malibu LCP defines the bluff edge as follows:

***For coastal and canyon bluffs, the bluff edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff, the bluff edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the bluff edge.***

The portion of the northern bluff edge underlying the proposed turnaround, for instance, is a part of the bluff face that is more gently sloping due to erosional processes. The gradient of this area increases continuously until it reaches the average gradient of the bluff. Previous grading of the building pad and related disturbance has obscured the relationship between this more gently sloping area and the adjacent bluff. Although additional analysis would be necessary to positively delineate the natural bluff edge, based on the available information, the likely bluff edge, according to the Malibu LCP definition, is located at least 10 feet landward of the north wall of the turnaround.

The applicant has submitted numerous geologic reports discussing bluff retreat rates and the stability of the site. The July 11, 2001 report by Gorian and Associates, Inc. states that

***An estimated bluff retreat rate (top of bluff) established for the north side of the building pad is approximately 1 inch per year, with an estimated 8 feet retreat in 75 years.***

Thus the estimated retreat for the 100 year economic life of the structure would be approximately 8.33 feet (100 inches) for the northern bluff. The Commission geologist generally recommends adding a ten foot buffer to the retreat distance to allow for uncertainty in the retreat rate analysis, potential increases in the retreat rates due to acceleration of sea level rise or other factors, protection of foundation elements, and to allow access for machinery should remedial measures be necessary. Thus the minimum setback from the northern bluff edge that provides for a 100 year economic life of the structure is 8.33 feet, and the recommended setback, that accounts for the factors identified above, is 18.33 feet. The proposed turnaround and portions of the proposed residence are located less than 18.33 feet from the northern bluff face.

Regarding the southern bluff face (that faces the ocean), the July 11, 2001 report by Gorian and Associates, Inc. states that

***Retreat rates on the south (ocean) side of the top of bluff have been estimated to range from 2-3 inches per year with an estimated total retreat of approximately 13 to 18 feet in 75 years. It should be noted that these rates are for the bluff in its existing non-improved condition. It is our professional opinion that proposed and properly designed improvements to the property will reduce the overall retreat rates at the top of the bluff to less than 1 inch per year by preventing runoff due to precipitation from flowing over the top of slopes; which currently causes erosion and bluff retreat.***

The bluff retreat rate noted above was determined using aerial photographs taken over a period of 37 years from 1952 to 1989. During that period, the southern bluff retreated approximately eight feet, or approximately 2.6 inches per year. The time span covered by the photos is relatively short, and does not meet the 50-year standard required by the Malibu LIP. The time frame does not take into account the known increase in erosion rates since 1989, including during the El Niño winters of 1994-1995 and 1997-1998 as also required by the Malibu LIP. Furthermore, although the consulting geologists argue that drainage improvements will decrease the retreat rate to 1 inch per year, unconsidered factors such as sea level rise and the progressive erosion of the landslide debris currently buttressing the southern bluff will likely offset any reduction in erosion caused by bluff top runoff. In summary, because the bluff retreat rates cannot be used with certainty, a conservative interpretation, using the 1952-1989 retreat rate to determine the minimum expected retreat distance, is warranted.

Therefore, the estimated retreat for the 100 year economic life of the structure is approximately 22 feet (260 inches) for the southern bluff. The proposed residence is located 20 - 25 feet north of the southern bluff edge. However, as noted above, the slope stability setback is 21 feet, which, when added to the 22 foot retreat distance, results in a 43 foot setback from the top of the southern bluff. (The 21 foot slope stability setback also provides the recommended 10 foot buffer, as discussed above regarding the north side of the residence.) This setback is the minimum necessary to ensure the geologic safety of the structure for a 100 year economic life. As noted above, Policy 4.27 of the Malibu LCP requires all new development to be set back at least 100 feet from the coastal bluff edge, or 50 feet if recommended by the City Geologist, and if demonstrated that the development will maintain an adequate factor of safety for its 100 year economic life. However, the approximately 20 - 25 foot setback from the southern bluff edge falls short of even the reduced 50 foot setback.

Accordingly, the location of the residence, as proposed, does not meet the coastal bluff setback requirement of Malibu LCP Policy 4.27. Application of Policy 4.27 in itself would result in the denial of the project.

Commission staff has considered whether an alternative location for residential development on the subject parcel exists that would allow conformity with Policy 4.27. As noted above, with the exception of the building pad area, the property consists of a coastal canyon, bluffs, and sandy beach. With the exception of the basement and required fire access turnaround, the proposed residence is no greater than 30 feet wide, and tapers to only 12 feet wide at its western tip. The narrow, east-west trending building pad that separates the northern and southern bluffs is approximately 40 feet wide over most of its length, flaring to approximately 65 feet at its eastern end where it adjoins the neighboring property. The pad itself, therefore, is not wide enough to accommodate the 50 foot coastal bluff setback required under the Malibu LCP, and still allow for residential development. Therefore, no alternative location exists that would allow conformity with Policy 4.27. While minor reductions in the width of the residence may be feasible, they would not significantly increase the geologic stability of the project. In addition, as a condition of approval, the applicant is required to waive his ability to build shoreline or bluff protection in the future and to agree to remove the residence or any portion of the residence if it is threatened by bluff instability in the future.

In summary, no alternative location or design for the residence exists that would allow conformity with Policy 4.27 or with the minimum coastal bluff setback necessary for geologic stability over the 100 year life of the structure. Application of the Malibu LCP policies alone would result in the denial of the proposed project.

However, the Commission must also consider Section 30010 of the Coastal Act, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The U.S. Supreme Court in *Lucas v. South Carolina Coastal Council* addressed the subject of what government action results in a "taking". In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency

might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, the geologic safety provisions of the Malibu LCP cannot be read to deny all economically beneficial or productive use of land because these provisions cannot be interpreted to require the Commission to act in an unconstitutional manner.

In this case, the applicant purchased the property in July 1998 for \$600,000. Although the Malibu LCP had not been drafted at that time, the certified 1986 Malibu Santa Monica Mountains Land Use Plan, which the Commission used for guidance prior to the Malibu LCP, designated the property for residential use. In addition, residential development had previously been approved by the Commission on this parcel [Coastal Development Permit 4-94-145 (Encinal Bluffs Partners)]. Based on these facts, the applicant had reason to believe that he had purchased a parcel on which he would be able to build a residence. In addition, the residence that was previously approved by the Commission occupied approximately the same footprint, and was approximately the same size, as the applicant's current proposal.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. The parcel is 2.16 acres, and is surrounded by other residentially-zoned developed parcels. Public parkland has been acquired in the vicinity; for instance, El Pescador State Beach is located approximately 300 feet west of the project site, and La Piedra State Beach is located approximately 600 feet east of the project site. However, there is no indication that a public agency would consider it a priority to purchase a small parcel such as the project site, especially since the only vehicle access is a private driveway located on an adjacent property and shared by two neighboring residences. Additionally, given the fact that the parcel is non-contiguous with the parkland and there is existing residential development on parcels separating the subject site from the parkland, it is unlikely that a public agency would attempt to acquire the site for a park or preserve. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use on the property would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence on the subject property would create a nuisance under California law. Other houses have been constructed in similar situations in coastal sage scrub and/or chaparral habitat in Los Angeles County, apparently without the creation of nuisances. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the geologic safety provisions of the Malibu LCP altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Therefore, in this situation, the Commission must still comply with the geologic safety provisions of the Malibu LCP by ensuring the geologic safety of the residence and surrounding properties to the extent that this can be done without taking the property.

As noted above, the Gorian and Associates, Inc. report dated March 18, 2002 concludes:

*As stated in previous correspondence, it is our professional opinion, based on subsurface data and stability analyses presented in the referenced GAI reports, the proposed residential structure and associated improvements within the subject property will be stable when building and drainage improvements are completed in accordance with our geotechnical recommendations. Construction of the residence will improve the stability of the property; not destabilize it.*

As such, the proposed project will serve to ensure general geologic and structural integrity on site at the present time. However, the submitted geologic reports include a number of recommendations to ensure the geologic stability and geotechnical safety of the site. To ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into all new development, **Special Condition One (1)** requires the applicant to submit project plans certified by the consulting geologist and geotechnical engineer as conforming to all geologic and geotechnical recommendations, as well as any new or additional recommendations by the consulting geologist and geotechnical engineer to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, sewage disposal and drainage. Any substantial changes to the proposed development approved by the Commission that may be recommended by the consultants shall require an amendment to the permit or a new coastal development permit.

The applicant's engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, as discussed above, the proposed development is located on a bluff top parcel that has experienced landslide activity and erosion. Furthermore, the only feasible building location does not allow an adequate setback to ensure geologic safety over its 100 year economic life. Due to these geologic risks, and to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Six (6)**. This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same. In addition, the Malibu LCP specifically requires that land owners of bluff properties subject to landslide and erosion shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

It should be noted that the danger from wind-blown sand at Malibu/Santa Monica is due to geologic conditions, not to development adjacent to the site. Development through

...ion for hazardous geologic conditions and new development throughout the greater ... where there exist potentially hazardous activity has occurred either directly upon or ... has required such restrictions for other mountains region.

Policy 4.38 of the ... permitted to protect ... the geologist en ... require a shoreline ... shall record a de ... constructed in the

... shoreline protective structure shall be ... 4.38.C. of the LIP states that where ... can be sited and designed so as not to ... of the development, the property owner ... shoreline protective device shall be proposed or

While shoreline p ... they do nothing to ... adverse effects of ... beach is a persist ... generally agreed th ... and beach profile ... documented by cr ... adversely impact th ... end of the structur ... back beach, and th ... from construction o ... accelerated rate ... access to a beach.

... protecting the landward development, ... ment or seawall and can often have ... produce impact of a structure on the ... line of coastal engineering, it is ... affect the configuration of the shoreline ... rock revetment. It has been well ... that shoreline protective devices will ... our, end scour (the beach area at either ... al behind the wall, the fixing of the ... Scouring and beach erosion resulting ... into a loss of beach sand at an ... the decreased availability of public

Therefore, Spec ... permit, that no bl ... development app ... requires the appli ... other standard an ... enjoyment of the ... bluff edges are insu ... economic life of the str ... portion of the structur ... geologic or other natur ... the principal resi ... residence to remed

... applicant to agree, by acceptance of the ... will ever be constructed to protect the ... **Special Condition Thirteen (13)** ... **Special Condition Ten (10)** and all ... conditions and restrictions on the use and ... setbacks from the north and south ... geologic factor of safety over the 100 year ... (10) also requires removal of all or a ... orders the residence to be vacated due to ... at the bluff recedes to within ten (10) feet of ... recommends removal of all or part of the ... residence as unsafe for occupancy.

The Commission ... site. In addition, the ... minimize erosion ... disturbed and graded a ... environment. In pa ... plant species are bet ... their high surface/foilage ... than native vegetation ... high surface/foilage w

... site erosion will add to the stability of the ... ded and disturbed areas be revegetated to ... by requiring the applicant to landscape all ... tive plants compatible with the surrounding ... ion has found that invasive and non-native ... a shallow root structure in comparison with ... greater amount of irrigation and maintenance ... that non-native and invasive plant species with ... tures do not serve to stabilize bluff slopes and

bluff top areas and that such vegetation results in potential adverse effects to the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foilage weight but also by their low irrigation and maintenance requirements. Further, they can be maintained without the use of permanent irrigation systems, which can cause excessive infiltration of water into the bluff, potentially leading to slope failures. Within the Zone A, as designated on the fuel modification plan, non-invasive ornamental plants are acceptable. Therefore, in order to ensure the stability and geotechnical safety of the site, **Special Condition Three (3)** requires that all proposed disturbed and graded areas on subject site are stabilized with native and limited non-invasive ornamental vegetation.

The applicants have submitted a final fuel modification plan that has been approved in concept by the County of Los Angeles Fire Department. The plan indicates that Fuel Modification Zone A will extend 20 feet from the structure; Zone B will extend 30 feet further; and Zone C will extend 150 feet further or to the property line. Zone A therefore includes a portion of the northern bluff face; and Zone B includes both the northern canyon slope and a portion of the southern coastal bluff. Both Zone A and Zone B are irrigated zones requiring the use of vegetation with a high moisture content. Removal of existing drought-tolerant vegetation and increased water input would contribute to the destabilization of the steep bluff faces. Commission staff expressed this concern to Los Angeles County Fire Prevention Bureau, Fuel Modification Unit staff, who indicated that alternatives that limit the amount of irrigation and removal of native plant species could be further explored for the site. Therefore, in order to minimize potential impacts to the stability of the bluff slopes, **Special Condition Three (3)** also requires the applicants to submit a final long-term fuel modification plan, for the review and approval of the Executive Director, that prohibits use of a permanent irrigation system and minimizes removal of native plant species.

The project will increase the amount of impervious coverage on-site which may increase both the quantity and velocity of stormwater runoff. If not controlled and conveyed off-site in a non-erosive manner, this runoff may result in increased erosion, affect site stability, and impact downslope water quality. The applicant's geologic / geotechnical consultant has recommended that site drainage be collected and distributed in a non-erosive manner. In addition, Malibu LCP policy 4.10 requires that "new development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams". Therefore, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by **Special Condition Two (2)**, to submit drainage and polluted runoff management plans for the construction and post-construction phases of development that are prepared by the consulting engineer. To ensure that the project's drainage structures will not contribute to further destabilization of the project site or surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, **Special Condition Two (2)** also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

To ensure excess excavated material is moved off site so as not to contribute to unnecessary landform alteration and to minimize erosion and sedimentation from stockpiled excavated soil, the Commission finds it necessary to require the applicant to dispose of the material at a appropriate disposal site or to a site that has been approved to accept fill material, as specified in **Special Condition Eight (8)**.

Finally, **Special Condition Thirteen (13)** requires the applicant to record a deed restriction that imposes all terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, for the reasons discussed above, the Commission finds that the project, as conditioned, is consistent with the applicable policies and standards of the Malibu LCP to the extent feasible, while allowing residential development on the site, and approval of the project, as conditioned, is authorized by section 30010 of the Coastal Act.

**C. Environmentally Sensitive Habitat Areas (ESHA)**

As noted above, the building pad for the proposed project is located on the spur ridge of an approximately 110 foot high coastal bluff. The site is unusual in that bluffs descend from the bluff top on three sides. To the south, a steep coastal bluff face descends from the bluff top to the beach, and to the north and west, the bluff descends to a coastal canyon containing a blue line stream. With the exception of the building pad area, the lot consists entirely of the bluffs, canyon slopes, and sandy beach. The bluffs to the north, south, and west of the bluff top contain native coastal bluff scrub vegetation, including Giant Coreopsis (*Coreopsis gigantea*). The riparian canyon north of the bluff top contains both non-native and native vegetation, including California Sycamore (*Platanus racemosa*). Both areas are mapped environmentally sensitive habitat areas (ESHA) in the Malibu LCP. In addition, the offshore environment immediately south of the subject site is designated as a Kelp Bed ESHA in the Malibu LCP.

The Malibu Local Coastal Program (LCP) contains the following development policies related to protection of ESHA that are applicable to the proposed development:

Section 30230 of the Coastal Act, which is incorporated as part of the Malibu LCP, 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, which is incorporated as part of the Malibu LCP, 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, and minimizing alteration of natural streams.***

Section 30240 of the Coastal Act, which is incorporated as part of the Malibu LCP, states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such 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 such areas, and shall be compatible with the continuance of such habitat areas.*

In addition, the following LCP policies are applicable in this case:

- 3.8** *Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*
- 3.10** *If the application of the policies and standards contained in this LCP regarding use of property designated as Environmentally Sensitive Habitat Area, including the restriction of ESHA to only resource-dependent use, would likely constitute a taking of private property, then a use that is not consistent with the Environmentally Sensitive Habitat Area provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking.*
- 3.11** *Applications for development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property.*
- 3.12** *No development shall be allowed in wetlands unless it is authorized under Policy 3.89. For all ESHA other than wetlands, the allowable development area (including the building pad and all graded slopes, if any, as well as any permitted structures) on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less. If it is demonstrated that it is not feasible from an engineering standpoint to include all graded slopes within the approved development area, then graded slope areas may be excluded from the approved development area. For parcels over 40 acres in size, the maximum development area may be increased by 500 sq. ft. for each additional acre in parcel size to a maximum of 43,560-sq. ft. (1-acre) in size. The development must be sited to avoid destruction of riparian habitat to the maximum extent feasible. These development areas shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance, as defined in California Civil Code Section 3479. Mitigation of adverse impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be required.*
- 3.14** *New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.*

- 3.15 *Mitigation measures for impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives, including habitat restoration and/or enhancement shall be monitored for a period of no less than five years following completion. Specific mitigation objectives and performance standards shall be designed to measure the success of the restoration and/or enhancement. Mid-course corrections shall be implemented if necessary. Monitoring reports shall be provided to the City annually and at the conclusion of the five-year monitoring period that document the success or failure of the mitigation. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met. However, if after ten years, performance standards have still not been met, the applicant shall submit an amendment proposing alternative mitigation measures.*
- 3.18 *The use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas, shall be prohibited within and adjacent to ESHAs, where application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application.*
- 3.23 *Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.*
- 3.25 *New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required ESHA or park buffer areas, except for that case addressed in Policy 3.27. Habitat restoration and invasive plant eradication may be permitted within required buffer areas if designed to protect and enhance habitat values.*
- 3.26 *Required buffer areas shall extend from the following points:*
- *The outer edge of the canopy of riparian vegetation for riparian ESHA.*
  - *The outer edge of the tree canopy for oak or other native woodland ESHA.*
  - *The top of bluff for coastal bluff ESHA*
- 3.27 *Buffers shall be provided from coastal sage scrub and chaparral ESHA that are of sufficient width to ensure that no required fuel modification (Zones A, B, or C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat.*
- 3.28 *Variances or modifications to buffers or other ESHA protection standards shall not be granted, except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development pursuant to Policies 3.10-3.13.*
- 3.29 *Modifications to required development standards that are not related to ESHA protection (street setbacks, height limits, etc.) shall be permitted where necessary to avoid or minimize impacts to ESHA.*
- 3.30 *Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and*

**ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.**

- 3.31 Permitted development located within or adjacent to ESHA and/or parklands that adversely impact those areas may include open space or conservation restrictions or easements over ESHA, ESHA buffer, or parkland buffer in order to protect resources.**
- 3.42 New development shall be sited and designed to minimize impacts to ESHA by:**
- Minimizing grading and landform alteration, consistent with Policy 6.8**
  - Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.**
  - Limiting the maximum number of structures to one main residence, one second residential structure, and accessory structures such as, stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification.**
  - Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources.**
  - Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the City Planning Commission, upon recommendation of the Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use to be processed consistent with the LIP provisions.**
  - Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.47.**
  - Minimizing impacts to water quality, consistent with Policies 3.94-3.155**
- 3.43 New septic systems shall be sited and designed to ensure that impacts to ESHA are minimized, including those impacts from grading and site disturbance as well as the introduction of increased amounts of water. Adequate setbacks and/or buffers shall be required to protect ESHA and to prevent lateral seepage from the leachfield(s) or seepage pit(s) into stream waters or the ocean.**
- 3.45 All new development shall be sited and designed so as to minimize grading, alteration of physical features, and vegetation clearance in order to prevent soil erosion, stream siltation, reduced water percolation, increased runoff, and adverse impacts on plant and animal life and prevent net increases in baseline flows for any receiving waterbody.**
- 3.46 Grading or earthmoving exceeding 50 cubic yards shall require a grading permit. Grading plans shall meet the requirements of the local implementation plan with respect to maximum quantities, maximum cuts and fills, remedial grading, grading for safety purposes, and maximum heights of cut or fill. Grading proposed in or adjacent to an ESHA shall be minimized to the maximum extent feasible.**
- 3.47 Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that is 1) located within or adjacent to ESHA, or 2) that**

*includes grading on slopes greater than 4:1. In such cases, approved grading shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1, unless the City determines that completion of grading would be more protective of resources.*

**3.50** *Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:*

- Plantings shall be native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.*
- Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.*
- Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.*
- Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.*
- Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.*

**3.51** *Disturbed areas ESHAs shall not be further degraded, and if feasible, restored. If new development removes or adversely impacts native vegetation, measures to restore any disturbed or degraded habitat on the property shall be included as mitigation.*

**3.53** *Fencing or walls shall be prohibited within riparian, bluff, Point Dume canyon or dune ESHA, except where necessary for public safety or habitat protection or restoration. Fencing or walls that do not permit the free passage of wildlife shall be prohibited in any wildlife corridor.*

**3.55** *Fencing adjacent to ESHA shall be sited and designed to be wildlife permeable, enabling wildlife to pass through.*

**3.56** *Exterior night lighting shall be minimized, restricted to low intensity fixtures, shielded, and directed away from ESHA in order to minimize impacts on wildlife. High intensity perimeter lighting and lighting for sports courts or other private recreational facilities in ESHA, ESHA buffer, or where night lighting would increase illumination in ESHA is prohibited.*

**3.58** *To protect seabird-nesting areas, no pedestrian access shall be provided on bluff faces except along existing, formal trails or stairways. New structures shall be prohibited on bluff faces, except for stairs or accessways to provide public beach access.*

- 3.59 All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety, as required by Policies 4.45 through 4.54. Development shall utilize fire resistant materials and incorporate alternative fuel modification measures, such as firewalls (except where this would have impacts on visual resources), and landscaping techniques, where feasible, to minimize the total area modified. All development shall be subject to applicable federal, state and county fire protection requirements.**
- 3.60 As required by Policy 4.49, applications for new development shall include a fuel modification plan for the project site, approved by the County Fire Department. Additionally, applications shall include a site plan depicting the brush clearance, if any, that would be required on adjacent properties to provide fire safety for the proposed structures.**
- 3.61 Applications for new development shall include a quantification of the acreage of natural vegetation that would be removed or made subject to thinning, irrigation, or other modification by the proposed project, including building pad and road/driveway areas, as well as required fuel modification on the project site and brush clearance on adjacent properties.**
- 3.62 All new development shall include mitigation for unavoidable impacts to ESHA from the removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance.**

As noted above, the project site contains coastal bluffs and a riparian canyon that are mapped environmentally sensitive habitat areas (ESHA) in the Malibu LCP. The proposed building site is an existing approximately 8,000 sq. ft. pad surrounded on three sides by the bluff and canyon ESHAs. In addition, the offshore environment immediately south of the subject site is designated as a Kelp Bed ESHA in the Malibu LCP.

The Malibu LCP provides for the protection of ESHA by limiting the scope of development in and adjacent to ESHA. For instance, the Malibu LCP requires the use of buffers between ESHA and adjacent new development. In order to protect riparian ESHA, the LIP requires a 100 foot buffer from the outer edge of the canopy of riparian vegetation, or from the outer edge of the stream bank when no riparian vegetation is present. In order to protect Coastal Bluff ESHA, the LIP requires a 100 foot buffer from the bluff edge. The LIP prohibits all development in these ESHA buffers, including vegetation removal or thinning, or planting of non-native invasive vegetation.

As explained above, the building setbacks do not provide the 100 foot coastal bluff ESHA buffer required by the Malibu LCP (LIP 4.6.1). In addition, the proposed development is located approximately 50 feet from the centerline of the stream. Thus the proposed development is located within the required buffers for the riparian and coastal bluff ESHA on site.

Policy 3.28 prohibits modifications to ESHA buffers except where there is no other feasible alternative for siting the development, and where the proposed project does not exceed the limits on allowable development provided in Policies 3.10 to 3.13. These limits restrict the maximum allowable development area to 10,000 sq. ft. on parcels containing 40 acres or less.

With the exception of the proposed building site, the subject property consists of a coastal canyon, bluffs, and sandy beach. No alternative site exists that would allow conformity with the

ESHA buffers required by the Malibu LCP. The proposed building site is an approximately 40 to 65 foot wide existing pad surrounded by the descending bluff slopes. The pad itself, therefore, is not wide enough to accommodate the required ESHA buffers. No alternative design exists that would significantly increase the available setback from the bluffs. Minor reductions in the width of the already narrow residence may be feasible, but would not significantly increase the project's conformity with the ESHA buffer standards. In summary, no feasible siting or design alternatives exist for the proposed development.

The proposed area of development is approximately 8,000 sq. ft., and is therefore consistent with the limits on maximum allowable development area in ESHA buffers provided in Policy 3.12.

Given that there exists no alternative reasonable economic use of the property and no feasible siting or design alternatives for the proposed development, and given that the proposed project meets the maximum allowable development area standards provided when no feasible alternative to development in ESHA buffers exists, the proposed siting of the project within the ESHA buffers is allowable under the ESHA protection policies of the Malibu LCP.

However, additional measures must be taken to minimize the proposed project's impacts on adjacent ESHA, as discussed below.

The applicant has proposed to restore native vegetation in the canyon north of the proposed residence. The proposed restoration includes planting riparian species, including California Sycamore (*Platanus racemosa*) and Arroyo Willow (*Salix lasiolepus*) in the canyon bottom and coast sage scrub species, including Lemonade Berry (*Rhus integrifolia*) and Toyon (*Heteromeles arbutifolia*) on the slopes. The proposed restoration also includes removal of invasive non-native species, including Black Mustard (*Brassica nigra*), Fennel (*Foeniculum vulgare*), and Hottentot Fig (*Carpobrotus edulis*). In order to ensure that the proposed restoration is carried out successfully and in a manner that minimizes the potential for erosion and contributes to site stability, **Special Condition Eleven (11)** requires the applicant to submit a restoration/revegetation plan, including a monitoring program.

The proposed location of the residence will establish a 200-foot brush clearance radius that will extend down the bluff and canyon slopes. This radius is contained entirely within the 200 foot radii of existing development. (**Exhibit 13**). However, as explained above, habitat on the bluffs and in the canyon on the site is ESHA and has not been extensively thinned or removed for fire safety. Brush clearance on the subject property will be governed by the fuel modification plan.

The applicants have submitted a final fuel modification plan that has been approved in concept by the County of Los Angeles Fire Department. The plan indicates that Fuel Modification Zone A will extend 20 feet from the structure; Zone B will extend 30 feet further; and Zone C will extend 150 feet further or to the property line. Zone A therefore includes a portion of the northern bluff face; and Zone B includes both the northern canyon slope and a portion of the southern coastal bluff. Both Zone A and Zone B are irrigated zones requiring the use of vegetation with high moisture content. Removal of existing drought-tolerant vegetation and increased water input would contribute to the destabilization of the steep bluff faces. Commission staff expressed this concern to Los Angeles County Fire Prevention Bureau, Fuel Modification Unit staff, who indicated that alternatives that limit the amount of irrigation and removal of native plant species could be further explored for the site.

The final fuel modification plan also specifies that on the north descending slope, only dead or dying vegetation shall be removed. The plan further states that no thinning of the remaining native coastal sage scrub species shall occur, and that exotic vegetation, including invasive species such as Black Mustard (*Brassica nigra*), Fennel (*Foeniculum vulgare*), and Hottentot Fig (*Carpobrotus edulis*) shall be removed. To ensure the most minimal disturbance feasible of the surrounding native vegetation, **Special Condition Three (3)** requires the applicants to submit a final long-term fuel modification plan for the review and approval of the Executive Director. The final fuel modification plan must minimize irrigation and removal of native plant species, and be consistent with the restoration plan required under **Special Condition Eleven (11)**. In order to further minimize the displacement of native plant species by non-native or invasive species, **Special Condition Three (3)** requires also requires that all areas of the site that are disturbed by the proposed development be planted with native vegetation.

In addition, **Special Condition Two (2)** requires the applicant to submit erosion, drainage and polluted runoff control plans for the proposed development, as discussed in Section D. below. Implementation of **Special Condition Two (2)** will serve to minimize impacts to the water quality of the stream below the project site, both during and after construction, consistent with the coastal waters protection policies of the Malibu LCP. The Commission finds that **Special Conditions Two (2)** and **Three (3)** are necessary to ensure the proposed development will minimize impacts to water quality and native vegetation.

In addition, **Special Condition Seven (7)** addresses future development by ensuring that all future development proposals for the site, which might otherwise be exempt from review, would require prior review so that potential impacts to ESHA on site may adequately be considered. Finally, **Special Condition Thirteen (13)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the proposed project, as conditioned, complies with the requirements of the Malibu LCP for protection of sensitive habitat.

#### **D. Water Quality**

The Malibu LCP provides for the protection of water quality. The policies require that new development protects, and where feasible, enhances and restores wetlands, streams, and groundwater recharge areas. The policies promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters through new construction and development regulation, including site planning, environmental review and mitigation, and project and permit conditions of approval. Additionally, the policies require the implementation of Best Management Practices to limit water quality impacts from existing development, including septic system maintenance and City services.

Section 30231 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, 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, minimizing alteration of natural streams.**

In addition, the following water quality LCP policies are applicable in this case:

- 3.2 New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:**
- **Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.**
  - **Limiting increases of impervious surfaces.**
  - **Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.**
  - **Limiting disturbance of natural drainage features and vegetation.**
- 3.3 New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.**
- 3.4 Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern<sup>1</sup> that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.**
- 3.5 Post-development peak stormwater runoff discharge rates shall not exceed the estimated pre-development rate. Dry weather runoff from new development must not exceed the pre-development baseline flow rate to receiving waterbodies.**
- 3.6 New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.**
- 3.7 Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour storm event for volume-based BMPs and/or the 85<sup>th</sup>**

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<sup>1</sup> Pollutants of concern are defined in the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County as consisting " of any pollutants that exhibit one or more of the following characteristics: current loadings or historic deposits of the pollutant are impacting the beneficial uses of a receiving water , elevated levels of the pollutant are found in sediments of a receiving water and/or have the potential to bioaccumulate in organisms therein, or the detectable inputs of the pollutant are at a concentrations or loads considered potentially toxic to humans and/or flora or fauna".

*percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.*

- 3.8 *New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.*
- 3.9 *New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.*
- 3.10 *Permits for new development shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required BMPs. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility.*
- 3.11 *The City, property owners, or homeowners associations, as applicable, shall be required to maintain any drainage device to insure it functions as designed and intended. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.*
- 3.12 *Some BMPs for reducing the impacts of non-point source pollution may not be appropriate for development on steep slopes, on sites with low permeability soil conditions, or areas where saturated soils can lead to geologic instability. New development in these areas should incorporate BMPs that do not increase the degree of geologic instability.*
- 3.13 *New development that requires a grading permit or Local SWPPP shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.50. Any landscaping that is required to control erosion shall use native or drought-tolerant non-invasive plants to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.*
- 3.14 *New development shall protect the absorption, purifying, and retentive functions of natural systems that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner. Disturbed or degraded natural drainage systems shall be restored, where feasible, except where there are geologic or public safety concerns.*
- 3.15 *Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.*
- 3.16 *Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems*

- (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.*
- 3.17 *OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.*
- 3.18 *New development shall be sited and designed to provide an area for a backup soil absorption field in the event of failure of the first field.*
- 3.19 *Soils should not be compacted in the soil absorption field areas during construction. No vehicles should be parked over the soil absorption field or driven over the inlet and outlet pipes to the septic tank.*
- 3.20 *Subsurface sewage effluent dispersal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath nonporous paving or surface covering.*
- 3.21 *New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and should avoid the use of garbage disposals to minimize hydraulic and/or organic overloading of the OSTs.*
- 3.22 *New development may include a separate greywater dispersal system where approved by the Building Safety Department.*
- 3.23 *New development shall include protective setbacks from surface waters, wetlands and floodplains for conventional or alternative OSTs, as well as separation distances between OSTs system components, building components, property lines, and groundwater. Under no conditions shall the bottom of the effluent dispersal system be within five feet of groundwater.*
- 3.24 *The construction of private sewage treatment systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage treatment system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.*
- 3.25 *Applications for new development relying on an OSTs shall include a soils analysis and or percolation test report. Soils analysis shall be conducted by a California Registered Geotechnical Engineer or a California Registered Civil Engineer in the environmental/geotechnical field and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California registered Geotechnical Engineer, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist. The OSTs shall be designed, sited, installed, operated, and maintained in full compliance with the building and plumbing codes and the requirements of the LA RWQCB.*
- 3.26 *New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems.*

- 3.27 ***Applications for a coastal development permit for OSTs installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTs on groundwater level, quality of nearby surface drainages, and slope stability. Where it is shown that the OSTs will negatively impact groundwater, nearby surface waters, or slope stability, the OSTs shall not be allowed.***

As described in detail above, the proposed project includes construction of a two-story, 18 foot high, 4,340 sq. ft. single family residence, with attached two-car garage, basement, spa, septic system, turnaround, driveway expansion, restoration of riparian vegetation and 1,055 cu. yds. of grading (1,020 cu. yds. cut, 35 cu. yds. fill).

As such, the proposed project will result in an increase of impervious surface on site, which in turn decreases the infiltrative function and capacity of existing permeable land on project sites. The Commission notes that this reduction in permeable surface leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak stream discharge is increased and the peak occurs much sooner after precipitation events. Changes in the stream flow result in modification to stream morphology. Additionally, grading, excavations and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion of disturbed soils and in sedimentation of nearby coastal stream and waters.

In addition, pollutants commonly found in runoff associated with new development include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter; fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use; nutrients from wastewater discharge, animal waste and crop residue; and bacteria and pathogens from wastewater discharge and animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation which provides food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the preparation of a Storm Water Management Plan (SWMP) for all projects that require a coastal development permit or a Water Quality Mitigation Plan (WQMP) for new hillside residential developments that involve one acre or more of disturbance or projects that are 2,500 sq. ft. or more of impervious surface area and discharge directly to ESHA. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to minimize or prevent adverse effects of the project on water quality. A WQMP requires treatment control (or

structural) BMPs, in addition to site design and source control BMPs that are required for a SWMP, to minimize or prevent the discharge of polluted runoff from a project site. The proposed project involves over 2,500 sq. ft. of impervious surface area and discharges directly to the adjacent ESHA. Therefore, pursuant to the requirements of the Malibu LCP, and to ensure the proposed project will not adversely impact water quality or coastal resources, the Commission finds it necessary to require the preparation of a WQMP for the subject site, that utilizes site design, source control and treatment control BMPs, as specified in **Special Condition Two (2)**.

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from runoff during construction. The Malibu LCP requires that a Local Storm Water Pollution Prevention Plan (SWPPP) be prepared for all development that requires a Coastal Development Permit and a grading or building permit, and it shall apply to the construction phase of the project. The SWPPP includes measures and BMPs to prevent erosion, sedimentation and pollution of surface and ocean waters from construction and grading activities. In this case, the proposed project does involve grading and construction that requires grading and building permits. Therefore, pursuant to the Malibu LCP and to ensure the proposed development does not adversely impact water quality or coastal resources during the construction phase of the project, the Commission finds it necessary to require the applicant to submit a Local SWPPP for the subject site, consistent with the requirements specified in **Special Condition Two (2)**.

Finally, the proposed development includes the installation of an on site wastewater treatment system (OSTS) to serve the residence. The applicant is proposing to install a new 2,500 gallon tank with an effluent filter, pump, approximately 250 foot long piping, and leach trench. The leach trench is located immediately west and parallel to the driveway, and approximately 85-90 feet from the centerline of the stream, as shown in **Exhibit 14**. The proposed OSTS was reviewed and approved in concept by the City of Malibu Environmental Health Department, determining that the system meets the requirements of the plumbing code. However, the approval states that it "does not include an evaluation of any geological, or other potential problems, which may require an alternative method of wastewater disposal." Nor did the Environmental Health Department evaluate compliance with the recently adopted Malibu LCP.

The Malibu LCP includes a number of policies and standards relative to the design, siting, installation, operation and maintenance of OSTs to ensure these systems do not adversely impact coastal waters. The Malibu LIP requires a horizontal effluent dispersal system (such as the proposed leach trench) to be set back 100 feet from a stream. (Section 18.7.M.) The site plans show that the proposed leach trench is located 85 - 90 feet from the stream on the site. The Malibu LIP also restricts conventional gravity trench leachfields (such as the proposed leach trench) to slopes of 30% or less. (Section 18.7. K). The area where the proposed leach trench is located exceeds this slope. The location of the proposed leach trench adjacent to a steep canyon and slightly less than 100 feet from the stream raises the potential impact of effluent daylighting on the slope.

The applicant proposes to use an effluent filter in the septic tank, to reduce the amount of solids in the effluent. One of the most serious problems with septic systems is the migration of solids into the leachfield. An effluent filter in the septic tank limits passage of suspended solids into the effluent. Solids in a filtered system's effluent discharge are significantly less than those produced in a non-screened system. The effluent filter must be capable of removing solids in

excess of one eighth (1/8) of an inch and greater and shall prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head.

In addition, use of a pressure dosing system will increase the treatment capability of the septic system and allow more removal of pollutants in the effluent. Pressure-dosed systems periodically pump clarified effluent to the leachfield and are often used to solve the problems associated with uneven distribution of effluent in the leachfield. Uneven distribution of effluent may cause localized overloading that results in either under-treatment of wastewater in highly permeable soil because only a portion of the leachfield is being used, or clogging of trenches and pipes in areas with slowly permeable soil. Dosing allows the soil to drain between applications and improves the leachfield performance by increasing aeration (and aerobic decomposition), as well as reducing excessive anaerobic bacteria growth and the associated clogging. In addition, a pressurized system ensures a uniform distribution of effluent throughout the leachfield by the use of small-diameter pipes and holes, resulting in effluent contact with more of the field.

The treatment capability of the septic system can also be increased by using low flow plumbing fixtures, including flow-restricted showers and ultra-low flush toilets, to reduce the volume of effluent flowing through the leach trench. Additional improvement in the treatment capability of the septic system can be obtained by prohibiting garbage disposals. Garbage disposal adds solids to the septic tank and dissolved organic content to the effluent. Undigested food scraps take much longer to break down than solids that have been pre-digested. A garbage disposal will increase the amount of solids in the tank by as much as 30 to 50%, and, therefore, the tank must be pumped more frequently. Increased dissolved organic matter may promote excessive growth of bacteria along the bottom and sidewalls of a leachfield trench and reduce the permeability as a result. This can result in excessive ponding of wastewater in the trench, back-flow into the septic tank, or surfacing of effluent above ground.

In the event that any discharge of effluent onto the canyon slope occurs, use of an effluent filter, pressure dosing, and low-flow plumbing fixtures, as well as prohibiting use of garbage disposals, all minimize the potential for the effluent to contain pollutants that could adversely impact water quality in the stream at the bottom of the canyon. Therefore, **Special Condition Five (5)** requires the residence and the septic system to comply with these measures. The condition also requires the applicant to move the leach trench further from the stream, and closer to the property line, if this is possible.

Commission staff, including the Commission's geologist and water quality staff, have evaluated siting and design alternatives for a septic system on the site and determined that there is no alternative system or location that would be environmentally preferable. The proposed location provides the greatest possible setback of the effluent dispersal system from the stream. In addition, all feasible measures to reduce the potential for polluted effluent to impact surface water quality have been imposed and Commission staff concludes that these measures are adequate to prevent adverse impacts to water quality from the septic system.

Because the septic system does not fully comply with the required stream setback and slope restrictions, it is important that the system be regularly maintained and monitored to ensure that it is operating properly. Therefore, **Special Condition Five (5)** requires that maintenance and inspection occur every three years, and a report evaluating the system be submitted to the City and the Commission. The report must include recommendations for any additional maintenance or modifications that are necessary to ensure proper operation of the system.

The applicant must carry out the recommendation maintenance and seek approval of a permit amendment to make any recommended modifications.

Implementation of all the measures identified above is necessary to ensure compliance with the Malibu LCP Policies that require design of development to minimize adverse impacts to biological productivity and quality of coastal streams and avoid contributing nutrients to groundwater and/or surface water (Policy 3.16), to avoid adverse impacts to water quality for the life of the project (Policy 3.24), and to protect surface waters from lateral seepage from effluent dispersal systems (Policy 3.26).

As stated previously, the proposed project includes a spa. Malibu LUP policies 3.95 and 3.96 require that new development shall be sited and designed to protect water quality and not result in the degradation of surface waters, including the ocean, coastal streams or wetlands. There is the potential for spas to have deleterious effects on aquatic habitat if not properly maintained and drained. In addition, chlorine and other chemicals are commonly added to pools and spas to maintain water clarity, quality, and pH levels. Further, both leakage and periodic maintenance of the proposed spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing instability of the site and adjacent properties and may result in the transport of chemicals, such as chlorine, into coastal waters, adversely impacting sensitive riparian, wetland and marine habitats. Therefore, in order to minimize potential adverse impacts from the proposed spa, the Commission finds it is necessary to require the applicant to submit a spa drainage and maintenance plan, as detailed in **Special Condition Four (4)**.

In addition, **Special Condition Seven (7)** addresses future development by ensuring that all future development proposals for the site, which might otherwise be exempt from review, would require prior review so that potential impacts to water quality may adequately be considered. Finally, **Special Condition Thirteen (13)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Although the septic system does not fully comply with all standards in the Malibu LIP, as stated above, the Commission is authorized under section 30010 of the Coastal Act to approve residential development on the site to avoid a taking. As explained above, the septic system, as conditioned, will not adversely impact water quality and there are no environmentally preferable alternative systems or locations. Therefore, the Commission finds that the project complies with the provisions of the LCP for protection of water quality to the extent feasible, while allowing residential development, and approval of the project is authorized by Section 30010 of the Coastal Act.

#### **E. Visual Resources**

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where

this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

***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.***

In addition, the following LCP policies are applicable in this case:

- 6.1 ***The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.***
- 6.2 ***Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.***
- 6.3 ***Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.***
- 6.4 ***New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.***

- 6.5 *Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.*
- 6.6 *The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.*
- 6.9 *All new development shall be sited and designed to minimize alteration of natural landforms by:*
- *Conforming to the natural topography.*
  - *Preventing substantial grading or reconfiguration of the project site.*
  - *Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.*
  - *Requiring that man-made contours mimic the natural contours.*
  - *Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.*
  - *Minimizing grading permitted outside of the building footprint.*
  - *Clustering structures to minimize site disturbance and to minimize development area.*
  - *Minimizing height and length of cut and fill slopes.*
  - *Minimizing the height and length of retaining walls.*
  - *Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.*
- 6.10 *New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.*
- 6.12 *All new structures shall be sited and designed to minimize impacts to visual resources by:*
- *Ensuring visual compatibility with the character of surrounding areas.*
  - *Avoiding large cantilevers or understories.*
  - *Setting back higher elements of the structure toward the center or uphill portion of the building.*
- 6.13 *New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.*
- 6.14 *The height of permitted retaining walls shall not exceed six feet. Stepped or terraced retaining walls up to twelve feet in height, with planting in between, may be permitted. Where feasible, long continuous walls shall be broken into sections*

*or shall include undulations to provide visual relief. Where feasible, retaining walls supporting a structure should be incorporated into the foundation system in a stepped or split level design. Retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.*

- 6.15** *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.*
- 6.16** *Blufftop development shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure, as detailed in Policy 4.27.*
- 6.17** *Where parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive descend from the roadway, new development shall be sited and designed to preserve bluewater ocean views by:*
- *Allowing structures to extend no higher than the road grade adjacent to the project site, where feasible.*
  - *Limiting structures to one story in height, if necessary, to ensure bluewater views are maintained over the entire site.*
  - *Setting fences away from the road edge and limiting the height of fences or walls to no higher than adjacent road grade, with the exception of fences that are composed of visually permeable design and materials.*
  - *Using native vegetation types with a maximum growth height and located such that landscaping will not extend above road grade.*
- 6.23** *Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.*
- 6.29** *Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:*
- *Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.*
  - *Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.*
  - *Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.*
  - *Lawn shall not be located on any geologically sensitive area such as coastal blufftop.*
  - *Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel*

*modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.*

The project site is located immediately seaward of Pacific Coast Highway in western Malibu. Pacific Coast Highway is a major coastal access route and a designated scenic roadway in the Malibu LCP.

The Malibu LCP requires that new residential development on vacant bluff lots, where feasible, be sited and designed so as not to block views of the ocean as seen from Pacific Coast Highway. In this case, the proposed residence will not be visible from the highway as it is sited approximately 50 feet below the elevation of Pacific Coast Highway at a distance of approximately 350 feet. In addition, existing development and vegetation further shield views of the proposed residence.

The proposed residence will be visible from El Pescador State Beach, located approximately 300 feet west of the subject site. Because it is visible from parkland, the site conforms to the definition, under Malibu LCP Policy 6.4, of a Scenic Area. Therefore, this site is governed by LCP Policy 6.5, which requires that development minimize adverse impacts on scenic areas that are visible from public viewing areas.

The Malibu LCP requires new development to be sited and designed to minimize adverse impacts on scenic areas. Where no alternative siting exists, as in the subject case, impacts must be minimized through such measures as reducing the size and height of structures, minimizing grading, utilizing colors and exterior materials compatible with the surrounding environment, minimizing exterior lighting, and revegetating disturbed areas with a native plant palette that blends with natural habitats on site.

The height of the proposed structure is 18 feet high, equivalent to a one-story building. Therefore, reduction in the height of the residence is not feasible. The proposed structure is 4,340 sq. ft. in size, much of which is located below grade, with a footprint of approximately 2,106 sq. ft. Reduction in the size of the residence would not significantly reduce impacts on public views. The applicant proposes 1,055 cu. yds. of grading (1,020 cu. yds. cut, 35 cu. yds. fill) in order to utilize a portion of the property located between the existing graded pad and neighboring residences. This portion of the property is located under the eastern portion of the proposed residence, thus the landform alteration will not be visible once the project is completed. The proposed project is therefore consistent with the LCP policies cited above relative to landform alteration and grading, retaining wall heights and height of structures above natural grade.

The Commission has found that in highly scenic areas, the color of a structure can adversely impact a viewshed if the color is not consistent with the surrounding environment. For example, white structures are highly visible from long distances and can adversely impact the visual resources from scenic highways, trails, and public view areas. Structures that have exterior colors and materials that are compatible with the surrounding environment are less visually obtrusive. Policy 6.13 of the Malibu LCP requires new development in areas visible from public viewing areas to incorporate colors and exterior materials compatible with the surrounding landscape, and prohibits the use of highly reflective materials. Therefore, **Special Condition Nine (9)** restricts the color of the residence to those compatible with the surrounding environment and requires the use of non-glare glass.

The Commission has also found that night lighting of areas in the Malibu / Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Policy 6.23 of the Malibu LCP specifically requires exterior lighting to be concealed so that no light source is directly visible from public viewing areas. Therefore, **Special Condition Twelve (12)** restricts the use of exterior lighting on the subject property to the minimum necessary for safety purposes.

In addition, future construction on the property has the potential to negatively affect the visual character of the area as seen both from El Pescador State Beach and from Pacific Coast Highway. To insure that no additions or improvements are made to the property that may affect visual resources on-site without due consideration of the potential cumulative impacts, the Commission finds it necessary to require the applicant to record a future development deed restriction, which will require the applicant to obtain an amended or new coastal permit if additions or improvements to the site are proposed in the future, as required by **Special Condition Seven (7)**.

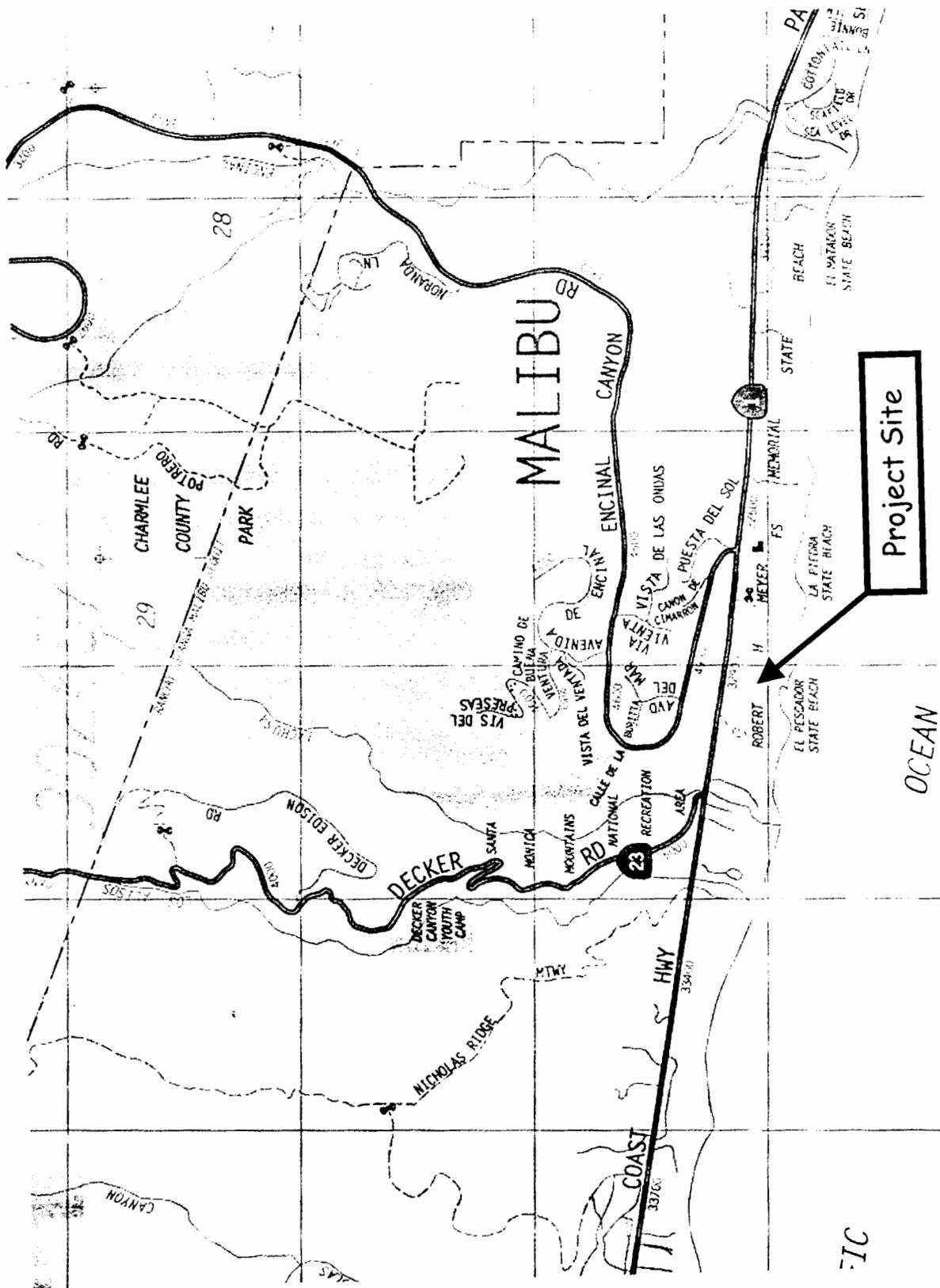
Finally, **Special Condition Thirteen (13)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In summary, the proposed project, as conditioned, will not result in a significant adverse impact to scenic public views or the character of the surrounding area in this portion of Malibu. In addition, there are no alternatives that would lessen any significant adverse impact on scenic and visual resources. Thus, the Commission finds that the proposed project is consistent, as conditioned, with applicable policies of the Malibu LCP.

#### **F. California Environmental Quality Act**

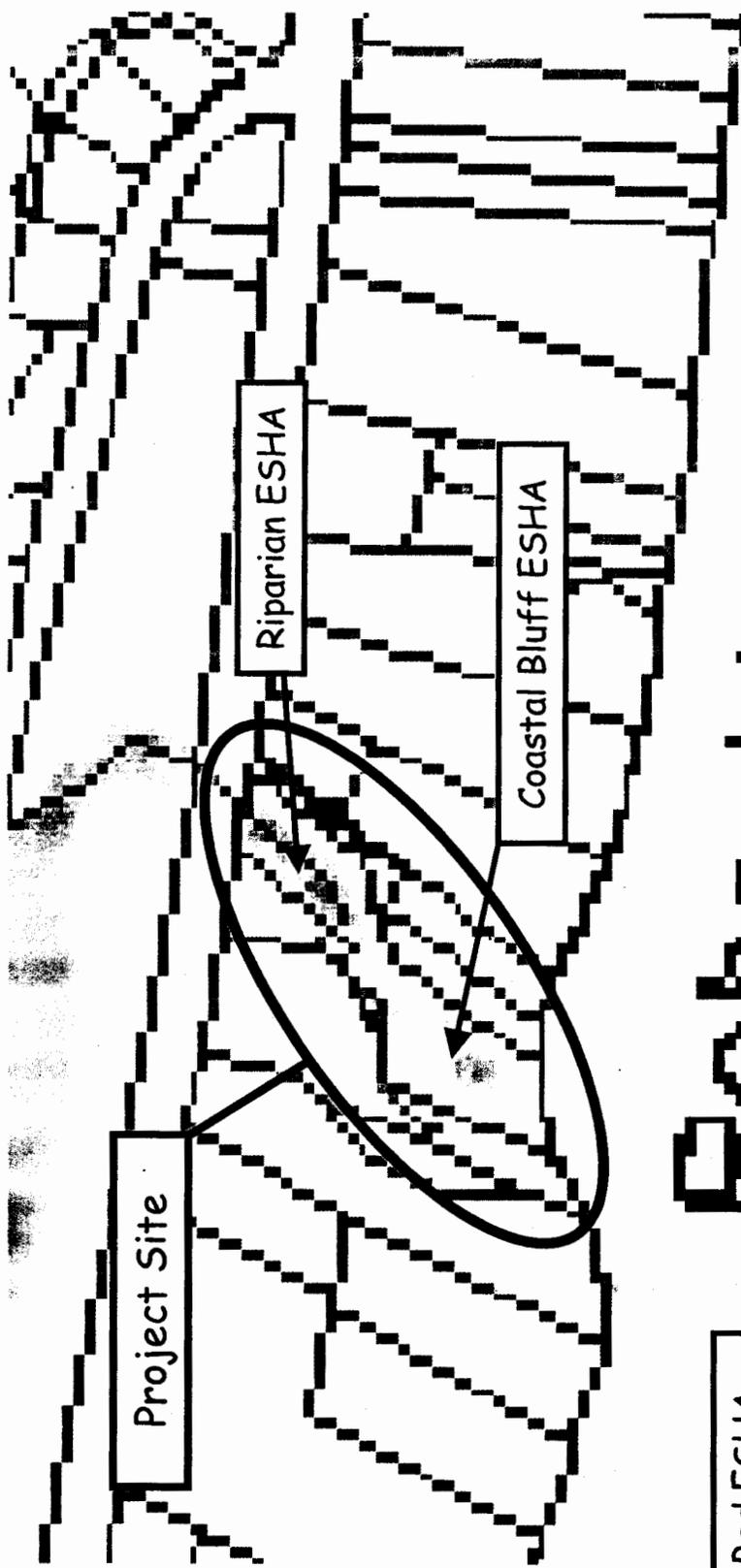
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 which 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.



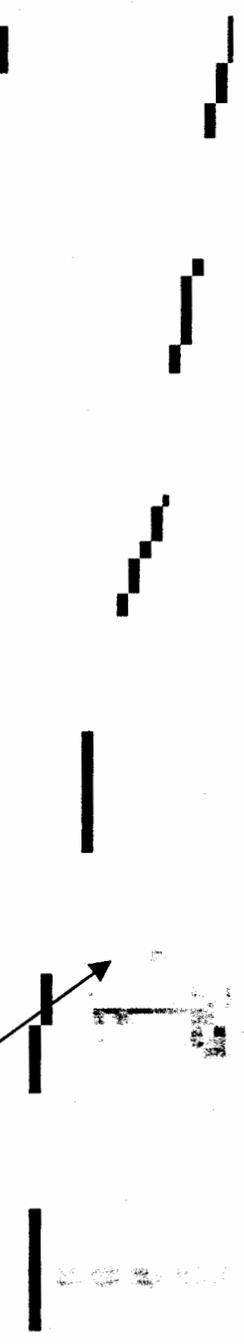
**Project Site**

EXHIBIT NO. 1
APPLICATION NO.
4-01-217
VICINITY MAP



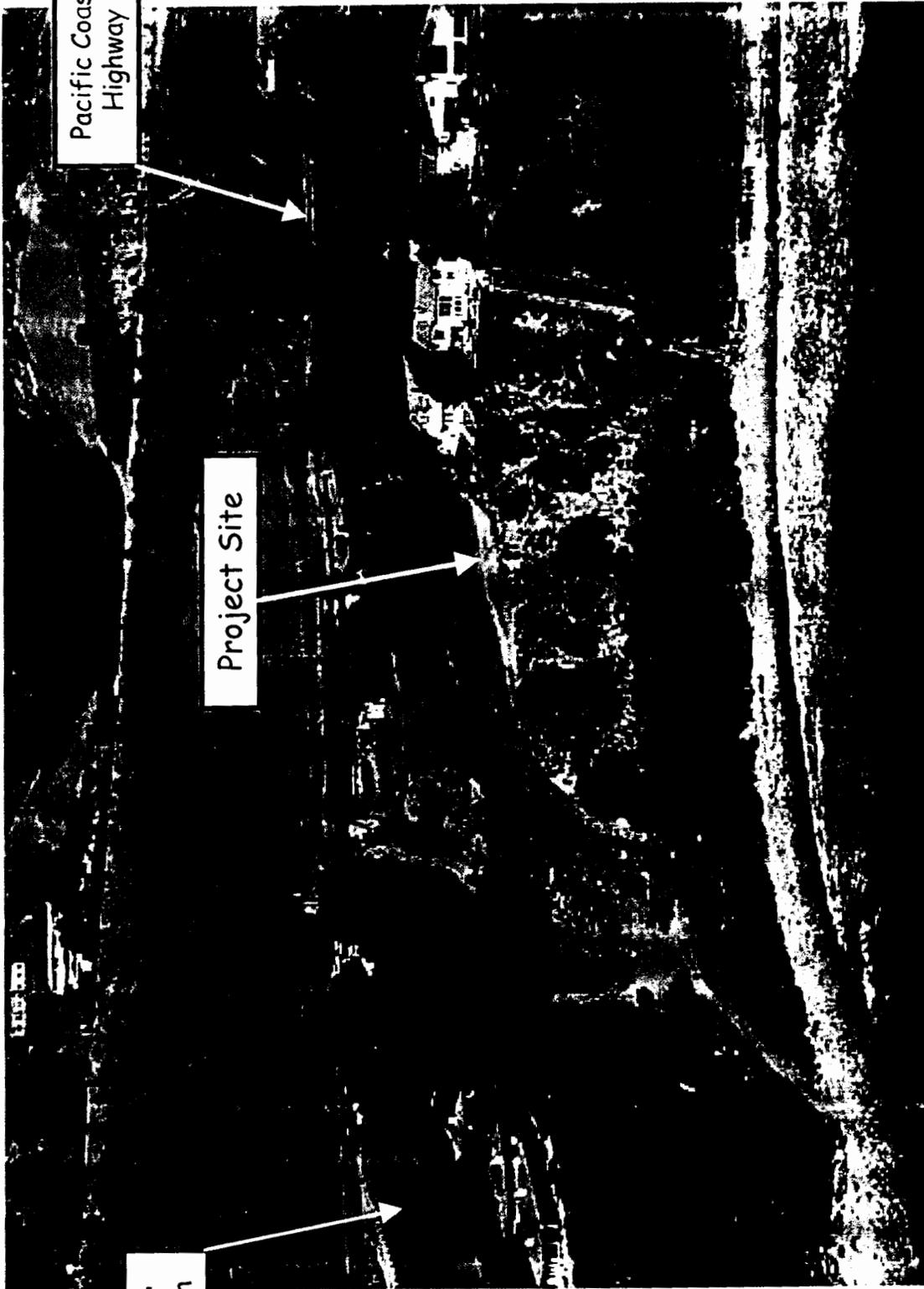
Robert H. Meyer

Kelp Bed ESHA



ESHA as shown on "ESHA and Marine Resources Map 1: Nicholas Canyon to Trancas Beach," Malibu LCP.

EXHIBIT NO. 2
APPLICATION NO.
4-01-217
ESHA MAP



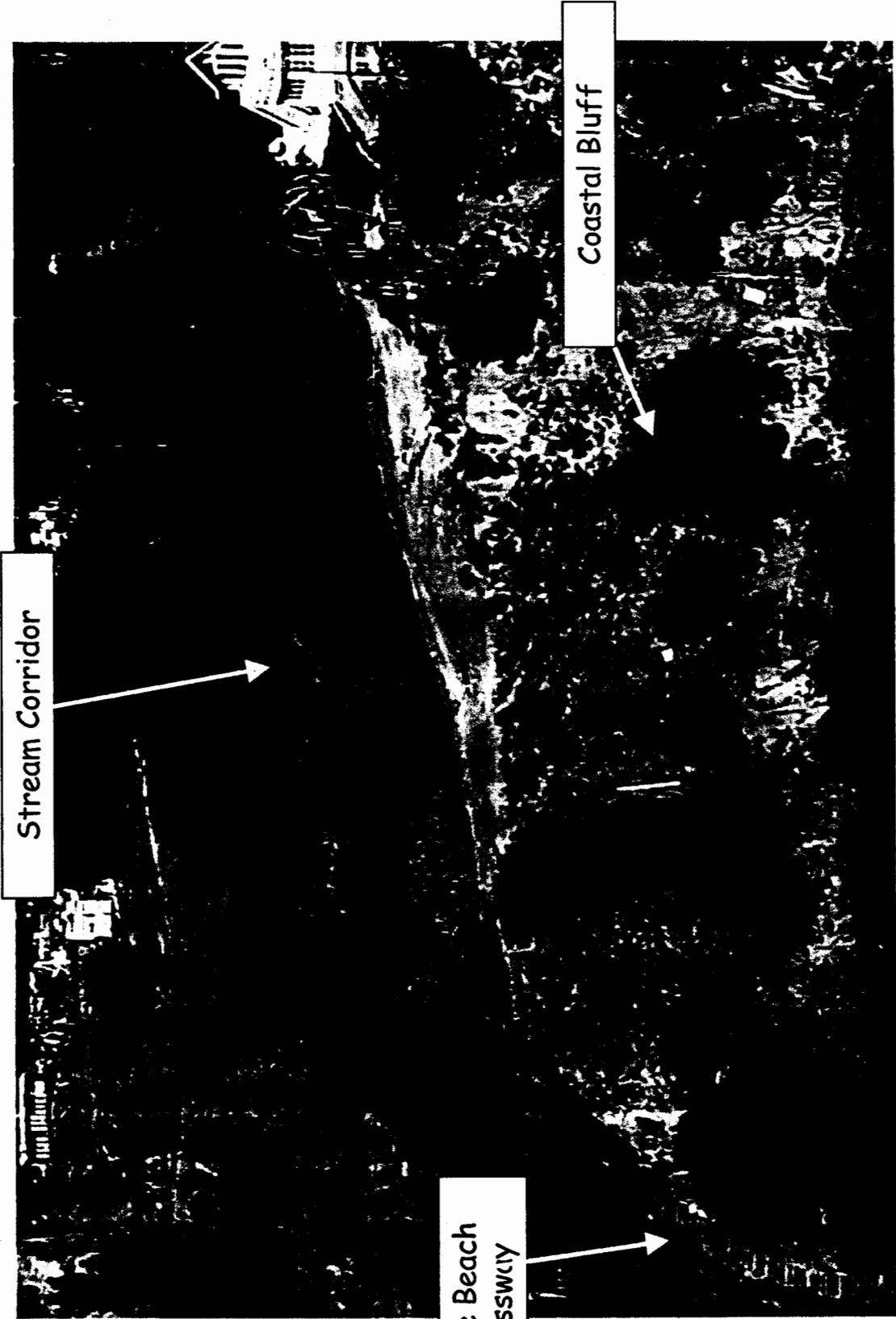
Pacific Coast Highway

Project Site

El Pescador State Beach

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EXHIBIT NO. 3
APPLICATION NO.
4-01-217
SITE PHOTO 1



Stream Corridor

Coastal Bluff

Private Beach  
Accessway

Copyright (C) 2002 Kenneth Adelman, California Coastal Records Project, [www.californiacoastline.org](http://www.californiacoastline.org)

EXHIBIT NO. 4
APPLICATION NO.
4-01-217
SITE PHOTO 2



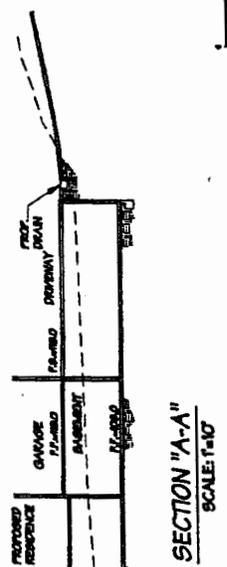
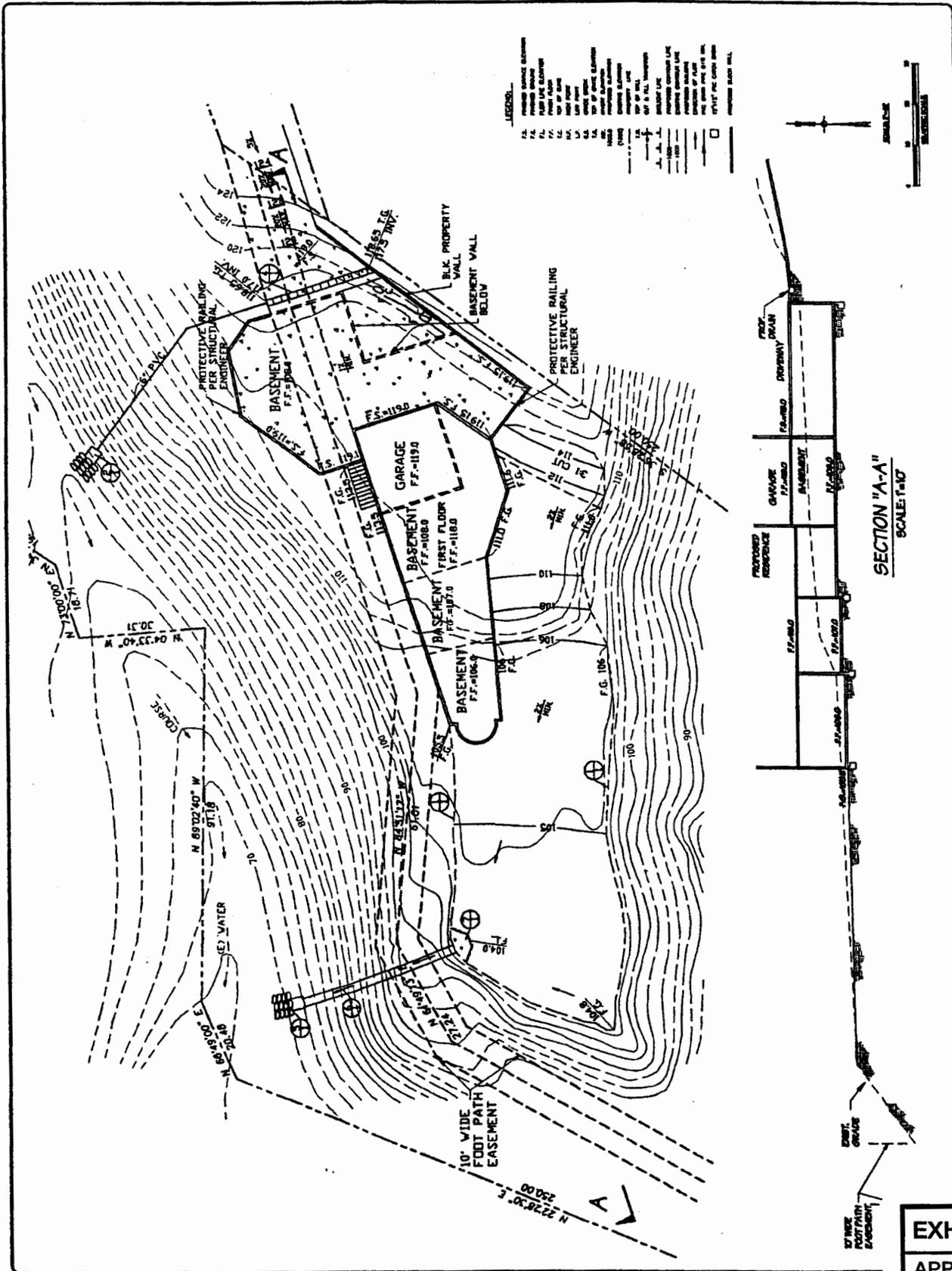
**GRADING PLAN**

ADDRESS: 1200 PACIFIC COAST HIGHWAY  
 RAYMUN, CA 92688  
 OWNER: EILEEN & PAUL KEMPTON

12000 MORNING STAR DRIVE, BERRINGHAM OAKS, CA 94603  
 (925) 764-4115

**VP CONSULTING, INC.**





**EXHIBIT NO. 6**

APPLICATION NO.

**4-01-217**

**GRADING PLAN**

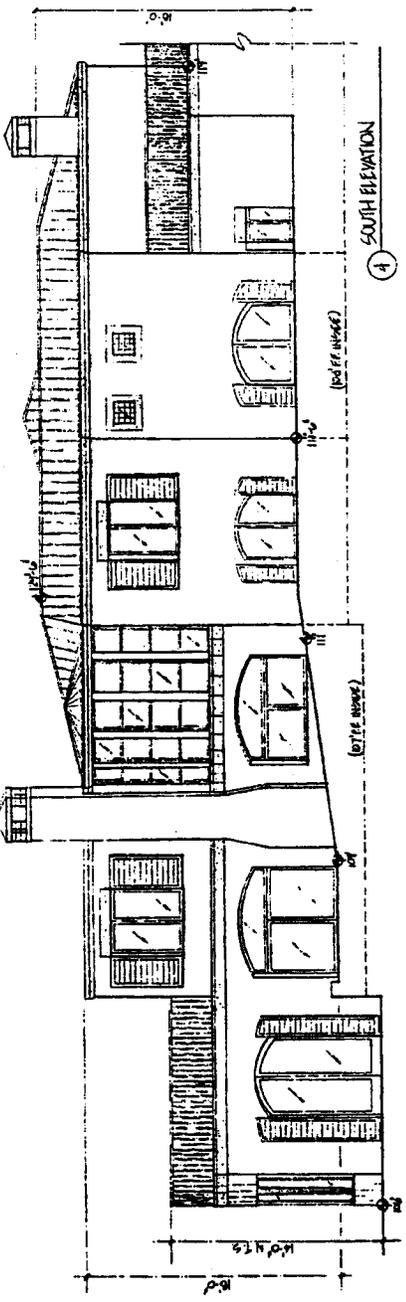
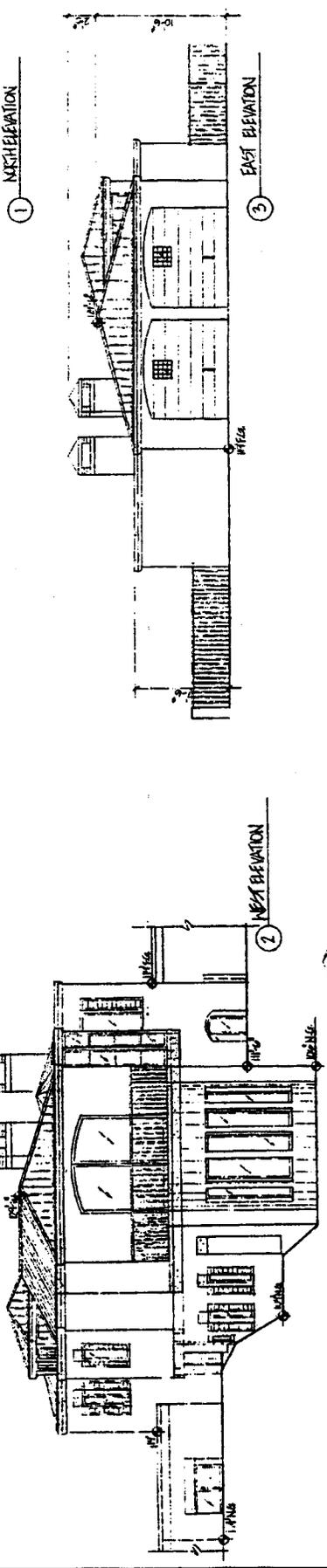
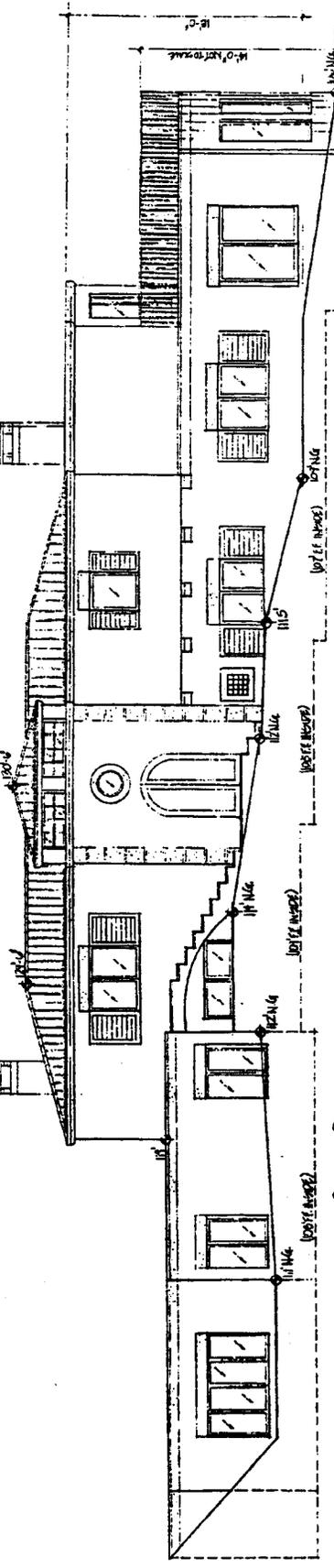






4

CITY OF HALLELU  
1230 UNIVERSITY  
COUNCIL  
RECEIVED  
APR 1 1998  
CITY OF HALLELU  
1230 UNIVERSITY



1017 16th Street SA  
Santa Monica, CA 90403  
(310) 829-9443  
frhinson@evgroup.net

EXHIBIT NO. 10  
APPLICATION NO.  
4-01-217  
ELEVATIONS







Approximate 200-foot brush clearance radii for subject site and surrounding residences.

EXHIBIT NO. 13
APPLICATION NO.
4-01-217
BRUSH CLEARANCE

32804 PACIFIC COAST HWY.  
MALIBU, CA 90265

REVISION OF 01-01-00 APPROVAL  
SUPERSEDES ALL PRIOR APPROVALS

S.F.D.: 4 Bedroom/58 Fixture Units (M)  
SEPTIC TANK: 2500 Gallon w/Effluent Filter (M)  
ACTIVE: 1 - 3' X 50' Leach Trench  
with 2' Extra Rock (M)  
FUTURE: 100Z  
PERC RATE: 13 microns/inch

DATE: 12/2002  
BY: L Young

NOTES:

1. This approval is for a 4 bedroom (58 fixture units) single family dwelling. A new conventional private sewage disposal system shall be installed, as shown.
2. This approval only relates to the minimum requirements of the City of Malibu Uniform Plumbing Code and does not include an evaluation of any geological, or other potential problems, which may require an alternative method of wastewater disposal.
3. This approval is valid for one year or until City of Malibu Uniform Plumbing Code and/or Administrative Policy changes render it noncomplying.

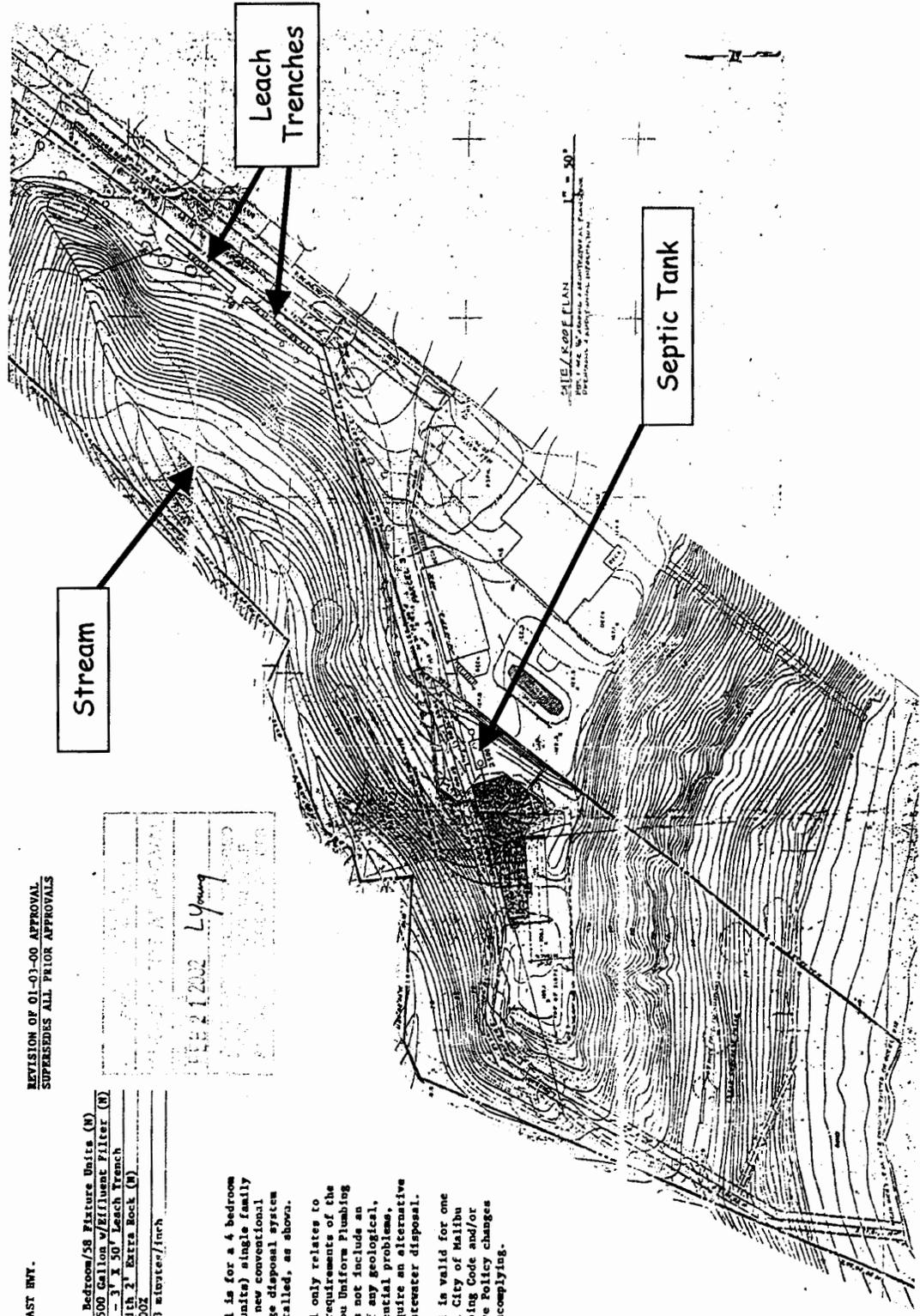


EXHIBIT NO. 14
APPLICATION NO.
4-01-217
SEPTIC SYSTEM

CALIFORNIA COASTAL COMMISSION

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

Filed: 10/28/94  
49th Day: 12/16/94  
180th Day: 4/26/95  
Staff: CAREY  
Staff Report: 11/21/94  
Hearing Date: 12/13-16/94  
Commission Action:



COMMISSION ACTION ON 12/14/94

- Approved as Recommended
- Denied as Recommended
- Approved with Charges
- Denied
- Other

STAFF REPORT: REGULAR CALENDAR

**W8r**

MINOR  
CHANGE  
TO SPECIAL  
COND.

APPLICATION NO.: 4-94-145

APPLICANT: Encinal Bluff Partners

AGENT: Norman Haynie

PROJECT LOCATION: 32804 Pacific Coast Highway, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of 3,700 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system, driveway paving and 100 cu. yds. of grading on a bluff-top lot.

Lot area:	2.16 acres
Building coverage:	2,000 sq. ft.
Pavement coverage:	8,000 sq. ft.
Landscape coverage:	1,600 sq. ft.
Parking spaces:	2
Ht abv ext grade:	28 ft.

LOCAL APPROVALS RECEIVED: City of Malibu Preliminary Health Services Approval

SUBSTANTIVE FILE DOCUMENTS: 5-90-1034 (Encinal Bluffs Partnership)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with Special Conditions regarding future improvements, open space deed restriction, landscaping, erosion control and drainage, and geology. The proposed project raises issues with regard to the environmentally sensitive habitat area, coastal water and stream protection, and geologic hazard policies of the Coastal Act. The proposed project site is severely constrained with a blue-line stream on one side and coastal bluff on two sides of the building pad area. The proposed structure is to be located on the only available building site. Therefore, even though the structure does not provide the 50-foot riparian setback that the Commission has required in the past, it does provide the maximum setback possible for the site. As such, staff is recommending approval with conditions designed to minimize impacts to the resources of the site.

EXHIBIT NO. 15
APPLICATION NO.
4-01-217
CDP 4-94-145 REPORT

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STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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 this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. Special Conditions.

#### 1. Fuel Modification Plan.

Prior to issuance, the applicant shall submit, for the review and approval of the Executive Director, a fuel modification plan for the project site, prepared by a licensed landscape architect, and approved by the Los Angeles County Fire Department. Said plan shall show the radii of any required fuel modification zones along with notations showing what work is required in each zone (i.e. clearing, trimming, removal of dead vegetation), what plants are prohibited, etc. Vegetation clearance within the riparian corridor of the stream channel shall be minimized to the greatest extent feasible and shall be limited to hand clearance and thinning only.

#### 2. Landscaping and Erosion Control Plan

Prior to issuance of permit, the applicant shall submit landscaping and erosion control plans prepared for review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (a) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native, drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated January 20, 1992. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) All disturbed riparian areas on the subject site shall be revegetated with native, riparian plant species which minimize fuel load consistent with the requirements of the Los Angeles County Fire Department for fuel modification. Plant species, size and spacing shall be shown on the approved fuel modification plan for the site required by 1 above.
- (c) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

#### 3. Future Improvements/Maintenance

Prior to issuance of permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that Coastal Commission permit 4-94-145 is only for the proposed development and that any future additions or improvements to the property, including clearing of vegetation and grading, will require a permit from the Coastal Commission or its successor agency. The deed

restriction shall specify that clearance of vegetation up to 50 feet outward from the approved residence and selective thinning of vegetation within a 200 foot radius of the approved residence as required by the Los Angeles County Fire Department is permitted and shall not require a new permit. The document shall run with the land, 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 interest being conveyed.

#### 4. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Site Investigation, dated 9/18/89, Geotechnical Update Report, dated 2/15/91, Response to Engineering Geologic Review, dated 6/27/91, Alternative Bluff Toe Protection, dated 11/26/91, Update Report, dated 5/28/92, Response to Geologic and Geotechnical Reviews by City of Malibu, dated 10/15/92, Fault Investigation, dated 2/10/94, and Bluff Retreat Report, dated 7/6/94, all prepared by Gorian and Associates shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by the consultants. Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project 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.

#### 5. Drainage and Erosion Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a run-off control plan designed by a licensed engineer which collects run-off from the building pad, roof, patios, pool deck and all impervious surfaces and directs it to drainage structures that conveys it offsite in a non-erosive fashion. Should the project drainage structures fail or result in any erosion, the applicant/landowner shall be responsible for any necessary repairs and restoration.

#### 6. Open Space Deed Restriction

Prior to 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 provides that the portion of the applicant's property generally depicted on Exhibit 6 will be precluded from future development and preserved for open space and habitat protection. The restriction shall restrict the applicant or his successor interest from grading, landscaping and vegetation removal (except that required under Special Condition 1 above). The septic trenches, drainage devices, riparian revegetation activities, bluff stairway and associated access easement are allowable uses within the restricted area. The document shall run with land, binding all successors

and assigns, and 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.

7. Applicant's Assumption of Risk.

Prior to 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: (a) that the applicant understands that the site may be subject to extraordinary hazard from storm waves, erosion or flooding and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and 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.

8. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicants shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description

The applicant proposes the construction of a 3,700 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system, driveway paving and 100 cu. yds. of grading on a 2.16-acre blufftop parcel on Pacific Coast Highway in the City of Malibu. Although the proposed project site is 2.16-acres in size, very little of the property is available for building area. To the north and east of the building pad area is a canyon which contains a blue-line stream (as designated by the United States Geologic Survey) and which has been previously recognized by the Commission as an environmentally sensitive habitat area. The area south of the building pad area is a steep coastal bluff leading to a small beach below. Additionally, there is an existing easement across the property to the west edge of the pad leading to an existing series of stairs which descend to the beach below.

B. Background.

The project site has previously been the subject of a permit application [5-90-1034 (Encinal Bluffs Partnership)]. In that application, the applicant

was proposing the construction of a 4,000 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system and 300 cu. yds. of grading. Staff recommended denial of that application because of the proposed project's inconsistencies with the policies of the Coastal Act. For one, the construction of the proposed project would have necessitated the construction of a revetment (a revetment was proposed by the applicant) which would not serve existing or infill development, inconsistent with Section 30235 of the Coastal Act. Further, staff recommended that the proposed revetment would result in a decrease in public access, inconsistent with the access policies of the Coastal Act. Additionally, staff noted that while the proposed project was located on the only available building pad area, did not provide an adequate setback from the environmentally sensitive habitat area, inconsistent with Sections 30231 and 30240 of the Coastal Act. Finally, while the proposed structure was setback 25 from the edge of the bluff, the proposed septic system was located only 10-12 feet from the edge of the bluff because of the required setback from the stream on the other side. Staff noted that based on the erosion rates determined by the applicant's geologist, the septic system setback would not provide a 75-year useful life. Additionally, natural bluff retreat could be accelerated by effluent deposited so close to the unstable bluff face, inconsistent with Section 30253 of the Coastal Act. Based on the above reasons, staff recommended denial of the application.

At the December 10, 1991 Commission hearing, the applicant agreed to withdraw the application to give more time to resolve these issues if the Commission would agree to waive the requirement for approval in concept from the City of Malibu. The Commission agreed to direct the Executive Director to waive local approval in concept but required the applicant to obtain the City's input with regard to geologic and septic issues.

When the applicant submitted application 4-94-145 for development on the subject parcel, staff expressed concern about the amount of time that had passed since the Commission directed the Executive Director to waive local approvals and the resubmittal. The applicant submitted a chronology (Exhibit 8) which lists the steps the applicant has followed to obtain geology and septic system approvals from the City of Malibu. Given that the applicant appears to have diligently pursued these approvals, staff decided that accepting the application without the local approval in concept would be consistent with the intent of the Commission's previous action.

### C. Environmentally Sensitive Habitat Areas.

Section 30230 of the Coastal Act states that:

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 that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such 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 such areas, and shall be compatible with the continuance of such habitat areas.

The applicant proposes the construction of a 3,700 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system, driveway paving, and 100 cu. yds. of grading on a bluff-top parcel. The project site includes a canyon and stream which is identified on United States Geologic Service maps as a blueline stream. The watercourse and associated riparian corridor has, in past decisions, been designated by the Commission as an environmentally sensitive habitat area. Additionally, the Commission has found, in past decisions, that the bluff and beach areas onsite and any kelp beds occurring offshore to be ESHA areas as well. The Commission has consistently emphasized the importance placed by the Coastal Act on protecting sensitive environmental resources.

The intermittent blueline stream which traverses the site has been denuded of vegetation at its southern end near the proposed building site. The stream at this point enters some sort of flood control device. The northern portion of the stream contains a healthy riparian canopy. Aerial photographs of the site taken in 1986 do show vegetation existing in the southern portion of the stream course. However, Commission staff has been unable to determine conclusively what area constituted the riparian corridor from these photographs. The proposed structure is setback 50 feet from the centerline of the stream course. The adjacent structure is setback approximately 80 feet from the centerline of the stream. Although the limits of the historic riparian canopy is difficult to determine, it would be safe to assume that the riparian vegetation extended up the canyon slope some distance from the centerline of the stream. The Commission has, in past actions, required a minimum 50-foot setback from the riparian canopy of streams in order to provide adequate protection of the habitat values of ESHA's. If the pre-existing canopy extended even a few feet from the centerline, the proposed structure could not provide the 50 foot setback that the Commission has required in past actions. In addition, fire department fuel modification requirements for the proposed structure would require 50 feet of vegetation clearance to mineral earth around the residence. This 50 foot requirement would require clearance to the centerline of the stream and would prevent any riparian vegetation from reestablishing in this area.

However, there is only one possible building pad site on the parcel. In order

to provide the maximum possible setback from the riparian area and to provide the 25-foot bluff setback, the proposed structure ranges in width from only 15 feet to a maximum of 25 feet in the proposed garage. Staff notes that it does not seem feasible to further reduce the width of the proposed structure. As such, the Commission finds that it is necessary to allow the residence to be constructed in the only feasible location on the project site. In order to mitigate the potential impacts of a reduced setback from the stream and the required fuel modification, the Commission finds it necessary to require the applicant to submit a fuel modification plan approved by the fire department for the review and approval of the staff and to revegetate the portion of the stream and canyon on the applicant's parcel with native, riparian vegetation which is consistent with the fire department's requirements for fuel modification. This revegetation would be in addition to landscaping the disturbed or graded areas of the building pad area. In addition, the applicant shall be required to minimize vegetation clearance within the riparian corridor to the greatest extent feasible and will be limited to only hand clearing and thinning. Further, the Commission finds it necessary to require the applicant to record an open space deed restriction across the bluff face and the stream areas to protect the habitat values of these environmentally sensitive habitat areas (Exhibit 6). Finally, the applicant shall be required to record a future improvements deed restriction in order to ensure that any development of the site in the future is reviewed by the Commission for consistency with the ESHA protection policies of the Coastal Act. The Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30240, and 30241 of the Coastal Act.

#### E. Geologic Stability.

Section 30253 of the Coastal Act states, in part, that:

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.

The applicant proposes the construction of a 3,700 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system, driveway paving, and 100 cu. yds. of grading on a bluff-top parcel. Although the proposed project site is 2.16-acres in size, very little of the site is available for building area. The area of the parcel to the north and east of the building pad area is occupied by a canyon which contains a blue-line stream and the area south of the pad is a steep coastal bluff leading to a beach below.

For the previous permit application (5-90-1034), the applicant submitted a number of geotechnical reports for the proposed project site. These included a Geotechnical Site Investigation, dated 9/18/89, Geotechnical Update Report, dated 2/15/91, as well as a Response to Engineering Geologic Review, dated 6/27/91 and Alternative Bluff Toe Protection, dated 11/26/91, all prepared by

Gorian and Associates. The primary concerns staff had with regard to the project geotechnical reports at that time were: 1) the necessity, at the time of construction or in the future, for a shoreline protective device to protect the toe of the bluff; and 2) the potential for accelerated bluff retreat resulting from the placement of the proposed seepage pits near the edge of the bluff-top. In fact, the 2/15/91 report states that "It is our opinion that sometime during the life of the project, measures will have to be implemented to protect the toe of the bluff from wave action". The 6/27/91 report states that:

In conclusion, it is our opinion that the proposed construction can safely be build (sic) at this site provided: (1) a sea wall or other bluff toe protection be provided to prevent further erosion of the bluff area...

The applicant has now submitted additional geotechnical reports for the proposed project. These include an Update Report, dated 5/28/92, Response to Geologic and Geotechnical Reviews by City of Malibu, dated 10/15/92, Fault Investigation, dated 2/10/94, and Bluff Retreat Report, dated 7/6/94, all prepared by Gorian and Associates. These reports were prepared in response to concerns of the City of Malibu Building Department in their preparation of a Geology and Geotechnical Engineering Review Sheet for the development of the proposed project site. The report dated 5/28/92 states that:

Based on a recent site visit it appears that during the past winter additional erosion and/or slumping occurred in a portion of the lower part of the slope adjacent to the ocean. The movement appears to be within the previously mapped landslide feature. This feature does not encroach into the proposed building area, see cross section A-A'. As we have indicated before, some of this slope movement may be caused by surface water runoff from the level pads above discharging onto the slope and into the slide area. These adverse drainage conditions should be corrected...

With the current proposed house setback and the pile foundation system, it is our opinion that the toe protection at the base of the bluff may be deleted, although the bluff toe protection would help to reduce slumping on the bluff and preserve the bluff.

The applicant no longer proposes the construction of any sort of shoreline protection device in reliance on the above conclusion of the geotechnical engineer. Based on the consultant's recommendations regarding improving the stability of the bluff by controlling drainage and the fact that erosion caused by proposed grading and development in close proximity to the ocean, to canyons and to ESHAs is an area of concern, the Commission finds it necessary to require the applicant submit drainage and erosion control plans designed to collect runoff from the site and conduct it offsite in a manner which minimizes erosion.

The Commission also finds that site stability may be further assured with the minimization of site erosion by requiring the applicant to landscape the site with native plants, compatible with the surrounding environment. Therefore, the Commission finds it necessary to require the applicant to submit and implement landscaping plans designed to revegetate disturbed and graded areas of the site.

The geotechnical report states further, that::

It remains our opinion that the subject site can be developed for single family residential use from a geotechnical standpoint. Utilizing pile foundations and proper setbacks, a residence can be founded such that it would be safe from soil slippage. Pertinent recommendations contained in our previous referenced reports remain applicable.

The applicant has also submitted approval of the City of Malibu Building Department of the geotechnical reports (Exhibit 8) which indicates that the reports address all required aspects of the geologic feasibility of developing the project site. Based on the recommendations of the consulting geologist the Commission finds that the development is consistent with Section 30253 of the Coastal Act and applicable LUP policies so long as the geologic consultant's geologic recommendations are incorporated into project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting Engineering Geologist as conforming to their recommendations.

Notwithstanding the findings and recommendations of the geotechnical consultants, the proposed project site is exposed to wave attack, flooding, and erosion hazards that in the past have caused significant damage to development along the California coast, including the Malibu coast. The Coastal Act recognizes that new development such as the proposed residence may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

The Commission finds that due to the unforeseen possibility of wave attack to the toe of the bluff, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciated the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development. Additionally, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks. Through the waiver of liability the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. The Commission finds that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act and applicable portions of the Malibu LUP.

#### D. Blufftop Development.

Section 30251 of the Coastal Act states that:

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 subordinate to the character of its setting.

Section 30253 of the Coastal Act states, in part, that:

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.

The applicant proposes the construction of a 3,700 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system, driveway paving, and 100 cu. yds. of grading on a bluff-top parcel. Section 30251 of the Coastal Act requires that scenic and visual resources of coastal areas be protected and enhanced. In addition, Section 30253 requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. In order to implement these policies on bluff-top lots, the Commission has, in past actions, required new development to be setback an adequate distance from the bluff edge to provide for the maintenance of structures for a reasonable useful life and to protect the visual resources of beach areas below. In past actions, the Commission has found that a minimum of 25 feet from the top of the bluff or a stringline drawn between the nearest corners of adjacent structures, whichever distance is greater, provides an adequate blufftop setback.

Staff notes that because of the undulating coastal bluff edge in the area of the project site, a 25-foot development setback from the bluff-edge is appropriate for this site. The proposed structure provides a 25-foot setback from the bluff top. The residence is designed to be stepped-back to meet the setback. As discussed in Section C above, there is only one possible building pad site on the parcel. In order to provide the maximum possible setback from the riparian area and to provide the 25-foot bluff setback, the proposed structure ranges in width from only 15 feet to a maximum of 25 feet in the proposed garage.

The setback of the proposed septic system was of concern in the previous application (5-90-1034) on the site. As discussed in Section F below, the applicant originally proposed seepage pits. The present pit would have been located 10-12 feet from the face of the bluff, while the future pit appeared to be directly at the edge of the bluff. The applicants indicated that the seepage pits had to encroach toward the edge of the bluff in order to maintain the minimum 100-foot setback required from the blue line stream. The primary

concern with that proposed design was that it would not allow the applicant to maintain the septic system in place for a 75-year useful life if 15 feet of erosion (based on the geologist's estimate of 3 inches of erosion per year average) occurred. Additionally, it was felt that natural bluff retreat would be accelerated by effluent being deposited so close to the bluff face. For these reasons, while the structure provided a 25-foot bluff setback, staff recommended that the seepage pits did not provide an adequate setback.

The applicant now proposes a septic system which locates trenches near the highway so effluent would not impact the bluff face. The septic tank and pump station would be located within the 25-foot setback area. They would be located below grade so no visual impacts would result. Therefore, the Commission finds that the proposed project is consistent with blufftop setbacks that have been required in past permit actions. Especially given the physical constraints of the site, the proposed structure will minimize potential visual impacts. The Commission finds that the proposed project, as conditioned above, will be consistent with Sections 30251 and 30253 of the Coastal Act as they pertain to bluff setback.

#### F. Septic System.

The proposed development includes the installation of an on-site septic system to provide sewage disposal. The Commission has recognized, in past permit actions, that the potential build-out of lots in the Malibu area and the resultant installation of septic systems may contribute to adverse health effects. 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.

The applicant proposes the construction of a on-site septic system which consists of a septic tank and pump station between the proposed structure and the bluff edge, a pipe along the existing driveway, and a present and future trench located near Pacific Coast Highway. The applicant has submitted a percolation test which indicates that the proposed trench areas have sufficient percolation. Additionally, the applicant has submitted In-Concept Approval from the City of Malibu Environmental Health Department which indicates that the proposed system meets the minimum requirements of the City's Uniform Plumbing Code.

In consideration of the previous permit application for the site (5-90-1034), there was serious concern about the design of the septic system. At that time, the applicant proposed seepage pits. The present pit would have been located 10-12 feet from the face of the bluff, while the future pit appeared to be directly at the edge of the bluff. The applicants indicated that the seepage pits had to encroach toward the edge of the bluff in order to maintain the minimum 100-foot setback required from the blueline stream. The primary concern with this proposed design was that it would not allow the applicant to

maintain the septic system in place for a 75-year useful life if 15 feet of erosion (based on the geologist's estimate of 3 inches of erosion per year average) occurred. Additionally, it was felt that natural bluff retreat would be accelerated by effluent being deposited so close to the bluff face. At that time, it appeared that there were no alternatives available for providing sewage disposal for the site.

The applicant, in consultation with the City of Malibu, has now arrived at a different design for the septic system. Instead of seepage pits, the applicant proposes trenches which only require a 50-foot setback from the stream. The trenches will be located up the driveway near the highway, so the effluent will not impact the bluff face. Finally, the septic tank and pump station will be located in excess of 15 feet from the bluff face. The applicant's geologists now estimate that there is an average of 2 inches per year of bluff retreat. As such, the septic system may be maintained in place for the 75-year useful life of the proposed structure. Therefore, the Commission finds that the project, as proposed, is consistent with Section 30231 of the Coastal Act.

G. Local Coastal Program.

Section 30604(a) of the Coastal Act states that:

(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 coastal 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 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. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. However, on March 28, 1991 the City of Malibu was legally incorporated. Therefore, the previously certified County of Los Angeles Malibu/Santa Monica Mountains LUP is no longer legally binding within the City of Malibu and is therefore, no longer used within the City as a guidance document.

The proposed development as conditioned will not create adverse impacts and is consistent with Chapter 3 policies of the Coastal Act. The Commission finds that approval of this project will not prejudice the ability of the City of Malibu to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act, and is therefore consistent with Section 30604 (a) of the Coastal Act.

H. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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

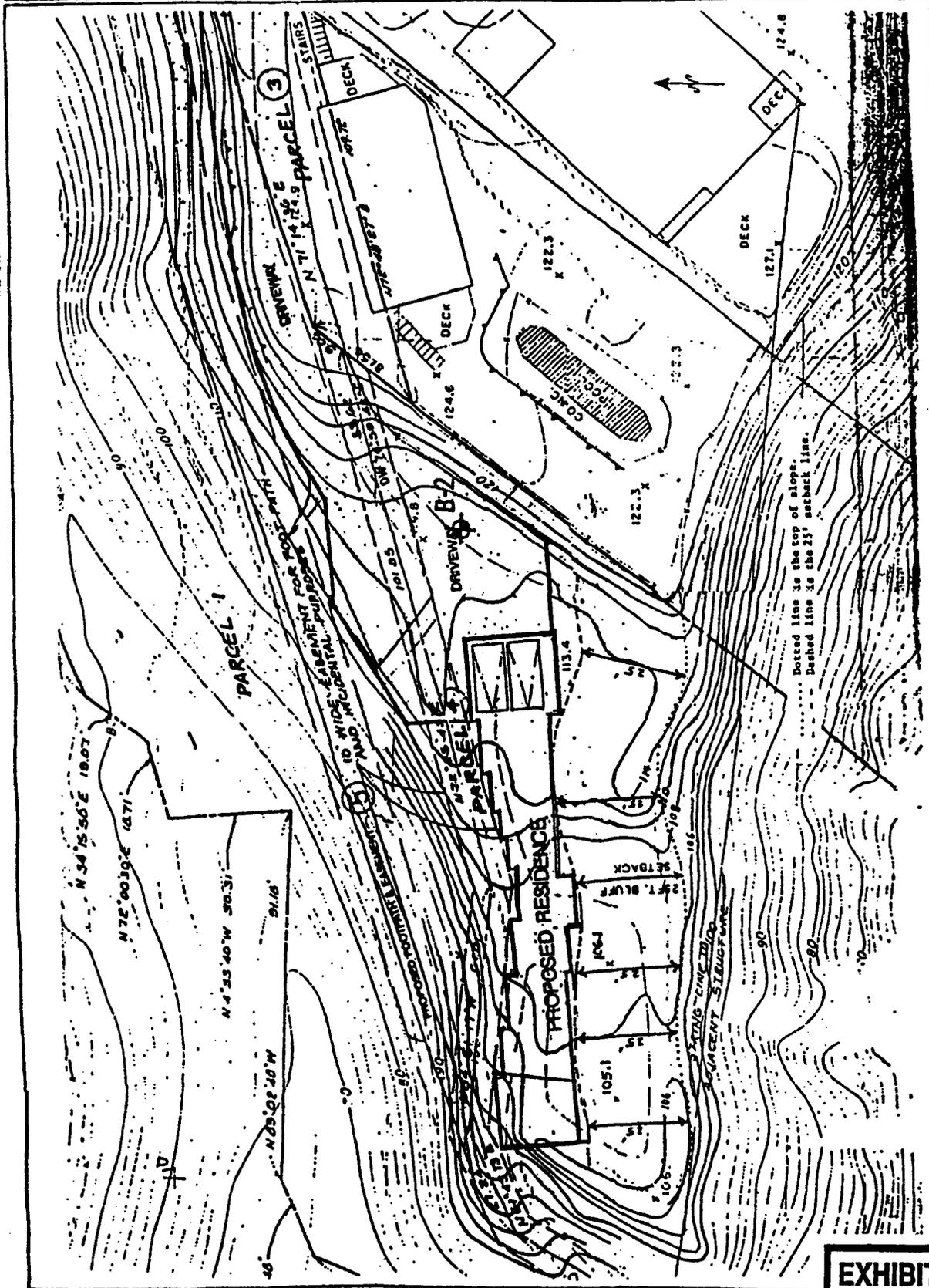
Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As proposed, there appear to be no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

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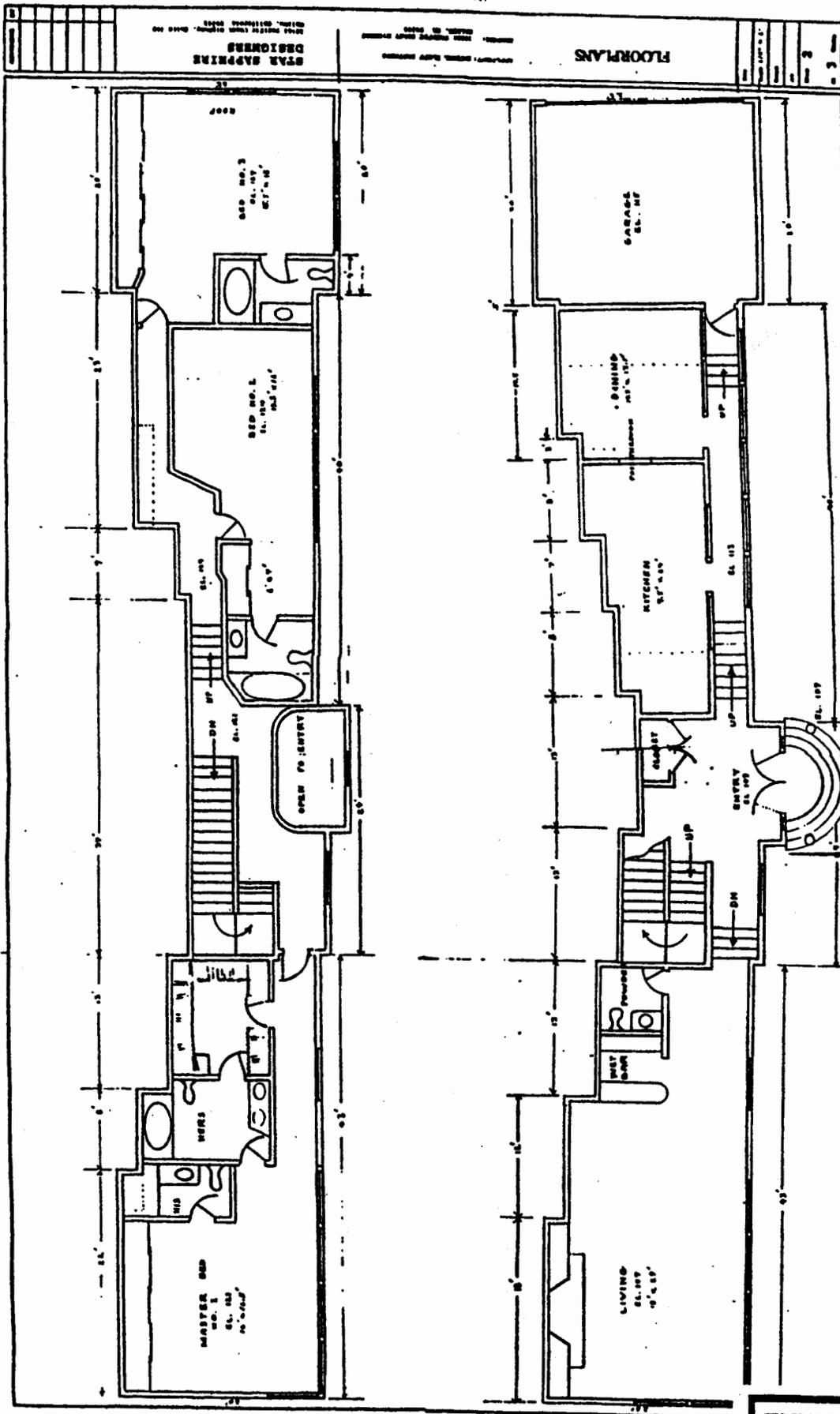
SITE PLAN AND TOPOGRAPHY

STEAR GARDNER  
 DESIGNERS  
 1000 WEST 10TH AVENUE  
 DENVER, CO 80202



4-94-145

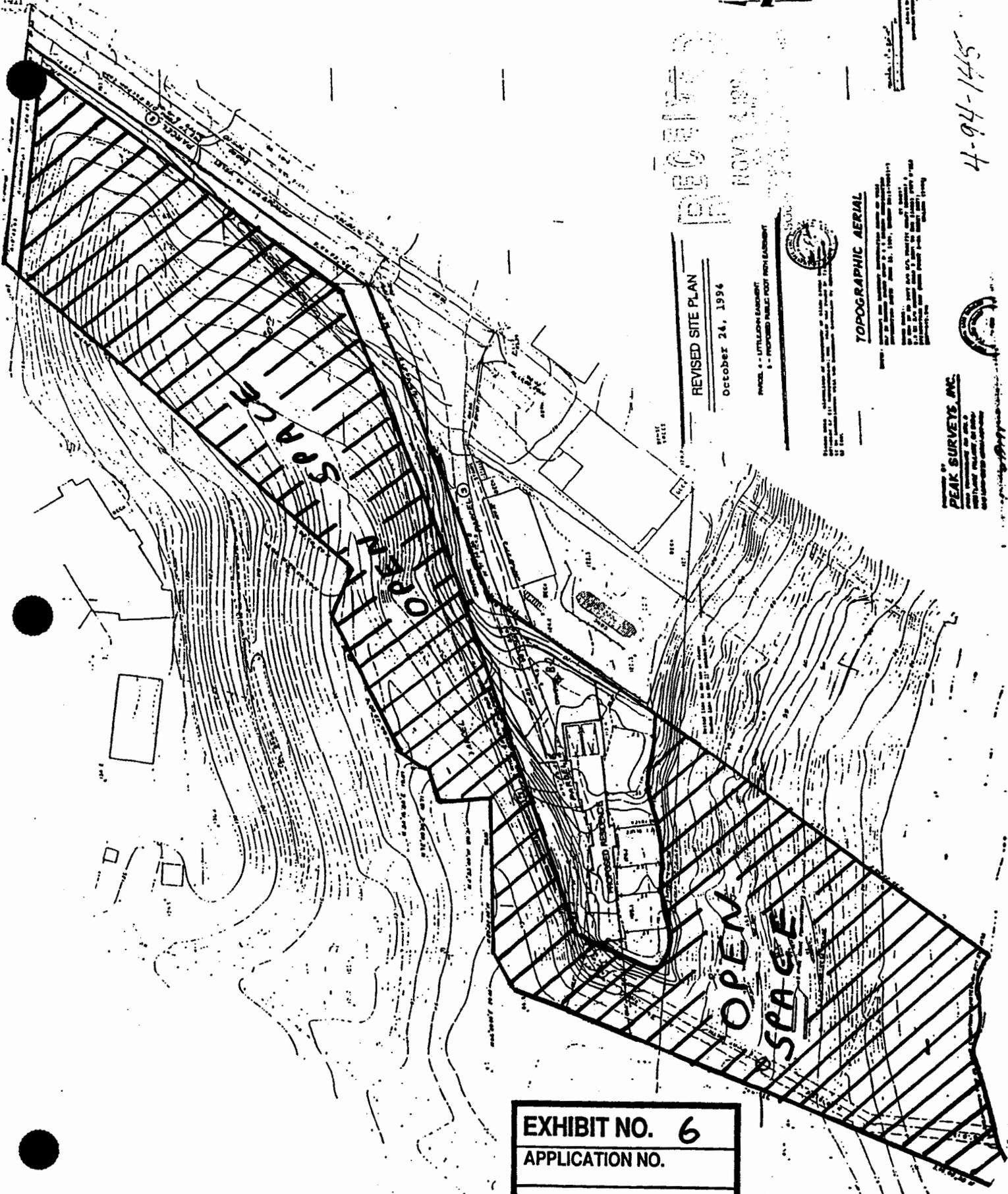
**EXHIBIT NO. 4**  
 APPLICATION NO.  
 4-94-145  
**TOPOGRAPHY**



**EXHIBIT NO. 5**

APPLICATION NO.  
4-94-145

**FLOOR PLANS**



A SINGLE FAMILY RESIDENCE FOR ENONAL BLUFFS PARTNERSHIP  
 32804 PACIFIC COAST HIGHWAY  
 MALIBU CA 90265

REVISED  
 NOV 4 1994

REVISED SITE PLAN  
 October 24, 1994

INCHES = LITTLETON EASEMENT  
 6" = PROPOSED PUBLIC FOOT PATH EASEMENT



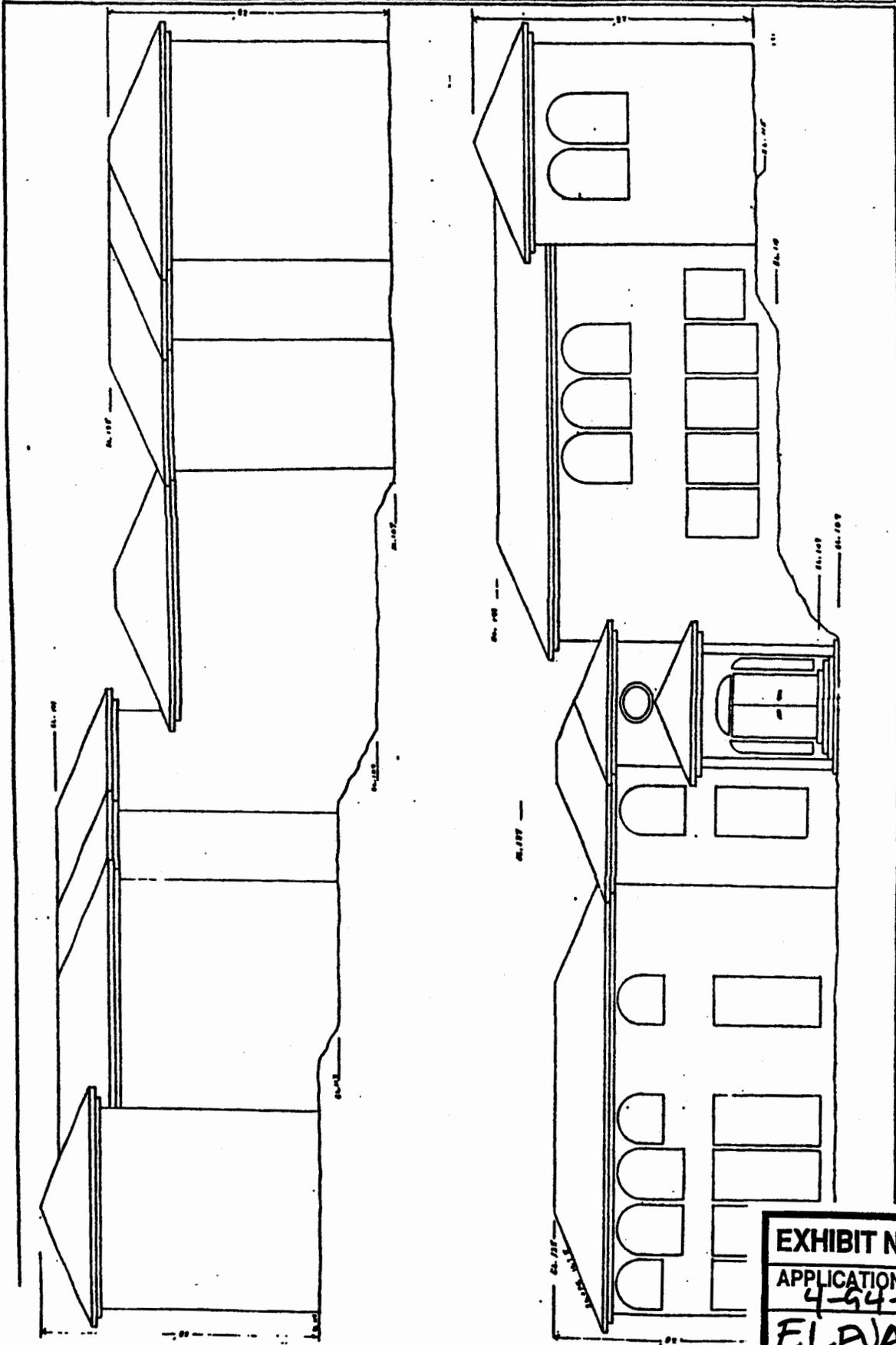
TOPOGRAPHIC AERIAL

THIS MAP WAS PREPARED BY THE SURVEYOR FROM AERIAL PHOTOGRAPHS TAKEN ON OR ABOUT JANUARY 15, 1994. THE HORIZONTAL SCALE IS AS SHOWN ON THE MAP. THE VERTICAL SCALE IS AS SHOWN ON THE MAP. THE MAP IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE SURVEYOR.

PEAK SURVEYS, INC.  
 10000 WILSON AVENUE  
 SUITE 100  
 WESTLAKE, CALIFORNIA 91361  
 (818) 499-1111

4-94-1475

EXHIBIT NO.	6
APPLICATION NO.	



4-94-145

**EXHIBIT NO. 7**  
**APPLICATION NO.**  
 4-94-145  
**ELEVATIONS**

RECEIVED

CHRONOLOGY OF ENCINAL BLUFF GEOLOGY AND SEPTIC TESTING

OCT 28 1994

Coastal Application No. 4-94-145

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

- 12-91 Applicant withdraws at Coastal Commission in order to get City of Malibu geology and septic approval for redesigned home that will mitigate Coastal Commission Staff concerns
- 1/92 Applicant's representative (architect) and geologist  
thru coordinate specifications for redesign of home and  
5/92 the geology and soils analysis and recommendations that will satisfy the Coastal Commission.

The City had initiated a moratorium on the approvals of all structures in the City of Malibu including single family homes in March 1991, and refused to review the house plans and geology and soils reports for the house, as required by the Coastal Commission until after March 28, 1992.

The new geologist, working for the City without any conflicts, met with the applicant's geologist and indicated what his concerns were and what additional information he would require.

The City of Malibu determined that the geologist that was contracted to do the City's review (Don Kowalesky) had a conflict of interest and could not review any work submitted by the applicant's geologist, Gorian & Associates. After a month of delay the City contracted with another geological firm to review all reports in which there was an inherent conflict of interest involving Mr. Kowalesky.

- 5-28-92 Gorian's updated geology report on revised site location 25' from top of slope. This report recommends drilled pile supports, improvements to pad surface surface drainage, and states slope stability factors of 1.5 or greater and bluff erosion rates of 3 inches per year. This report recommends deleting toe protection.
- 6-25-92 Gorian's report submitted to City.
- 8-17-92 City (Bing Yen) review of soils report which had several concerns to be answered.
- 9-8-92 Clay Masters' geology review of 5-28-92 report which requests, among other things, most importantly:
1. Further fault exploration
  2. Justification of bluff retreat rates

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EXHIBIT NO. 8
APPLICATION NO. 4-94-145

- ? 92 Meeting between Gorian and Clay Masters
- 10-15-92 Gorian's response to 9-8-92 and 8-17-92 City geology and soils reviews, as well as meeting with Clay Masters
1. Based on meeting with Clay Masters, trenching requirement will be waived if acceptable to City of Malibu
  2. Aerial photos used for bluff retreat rate analysis
- 10-23-92 Gorian's report submitted to City.
- 11-19-92 City geology review of 10-15-92 report. Most important concerns:
1. More information needed on bluff retreat rates
  2. If no trenching, must supply "detailed logs of exposures used to develop this opinion"
- 12-21-92 Bing Yen's recommendation of approval for soils in response to City's request for his review of Geology and Soils reports and reviews
- 1-14-93 Haynie retained as project representative
- 1-25-93 Meeting with Geology and Building Department, City of Malibu to determine exactly what is needed by the City for them to approve geology on the site; the applicant had anticipated approval of the last report, and was taken aback at the unexpected further withholding of approval.
- 2/93  
thru  
10/93
- Over these months a series of discussions take place between the geologist, the applicant, the applicant's representative and the City relative to exactly what kind of subsurface exploration will be required, where it should be located, and how it will be inspected by the City as well as analyzed by the project geologist. Several dates are made and then changed due to the different parties' schedule conflicts.
- During this time the City's geologist and soils engineer changed their opinion as to exactly what their concerns were and how these concerns could be resolved with field work and surface exploration. The delays were not the fault of the applicant.

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EXHIBIT NO. 8
APPLICATION NO. 4-94-145
Chronology

- 11-2-93 Trenching at site with Gorian & Associates and City Geologist Clay Masters.
- 11-18-93 Trenching at site. David Riggle conducted his tests as well.
- 11-30-93 Receive David Riggle's percolation tests results.
- 12-21-93 Survey of pop-out areas at Clay Master's request
- 2-10-94 Gorian's report of fault investigation results (11-93 trenching) finding no evidence of active faulting
- 4-28-94 Submit septic system design for City approval
- 5-5-94 Meeting between applicant's representative (Haynie), Clay Masters and Greg Silver
- Results: Potential faulting issue resolved; slope stability is remaining issue: they want geologist to visit site with surveyor who mapped popouts to determine if their limits were mapped correctly
- 5-10-94 Meeting at site with geologist and surveyor
- 5-26-94 Meeting between applicant's representative (Haynie), Clay Masters and Greg Silver
- Results: Masters' concerns re: aerial photo erosion rates (he wants to look at aerials in Santa Barbara), cause of popout areas (Gorian says caused by poor drainage)
- 6-1-94 Receive septic system approval from the City of Malibu
- 7-6-94 Gorian reports on bluff retreat rates based on analysis of aerial photographs and three different topographic maps over an 18-year span
- 7-22-94 City geology review of 7-6-94 report stating that the project "may be geologically feasible and the City of Malibu Building Official may want to consider approval of this project"
- 8-9-94 Receive geology approval from the City of Malibu.
- 8-31-94 Submit application to Coastal Commission for revised house with Geology and Septic System approval from the City of Malibu

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EXHIBIT NO. 8
APPLICATION NO. 4-94-145



City of Malibu  
23555 Civic Center Way  
Malibu, California 90265-4804  
(310) 456-CITY Fax (310) 456-3356

**GEOLOGY AND GEOTECHNICAL ENGINEERING REVIEW SHEET**

**Site Address:** 32804 Pacific Coast Highway  
**Applicant:**  
**Architect:**  
**Project Type:** Single Family Home  
**City Log No.:** (old #ES 92-06)  
**Planning No.:** Preplanning (Project Approved by LACO Regional Planning)

**Geotechnical Engineer:** Gorian & Associates  
**Geotechnical Report(s):** 5-28-92, 9-18-92, 2-10-94, 7-6-94  
**Engineering Geologist:** Gorian & Associates  
**Geologic Report(s):** 5-28-92, 9-18-92, 2-10-94, 7-6-94

**STATUS:**

X The geology and geotechnical engineering of the proposed project is approved for Planning and submission into the California Coastal Commission.

Reviewed by: J. Buboltz for James Guerra Date: 8.9.94  
James M. Guerra  
Building Official

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EXHIBIT NO. 9
APPLICATION NO. 4-94-145
GED Approval

APPLICATION NO. 4-94-145 (Higgins - Encinal Bluff)

I. THE ISSUES

1. The Hearing is Appropriately Scheduled.

The Coastal Commission actually voted to make a commitment to the applicant and to direct Staff to accept the application and to schedule the Coastal Commission hearing once the City of Malibu had reviewed the proposed septic system and percolation tests and geology and soils engineering reports and stated the proposed house could be constructed safely.

The applicants relied on this commitment, obtained the City of Malibu approvals relative to the safety of the geologic and soils conditions of the site and the septic system, and the application for the proposed house was appropriately accepted as properly filed by the Coastal Commission.

2. The Hearing Notice Was Properly Received by the Neighbors Opposing the Construction of a House on the Site.

- a. The notices went to all people within a 100' radius of the project.
- b. The notice of the hearing was posted not once, but twice within the time parameters required.
- c. The neighbors who are in opposition to the hearing have known about geology and soils investigations on the site for over 1-1/2 years.

II. WHAT ARE THE REAL ISSUES?

1. The lot on which the house is proposed is 2.16 acres and is legal and residentially zoned.
2. The proposed site for the house can be built on safely as verified by the applicant's geologist and soils engineers, the County of Los Angeles Geology and Soils Engineering departments, and the City of Malibu's geology and soils engineering departments. All three sets of licensed geologist and soils engineers have verified that the proposed house can be constructed on the proposed site without any requirement for a seawall or any other protective structure along the beach.
3. The proposed septic system will be effective and safe as approved by the City of Malibu.

4. The proposed building site is the only building site which can satisfy all of the Coastal Commission's strict regulations.
5. The roof of the proposed home is only 28 feet above the existing grade of the existing flat building site.
6. The building site has access from P.C.H. and all required utilities are immediately adjacent to the edge of the subject property.
7. Public views from P.C.H. are not impacted due to the fact that the highest point on the roof of the proposed house is 12 feet below P.C.H..
8. The proposed house is not located in a Sensitive Habitat Area; in fact, the house is located on a flat pad that was graded prior to the inception of Proposition 20 and prior to the Coastal Act of 1976.
9. The house has been redesigned so that it can conform to the Coastal Commission's regulations requiring a 25 foot setback from the edge of a "coastal bluff." This redesign was difficult and the resulting house is now a maximum of 22 feet wide and in some areas only 15 feet wide. Accordingly, it is clear that the applicant has truly made every effort to satisfy the Coastal Commission's strict regulations.

### III. REQUESTED MODIFICATIONS TO THE STAFF'S SUGGESTED CONDITIONS

1. The proposed open space easement should be located no closer than 15 feet to any proposed structure or access driveway, ~~and should not include the area where there is an old existing foundation for a house that burnt down in the past. The purpose for the open space easement as stated in the Staff report is "to protect the habitat values of these environmentally sensitive habitat areas." The foundation of the old house is not natural, pristine, or environmentally sensitive.~~
2. The edge of the open space easement should be located 5 feet below the top of the flat pad to permit the proper construction of drainage facilities and trimming of fire hazardous brush.