

CALIFORNIA COASTAL COMMISSION

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Fri/3b

Staff: AGD-SF
Staff Report: February 20, 2003
Hearing Date: March 7, 2003

STAFF REPORT FOR CEASE AND DESIST ORDER NO. CCC-03-CD-01

CEASE AND DESIST ORDER:	CCC-03-CD-01
RELATED VIOLATION FILE:	V-4-02-071
PROPERTY LOCATION:	30718 Pacific Coast Highway (APN 4469-026-007) Malibu, Los Angeles County (Exhibit 1)
DESCRIPTION OF PROPERTY	The subject property is a 0.38-acre beachfront parcel of land on the eastern end of Broad Beach, between Pacific Coast Highway and the ocean, approximately 100 ft. west of Zuma Beach County Park.
PROPERTY OWNER:	Ronald J. Myers, as Trustee of Fossil-II Trust
VIOLATION DESCRIPTION:	<p>Noncompliance with the approved plans and conditions of approval of CDP 4-99-154, as a result of the following unpermitted development or actions:</p> <ol style="list-style-type: none"> 1. construction of residence not according to approved plans, including construction of a wall on the sandy beach under the seaward toe of the deck; 2. construction of non-visually permeable structures, including solid wood gates and fencing, a stairway and associated landing, two planters, and installation of new landscaping which obstruct the recorded public view corridors on site; 3. placement of private property signs on the sandy beach; 4. construction of fencing and landscaping within a sensitive dune habitat area and failure to fully implement required dune habitat restoration program, and 5. failure to remove all vegetation located

between the proposed residence and Pacific Coast Highway, including the existing *Myorporum* and other invasive vegetation which obstruct the recorded public view corridors.

(Exhibits 2, 3, 4)

SUBSTANTIVE FILE DOCUMENTS:

Coastal Development Permit Nos. 4-99-153, 4-99-154, and 4-99-155 Files,

Deed Restriction, recorded on February 22, 2000 at the Los Angeles County Recorder's Office, as Instrument No. 00-0258772 (Exhibit 5)

Open Space Deed Restriction, recorded on February 22, 2000 at the Los Angeles County Recorder's Office, as Instrument No. 00-0258774 (Exhibit 6)

Cease and Desist Order CCC-03-CD-01 File

CEQA STATUS:

Categorically Exempt (CEQA Guidelines (CG) §§ 15061(b)(2), 15307, 15308 and 15321)

Summary of Staff Recommendation

Staff recommends **APPROVAL** of the proposed Cease and Desist Order to require the current owner, Ronald J. Myers, as Trustee of Fossil-II Trust to remove the development that is in violation of the conditions and approved plans of CDP 4-99-154 and to perform certain actions that were required by CDP 4-99-154, including implementing a dune habitat restoration project and removing materials, including plants, that block the recorded public view corridors.

I. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are outlined in section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, and Subchapter 8. The Cease and Desist hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate

what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13186, incorporating by reference section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

II. MOTION/STAFF RECOMMENDATION OF APPROVAL

A. Motion

Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-03-CD-01 pursuant to the staff recommendation.

B. Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in issuance of the cease and desist order. The motion passes only by an affirmative vote of a majority of Commissioners present.

C. Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order number CCC-03-CD-01 set forth in **Exhibit 9** and adopts the findings set forth below on grounds that development and activities have occurred which are inconsistent with a coastal development permit previously issued by the Commission (CDP 4-99-154).

IV. FINDINGS

A. Description of Violations

The violations of CDP 4-99-154 that are the subject of this Cease and Desist Order are the following: noncompliance with the approved plans required by Special Condition One; noncompliance with Standard Condition Three; and noncompliance with Special Conditions Two (Landscape, Erosion Control, and Dune Habitat Restoration Plan), Five (Sign Restriction), Seven (Public View Corridor), Eight (Assumption of Risk/Shoreline Protection), and Nine (Open Space Deed Restriction), as a result of the following unpermitted development or actions:

1. residence, fence, gates, signs and landscaping not in compliance with the final plans approved by the Commission staff on March 1, 2000, including a wall on the sandy beach under the seaward toe of the deck and the development described below in numbers 2-5;
2. non-visually permeable structures, including solid wood gates and fencing, a stairway and associated landing, two planters, and landscaping in the recorded public view corridors, which obstruct the view corridors;
3. private property signs on the sandy beach;
4. fencing and landscaping within a sensitive dune habitat area and failure to fully implement required dune habitat restoration program; and
5. failure to remove all vegetation located between the proposed residence and Pacific Coast Highway, including the existing *Myrsine* and other invasive vegetation which obstruct the recorded public view corridors.

Refer to **Exhibit 2** to view photographs of the violations at the subject property, to **Exhibit 3** for the Staff Report for CDP 4-99-154, and to **Exhibit 4** for CDP 4-99-154, issued on March 1, 2000.

B. Background and Administrative Resolution Attempts

The property that is the subject of this Cease and Desist Order is located at 30718 Pacific Coast Highway (APN 4469-026-007) in Malibu, Los Angeles County, on a 0.38-acre beachfront parcel of land on the eastern end of Broad Beach between Pacific Coast Highway and the ocean (**Exhibit 1**). The area west of the subject site (Broad Beach) is characterized as a built-out portion of Malibu consisting of residential development. Zuma Beach County Park is located approximately 100 ft. to the east of the subject site. A vegetated dune system is located along the southern beachfront portion of the subject site and has been found by past Commission actions to be environmentally sensitive habitat area (ESHA). Access to the project site is from a private road located between the residence and Pacific Coast Highway.

The alleged violations that are the subject of this Cease and Desist Order consist of noncompliance with the conditions of approval and the approved plans of Coastal Development Permit (CDP) 4-99-154, which was approved by the Commission on December 9, 1999 (**Exhibit 3**). CDP 4-99-154 authorized the demolition of an existing 3,500 sq. ft. single-family residence, detached garage, and septic system and the construction of a new 5,741 sq. ft. single-family residence with attached garage and septic system on the property. The applicants and owners of

the subject property at the time of the Commission's approval of the application were John and Susan Montanaro.

To mitigate the adverse impacts of the development authorized by CDP 4-99-154 on the resources protected by the Coastal Act and to make the proposed development consistent with the Coastal Act, the Commission imposed standard and special conditions on CDP 4-99-154. The conditions are discussed in Section C of the findings for this Cease and Desist Order. These conditions run with the land and bind all future owners of the property.

To comply with some of the conditions of CDP 4-99-154, John and Susan Montanaro recorded the following documents on February 22, 2000, at the Los Angeles County Recorder's Office:

1. Deed Restriction incorporating terms of Special Condition Seven (public view corridor) and Special Condition Eight (assumption of risk/shoreline protection restriction), as Instrument No. 00-0258772 (**Exhibit 5**) and
2. Open Space Deed Restriction, incorporating terms of Special Condition Nine, as Instrument No. 00-0258774 (**Exhibit 6**).

The final project plans required by Special Condition One were approved by Commission staff on March 1, 2000. After all prior-to-issuance conditions were satisfactorily completed, CDP 4-99-154 was issued to John and Susan Montanaro on March 1, 2000 (**Exhibit 4**). The Montanaros accepted the benefits of the permit by demolishing the previous house and constructing a new residence with attached garage and septic system.

On November 15, 2001, the Montanaros recorded at the Los Angeles County Recorder's Office, a deed which transferred the title to the property to Ronald J. Myers as the Trustee of the Fossil-II Trust. The terms and conditions of CDP 4-99-154 run with the land and are binding on Ronald J. Myers and all future owners.

On June 24, 2002, Commission enforcement staff observed vegetation and a non-visually permeable (solid wood) fence blocking the view corridors at the subject property in non-compliance with the conditions of approval and approved plans of CDP 4-99-154. Staff also noted that dune restoration monitoring reports had not been received by the Commission staff, as required by CDP 4-99-154. Therefore, on this same day, the enforcement staff opened an investigation into alleged violations at the subject property.

On July 24, 2002, enforcement staff sent Ronald J. Myers a first notice of violation. This letter described the alleged violation of the Coastal Act as the obstruction of the recorded 10-ft. wide public view corridor and failure to complete required dune habitat restoration program in non-compliance with approved plans and with Standard Condition Three (Compliance), Special Condition Two (Dune Habitat Restoration Plan) and Special Condition Seven (Public View Corridor) of CDP 4-99-154. In this letter, Commission enforcement staff established a deadline of August 26, 2002 for performance of specified actions to resolve the lack of compliance with CDP 4-99-154. On August 8, 2002, Jeff Lane, Esq., a representative of Ronald J. Myers, sent a

letter to enforcement staff requesting a 30-day extension of the deadline for performance of actions to resolve the alleged violations.

On August 14, 2002, enforcement staff met with Mr. Lane to observe the site conditions and discuss the alleged violations.

On September 4, 2002, Commission enforcement staff sent a second letter, which included additional items of non-compliance with CDP 4-99-154 that had been confirmed during the recent site visit, and established a new deadline of October 8, 2002 for performance of actions to resolve the lack of compliance with CDP 4-99-154.

Both of the enforcement letters indicated that lack of compliance with the deadlines could result in enforcement actions, including steps to collect penalties.

On August 21, 2002, Mr. Lane sent Commission staff a copy of a letter to CalTrans, inquiring regarding a proposal for the removal of the unpermitted vegetation in the CalTrans easement located in the area between the residence and Pacific Coast Highway. The vegetation had been planted in the Caltrans easement by previous private property owners without the required coastal development permit and Special Condition Two requires its removal. On October 3, 2002, Mr. Lane sent Commission staff a copy of a cover letter for a Standard Encroachment Permit Application submitted to CalTrans for the removal of the vegetation from the area located between the residence and Pacific Coast Highway. On October 8, 2002, Mr. Lane submitted a updated and revised Dune Restoration Program as required by Special Condition Two, dated October 7, 2002 and prepared by Klaus Radtke from Wildland Resource Sciences. On November 26, 2002, Lucas Ma of Clive Dawson Architecture Planning sent a letter to enforcement staff proposing to take steps to resolve some of the alleged violations, but proposing to retain some of the development that is inconsistent with CDP 4-99-154 and to not perform certain actions required by CDP 4-99-154, such as implementation of the dune habitat restoration project within the unpermitted lawn area.

On January 22, 2003, Commission enforcement staff met with Klaus Radtke, the restoration biologist, to discuss the dune restoration.

On January 29, 2003, Commission enforcement staff sent Ronald J. Myers a Notice of Intent to Commence Cease and Desist Order Proceedings (**Exhibit 7**). The enforcement staff subsequently had conversations with Mr. Lane regarding the possibility of a Consent Agreement and Cease and Desist Order ("Consent Order") and staff was optimistic that an amicable resolution could be reached. However, as of the date of this staff report, Mr. Lane and the Commission enforcement staff had not reached an agreement that would resolve the alleged violations at the subject property.

C. Basis for Issuance of the Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that ... is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Commission has jurisdiction over this alleged Coastal Act violation pursuant to Public Resources Code Section 30810. Since such development occurred in violation of the conditions of a previously issued permit, CDP 4-99-154, the Commission is issuing this Cease and Desist Order to direct compliance with the conditions of this permit. The subject property is located in the City of Malibu. A portion of the property is subject to tidal influence. For the purpose of the enforcement order proceedings, the Commission has jurisdiction over all of the above-referenced unpermitted development since the violations involve non-compliance with the approved plans and the required conditions of approval of a permit issued by the Commission. Therefore, for the purposes of issuance and enforceability of this Cease and Desist Order, the Commission has jurisdiction to act as set forth in this Cease and Desist Order.

The special conditions included in CDP 4-99-154 were designed to minimize impacts on coastal resources and ensure that the authorized development would comply with the Coastal Act policies which protect coastal resources, such as scenic views, environmentally sensitive habitat, public access to the sea and coastal access and recreation. These policies are more fully discussed in the staff report for CDP 4-99-154 and addendum, attached as Exhibit 3.

Standard Condition Three (Compliance)

All of the development or actions listed in Section A of the findings for this Cease and Desist Order is in noncompliance with Standard Condition Three, which states:

All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

Special Condition One required submittal of revised plans for review and approval by the Executive Director, prior to issuance of the permit. The final project plans were approved by Commission staff, on behalf of the Executive Director, on March 1, 2000. As noted above, the development or actions that are the subject of this Cease and Desist Order are not in compliance with the approved plans, nor was any staff or Commission approval obtained for the deviations from the approved plans and the lack of compliance with the approved project description and conditions of approval. Therefore, the development does not comply with Standard Condition Three.

The wall that was constructed beneath the deck on the seaward side of the residence is not shown on the approved plans for CDP 4-99-154 and, therefore, is in noncompliance with Standard Condition Three. If subject to wave action, this wall may potentially function as a shoreline protective device. Special Condition Eight of CDP 4-99-154 prohibits construction of any shoreline protective device to protect the development on the property to prevent the adverse

impacts to coastal processes and beaches commonly associated with such structures. Refer to pages 11-16 of the staff report for CDP 4-99-154, in **Exhibit 3**.

Special Condition Two (Landscape, Erosion Control, and Dune Habitat Restoration Plan)

The following development or actions were performed, all of which are violations of Special Condition Two of CDP 4-99-154, which addressed landscaping, erosion control and dune habitat restoration:

1. planters and associated vegetation within the recorded public view corridors, including trees which exceed the two-foot limit on vegetation in the view corridors and block public views of the ocean and the beach from Pacific Coast Highway;
2. failure to fully implement required dune habitat restoration program, including the presence of an approximately 500 sq. ft. lawn with a perimeter white picket fence within the required dune restoration area and failure to restore this area, which is designated as ESHA and failure to submit monitoring reports within the specified time periods; and
3. failure to remove all vegetation located between the proposed residence and Pacific Coast Highway, including the existing *Myorporum* and other invasive vegetation which completely block public views of the ocean and beach from Pacific Coast Highway within the recorded public view corridors.

All of the actions and development listed above are violations of Special Condition Two of CDP 4-99-154, which included the following provisions:

Vegetation within the public view corridor, as consistent with Special Condition Seven (7), shall be limited to low-lying vegetation of no more than 2 ft. in height.

*All existing invasive plant species, including the existing *Myoporum* and other invasive vegetation located between the proposed residence and Pacific coast Highway, shall be removed.*

The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

All invasive and non-native plant species shall be removed from the dune habitat restoration area as delineated on the site plan prepared by James Eserts date-stamped 11/5/99 and included as Exhibit 3. The dune habitat restoration area shall be revegetated with native plant species appropriate to beach dune vegetation communities.

The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, evaluating 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 proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites.

These requirements of Special Condition Two were not met, since vegetation with heights well over two feet were planted, the invasive vegetation located between the residence and Pacific Coast Highway was not removed, changes were made to the landscaping without approval for deviations from the approved plans, the dune habitat project was not implemented in the area currently planted with a lawn, and an annual monitoring report was not submitted. All of these actions are violations of CDP 4-99-154 which must be remedied.

Special Condition Two required restoration of the dune area on the site and prohibited all development in that area. This condition was imposed to protect the environmentally sensitive habitat on the dunes. Native dune habitat is very rare in Malibu and Southern California. The staff report for CDP 4-99-154 (**Exhibit 3**) noted that Broad Beach is unique in that it is the only area along the Malibu coastline where a system of vegetated sand dunes is found. Such dune communities are listed as "very threatened" by the State of California. Section 30240(a) of the Coastal Act provides that "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." Environmentally sensitive habitat areas have to be protected, and adjacent development may not harm the habitat, under the provisions of Section 30240(b) of the Coastal Act.

Special Condition Five (Sign Restriction)

The private property signs on the sandy beach at the subject property violate Special Condition Five, which states:

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Numbers 4469-026-007) located seaward of the residence and deck permitted in this application 4-99-154 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. Signs limiting public access within that portion of the site designated as environmentally sensitive dune habitat buffer, consistent with Special Condition Six (6), may be allowed if a separate coastal development permit is obtained. In no instance shall signs be posted which read "Private Beach" or "Private Property." In order to effectuate the above prohibitions, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

Two signs, which display the language "Private Property Environmentally Sensitive Area Please Keep Off" directly violate Special Condition Five, because they were not authorized by the Commission or the Executive Director and because the signs include the language "Private Property", which was specifically prohibited by this condition. These signs serve to deter public access.

Public access to the ocean and public use of the sandy beach are important protected coastal uses under the Coastal Act. For example, Section 30210 of the Coastal Act provides for maximum public access and recreational opportunities. Section 30220 provides that uses of coastal areas suited for water oriented recreational activities shall be protected. Installation of "private property" signs clearly has the potential to restrict public access to the ocean and beach. It was for this reason that the placement of such signs was specifically prohibited by the permit.

The Cease and Desist Order requires the removal of the private property signs and provides authorization for the installation of temporary signs with language such as "please do not disturb sensitive habitat restoration project", to be placed for the duration of the dune restoration and monitoring project, subject to the approval of the Executive Director.

Special Condition Seven (Public View Corridor)

Special Condition Seven of CDP 4-99-154 is very specific about the requirement for a public view corridor at the subject property and what is prohibited within the view corridor. It required that the applicants, John and Susan Montanaro, execute and record a document which provided the following restrictions to maintain a public view corridor at the subject property:

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

The Montanaros recorded a deed restriction on February 22, 2000 to comply with Special Condition Seven (**Exhibit 5**). Exhibit 5 of this deed restriction shows the location of the view corridors as two 5-ft. wide areas adjacent to the eastern and western property boundaries. Special Condition Seven and this deed restriction included the provision that the deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. Therefore, not only is the current owner of the property bound by the conditions of CDP 4-99-

154, which run with the land, but the owner had notice of these conditions because of the recordation of the deed restriction.

The following unpermitted development or actions are in non-conformance with Special Condition Seven and the deed restriction:

1. solid wood gates and fencing extending across the view corridors along the front of the house,
2. solid wood fencing located on or closely parallel with the western and eastern property boundaries,
3. stairway and associated landing in the western view corridor,
4. two planters with associated landscaping, with a height of over two feet in the view corridors, and
5. failure to remove previously existing unpermitted landscaping between the residence and Pacific Coast Highway and within the recorded public view corridors.

Section 30251 requires 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". Pacific Coast Highway is recognized as a Scenic Highway and therefore views along this corridor are particularly important and to be protected. In past permit actions, the Commission has found that residential development must be designed so that views of the ocean across a parcel are not precluded. For instance, as conditions of approval for the construction of two new residences on both neighboring parcels immediately upcoast and downcoast of the subject site, the Commission previously required the provision and recordation of public view corridors on those neighboring properties similar to the public view corridor required on the subject site (CDP Applications 4-99-153 and 4-99-155). This issue is directly addressed in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). Policy 138 of the LUP provides that "buildings located on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site." Policy 141 of the LUP provides that "fencing or walls to be erected on the property shall be designed and constructed to allow for view retention from scenic roadways." In this case, the above referenced development that has occurred in non-compliance with the approved plans and required conditions of CDP 4-99-154 completely blocks all views of the ocean and beach from Pacific Coast Highway within the public view corridor that was required on site.

Special Condition Nine (Open Space Deed Restriction)

Special Condition Nine of CDP 4-99-154 included the following restriction:

No development, as defined in section 30106 of the Coastal Act, with the exception of dune habitat restoration, shall occur within the area of the subject site located between the dripline of the deck and the ambulatory seawardmost limit of dune vegetation...

Special Condition Nine required the recordation of a deed restriction incorporating the terms of Special Condition Nine. A deed restriction satisfying this requirement was recorded on February 22, 2000 (**Exhibit 6**). Special Condition Nine and this deed restriction included the statement that the deed restriction shall run with the land, binding all successors and assigns, and shall be

recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. Therefore, not only is the current owner of the property bound by the conditions of CDP 4-99-154, which run with the land, but the owner had notice of these conditions because of the recordation of the deed restriction.

The private property signs, the fence and enclosed lawn vegetation, which are all located seaward of the stringline of the deck violate Special Condition Nine and the Deed Restriction, which prohibit development in the dune ESHA, located between the stringline of the deck and the ambulatory seawardmost limit of dune vegetation.

Special Condition 9 was required to protect the rare, sensitive dune habitat on the site, as discussed above and in the staff report for CDP 4-99-154 and addendum.

Conclusion Regarding Basis for Issuance of Cease and Desist Order

Since the development described in Section A of the findings of this Cease and Desist Order is inconsistent with CDP 4-99-154, a permit previously issued by the Commission, the Commission finds that the requirements for the issuance of a Cease and Desist Order have been met. Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit or amendment to an existing permit, pursuant to the Coastal Act. Cease and Desist Order CCC-03-CD-01, presented as **Exhibit 9**, sets forth a schedule for the performance of actions required to resolve the violations of CDP 4-99-154.

D. CEQA

The Commission finds that the performance of the activities required by this Cease and Desist Order is consistent with any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

E. Allegations

Set forth below is a list of allegations that Ronald J. Myers admits or does not contest in his Statement of Defense that was received by the Commission staff on February 13, 2003.

1. Ronald J. Myers, as Trustee of Fossil-II Trust, is the owner of property located at 30718 Pacific Coast Highway (APN 4469-026-007) in Malibu, Los Angeles County. (Admitted)

2. Violations of the Coastal Act have occurred at the subject property, as a result of noncompliance with the approved plans and conditions of approval of CDP 4-99-154 based on the following unpermitted development or actions:
 1. construction of residence not according to approved plans, including construction of a wall on the sandy beach under the seaward toe of the deck;
 2. construction of non-visually permeable structures, including solid wood gates and fencing, a deck, a stairway, two planters, and installation of new landscaping which obstruct the recorded public view corridors on site;
 3. placement of private property signs on the sandy beach;
 4. construction of fencing and landscaping within a sensitive dune habitat area and failure to fully implement required dune habitat restoration program, and
 5. failure to remove previously existing unpermitted landscaping.
(Not Contested)
3. The enforcement staff first notified Ronald J. Myers that violations of the Coastal Act had occurred at the subject property in a letter sent on July 24, 2002. (Not Contested)
4. Thereafter, the enforcement staff described the steps necessary to resolve the violation in numerous telephone calls, site meetings on August 14, 2002 and January 22, 2003 and a letter sent on September 4, 2002. (Not Contested)
5. Although Ronald J. Myers has indicated a willingness to take action to resolve some, but not all of the violations, the Commission staff initiated the proceedings for issuance of a Cease and Desist Order in a notice of intent sent on January 29, 2003, to ensure that all of the violations at the subject property are resolved. (Not Contested)
6. The Commission has the authority to enforce conditions of CDPs issued by the Commission prior to the certification of the Malibu Local Coastal Program. (Not Contested)

Ronald J. Myers expressly denies the following allegations in his Statement of Defense:

1. The fences which run perpendicular to the beach block the view of the public from Pacific Coast Highway.
2. The planters and associated vegetation located in the recorded view corridors block the view of the public from Pacific Coast Highway.
3. Dune restoration has been performed.

F. Defenses

Jeff Lane, Esq., a representative of Ronald J. Myers, submitted a Statement of Defense that was received by the Commission staff on February 13, 2003 and is included as **Exhibit 8**. The following describes the defenses presented in the Statement of Defense and sets forth the Commission's response to each contention.

Ronald J. Myers' Defense:

1. The fences which run perpendicular to the beach do not block the view of the public from Pacific Coast Highway and are essential for privacy and safety.

Commission's Response:

Ronald J. Myers has not challenged the allegation that the gates and fences that run *parallel* to Pacific Coast Highway are in noncompliance with Special Condition Seven (Public View Corridor) of CDP 4-99-154. However, he has challenged the allegation that the fences that are located in the view corridors and run *perpendicular* to Pacific Coast Highway do not comply with the permit conditions and must be replaced.

The fences which run perpendicular to the beach do obstruct public views from Pacific Coast Highway, especially views from oblique angles. These fences were constructed in a manner that is in non-conformance with the approved plans for CDP 4-99-154 and with Special Condition Seven, which restricted the designs of the fences to be visually permeable and to minimize the adverse effects to public views. The fences that run perpendicular to the beach are constructed of wood with little or no spacing between the boards, in noncompliance with the final plans for CDP 4-99-154, approved by the Commission staff on March 1, 2000, which show the fences as being constructed of a visually permeable wrought iron design with one-inch wide rails with one-foot spacing between the rails. The final approved plans also include the following note:

CA Coastal Comm. Fencing/Gate Restrictions w/in View Corridor: Fencing shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass). Fencing shall be limited to no more than 6' in height. Bars, beams or other opaque materials shall be 1" max thickness/width and 12" min. apart. Alternate design allowed only by approval of the Executive Director of the CCC.

This note on the approved plan summarizes the following provision of Special Condition Seven of CDP 4-99-154:

Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of any fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.

Since the fences were constructed of an opaque or visually impermeable material with little or no visually permeable areas, the fences are clearly inconsistent with the approved plans and Special Condition Seven, which require that the fences be visually permeable.

Mr. Myers asserts that the current design of the fences is necessary for privacy and safety. The Cease and Desist Order provides the option of submitting an alternative design different than that approved by the Commission in its action on CDP 4-99-154, provided that this design be consistent with Special Condition Seven, including the provisions thereof that require minimization of adverse effects to public views. An alternative design proposed under this option may allow the current owner to modify the previously approved design to address some of the current owner's concerns regarding the fences. However, such an alternative fence design must be consistent with the intent of Special Condition Seven to provide for public view corridors and to minimize impacts to public views. As a result, a proposal to retain the existing unpermitted wood fences would not be acceptable since they are inconsistent with the intent of the condition and do not minimize impacts to public views.

Section 13166 of the Commission's administrative regulations (Title 14, Division 5.5, California Code of Regulations (CCR)) contains the following provision:

The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

Accordingly, if Mr. Myers were to submit a proposal to retain the existing visually impermeable fences, the Executive Director would be required to reject such a proposal, since it would lessen or avoid the intended effect of a conditionally approved permit, unless it is based on newly discovered material information, which could not, with reasonable diligence, have been discovered and produced before the permit was granted.

The proper time to challenge the requirements of Special Condition Seven of CDP 4-99-154 was within 60 days of the Commission's action on CDP 4-99-154, according to the provisions set forth in Section 30801 of the Coastal Act for judicial review of any action of the Commission. The prior owners of the subject property did not file a petition for a writ of mandate for such judicial review of the Commission's action on CDP 4-99-154 within the 60-day time period. Therefore, that action can no longer be appealed and the Commission's action is final and binding based on the legal doctrine of administrative *res judicata*. Failure to seek review of an administrative action by way of petition for writ of administrative mandamus renders that action immune from collateral attack. (See *Rosasco Holdings, Inc. v. State of California* (1982) 212 Cal.App.3d 642, 660; *Ojavan Investors Inc. v. California Coastal Commission* (1994) 26 Cal.App.4th 516.)

Mr. Myers has had at all times relevant to this matter notice of the requirements of Special Condition Seven since the prior owners, the Montanaros, recorded a deed restriction on February 22, 2000 (**Exhibit 5**), which incorporated Special Condition Seven. This deed restriction included the provision that the deed restriction shall run with the land, and shall be binding all successors to and/or assigns of the Montanaros. Therefore, not only is the current owner of the property bound by the conditions of CDP 4-99-154, which run with the land, but the owner had notice of these conditions because of the recordation of the deed restriction.

Ronald J. Myers' Defense:

2. The planters do not block the view of the public from Pacific Coast Highway.

Commission's Response:

Ronald J. Myers does not challenge the requirement to remove vegetation that obstructs public views from Public Coast Highway; however, he does challenge the requirement that the combined height of the planters and the associated vegetation be less than two feet high. Mr. Lane has stated that the height of the planters themselves ranges from about 23 to 25 inches. The vegetation rises above this level, further obstructing the deed restricted view corridors.

The planters were constructed in noncompliance with Special Condition Seven of CDP 4-99-154, which sets forth requirements for the establishment and maintenance of a view corridor at the subject property. The planters and associated vegetation block public views from Pacific Coast Highway and are over two feet in height, in violation of the following provisions of Special Condition Seven:

No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.

As consistent with Special Condition One, no structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor.

Vegetation within the public view corridor, as consistent with Special Condition Two, shall be limited to low-lying vegetation of no more than 2 ft. in height.

The planters and associated vegetation violate these provisions of Special Condition Seven by obstructing public views (refer to **Exhibit 2** for photographs of the planters and associated vegetation) and by having vegetation that is more than two feet in height.

In order to comply with the requirement of Special Condition Seven to record a document that incorporates the terms of Special Condition Seven, the prior owners, the Montanaros recorded a deed restriction on February 22, 2000 (**Exhibit 5**). Special Condition Seven and this deed restriction included the provision that the deed restriction shall run with the land, and shall be binding all successors to and/or assigns of the Montanaros. Therefore, not only is Mr. Myers as the current owner of the property bound by the conditions of CDP 4-99-154, which run with the land, but he had notice of these conditions because of the recordation of the deed restriction.

Ronald J. Myers' Defense:

3. The fence around the lawn in the dune habitat area is necessary for privacy and safety.

Commission's Response:

The fence that surrounds the approximately 500 sq. ft. unpermitted lawn area seaward of the deck stringline is inconsistent with the approved plans and conditions of CDP 4-99-154, which require the removal of this fence and restoration of this area to dune habitat. The area enclosed by the fence is designated as ESHA and is located within the open space deed restricted area required as a condition of approval of CDP 4-99-154. Special Condition Two requires restoration of dune vegetation where the lawn is located.

Special Condition Nine of CDP 4-99-154 included the following restriction:

No development, as defined in section 30106 of the Coastal Act, with the exception of dune habitat restoration, shall occur within the area of the subject site located between the dripline of the deck and the ambulatory seawardmost limit of dune...

Since Special Condition Nine prohibited any development from being located seaward of the dripline of the deck, such a prohibition includes the lawn and the existing unpermitted fence. The fence is development according to the following definition of development set forth in Section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ... change in the density or intensity of use of land...; construction, reconstruction, demolition, or alteration of the size of any structure...

The installation of the fence at the subject property involved the placement or erection of a solid material or structure and the construction of a structure; therefore, the fence is development as defined in Section 30106 of the Coastal Act and is prohibited by Special Condition Nine within the area subject to the open space deed restriction.

Special Condition Nine required the recordation of a deed restriction incorporating the terms of Special Condition Nine. On February 22, 2000, the Montaneros, prior owners of the subject property, recorded a deed restriction that satisfied the requirement of Special Condition Nine for the recordation of a document incorporating the terms of the condition (**Exhibit 6**). Special Condition Nine and this deed restriction included the statement that the deed restriction shall run with the land, and shall be binding all successors to and/or assigns of the Montanaros. Therefore, not only is the current owner of the property bound by the conditions of CDP 4-99-154, which run with the land, but the owner had notice of these conditions because of the recordation of the deed restriction.

The proper time to challenge the requirements of Special Condition Seven of CDP 4-99-154 was within 60 days of the Commission's action on CDP 4-99-154, according to the provisions set forth in Section 30801 of the Coastal Act for judicial review of any action of the Commission. The prior owners of the subject property did not file a petition for a writ of mandate for such judicial review of the Commission's action on CDP 4-99-154 within the 60-day time period. Therefore, that action can no longer be appealed and the Commission's action is final and binding based on the legal doctrine of administrative *res judicata*. Failure to seek review of an

administrative action by way of petition for writ of administrative mandamus renders that action immune from collateral attack. (See *Roscco Holdings, Inc. v. State of California* (1982) 212 Cal.App.3d 642, 660; *Ojavan Investors Inc. v. California Coastal Commission* (1994) 26 Cal.App.4th 516.)

Ronald J. Myers' Defense:

4. "Owner is applying for permission from CalTrans to cut the trees/foliage on Pacific Coast Highway (outside the property line). The timing for the completion of this matter is not under the owner's control because permission of a governmental agency is required."

Commission's Response:

The failure to remove this vegetation violates Special Condition Seven of CDP 4-99-154, which was issued almost three years ago, in March 2000. The Commission enforcement staff informed Mr. Myers, through his representative Mr. Lane of non-compliance with Special Condition Seven (Public View Corridor) in a letter dated July 24, 2002. In a letter dated September 4, 2002, the Commission enforcement staff specifically informed Mr. Lane of the need to remove the vegetation located between Pacific Coast Highway and the residence. On October 3, 2002, Mr. Lane sent the Commission staff a copy of a cover letter enclosing an application to CalTrans for removal of vegetation. However, Mr. Lane has not provided Commission staff with a copy of the application. Commission staff will be in contact with CalTrans to obtain information regarding the application and the expected date of authorization for the removal of the unpermitted invasive vegetation that obstruct public views.

Ronald J. Myers' Defense:

5. Dune restoration has been performed.

Commission's Response:

Although portions of the dune restoration project have been implemented, an approximately 500 sq. ft. area seaward of the deck and enclosed by a perimeter fence currently has a lawn planted in it and the required dune restoration project has not been implemented within this area. The area required to be restored to dune habitat, in conformance with the conditions and approved plans for CDP 4-99-154, including the approved dune restoration plans, is shown on Exhibit 3 of CDP 4-99-154. Special Condition Two of CDP 4-99-154 included the following requirement:

All invasive and non-native plant species shall be removed from the dune habitat restoration area as delineated on the site plan prepared by James Eserts date-stamped 11/5/99 and included as Exhibit 3. The dune habitat restoration area shall be revegetated with native plant species appropriate to beach dune vegetation communities.

The maintenance of the approximately 500 sq. ft. area seaward of the deck as a lawn violates these requirements of Special Condition Two, since this area is located within the area required to be restored to dune habitat.

In addition, the maintenance of a lawn in an area required to be restored to dune habitat violates the approved plans, which include the following note: "lawn area to be removed and restored to ESHA".

In addition, no annual monitoring reports have been submitted, in violation of Special Condition Two, which requires the submittal of annual reports.

G. Exhibits

1. Locus map for the subject property.
2. Photographs of the violations.
3. Staff Report for Coastal Development Permit No. 4-99-154, approved on December 9, 1999.
4. CDP 4-99-154, issued on March 1, 2000.
5. Deed Restriction, recorded on February 22, 2000 at the Los Angeles County Recorder's Office, as Instrument No. 00-0258772, without Exhibit A.
6. Open Space Deed Restriction, recorded on February 22, 2000 at the Los Angeles County Recorder's Office, as Instrument No. 00-0258774, without Exhibit A.
7. Notice of Intent to Commence Cease and Desist Order Proceedings, dated January 29, 2003.
8. Statement of Defense received by Commission on February 13, 2003.
9. Cease and Desist Order CCC-03-CD-01.



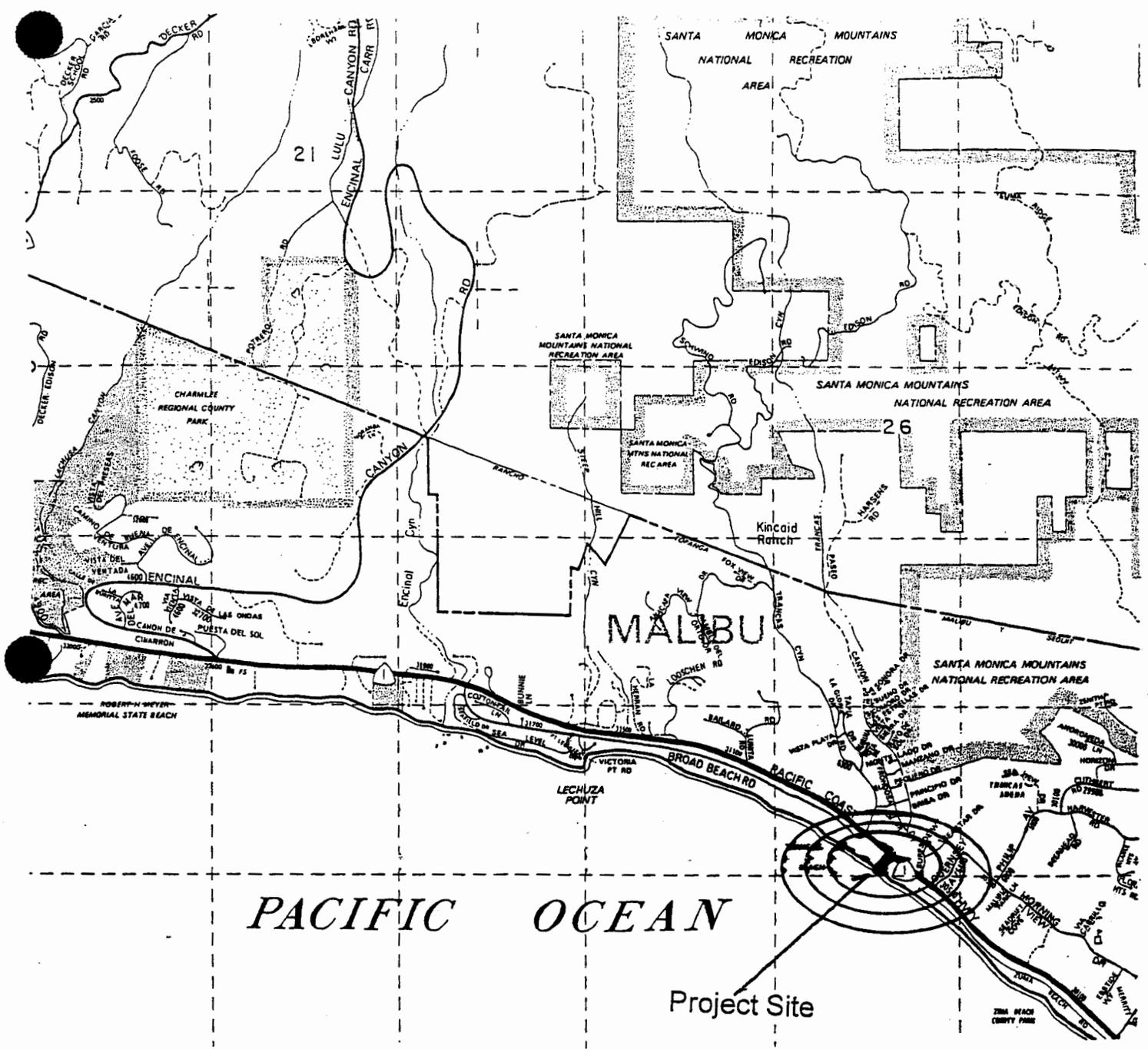


EXHIBIT 1
CCC-03-CD-1
(FOSSIL-II & MYERS)

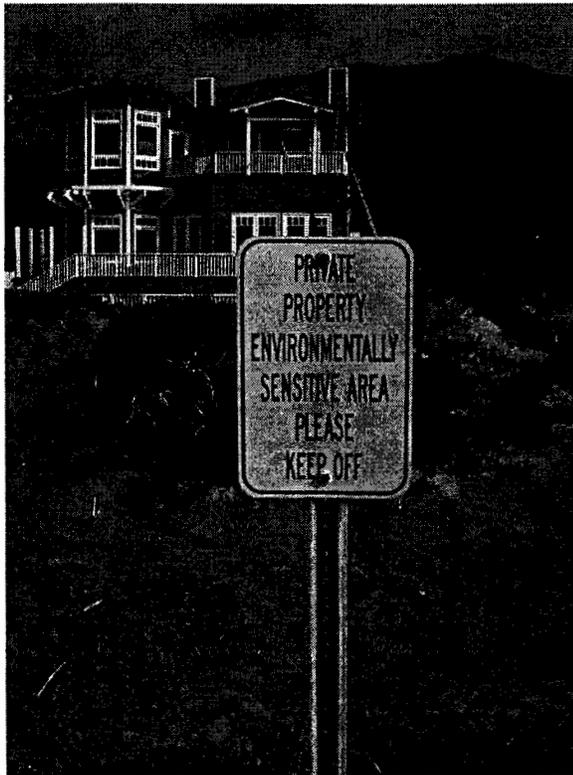


PHOTO 1 Looking northeast on January 23, 2003 at unpermitted sign installed in violation of the conditions of CDP 4-99-154, which prohibited private property signs and other development within the open space deed restricted area. Dunes and residence on subject property are in background.

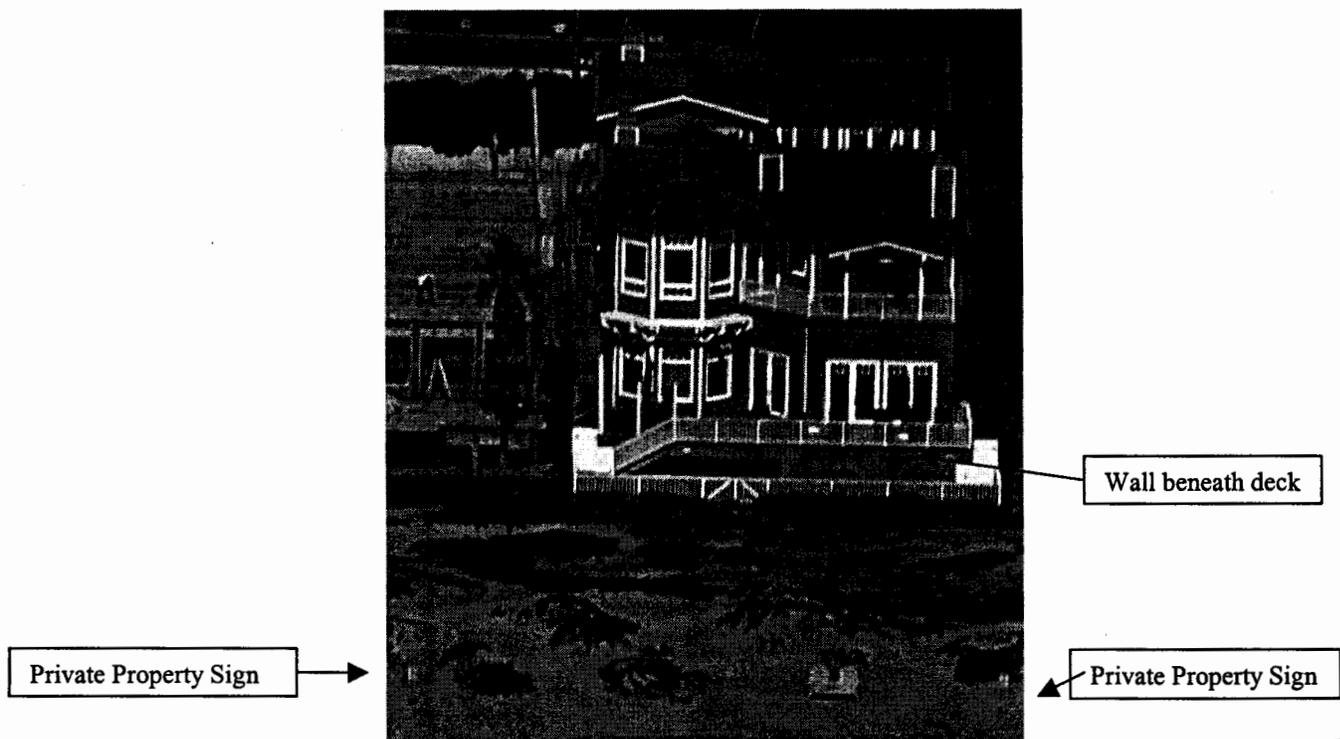


PHOTO 2 Looking northeast on September 23, 2002 at residence, with unpermitted concrete wall visible beneath deck (as noted) and the unpermitted signs visible in the lower right and left corners of photograph. Copyright (C) 2002 Kenneth Adelman, California Coastal Records Project, www.californiacoastline.org.



PHOTO 3 Looking southwest at planters, vegetation, visually impermeable gate and fence within the western recorded public view corridor, on January 23, 2003.



PHOTO 4 Looking southeast at planters and vegetation within the western recorded public view corridor on August 14, 2002 (solid wood gate in view corridor is open in this photograph).



PHOTO 5 Looking north within driveway area, on August 14, 2002, at unpermitted invasive *Myoporum* shrubs and other vegetation located between Pacific Coast Highway and the residence which was required to be removed as a condition of CDP 4-99-154 and which block public views from Pacific Coast Highway.

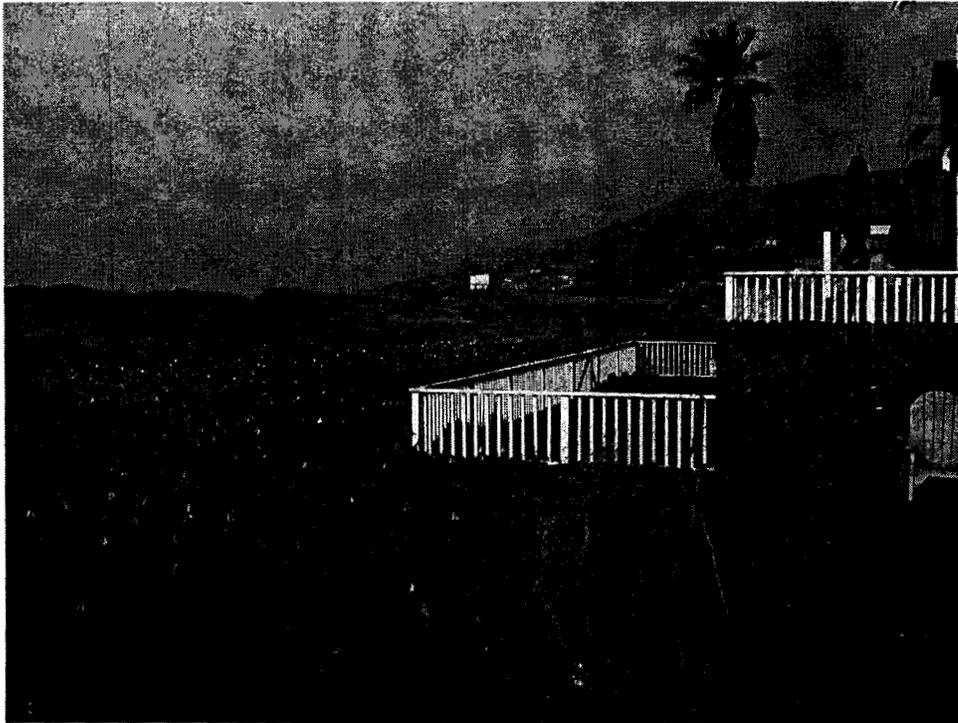


PHOTO 6 Looking west on January 23, 2003 at the approximately 500 sq. ft. lawn area enclosed by a fence which was required by CDP 4-99-154 to be removed and is located within area required to be restored to dune habitat.

CALIFORNIA COASTAL COMMISSION

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



ADDENDUM

DATE: December 7, 1999
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 15j, Thursday, December 9, 1999, Coastal Development Permit 4-99-154 (Montanaro)

The staff report for the proposed project is modified as follows:

A. Project Description

In response to recent discussions between the applicant's agent and staff, the project description on Page 1 and Page 10, Paragraph 1 of the staff report is modified as follows:

Demolition of an existing 3,500 sq. ft. single family residence, detached garage, and septic system and the construction of a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from ~~the deck stringline~~ to the mean high tide line landward to the ambulatory seawardmost limit of dune vegetation, offer to record an open space deed restriction over the portion of the site located between the deck stringline and the ambulatory seawardmost limit of dune vegetation, and the restoration of an existing dune system located on the subject site.

B. Special Conditions

In order to reflect the above changes to the proposed project description, the following changes to the staff report are necessary:

The first sentence of the Summary of Staff Recommendation on Page 1 is modified as follows:

Staff recommends approval of the proposed project with ~~eight (8)~~ nine (9) special conditions as outlined below and on pages 5-10 of the staff report.

Special Condition Six (6) on Pages 7 and 8 of the staff report is modified as follows:

6. Offer to Dedicate Lateral Public Access and Declaration of Restrictions

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the

Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the ~~deck stringline~~ **ambulatory seawardmost limit of dune vegetation on the subject site as illustrated on the site plan prepared by James Esserts dated August 1999. If at some time in the future, there is no dune vegetation seaward of the dripline of the deck, such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the dripline of the deck. At all times following recordation of the offer to dedicate provided for herein, development allowed within the lateral public access easement area identified in the offer to dedicate shall be limited to implementation of the dune habitat restoration program required by Special Condition Two (2). It is recognized that both the mean high tide line and the seaward limit of the dune system/vegetation on the subject site are ambulatory in nature and that, therefore, the area of beach subject to this offer to dedicate a lateral public access easement is also ambulatory in nature.**

~~The portion of the lateral access easement located between the approved deck stringline and the seawardmost limit of dune vegetation on the subject site shall be identified as an environmentally sensitive habitat area (ESHA) buffer. Use of the buffer for lateral public access shall be prohibited except at times when no other dry beach area on the property is available for such use. During such times, use of the buffer for public access shall be restricted to pass and repass only. It is recognized that both the mean high tide line and the dune system on the subject site are ambulatory in nature; therefore, the designated ESHA buffer shall be applicable only to the extent to which the buffer is located landward of the line of Mean High Tide.~~

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

In addition, Special Condition Nine (9) is added to the staff report as follows:

9. Open Space Deed Restriction

- A. No development, as defined in section 30106 of the Coastal Act, with the exception of dune habitat restoration, shall occur within the area of the subject site located between the dripline of the deck and the ambulatory seawardmost limit of dune vegetation as generally shown in Exhibit 3. It is recognized that the seaward limit of the dune system and dune vegetation on the subject site is ambulatory in nature and that, therefore, the seaward extent of the area subject to this deed restriction is also ambulatory in nature. This deed restriction shall in no way be interpreted to limit or restrict the area of beach available for lateral public access consistent with Special Condition Six (6).
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space. The

deed restriction shall include legal descriptions and a map of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

C. Findings and Declarations

Although the above changes to the project description will serve to reduce the overall size of the originally proposed lateral public access easement, Staff notes that the actual area of beach available for public use will not be affected. The proposed changes will eliminate that portion of the originally proposed lateral public access easement designated as ESHA buffer and not normally available for public use. To ensure that adverse effects to dune habitat from development are minimized, the applicant is now proposing to deed restrict the portion of the site originally proposed as ESHA buffer as open space not available for development. Staff notes that the proposed changes to the project description are consistent with the intent of the original project description to provide adequate lateral public access and protect environmentally sensitive dune habitat on site.

In order to reflect the above stated modifications to Special Condition Six (6) and Nine (9), the following changes to the staff report are made:

Page 23, Paragraph 4, Sentence 3 is modified as follows:

*Although this level of analysis has not been submitted by the applicant, the Commission notes that because the applicant has proposed as part of the project an offer to dedicate a lateral public access easement along the ~~entire~~ southern portion of the lot, as measured from the ~~dripline of the proposed deck~~ **mean high tide line landward to the ambulatory seawardmost limit of dune vegetation**, it has not been necessary for Commission staff to engage in an extensive analysis as to whether the imposition of an offer to dedicate would be required here absent the applicant's proposal.*

The following paragraph is added to Section E, Page 26:

In order to ensure that adverse effects to the dune habitat on the project site from new development are minimized, Special Condition Nine (9) requires that the applicant's proposal to record an open space deed restriction over the portion of the subject site between the deck stringline and the ambulatory seawardmost limit of dune vegetation is implemented. It is recognized that the seaward limit of the dune system and dune vegetation on the subject site is ambulatory in nature and that, therefore, the seaward extent of the area subject to this deed restriction is also ambulatory in nature. Specifically, the Commission notes that the landward limit of the lateral public access easement required by Special Condition Six (6) and the seaward limit of the open space easement required by Special Condition Nine (9) are both ambulatory and contiguous lines which will move in unison either seaward or landward of their current location in response to changing tidal or geomorphic conditions. This deed restriction shall in no way be interpreted to limit or restrict the area of beach available for lateral public access consistent with Special Condition Six (6).



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Filed: 11/17/99
49th Day: 1/5/00
180th Day: 5/15/00
Staff: S. Hudson
Staff Report: 11/18/99
Hearing Date: 12/9/99
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-99-154

APPLICANT: John and Susan Montanaro

AGENT: James Eserts

PROJECT LOCATION: 30718 Pacific Coast Highway, Malibu; Los Angeles County.

PROJECT DESCRIPTION: Demolition of an existing 3,500 sq. ft. single family residence, detached garage, and septic system and the construction of a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the restoration of an existing dune system located on the subject site.

Lot area:	18,250	sq. ft.
Building coverage:	3,500	sq. ft.
Deck/Patio coverage:	1,500	sq. ft.
Ht. abv. ext. grade:	28 ft.	

LOCAL APPROVALS RECEIVED: Approval in Concept City of Malibu Planning Department, Approval in Concept for City of Malibu Engineering and Geotechnical Review, Approval in Concept City of Malibu Environmental Health Department (Septic).

SUBSTANTIVE FILE DOCUMENTS: Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94; Dune Restoration Program Addendum by Geo Safety dated 10/7/99; and Dune Restoration Program by Geo Safety dated 3/4/97.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with eight (8) special conditions as outlined below and on pages 5-10 of the staff report. The proposed project includes the demolition of an existing 3,500 sq. ft. single family residence, detached garage, and septic system and construction of a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline

continued

summary continued

to the mean high tide line and the restoration of an existing dune system located on the subject site.

The project site is located on an 18,250 sq. ft. beachfront parcel of land on the eastern end of Broad Beach between Pacific Coast Highway and the ocean approximately 100 ft. west of Zuma Beach County Park (Exhibit 1). A vegetated dune system is located along the southern beachfront portion of the subject site which is designated as environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan (LUP).

No shoreline protective device is proposed as part of the development and the applicant's coastal engineering consultant has indicated that no such protection is required. Construction of a shoreline protective device would result in potential adverse effects to coastal processes, shoreline sand supply, and public access. Therefore, Special Condition Eight (8) prohibits the construction of a future shoreline protective device to protect the proposed development.

The proposed project will not result in the removal of dune habitat. However, development adjacent to environmentally sensitive habitat areas, such as the dune system located on site, results in potential adverse effects to those habitat areas. In order to mitigate adverse effects to the dune habitat on site from the proposed development, Special Condition Two (2) requires, in part, that the applicant submit a dune habitat restoration program.

To ensure structural and site stability, Special Condition Four (4) requires the applicant to submit project plans certified by all consulting geotechnical coastal engineering consultants as conforming to all recommendations. Although the proposed development will be designed to ensure stability, the project site is located on a beachfront and will be subject to inherent potential hazards such as storm damage, flooding, and liquefaction. Therefore, Special Condition Eight (8) requires the applicant to acknowledge the potential hazards on the project site and waive any claim of liability against the Commission.

New development along the coast can substantially reduce or block public views of the beach and ocean. In past permit actions, the Commission has required that new residential projects provide for a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to protect public views of the coast. Special Condition Seven (7) requires the applicant to execute and record a deed restriction which provides that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor. Special Condition One (1) requires the applicant to submit revised plans showing that all proposed development within the view corridor that would block public views of the coast is deleted.

The occupation of sandy beach area by a structure, such as the proposed development, results in potential adverse effects to shoreline sand supply and public access. The applicant is proposing to dedicate a public lateral access easement from the deck stringline to the mean high tide. To mitigate adverse effects to public access, Special Conditions Seven (7) has been required to ensure implementation of the applicant's proposal. In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit public access have occurred on beachfront private properties in the Malibu and Broad Beach area. Therefore, Special Condition Five (5) has been required to prohibit such signs.

STAFF RECOMMENDATION

The staff recommends that the Commission APPROVE the permit application with special conditions.

MOTION

Staff recommends a YES vote on the following motion:

I move that the Commission approve with special conditions Coastal Development Permit 4-99-154 per the staff recommendation as set forth below.

A majority of the Commissioners present is required to pass the motion.

RESOLUTION

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, 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, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as 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 term or 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 development during construction, 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. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit revised project plans consistent with Special Condition Seven (7), for the review and approval of the Executive Director, which show that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean and that all development located within the public view corridor that will block public views of the beach and ocean is deleted.

2. Landscape, Erosion Control, and Dune Habitat Restoration Plan

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping, erosion control, and dune habitat restoration plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping, erosion control, and dune habitat restoration program shall be reviewed and approved by the consulting environmental resource specialist that the plans are in conformance with the consultants' recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

A. Landscaping Plan

- (1) The portion of the subject site that is not sandy beach (or subject to wave action) shall be planted within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (2) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (3) Vegetation within the public view corridor, as consistent with Special Condition Seven (7), shall be limited to low-lying vegetation of no more than 2 ft. in height.
- (4) All existing invasive plant species, including the existing Myoporum and other invasive vegetation located between the proposed residence and Pacific coast Highway, shall be removed.
- (5) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the

Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

B. Dune Habitat Restoration Plan

All invasive and non-native plant species shall be removed from the dune habitat restoration area as delineated on the site plan prepared by James Eserts date-stamped 11/5/99 and included as Exhibit 3. The dune habitat restoration area shall be revegetated with native plant species appropriate to beach dune vegetation communities. The restoration plan shall also clearly delineate a foot path of no more than 3 ft. in width (sand surface only) for beach access through the dune system by the applicant in order to minimize disturbance to the dune system. The plan shall specify the preferable time of year to carry out the restoration and describes the supplemental watering requirements that will be necessary. The plan shall also specify specific performance standards to judge the success of the enhancement effort. The performance standards shall incorporate ground coverage and survival rates typical to dune vegetation habitat areas. The restoration plan shall be consistent with all recommendations contained in the Dune Restoration Program by Geo Safety, Inc. dated 3/4/97, the Dune Restoration Program Addendum by Geo Safety, Inc. dated 10/7/99, Dune Restoration Program Amendment by Geo Safety, Inc. dated 11/14/99, and as shown on the site plan prepared by James Eserts date-stamped 11/5/99 shall be incorporated into the monitoring plan.

C. Monitoring

- (1) The applicant shall submit, for the review and approval of the Executive Director, a five (5) year Landscape, Erosion Control, and Dune Habitat Restoration Monitoring Program, prepared by an environmental resource specialist, which outlines dune restoration performance standards to ensure that restoration efforts, as required by Special Condition Two (2), at the project site are successful. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 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. The monitoring program shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) showing the area of the project site where restoration will occur prior to restoration.
- (2) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, evaluating 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 proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. 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 project site. If these inputs are required beyond the first four years, then the monitoring program shall be extended for an equal length of time so that the success and sustainability of the project sites is ensured. Restoration sites shall not be considered successful until they are able to survive without artificial inputs.

- (3) At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. 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 program to compensate for those portions of the original program which were not successful. The revised, or supplemental dune restoration program shall be processed as an amendment to this Coastal Development Permit.

3. Construction Responsibilities and Debris Removal

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

4. Geotechnical Recommendations

All recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94; Dune Restoration Program Addendum by Geo Safety dated 10/7/99; and Dune Restoration Program by Geo Safety dated 3/4/97., shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system plans must be reviewed and approved by the consultants prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to 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. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Numbers 4469-026-007) located seaward of the residence and deck permitted in this application 4-99-154 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. Signs limiting public access within that portion of the site designated as environmentally sensitive dune habitat buffer, consistent with Special Condition Six (6), may be allowed if a separate coastal development permit is obtained. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

6. Offer to Dedicate Lateral Public Access and Declaration of Restrictions

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the deck stringline as illustrated on the site plan prepared by James Esserts dated August 1999. At all times following recordation of the offer to dedicate provided for herein, development allowed within the lateral public access easement area identified in the offer to dedicate shall be limited to implementation of the dune habitat restoration program required by Special Condition Two (2).

The portion of the lateral access easement located between the approved deck stringline and the seawardmost limit of dune vegetation on the subject site shall be identified as an environmentally sensitive habitat area (ESHA) buffer. Use of the buffer for lateral public access shall be prohibited except at times when no other dry beach area on the property is available for such use. During such times, use of the buffer for public access shall be restricted to pass and repass only. It is recognized that both the mean high tide line and the dune system on the subject site are ambulatory in nature; therefore, the designated ESHA buffer shall be applicable only to the extent to which the buffer is located landward of the line of Mean High Tide.

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

7. Public View Corridor

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

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

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

8. Assumption of Risk/Shoreline Protection

A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

- (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
- (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
- (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- (5) No shoreline protective device shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to coastal development permit 4-99-154 including, but not limited to, the residence, foundations, decks, driveways, or the septic system in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

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

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to demolish an existing 3,500 sq. ft. single family residence, detached garage, and septic system and construct a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the restoration of an existing dune system located on the subject site. No shoreline protective device is proposed as part of the development.

The project site is located on an 18,250 sq. ft. beachfront parcel of land on the eastern end of Broad Beach between Pacific Coast Highway and the ocean (Exhibit 1). The area west of the subject site (Broad Beach) is characterized as a built-out portion of Malibu consisting of residential development. Zuma Beach County Park is located approximately 100 ft. to the east of the subject site. A vegetated dune system is located along the southern beachfront portion of the subject site which is designated as environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan (LUP). Access to the project site is from an existing private road located between the proposed development and Pacific Coast Highway. The project site has been previously developed with a 3,500 sq. ft. residence and detached garage which has been constructed on an at-grade slab foundation. The proposed project includes the demolition of all existing development on the subject site and the construction of a new larger residence on a raised friction pile/beam foundation.

The applicant has submitted evidence of review of the proposed project by the California State Lands Commission (CSLC) which indicates that the CSLC presently asserts no claims that the project is located on public tidelands although the CSLC reserves the right to any future assertion of state ownership or public rights should circumstances change.

The Commission notes that the project site has been subject to past Commission action. Coastal Development Permit 4-95-005 was approved by the Commission on March 10, 1995, for the demolition of the existing single family residence and the construction of a new 6,533 sq. ft. single family residence, septic system, and 348 cu. yds. of grading. However, the development approved by Coastal Development Permit 4-95-005 was never carried out and the permit expired on March 10, 1997. In addition, Coastal Development Permit Waiver 4-95-100 was issued in 1995 for the construction of the existing private access road and retaining wall located between the proposed development and Pacific Coast Highway.

B. Shoreline Processes and Seaward Encroachment

Section 30235 of the Coastal Act states:

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

Section 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.

Finally, 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.*

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

Site Shoreline Characteristics

The proposed project site is located on Broad Beach in the City of Malibu. Broad Beach is characterized as a relatively wide beach which has been developed with

numerous single family residences located to the west of the subject site. A well developed, but disturbed, dune system is located along Broad Beach seaward of the residential development. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Broad Beach is generally protected by the wide nature of the beach and the presence of the existing dune field. However, the report also states that Broad Beach is subject to periodic episodes of beach recession and recovery that expose development along Broad Beach to potential storm damage and flooding from severe storm events. The applicant's coastal engineering consultant has also indicated that Broad Beach is an oscillating (equilibrium) beach which experiences seasonal erosion and recovery. The Wave Uprush Study by Pacific Engineering Group dated 11/11/98 further indicates that the width of the beach changes seasonally and that the subject beach experiences a seasonal foreshore slope movement (oscillation) by as much as 100 ft.

Stringline

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

In the case of this project, the dripline of the proposed deck will be located approximately 10 ft. further landward than the seawardmost extent of the existing back yard/lawn area and fence to be demolished which are currently located on the subject site. As such, the Commission notes that the proposed development will be located further landward than the currently existing development on site. Further, the proposed development will be located landward of the appropriate stringline and will not result in the seaward encroachment of residential development on Broad Beach (Exhibit 3). Therefore, the Commission finds that the proposed project will not result in the seaward encroachment of development on Broad Beach and will serve to minimize adverse effects to coastal processes.

Wave Uprush and Mean High Tide Line

The Site Plan prepared by James Esserts dated August 1999 delineates several different surveyed locations of the ambulatory mean high tide line during winter and summer months on the subject site between 1951 and 1998. The surveyed information submitted by the applicant indicates that the most landward measurement of the

ambulatory mean high tide line on the project site occurred in August 1951 when the mean high tide line on site was located approximately 365 ft. seaward of the Pacific Coast Highway right-of-way line. The seaward most extension of the proposed development (the dripline of the proposed deck) will be located 162 ft. seaward of the highway right-of-way line (approximately 203 ft. landward of the August 1951 mean high tide line). Based on the submitted information, the Commission notes that the proposed development will be located landward of the August 1951 mean high tide line and should not extend onto public tidelands under normal conditions.

Although the proposed structure will be located landward of the August 1951 mean high tide line, the Wave Uprush Study prepared by Pacific Engineering Group dated 11/11/98 indicates that the maximum wave uprush at the subject site is expected to occur approximately 189 ft. seaward of the Pacific Coast Highway right-of-way line (approximately 27 ft. seaward of the proposed deck stringline). The Commission notes that although the proposed residence will not be subject to wave uprush under normal tidal conditions, recent winter storms, including the El Nino Event of 1998 resulted in severe erosion of the beach and damage to several residences located in the Broad Beach area. The applicant's engineering consultant has indicated that the proposed residence will be constructed on a friction pile foundation and will not require a shoreline protection device to ensure structural stability in the event that the proposed development is exposed to wave action during storm events. The seaward extent of the septic system and leach field will be located approximately 32 ft. from the Pacific Coast Highway right-of-way line (approximately 157 ft. landward of the maximum wave uprush limit). The applicant's coastal engineering consultant has concluded that since the proposed septic system will be located well landward of the maximum wave uprush limit, no shoreline protection device is required to protect any portion of the proposed system. The Wave Uprush Report dated 11/11/99 states that:

The proposed leach field septic system should be located no farther than 170 feet seaward from the Pacific Coast Highway Right-of-Way Line so as not to require a protective structure such as a bulkhead or revetment. At this location, a protective structure is not required.

The applicant's coastal engineering consultant has made several other recommendations regarding the foundations of the residence, floor slab elevation, and the location of the septic system in order to minimize adverse effects to shoreline sand supply and to ensure the structural stability of the proposed development. To ensure that all recommendations by the coastal engineering consultant have been incorporated into the proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by

GeoSystems dated 6/30/94 to ensure structural and site stability and that the proposed development will not result in adverse effects to shoreline processes. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

Future Shoreline Protective Devices

In the case of the proposed project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. However, as discussed above, areas of Broad Beach have experienced extreme erosion and scour during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed residence may be subject to in the future. The Commission notes that the construction of a shoreline protective device on the proposed project site would result in potential adverse effects to coastal processes, shoreline sand supply, and public access.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This effects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, Broad Beach is currently characterized as a wide oscillating beach. However, the applicant's consultant has also indicated that seasonal foreshore slope movement on the subject site can be as much as 100 ft. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and

seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

The adverse effects of shoreline protective devices are greater the more frequently that they are subject to wave action. In order to minimize adverse effects from shoreline protective devices, when such devices are found to be necessary to protect existing development, the Commission has required applicants to locate such structures as far landward as is feasible. In addition, since shoreline protective devices are most often required to protect existing septic systems, the Commission has also required applicants to locate septic systems as far landward as feasible [4-97-191 (Kim)]. The Commission has also required the utilization of alternative technologies for sewage disposal such as bottomless sand filter systems because they are able to be designed to occupy less area on the beach and, therefore, be located further landward than a standard system. In the case of the proposed project, the proposed septic system will be of a bottomless sand filter design and will be located as landward as feasible. The Commission notes that the applicant is proposing to construct a large residence that will extend further seaward than a smaller residence would. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect either the proposed residence (which will be constructed entirely on an engineered friction pile foundation able to withstand wave action) or to protect the septic system (which will be located approximately 157 ft. landward of the maximum wave uprush limit).

In addition, the Commission notes that Section 30235 of the Coastal Act allows for the construction of a shoreline protective device when necessary to protect existing development or to protect a coastal dependent use. The Commission further notes that the approval of a shoreline protective device to protect new residential development, such as the proposed project, would not be required by Section 30235 of the Coastal Act. The construction of a shoreline protective device to protect a new residential development would conflict with Section 30253 of the Coastal Act which states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. In addition, the construction of a shoreline protective device to protect new residential development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from such a device. To ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Eight (8) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, etc.

Conclusion

The proposed residence will be located landward of the August 1951 mean high tide line and be designed to eliminate the necessity for a shoreline protective device. The septic system for the proposed residence will be located as landward as feasible, will not be subject to wave uprush, or require the construction of a shoreline protective device. Further, the proposed development will be located landward of the appropriate stringline and will not result in the seaward encroachment of residential development on Broad Beach.

In addition, no shoreline protective device is proposed as part of the development. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect either the proposed residence or the septic system. However, as previously discussed, areas of Broad Beach have experienced extreme erosion and scour during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed residence may be subject to in the future. As discussed in detail above, the construction of a shoreline protective device to protect new residential development would result in potential adverse effects to coastal processes, shoreline sand supply, and public access and would not be consistent with Sections 30235, 30251, or 30253 of the Coastal Act. Therefore, to ensure that the proposed project is consistent with Sections 30235, 30251, and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Eight (8) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, driveway, etc. Further, to ensure structural and site stability, Special Condition Four (4) requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30235, 30251, and 30253.

C. Hazards and Geologic Stability

Section 30253 of the Coastal Act 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, 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 proposed development would be located along the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu coastline include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Even beachfront properties have been subject to wildfires. Finally, beachfront sites are specifically subject to flooding and erosion from storm waves.

The applicant has submitted a Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94. The consultants have determined that the proposed development will serve to ensure geologic and structural stability on the subject site. The Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98 concludes that:

It is the finding of this firm that the proposed building...will be safe and that the property will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property...provided our recommendations are followed.

The Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94 include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical and coastal engineering consultants have been incorporated into all proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by both the consulting geotechnical and geologic engineer and the coastal engineering consultant as conforming to all recommendations 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. Any substantial changes to the proposed development approved by the

Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

As discussed above, the Commission notes that 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, the Commission also notes that the proposed development is located on a beachfront lot in the City of Malibu and will be subject to some inherent potential hazards. The Commission notes that the Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the 1998 severe El Nino winter storm season. The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. Past occurrences have caused property damage resulting in public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in Malibu area alone from last year's storms.

In the winter of 1977-1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damages of as much as almost \$5 million to private property alone.

The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million to structures in Los Angeles County, many located in Malibu. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California, and in particular, Malibu coast. The 1998 El Nino storms also resulted in widespread damage to residences, public facilities and infrastructure along the Malibu Coast.

Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The proposed development will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting coastal engineer, may still involve the taking of some 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 the subject property.

The Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted

development. The applicant's assumption of risk, as required by Special Condition Eight (8), when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

In addition, the Commission notes that the proposed development includes the demolition of an existing residence and detached garage and the construction of a new larger residence. The Commission further notes that construction/demolition activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction site materials were discharged into the marine environment or left inappropriately/unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. To ensure that adverse effects to the marine environment are minimized, Special Condition Three (3), requires the applicant to ensure that stockpiling of construction materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

Therefore, the Commission finds, for the reasons set forth above, that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

D. Public Access

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

Coastal Act Section 30210 states that:

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

Coastal Act Section 30211 states:

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

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

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30220 of the Coastal Act states that:

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

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

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

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. The subject site is located on Broad Beach, approximately 100 ft. west (upcoast) of the nearest public beach (Zuma Beach County Park) and approximately ½ mile to the east (downcoast) of an existing public vertical accessway. The Commission notes that Zuma Beach County Park is the most heavily used beach in the Malibu area. The Commission further notes that many beachgoers who access the beach from Zuma Beach County Park, or the public vertical accessways along Broad Beach, often walk along the shoreline between Lechuza Point (located approximately 1 mile upcoast from the project site) and Point Dume (located approximately 3 miles downcoast from the project site) including the southern beachfront portion of the subject site.

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

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

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

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

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and

availability of tidelands. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. The applicants seek Commission approval of a new beachfront residence supported on friction pile foundation. As previously discussed in detail, although the proposed project will not include the construction of any shoreline protection device, the direct occupation of sandy area by the proposed residence, will result in potential adverse effects to public access along the sandy beach.

Although no shoreline protective device is proposed as part of this project, the Commission notes that interference by a shoreline protective device has a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, which results from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect of this on the public is again a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of a public beach. Fourth, if not sited landward in a location that insures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave' energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

As previously discussed in detail, the applicant's coastal engineering consultant has indicated that no shoreline protective device is required to protect either the proposed residence (which will be constructed on a friction pile foundation) or the septic system (which will be located landward of the maximum wave uprush limit). Therefore, to ensure that the proposed project does not result in future adverse effects to public access, Special Condition Eight (8) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, garage/guesthouse, septic system, driveway, etc.

In addition, the Commission must also consider whether a project affects any public right to use shorelands that exist independently of the public's ownership of tidelands.

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

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

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

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission notes that because the applicant has proposed as part of the project an offer to dedicate a lateral public access easement along the entire southern portion of the lot, as measured from the dripline of the proposed deck, it has not been necessary for Commission staff to engage in an extensive analysis as to whether the imposition of an offer to dedicate would be required here absent the applicant's proposal. As such, Special Condition Six (6) has been required in order to ensure that the applicant's offer to dedicate a lateral public access easement is transmitted prior to the issuance of the coastal development permit.

The Commission notes that new residential development, fences, walls, and landscaping, in addition to use of the road shoulder for residential parking, results in potential adverse effects to public beach access when such development is located along the shoulder of Pacific Coast Highway in a manner which precludes a pedestrian's ability to utilize the road shoulder where no sidewalk is located. In order to eliminate. In addition, in past permit actions regarding new residential development along Pacific Coast Highway, the Commission has required that the applicant construct sidewalk improvements in order to eliminate such adverse effects to public access in coastal areas. In the case of the proposed project, the Commission notes that the proposed development will be located on the seaward side of an existing private access road located south of Pacific Coast Highway and that no part of the proposed development will encroach into highway road easement. In addition, the Commission further notes that the subject site is located along a semi-rural stretch of Pacific Coast and where there is ample open area for pedestrian use of the existing road shoulder. As such, the Commission notes that in this case, the proposed development will not result in any adverse effects to public pedestrian access along Pacific Coast Highway and that a condition requiring the applicant to construct sidewalk improvements on the subject site is not required.

In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. In fact, staff notes that more conflicts between private property owners and public beachgoers have been documented along Broad Beach than along any other beach in the Malibu area and that a "Private Beach Patrol" has been used by the Broad Beach Homeowner's Association in past years to patrol Broad Beach and enforce a "No Trespassing" policy. Staff have received numerous complaints, particularly during summer months, from beachgoers who have stated that private residents, or the Beach Patrol, have inhibited public access along Broadbeach. The Commission has determined, therefore, that to ensure that applicants clearly understand that such postings are not permitted without a separate coastal development permit, it is necessary to impose Special Condition Five (5) to ensure that similar signs are not posted on or near the proposed project site. Signs limiting public access within that portion of the site designated as environmentally sensitive dune habitat buffer, consistent with Special Condition Six (6), may be allowed if a separate coastal development permit is obtained. The Commission finds that if implemented, Special Condition Five (5) will protect the public's right of access to the sandy beach below the MHTL.

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

E. Environmentally Sensitive Resources

Section 30240 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.

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas (ESHAs) must be protected against disruption of habitat values. To assist in the determination of whether a project is consistent with section 30240 of the Coastal Act, the Commission has, in past coastal development permit actions for new development in the Malibu area, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, Policy 72 of the LUP provides that when new development is proposed adjacent to an environmentally sensitive habitat area, then open space or conservation easements shall be required in order to protect resources within the ESHA. In addition, Policy 104 of the LUP provides that restoration of damage to habitat(s) shall be required as a condition of permit approval. Further, Policy 109 of the LUP provides that for all new development on Broad Beach, vegetation disturbance, including recreation or foot traffic on vegetated dunes, should be minimized and where access through the dunes is necessary then well-defined footpaths shall be developed and used.

A vegetated dune system, designated as environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan (LUP), is located along the southern beachfront portion of the subject site. Although the dune system on the subject site has been highly disturbed from past residential development, in past permit actions, the Commission has found that Broad Beach is unique in that it is the only area along the Malibu coastline where a system of vegetated sand dunes is found. Native plant species found on the subject site which are characteristic of dune habitat include: Silver beach bur (*Ambrosia chamssonis*), Pink sand verbena (*Abronia umbellata*), Beach salt bush (*Atriplex leucophylla*), and Beach evening primrose (*Camissonia cheiranthifolia*). The Commission further notes that the Broad Beach dunes have been classified as "Southern Foredues" in the Holland community classification system by the California Department of Fish and Game and that such dune communities are listed as "very threatened" by the State of California.

The Commission notes that the existing dune system on the subject site is highly degraded and has been partially colonized by invasive plant species (primarily ice plant)

as a result of past residential development along Broad Beach. The proposed project includes the demolition of an existing single family residence and associated landscaping and the construction of a new residence in the same general location on the subject site. All new development will be located in the previously disturbed portion of the subject site and will not result in the removal of any existing dune vegetation habitat. However, in past permit actions, the Commission has found that new development located immediately adjacent to environmentally sensitive habitat areas, such as the dune system located along Broad Beach, results in potential adverse effects to those habitat areas. Specifically, the Commission has found that residential development on Broad Beach results in adverse effects to the existing dune system from increased erosion from foot traffic to the beach through the dune system by homeowners, septic effluent, introduction of non-native and invasive plant species used for landscaping, disturbance to wildlife, and loss of plant and animal habitat. Therefore, in order to mitigate any adverse effects to the dune vegetation habitat that result from the proposed development, Special Condition Two (2) requires, in part, that the applicant submit a dune habitat restoration program that would provide for the removal of all invasive and non-native plant species from the existing dune system on site and revegetate with native plant species appropriate for dune habitat. Special Condition Two (2) also requires the applicant to submit, on an annual basis for a period of five years (no later than December 31st 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. At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. 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 program to compensate for those portions of the original program which were not successful. The revised, or supplemental dune restoration program shall be processed as an amendment to this Coastal Development Permit.

In addition, the Commission notes that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant community habitat by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant species habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area and the adjacent environmentally sensitive dune habitat, Special Condition Number Two (2) also requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. Special Condition Two (2) also requires that

the existing invasive plant species located on the project site (including the invasive *Myoporum* located between the existing access road and Pacific Coast Highway) be removed.

Therefore, for the reasons discussed above, the Commission finds that the proposed amendment, as conditioned, is consistent with Section 30240 of the Coastal Act.

F. Visual Resources

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 subordinated to the character of its setting.

Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. In addition, to assist in the determination of whether a project is consistent with Section 30251 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, in concert with Section 30251 of the Coastal Act, Policy 138 of the LUP provides that "buildings located on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site." Policy 141 of the LUP provides that "fencing or walls to be erected on the property shall be designed and constructed to allow for view retention from scenic roadways."

The project site is located on Broad Beach, a built-out area of Malibu primarily consisting of residential development. The Commission notes that the visual quality of the Broad Beach area in relation to public views from Pacific Coast Highway have been significantly degraded from past residential development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast

Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. The Commission notes that the construction of individual beachfront residences, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

The subject site has been previously developed with an existing residential structure, privacy wall, and landscaping which blocks public views of the coastline from Pacific Coast Highway. The proposed project will include the demolition of all existing development on the subject site and the construction of a new larger single family residence. As stated above, Coastal Act Section 30251 requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The Commission notes that the demolition of existing development and the construction of new residential development on the same parcel provides for the opportunity to enhance public views, where such views have been significantly degraded by past development, through the creation and maintenance of public view corridors, consistent with Section 30251 of the Coastal Act. In addition, Policy 138 of the LUP, as consistent with Section 30251 of the Coastal Act, provides that new development on a beachfront property located on the seaward side of Pacific Coast Highway, such as the subject site, should reserve 20% of the linear frontage of the lot as visually open area to provide and maintain adequate public coastal views. Further, in past permit actions, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential projects, such as the proposed project, be designed to provide for a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway [Saban (4-99-146), Broad (4-99-185)].

In the case of the proposed project, the Commission notes that the subject site is 50 ft. in width and that a public view corridor of no less than 20% of the width of the site's lineal frontage would be 10 ft. in width. Although the public view corridor on the subject site would be relatively small, Staff notes that coastal development permit applications have recently been submitted for the construction of three other new single family residences on neighboring parcels immediately east and west of the subject site. As such, the Commission notes that the provision of even a 10 ft. wide view corridor on the subject site, when viewed on a cumulative basis, will serve to enhance public views of the coast. Thus, it is critical that an adverse precedent is not established by the subject proposal and that adverse effects to coastal views from public viewing areas, such as Pacific Coast Highway, are minimized.

The applicant is not proposing to include a public view corridor as part of this project. However, the Commission notes that the project plans, as proposed, provide for a 5 ft. setback from either side of the lot for the proposed residence and that such setbacks would be sufficient to provide for an adequate public view corridor (10 ft. in width) provided that any ancillary development located within the setback areas does not obstruct public views from Pacific Coast Highway. Approximately 120 sq. ft. of the proposed deck will be located within the setback area/potential public view corridor. However, the Commission notes that the proposed deck will be constructed at a sufficiently low elevation below Pacific Coast Highway so that the portion of the deck located within the setback area/potential public view corridor will not result in the loss of any public views of the beach, dune system, or ocean. However, the proposed development also includes the construction of two 34.5 ft. high chimneys on the eastern side of the residence which will extend approximately 2 ft. into the setback area/potential public view corridor. The Commission notes that the proposed chimneys, unlike the low-lying deck, would reduce public views of the beach and ocean from Pacific Coast Highway within the setback area and lessen the intent of Policy 138 of the LUP and with past Commission action regarding the provision of a public view corridor for new development on the beach. The Commission further notes that the proposed outcropping chimneys could easily be recessed into the proposed structure in order to eliminate adverse effects to public views. Therefore, in order to ensure that adverse effects to public views of the ocean from the highway are minimized, Special Condition One (1) requires the applicant to submit revised project plans which show that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean and that all development located within the public view corridor that will block public views of the beach and ocean is deleted. The Commission notes that Special Condition One will allow the applicant to either (1) construct the project as proposed, with the exception that the two chimneys located on the eastern side of the residence would be deleted or reconfigured to eliminate adverse effects to public views, or (2) reconfigure the proposed development to provide for a 10 ft. wide public view corridor at another location on the subject site.

An existing approximately 3 ft. high concrete retaining wall is located between Pacific Coast Highway and the existing private access road/driveway. Coastal Development Permit Waiver 4-95-100 was issued by the Commission in 1995 for the construction of the concrete retaining wall and private access road/driveway. The Commission notes that although a portion of the existing retaining wall is located within the view corridor, due to the low elevation of the retaining wall in relation to Pacific Coast Highway, the existing wall will not block public views of the beach, dune system, or ocean from Pacific Coast Highway. However, the Commission also notes that landscaping was planted between the low-lying retaining wall and Pacific Coast Highway after the wall was constructed. The landscaping, approximately 12-15 ft. in height, consists of bushy non-native and invasive plant species (including *Myoporum*) which serve to completely obscure any public view of the beach or ocean from Pacific Coast Highway. The Commission notes that retention of the existing invasive vegetation located between the

proposed development and Pacific Coast Highway would diminish the public's ability to utilize the public view corridor to view the ocean and beach and would not be consistent with either Policy 138 of the LUP or with past Commission action regarding the provision of a public view corridor for new development on beachfront lots. Therefore Special Condition Two (2) requires the applicant to submit a landscaping plan, consistent with Special Condition Seven (7), which would provide for the removal of all non-native and invasive plant species between the private access road and Pacific Coast Highway (including all *Myoporum*) and ensure that all landscaping within the public view corridor is low-lying in nature (no more than 2 ft. in height) to ensure that adverse effects to public views of the ocean from the highway are minimized.

Further, to ensure that public coastal views will be protected, Special Condition Seven (7) requires the applicant to execute and record a deed restriction which provides that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor. Development within the public view corridor shall be limited to fencing of visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Vegetation and landscaping within the public view corridor, as consistent with Special Condition Two (2), shall be limited to low-lying vegetation of no more than 2 ft. in height. In addition, Special Condition Two (2), has been required to ensure that the applicant submit a landscaping plan which limits vegetation within the public view corridor to low-lying vegetation of no more than 2 ft. in height in order to preserve public coastal views.

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

G. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area.

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, minimizing alteration of natural streams.

The applicant proposes to install a new septic system which includes a 2,000 gallon septic tank and a leachfield which will be located no further than 18 ft. seaward of the

Pacific Coast Highway right-of-way line. In order to reduce the size of the required leachfield for the proposed septic system and to allow the system to be located as far landward as possible, the applicant is proposing to install a bottomless sand filter septic system which is designed to produce treated effluent with reduced levels of organics, biochemical oxygen demand (BOD) and total suspended solids (TSS) while occupying only 50 percent of the area required for a conventional septic system and leachfield. As proposed, the septic system will be located as landward as possible.

The applicant has submitted approval from the City of Malibu Environmental Health Department stating that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

H. Local Coastal Program

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

I. CEQA

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

SMH-VNT

File smh/permits/regular/4-99-154 Montanaro report

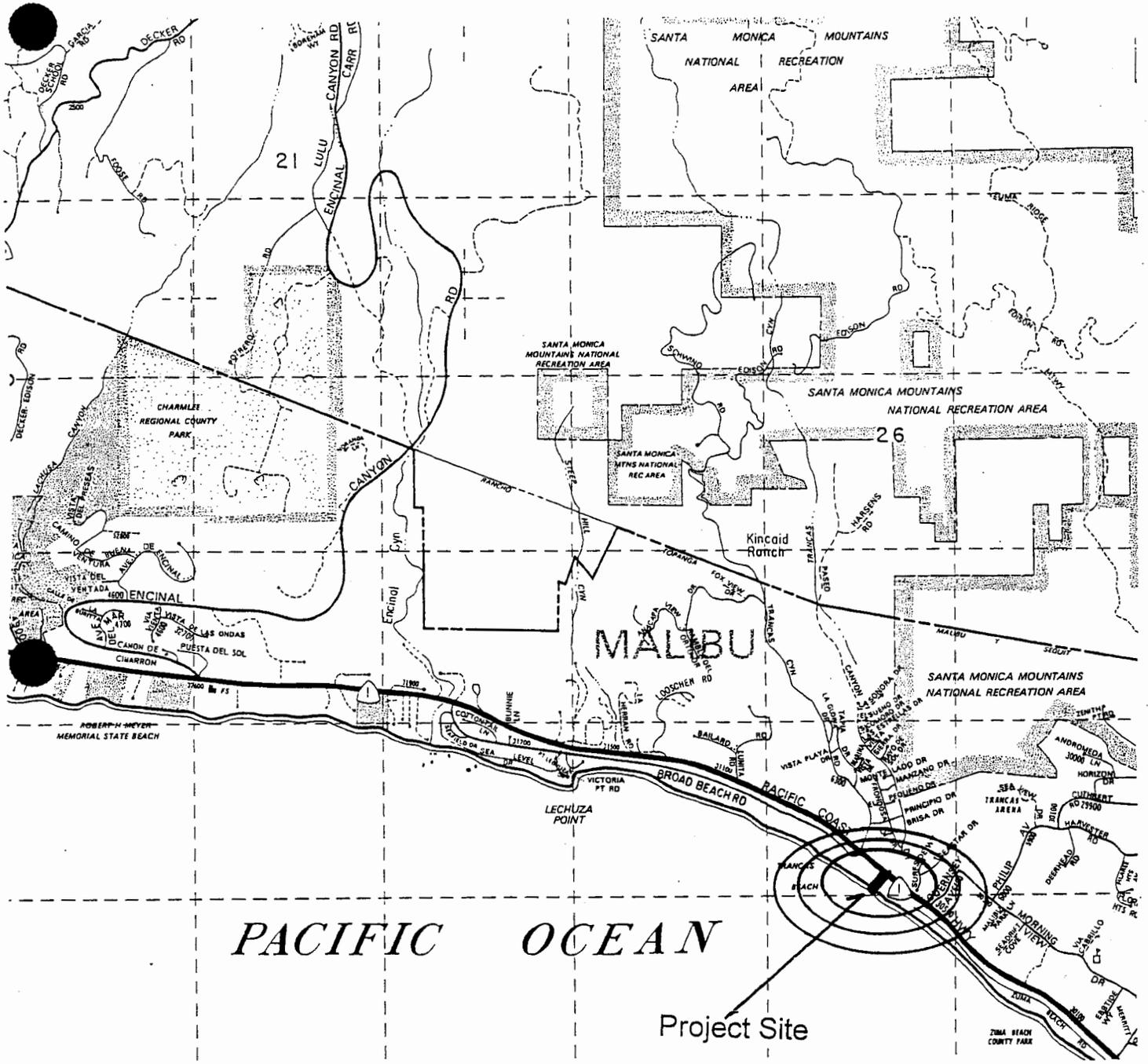


EXHIBIT 1
CDP 4-99-154 (Montanaro)
Location Map

4469 | 26
SCALE 1" = 100'

1992

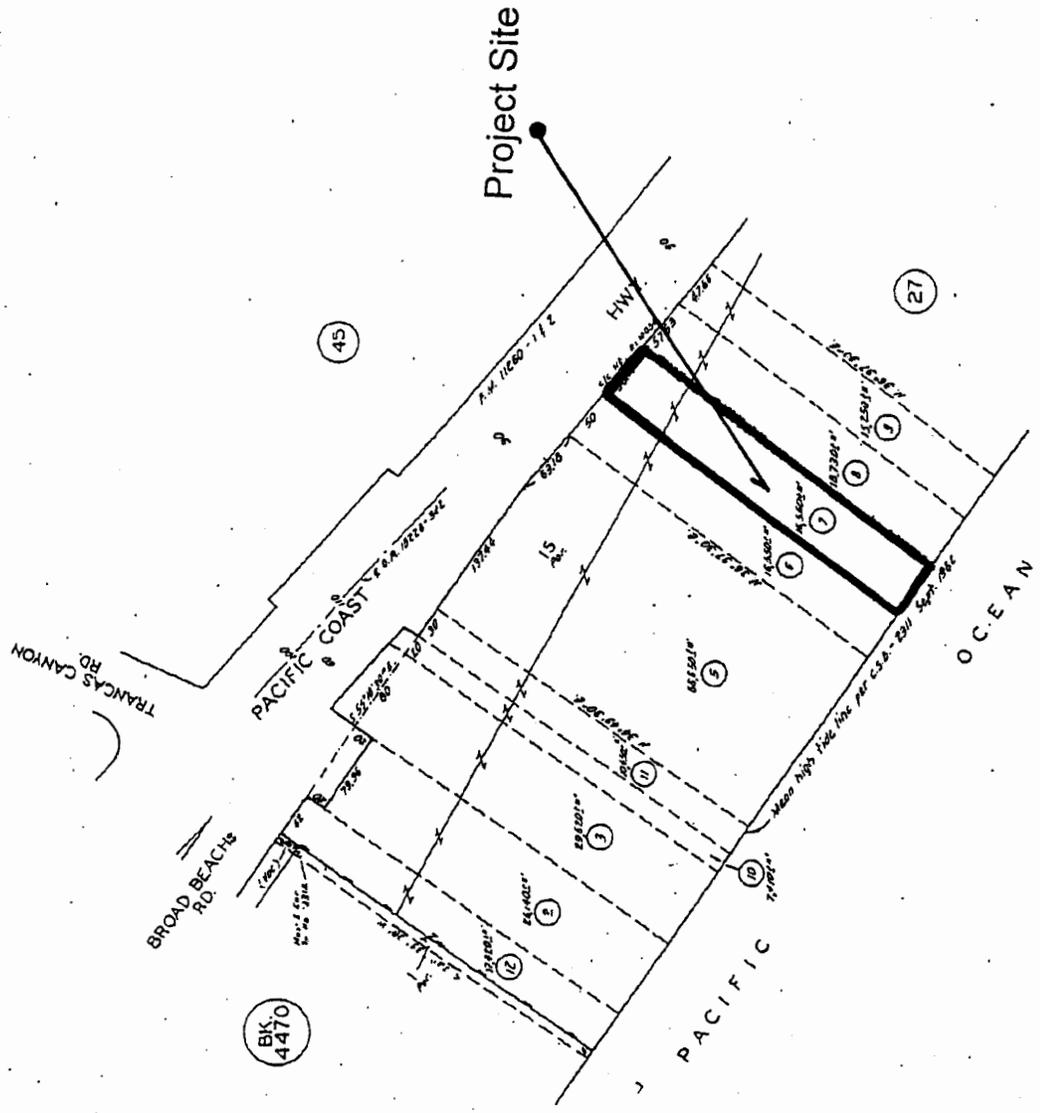
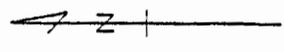


EXHIBIT 2
CDP 4-99-154 (Montanaro)
Parcel Map

EXHIBIT 3
CDP 4-99-154 (Montanaro)
Site Plan

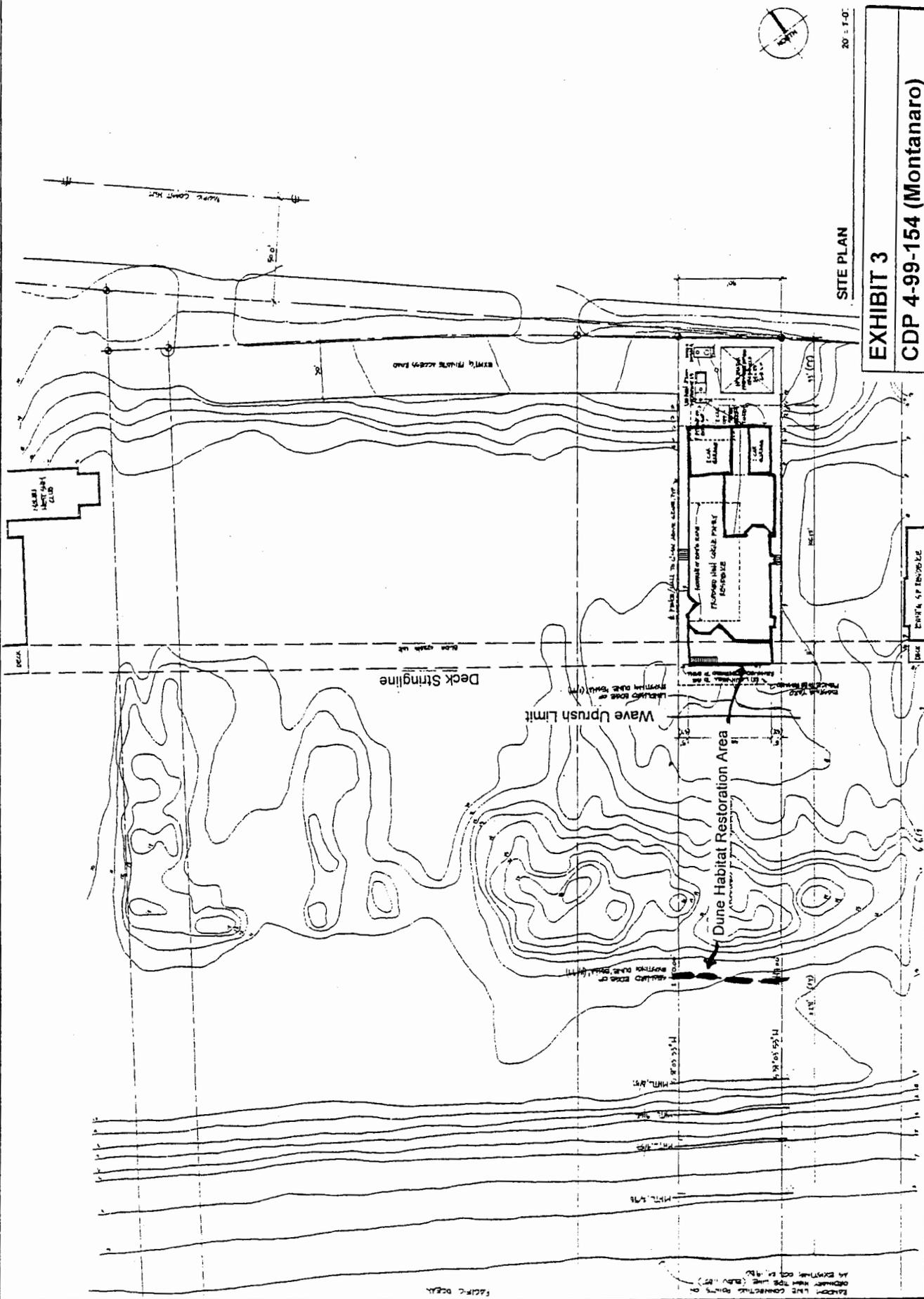


EXHIBIT 3
 CDP 4-99-154 (Montanaro)
 Site Plan

NO. ROOMS	17
TOTAL AREA	2912 SF
GARAGE AREA	750 SF
NET AREA	2162 SF

JAMES HENRY ESSENTS, AIA ARCHITECT

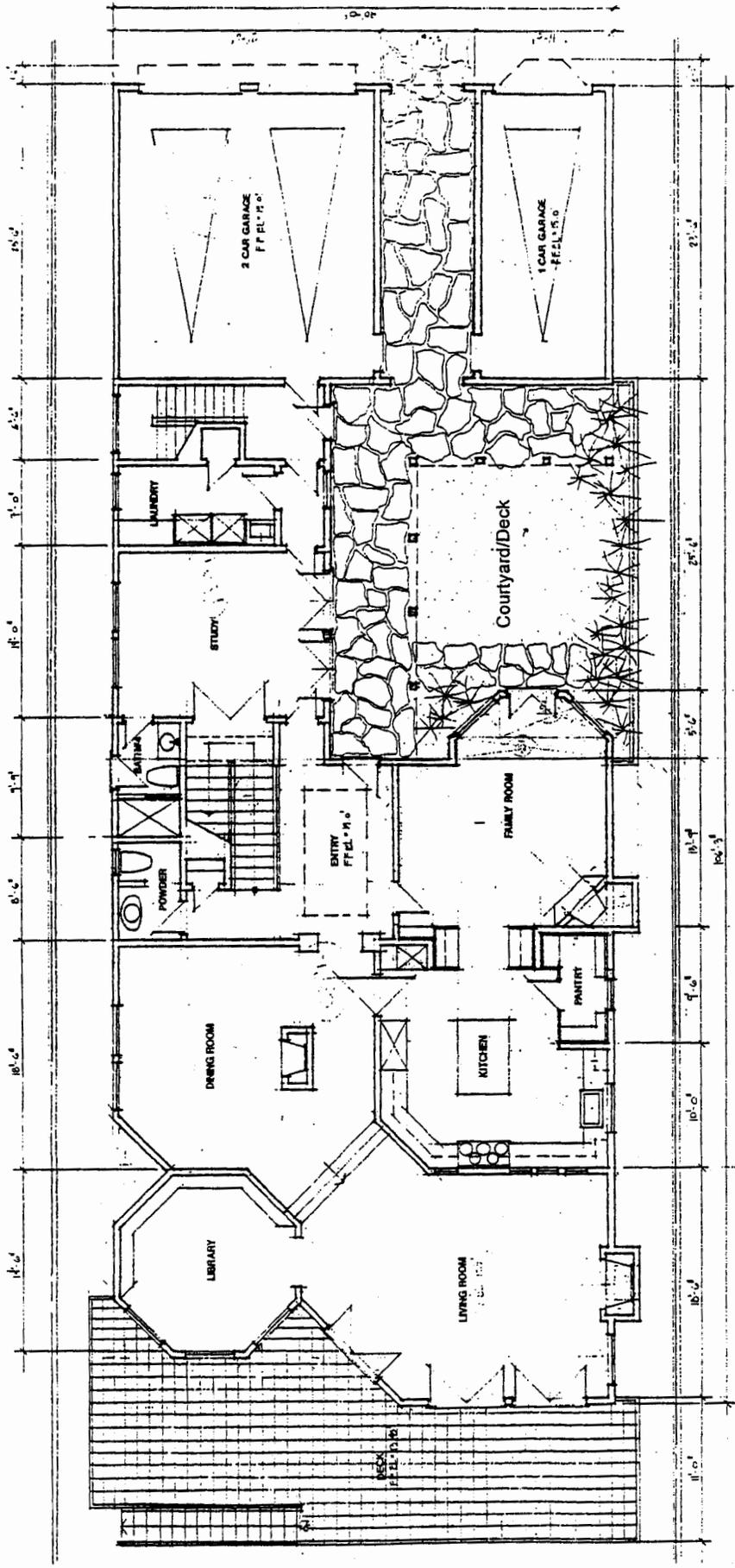


30718 PACIFIC COAST HWY.
MALIBU, CA 90265

NEW RESIDENCE FOR:
JOHN & SUSAN MONTANARO
PROPOSED LOWER FLOOR PLAN

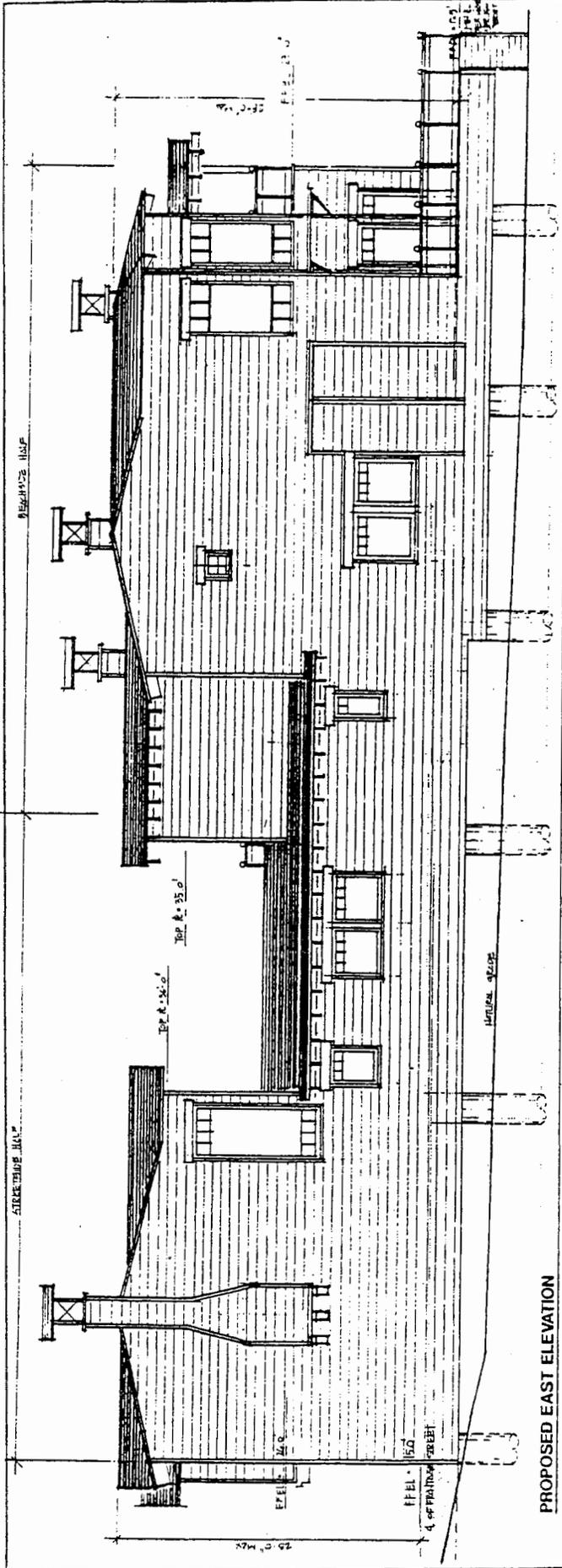
PROPOSED LOWER FLOOR PLAN

DATE	10/15/03
SCALE	1/4" = 1'-0"
PROJECT	CDP 4-99-154
ARCHITECT	JAMES HENRY ESSENTS, AIA
NO.	A3

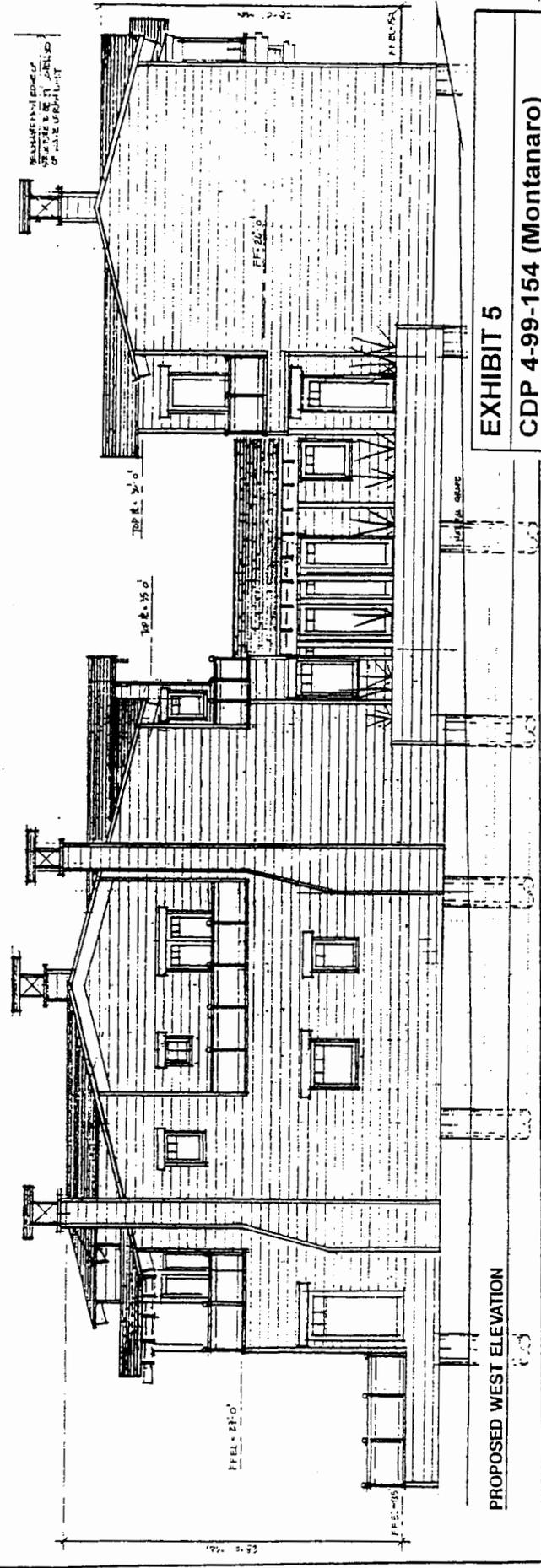


PROPOSED LOWER FLOOR PLAN
2912 SF + 750 SF GARAGE

EXHIBIT 4
CDP 4-99-154 (Montanaro)
Floor Plan



PROPOSED EAST ELEVATION



PROPOSED WEST ELEVATION

EXHIBIT 5
CDP 4-99-154 (Montanaro)
Structural Elevations

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0742

RECEIVED

MAR 6 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



Page 1 of 1 to the
Date: March 1, 2000
Permit Application No. 4-99-154

COASTAL DEVELOPMENT PERMIT

On December 9, 1999, the California Coastal Commission granted to John & Susan Montanaro, permit 4-99-154, subject to the attached Standard and Special Conditions, for development consisting of: Demolition of an existing 3,500 sq. ft. single family residence, detached garage, and septic system and the construction of a new 5,741 sq. ft. single family residence with attached garage and septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the northern beachfront portion of the site as measured from the mean high tide line landward to the ambulatory seawardmost limit of dune vegetation, offer to record an open space deed restriction over the portion of the site located between the deck stringline and the ambulatory seawardmost limit of dune vegetation, and the restoration of an existing dune system located on the subject site and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 30718 Pacific Coast Hwy., Malibu.

Issued on behalf of the California Coastal Commission by.

PETER DOUGLAS
Executive Director

By: Steven M. Hudson
Coastal Program Analyst

ACKNOWLEDGMENT:

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

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

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

3-3-2000

Date

Permittee

EXHIBIT 4
CCC-03-CD-1
(FOSSIL-II & MYERS)

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
20 SOUTH CALIFORNIA ST., SUITE 200
SANTA ANA, CA 92701
(714) 641-0142



Page 1 of 8

Date: March 1, 2000

Permit Application No. 4-99-154

COASTAL DEVELOPMENT PERMIT

On December 9, 1999, the California Coastal Commission granted to John & Susan Montanaro, permit 4-99-154, subject to the attached Standard and Special Conditions, for development consisting of: Demolition of an existing 3,500 sq. ft. single family residence, detached garage, and septic system and the construction of a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the mean high tide line landward to the ambulatory seawardmost limit of dune vegetation, offer to record an open space deed restriction over the portion of the site located between the deck stringline and the ambulatory seawardmost limit of dune vegetation, and the restoration of an existing dune system located on the subject site and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 30718 Pacific Coast Hwy., Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS
Executive Director

A handwritten signature in black ink, appearing to read "S. Hudson".

By: Steven M. Hudson
Coastal Program Analyst

ACKNOWLEDGMENT:

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

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

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

Date

Permittee

COASTAL DEVELOPMENT PERMIT

Page 2 of 8
Permit Application No. 4-99-154

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

1. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit revised project plans consistent with Special Condition Seven (7), for the review and approval of the Executive Director, which show that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean and that all development located within the public view corridor that will block public views of the beach and ocean is deleted.

COASTAL DEVELOPMENT PERMIT

Page 3 of 8
Permit Application No. 4-99-154

2. Landscape, Erosion Control, and Dune Habitat Restoration Plan

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping, erosion control, and dune habitat restoration plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping, erosion control, and dune habitat restoration program shall be reviewed and approved by the consulting environmental resource specialist that the plans are in conformance with the consultants' recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

A. Landscaping Plan

- (1) The portion of the subject site that is not sandy beach (or subject to wave action) shall be planted within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (2) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (3) Vegetation within the public view corridor, as consistent with Special Condition Seven (7), shall be limited to low-lying vegetation of no more than 2 ft. in height.
- (4) All existing invasive plant species, including the existing *Myoporum* and other invasive vegetation located between the proposed residence and Pacific coast Highway, shall be removed.
- (5) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

COASTAL DEVELOPMENT PERMIT

Page 4 of 8
Permit Application No. 4-99-154

B. Dune Habitat Restoration Plan

All invasive and non-native plant species shall be removed from the dune habitat restoration area as delineated on the site plan prepared by James Eserts date-stamped 11/5/99 and included as Exhibit 3. The dune habitat restoration area shall be revegetated with native plant species appropriate to beach dune vegetation communities. The restoration plan shall also clearly delineate a foot path of no more than 3 ft. in width (sand surface only) for beach access through the dune system by the applicant in order to minimize disturbance to the dune system. The plan shall specify the preferable time of year to carry out the restoration and describes the supplemental watering requirements that will be necessary. The plan shall also specify specific performance standards to judge the success of the enhancement effort. The performance standards shall incorporate ground coverage and survival rates typical to dune vegetation habitat areas. The restoration plan shall be consistent with all recommendations contained in the Dune Restoration Program by Geo Safety, Inc. dated 3/4/97, the Dune Restoration Program Addendum by Geo Safety, Inc. dated 10/7/99, Dune Restoration Program Amendment by Geo Safety, Inc. dated 11/14/99, and as shown on the site plan prepared by James Eserts date-stamped 11/5/99 shall be incorporated into the monitoring plan.

C. Monitoring

- (1) The applicant shall submit, for the review and approval of the Executive Director, a five (5) year Landscape, Erosion Control, and Dune Habitat Restoration Monitoring Program, prepared by an environmental resource specialist, which outlines dune restoration performance standards to ensure that restoration efforts, as required by Special Condition Two (2), at the project site are successful. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 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. The monitoring program shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) showing the area of the project site where restoration will occur prior to restoration.
- (2) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, evaluating 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 proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. 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 project site. If these inputs are required beyond the first four years, then the monitoring program shall be extended for an equal length of time so that the success and sustainability of the project sites is ensured. Restoration sites shall not be considered successful until they are able to survive without artificial inputs.

COASTAL DEVELOPMENT PERMIT

Page 5 of 8
Permit Application No. 4-99-154

- (3) At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. 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 program to compensate for those portions of the original program which were not successful. The revised, or supplemental dune restoration program shall be processed as an amendment to this Coastal Development Permit.

3. Construction Responsibilities and Debris Removal

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

4. Geotechnical Recommendations

All recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94; Dune Restoration Program Addendum by Geo Safety dated 10/7/99; and Dune Restoration Program by Geo Safety dated 3/4/97., shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system plans must be reviewed and approved by the consultants prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to 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. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Numbers 4469-026-007) located seaward of the residence and deck permitted in this application 4-99-154 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. Signs limiting public access within that portion of the site designated as environmentally sensitive dune habitat buffer, consistent with Special Condition Six (6), may be allowed if a separate coastal development permit is obtained. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

COASTAL DEVELOPMENT PERMIT

Page 6 of 8
Permit Application No. 4-99-154

6. Offer to Dedicate Lateral Public Access and Declaration of Restrictions

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide linelandward to the ambulatory seawardmost limit of dune vegetation on the subject site as illustrated on the site plan prepared by James Esserts dated August 1999. If at some time in the future, there is no dune vegetation seaward of the dripline of the deck, such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the dripline of the deck. It is recognized that both the mean high tide line and the seaward limit of the dune system/vegetation on the subject site are ambulatory in nature and that, therefore, the area of beach subject to this offer to dedicate a lateral public access easement is also ambulatory in nature.

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

7. Public View Corridor

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

- (a) No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.
- (b) As consistent with Special Condition One, no structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor.

COASTAL DEVELOPMENT PERMIT

Page 7 of 8
Permit Application No. 4-99-154

- (c) Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of any fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
- (d) Vegetation within the public view corridor, as consistent with Special Condition Two, shall be limited to low-lying vegetation of no more than 2 ft. in height.

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

8. Assumption of Risk/Shoreline Protection

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
 - (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
 - (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
 - (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
 - (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
 - (5) No shoreline protective device shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to coastal development permit 4-99-154 including, but not limited to, the residence, foundations, decks, driveways, or the septic system in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

COASTAL DEVELOPMENT PERMIT

Page 8 of 8
Permit Application No. 4-99-154

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

9. Open Space Deed Restriction

- A.** No development, as defined in section 30106 of the Coastal Act, with the exception of dune habitat restoration, shall occur within the area of the subject site located between the dripline of the deck and the ambulatory seawardmost limit of dune vegetation as generally shown in Exhibit 3. It is recognized that the seaward limit of the dune system and dune vegetation on the subject site is ambulatory in nature and that, therefore, the seaward extent of the area subject to this deed restriction is also ambulatory in nature. This deed restriction shall in no way be interpreted to limit or restrict the area of beach available for lateral public access consistent with Special Condition Six (6).
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space. The deed restriction shall include legal descriptions and a map of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.



LEAD SHEET

00 0258772

RECORDED/FILED IN OFFICIAL RECORDS
 RECORDER'S OFFICE
 LOS ANGELES COUNTY
 CALIFORNIA
 FEB 22 2000 AT 8 A.M.

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

FEE \$ 139 U

45

CODE
20

D.A. FEE Code 20 \$ 2.00

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

EXHIBIT 5
CCC-03-CD-1
(FOSSIL-II & MYERS)

THIS FORM IS NOT TO BE DUPLICATED



Accan

7

RECORDING REQUESTED BY AND
RETURN TO:
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco CA 94105-2219
Attn: Legal Division

00 0258772

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DEED RESTRICTION

I. WHEREAS, John D. Montanaro and Susan E. Montanaro, Trustees of the John and Susan Montanaro Family Trust (dated December 27, 1982, as amended), hereinafter referred to as the "Owner(s)," is/are

the record owner(s) of the following real property:

See Exhibit B attached hereto and incorporated herein by reference

hereinafter referred to as the "Property;" and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission," is acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in §30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the "California Coastal Act of 1976," (the Act); and

IV. WHEREAS, pursuant to the Act, the Owner applied to the Commission for a coastal development permit on the Property described above; and

V. WHEREAS, coastal development permit number 4-99-154, hereinafter referred to as the "Permit," was granted on December 9, 1999, by the Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as EXHIBIT A and herein incorporated by

LA 1130-40

1 reference; and

2 VI. WHEREAS, the Permit was subject to the terms and conditions
3 including, but not limited to, the following condition(s):

4 See Page 2A and 2B

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VII. WHEREAS, the Commission found that but for the imposition of the
above condition(s) the proposed development could not be found consistent
with the provisions of the California Coastal Act of 1976 and that a permit
could therefore not have been granted; and

VIII. WHEREAS, Owner has elected to comply with the condition(s)
imposed by the Permit and execute this Deed Restriction so as to enable
Owner to undertake the development authorized by the Permit.

//

00 0258772

7. Public View Corridor

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

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

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

8. Assumption of Risk/Shoreline Protection

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

(5) No shoreline protective device shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to coastal development permit 4-99-154 including, but not limited to, the residence, foundations, decks, driveways, or the septic system in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

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

1 NOW, THEREFORE, in consideration of the granting of the Permit to the
2 Owner by the Commission, the Owner hereby irrevocably covenants with the
3 Commission that there be and hereby is created the following restrictions
4 on the use and enjoyment of said Property, to be attached to and become a
5 part of the deed to the property.

6 1. COVENANT, CONDITION AND RESTRICTION. The undersigned Owner,
7 for himself/herself and for his/her heirs, assigns, and successors in
8 interest, covenants and agrees that:

9 See Page 3A

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18 2. DURATION. Said Deed Restriction shall remain in full force
19 and effect during the period that said permit, or any modification or
20 amendment thereof remains effective, and during the period that the
21 development authorized by the Permit or any modification of said development,
22 remains in existence in or upon any part of, and thereby confers benefit
23 upon, the Property described herein, and shall bind Owner and all his/her
24 assigns or successors in interest.

25 3. TAXES AND ASSESSMENTS. It is intended that this Deed
26 Restriction is irrevocable and shall constitute an enforceable restriction
27 within the meaning of a) Article XIII, §8, of the California Constitution;

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- 7
- a) No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean as shown on Exhibit C attached hereto and incorporated herein by reference;
 - b) Consistent with the revised plans approved pursuant to special condition 1 of the Permit, on file and available for inspection at the Commission's South Central Coast office, no structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor;
 - c) Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass material). Fencing shall be limited to no more than 6 feet in height. All bars, beams, or other non-visually permeable materials used in the construction of any fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of special condition 7 of the Permit and serve to minimize adverse effects to public views;
 - d) Vegetation within the public view corridor, consistent with the landscaping plan approved pursuant to special condition 2 of the Permit, on file and available for inspection at the Commission's South Central Coast office, shall be limited to low-lying vegetation of no more than 2 feet in height;
 - e) The site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire;
 - f) Owners assume the risks to themselves and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development;
 - g) Owners unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and
 - h) Owners 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 amount paid in settlement arising from any injury or damage due to such hazards;
 - i) Owner shall not construct, now or in the future, any shoreline protective device(s) for the purpose of protecting the residential development approved pursuant to coastal development permit 4-99-154 including, but not limited to, the residence, foundations, decks, driveways, or the septic system in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions or other natural hazards in the future and by acceptance of this permit the applicant hereby waives any rights to construct such devices that may exist under Public Resources Code Section 30235.

1 and b) §402.1 of the California Revenue and Taxation Code or successor
2 statute. Furthermore, this Deed Restriction shall be deemed to constitute
3 a servitude upon and burden to the Property within the meaning of §3712(d)
4 of the California Revenue and Taxation Code, or successor statute, which
5 survives a sale of tax-deeded property.

6 4. RIGHT OF ENTRY. The Commission or its agent may
7 enter onto the Property at times reasonably acceptable to the Owner to
8 ascertain whether the use restrictions set forth above are being observed.

9 5. REMEDIES. Any act, conveyance, contract, or authorization
10 by the Owner whether written or oral which uses or would cause to be used
11 or would permit use of the Property contrary to the terms of this Deed
12 Restriction will be deemed a violation and a breach hereof. The Commission
13 and the Owner may pursue any and all available legal and/or equitable remedies
14 to enforce the terms and conditions of this Deed Restriction. In the event
15 of a breach, any forbearance on the part of either party to enforce the
16 terms and provisions hereof shall not be deemed a waiver of enforcement
17 rights regarding any subsequent breach.

18 6. SEVERABILITY. If any provision of these restrictions is
19 held to be invalid, or for any reason becomes unenforceable, no other
20 provision shall be thereby affected or impaired.

21
22 Dated: Dec 14, 1999

23 The John and Susan MONTANARO Family Trust by:

24 SIGNED: [Signature] Trustee
25 John D. MONTANARO
26 PRINT OR TYPE NAME OF ABOVE

SIGNED: [Signature] Trustee
SUSAN E. MONTANARO
PRINT OR TYPE NAME OF ABOVE

27 * * NOTARY ACKNOWLEDGMENT ON THE NEXT PAGE * * (CU)

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STATE OF CALIFORNIA
COUNTY OF Los Angeles

On December 14, 1999 before me, CYNTHIA SCHMON, A Notary Public personally appeared * JOHN D. MONTAÑARO *, personally ~~known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that (he) she/they executed the same in (his) her/their authorized capacity(ies), and that by (his) her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Cynthia Schmon

STATE OF CALIFORNIA
COUNTY OF Los Angeles

On December 14, 1999 before me, CYNTHIA SCHMON, A Notary Public personally appeared * SUSAN E. MONTAÑARO *, personally ~~known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he (she) they executed the same in his (her) their authorized capacity(ies), and that by his (her) their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Cynthia Schmon

10

This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. 4-99-154 on December 9, 1999. and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: February 16, 2000

John Bowers
John Bowers, Staff Counsel
California Coastal Commission

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On 2/16/00 before me, Deborah L. Bove, A Notary Public personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah L. Bove

DEBORAH L. BOVE
COMM. #1239052
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires Oct. 21, 2003

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EXHIBIT B

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT, IN THE CITY OF MALIBU, RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, RECORDS OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT ENGINEER'S STATION 420 PLUS 24.72 AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE HAVING A BEARING OF SOUTH 53° 22'30" EAST, AND A LENGTH OF 906.54 FEET IN THE CENTER LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE FINAL ORDER OF CONDEMNATION IN SUPERIOR COURT CASE NO. 135650, A CERTIFIED COPY OF SAID FINAL ORDER BEING RECORDED IN BOOK 9434 PAGE 338, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE CENTER LINE OF SAID 80 FOOT STRIP OF LAND SOUTH 53° 22'30" EAST 1135 FEET; THENCE SOUTH 36° 37'30" WEST 40 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND AND THE TRUE POINT OF BEGINNING, THENCE ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND SOUTH 53° 22'30" EAST 50 FEET TO A POINT; SAID POINT BEING ALSO THE NORTHEASTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO CELIA M. G. TANNER, RECORDED IN BOOK 17520 PAGE 372, OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 36°37'30" WEST TO A POINT IN THE LINE OF ORDINARY HIGH TIDE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO A LINE WHICH BEARS SOUTH 36 37'30" WEST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 36° 37'30" EAST TO THE TRUE POINT OF BEGINNING, TOGETHER WITH THAT PORTION OF THE 80 FOOT STRIP OF LAND CONDEMNED BY DECREE OF CONDEMNATION ENTERED IN CASE NO. 135650, SUPERIOR COURT. (A CERTIFIED COPY OF SAID DECREE BEING RECORDED IN BOOK 9434 PAGE 338, OFFICIAL RECORDS) LYING SOUTHERLY OF THE SOUTHERLY LINE OF THE 100 FOOT WIDE STRIP OF AND (PACIFIC COAST HIGHWAY), CONVEYED TO THE STATE OF CALIFORNIA BY THE DEED RECORDED IN BOOK 20716 PAGE 385, SAID OFFICIAL RECORDS, AND BETWEEN THE NORTHERLY PROLONGATION OF THE SIDE LINES OF THE ABOVE DESCRIBED PARCEL.

EXCEPT ALL OIL, GAS, HYDROCARBON SUBSTANCES IN OR ON SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVIED IN DEED FROM MARBLEHEAD LAND COMPANY, RECORDED IN BOOK 17520, PAGE 372, OFFICIAL RECORDS.

ALSO EXCEPT ALL LITTORAL RIGHTS TOGETHER WITH THE FULL AND EXCLUSIVE RIGHT TO PRESERVE AND PROTECT SAID LITTORAL RIGHTS AS CONTAINED IN THE ABOVE DEED.

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VIEW CORRIDOR DIAGRAM

5 ft. wide View Corridor

5 ft. wide View Corridor

EXISTING YARD FENCE TO BE REMOVED

(F) LAWN AREA TO BE REMOVED & RESTORED TO BSHA

WAVE UPRUSH LIMIT, 189' FROM R (11/98)

LANDWARD EDGE OF EXISTING DUNE "ESHA" (11/98)

PROPOSED NEW SINGLE FAMILY RESIDENCE

FOOTPRINT OF EXIST'G HOUSE

R FENCE/WALL TO 6" MAX. ABOVE GRADE, TYP.

1 CAR GARAGE

2 CAR GARAGE

FOOTPRINT OF EXIST'G GAR.

NEUTRALIZER PRESSURE DRAINFIELD 24' x 27' (41 S.F.)

TANK

JEFFERSON MICROFAST 15

1000 G. BOSING

70.00' 55°22'30" 132'

33' (FY)

106.25'

1/20" = 1' - 0"

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132'



LEAD SHEET

RECORDING REQUESTED BY
WHEN RECORDED MAIL TO

00 0258774

NAME

MAILING FIRST AMERICAN TITLE COMPANY of LOS ANGELES
ADDRESS 520 NORTH CENTRAL AVENUE
GLENDALE, CALIFORNIA 91203
CITY, STATE
ZIP CODE

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
FEB 22 2000 AT 3AM

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

Open Space Deed Restriction

FEE

D.T.T.

FEE \$ 148 U 48

CODE 20 DA. FEE Code 20 \$ 2.00

CODE 19

CODE 9

CODE 24

4-99-154

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

RECORDING REQUESTED BY AND RETURN TO:

California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, CA 94105-2219

OPEN SPACE DEED RESTRICTION

WHEREAS, John D. Montanaro and Susan E. Montanaro, Trustees of the John and Susan Montanaro Family Trust (dated December 27, 1982, as amended), hereinafter referred to as the "Owner(s)," is/ are

the record owner(s) of the following real property:

See Exhibit D attached hereto and incorporated herein by reference

hereinafer referred to as the "Property;" and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission," is acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in section 30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the "California Coastal Act of 1976," (the Act); and

IV. WHEREAS, pursuant to the Act, the Owner applied to the Commission for a coastal development permit on the Property described above; and

V. WHEREAS, coastal development permit number 4-99-154, hereinafter referred to as the "Permit," was granted on December 9, 1999, by the Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as Exhibit A and herein incorporated by

1 reference; and

2 VI. WHEREAS, the Permit was subject to the terms and conditions
3 including, but not limited to the following condition(s):

4
5 **9. Open Space Deed Restriction**

6 A. No development, as defined in section 30106 of the Coastal Act, with the exception of dune habitat
7 restoration, shall occur within the area of the subject site located between the dripline of the deck and
8 the ambulatory seawardmost limit of dune vegetation as generally shown in Exhibit 3. It is
9 recognized that the seaward limit of the dune system and dune vegetation on the subject site is
ambulatory in nature and that, therefore, the seaward extent of the area subject to this deed restriction
is also ambulatory in nature. This deed restriction shall in no way be interpreted to limit or restrict
the area of beach available for lateral public access consistent with Special Condition Six (6).

10 B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall
11 execute and record a deed restriction in a form and content acceptable to the Executive Director,
12 reflecting the above restriction on development in the designated open space. The deed restriction
13 shall include legal descriptions and a map of both the applicant's entire parcel and the open space
14 area. The deed restriction shall run with the land, binding all successors and assigns, and shall be
15 recorded free of prior liens that the Executive Director determines may affect the enforceability of the
16 restriction. This deed restriction shall not be removed or changed without a Commission amendment
17 to this coastal development permit.

18
19
20 VII. WHEREAS, the Commission found that but for the imposition of the
21 above condition(s) the proposed development could not be found consistent
22 with the provisions of the California Coastal Act of 1976 and that a permit
23 could therefore not have been granted; and

24 VIII. WHEREAS, Owner has elected to comply with the conditions(s)
25 imposed by the Permit and execute this Deed Restriction so as to enable
26 Owner to undertake the development authorized by the Permit.

27 //

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1 NOW, THEREFORE, in consideration of the granting of the Permit to the
2 Owner by the Commission the Owner hereby irrevocably covenants with the
3 Commission that there be and hereby is created the following restrictions on
4 the use and enjoyment of said Property, to be attached to and become a part
5 of the deed to the property.

6 1. COVENANT, CONDITION AND RESTRICTION. The undersigned Owner, for
7 himself/herself and for his/her heirs, assigns, and successors in interest,
8 covenants and agrees that:

9 the use of the Protected Land as shown on Exhibit B, attached hereto
10 and incorporated herein by reference, shall be limited to natural open space
11 for habitat protection, private recreation and resource and resource
12 conservation uses. No development as defined in Public Resources Code
13 section 30106, attached hereto as Exhibit C and incorporated herein by
14 reference, including, but not limited to removal of trees and other major or
15 native vegetation, grading, paving, installation of structures such as
16 signs, buildings, etc., or

17 _____
18 _____

19 shall occur or be allowed on the Protected Land with the exception of the
20 following subject to applicable governmental regulatory requirements:

21 (a) the removal of hazardous substances or conditions or
22 diseased plants or trees;

23 (b) the removal of any vegetation which constitutes or
24 contributes to a fire hazard to residential use of neighboring properties,
25 and which vegetation lies within 100 feet of existing or permitted
26 residential development;

27 (c) the installation or repair of underground utility lines.

1 and septic systems;

2 (d) Other: dune habitat restoration in accordance with the Landscape,
3 Erosion Control, and Dune Habitat Restoration Plan approved pursuant to special
4 condition 2 of the Permit, on file and available for inspection at the Commission's
5 Sount Central Coast office.

6 2. DURATION. Said Deed Restriction shall remain in full force
7 and effect during the period that the said permit, or any modification or
8 amendment thereof remains effective, and during the period that the develop-
9 ment authorized by the Permit or any modification of said development,
10 remains in existence in or upon any part of, and thereby confers benefit
11 upon, the Property described herein, and shall bind Owner and all his/her
12 assigns or successors in interest.

13 3. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction
14 is irrevocable and shall constitute an enforceable restriction within the
15 meaning of a) Article XIII, section 8, of the California Constitution;
16 and b) section 402.1 of the California Revenue and Taxation Code or successor
17 statute. Furthermore, this Deed Restriction shall be deemed to constitute a
18 servitude upon and burden to the property within the meaning of section
19 3712(d) of the California Revenue and Taxation Code, or successor statute,
20 survives a sale of tax-deemed property.

21 4. RIGHT OF ENTRY. The Commission or its agent may enter onto the
22 Property at times reasonably acceptable to the Owner to ascertain whether
23 the use restrictions set forth above are being observed.

24 5. REMEDIES. Any act, conveyance contract, or authorization by
25 the Owner whether written or oral which uses or would cause to be used or
26 would permit use of the Property contrary to the terms of this Deed
27 Restriction will be deemed a violation and a breach hereof. The Commission
and Owner may pursue any and all available legal and/or equitable remedies to
enforce the terms and conditions of this Deed Restriction. In the event of a

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1 breach, any forbearance on the part of either party to enforce the terms and
2 provisions hereof shall not be deemed a waiver of enforcement rights
3 regarding any subsequent breach.

4 6. SEVERABILITY. If any provision of these restrictions is
5 held to be invalid, or for any reason becomes unenforceable, no other
6 provision shall be thereby affected or impaired.

7
8 Dated: Dec 14, 1999

9
10 The John and Susan MONTANARO Family Trust by:

11
12 SIGNED:

[Signature]
John D. MONTANARO

SIGNED:

[Signature]
SUSAN E. MONTANARO

13
14 See ATTACHED ACKNOWLEDGEMENT - (us)

15
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19 (NOTARY ON NEXT PAGE)
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STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On December 14, 1999, before me, CYNTHIA SCHMON, a Notary Public, personally appeared JOHN D. MONTAÑARO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature Cynthia Schmon

ATTACHED TO OPEN SPACE DEED RESTRICTION

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On December 14, 1999, before me, CYNTHIA SCHMON, a Notary Public, personally appeared * SUSAN E. MONTAÑARO *, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that she he/they executed the same in her his/their authorized capacity(ies), and that by her his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature Cynthia Schmon

1 This is to certify that the Open Space Deed Restriction set forth above is
2 hereby acknowledged by the undersigned officer on behalf of the California
3 Coastal Commission pursuant to authority conferred by the California Coastal
4 Commission when it granted Coastal Development Permit No. 4-99-154
5 on December 9, 1999 and the California Coastal Commission consents to
6 recordation thereof by its duly authorized officer.

7
8 Dated: February 16, 2000
9

10 CALIFORNIA COASTAL COMMISSION

11 John Bowers

12 John Bowers, Staff Counsel
13

14 STATE OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

16 On 2/16/00, before me, Deborah L. Bove, a Notary
17 Public, personally appeared John Bowers, personally
18 known to me (or proved to me on the basis of satisfactory evidence) to be
19 the person(s) whose name(s) is/are subscribed to the within instrument and
20 acknowledged to me that he/she/they executed the same in his/her/their
21 authorized capacity(ies), and that by his/her/their signature(s) on the
22 instrument the person(s), or the entity upon behalf of which the person(s)
23 acted, executed the instrument.

24 WITNESS my hand and official seal.

25
26 Signature Deborah L. Bove
27



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EXHIBIT "B"**Legal Description
Open Space Deed Restriction**

That portion of the land referred to herein situated in the County of Los Angeles, State of California described as follows:

DESCRIPTION OF SUBJECT LOT

That portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by patent, in the City of Malibu, Recorded in Book 1 Page 407 et seq., of patents, records of said county, particularly described as follows:

Commencing at Engineer's Station 420 plus 24.72 at the westerly extremity of that certain course having a bearing of south 53°22'30" east, and a length of 906.54 feet in the center line of the 80 foot strip of land described in the final order of condemnation in Superior Court Case #135650, a certified copy of said final order being recorded in Book 9434 Page 338, official records of said county; thence along the center line of said 80 foot strip of land south 53° 22'30" east 113.5 feet; thence south 36°37'30" west 40 feet to a point in the southerly line of said 80 foot strip of land and the true point of beginning of the subject lot; thence along the southerly line of said 80 foot strip of land south 53°22'30" east 50 feet to a point; said point being also the northeasterly corner of the land described in the deed to Celia M.G. Tanner, recorded in Book 17520 Page 372, official records of said county; thence south 36° 37'30" west to a point in the line of ordinary high tide of the Pacific Ocean; thence westerly along said tide line to a line which bears south 36°37'30" west from the true point of beginning of the subject lot; thence north 36°37'30" east to the true point of beginning of the subject lot, together with that portion of the 80 foot strip of land condemned by decree of condemnation entered in case #135650, superior court, (a certified copy of said decree being recorded in Book 9434 Page 338, official records) lying southerly of the southerly line of the 100 foot wide strip of land (Pacific Coast Highway), conveyed to the State of California by the deed recorded in Book 20716 Page 385, said official records, and between the northerly prolongation, of the side lines of the above described parcel.

Except all oil, gas, hydrocarbon substances in or on said land, but without right of entry, as reserved in deed from Marblehead Land Company, recorded in Book 17520 Page 372, official records.

Also except all littoral rights together with the full and exclusive right to preserve and protect said littoral rights as contained in the above deed.

DESCRIPTION OF RESTRICTED AREA

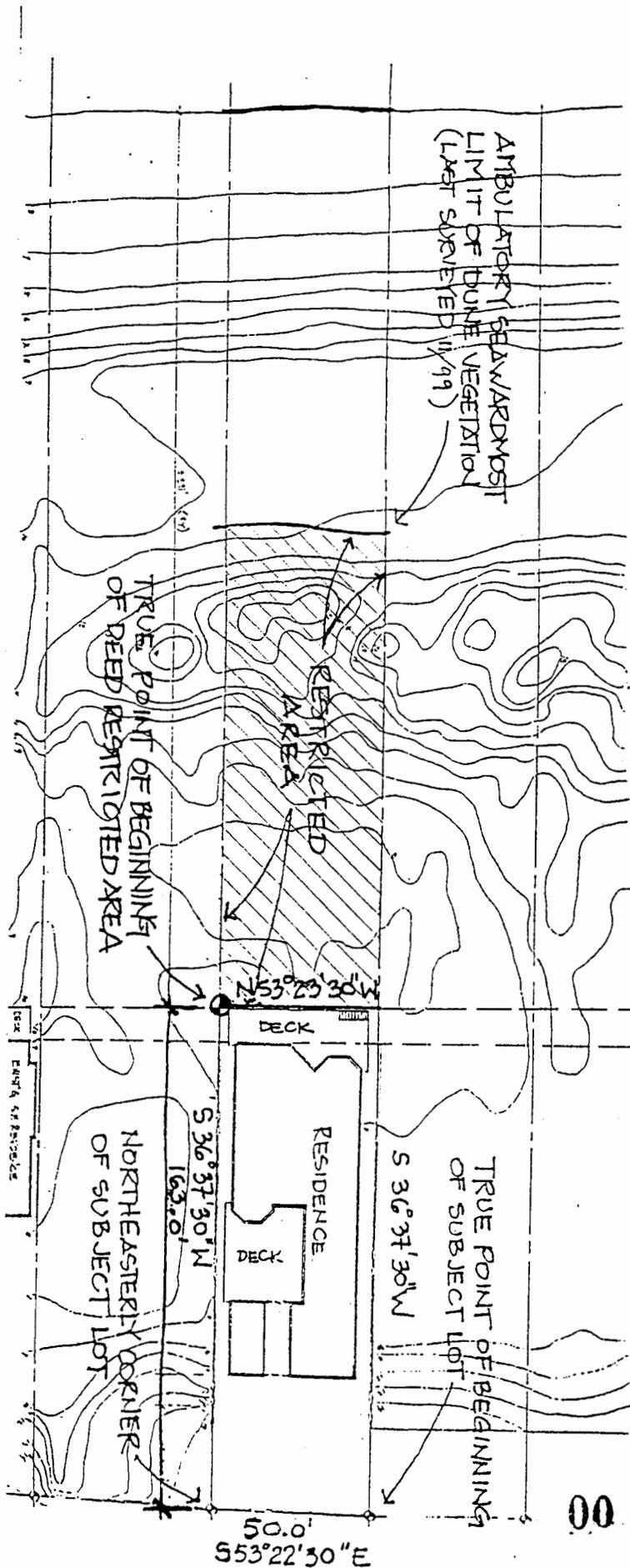
Beginning at the northeasterly corner of the subject lot south 36°37'30" west 163 feet to the true point of beginning of the deed restricted area. Restricted area shall include all land within the subject lot seaward of the following described line and landward of the ambulatory seawardmost limit of dune vegetation: thence north 53° 23'30" west to a line which bears south 36° 37'30" west from the true point of beginning of the subject lot.

It is recognized that the seawardmost limit of dune vegetation is ambulatory in nature and therefore the seaward extent of the restricted area is also ambulatory in nature.

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OPEN SPACE DEED RESTRICTION



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EXHIBIT C

[30106. Development]

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal of harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

EXHIBIT D

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFOIRNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT, IN THE CITY OF MALIBU, RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, RECORDS OF SAID COUNTY, PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT ENGINEER'S STATION 420 PLUS 24.72 AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE HAVING A BEARING OF SOUTH 53° 22'30" EAST, AND A LENGTH OF 906.54 FEET IN THE CENTER LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN THE FINAL ORDER OF CONDENMATION IN SUPERIOR COURT CASE NO. 135650, A CERTIFIED COPY OF SAID FINAL ORDER BEING RECORDED IN BOOK 9434 PAGE 338, OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE CENTER LINE OF SAID 80 FOOT STRIP OF LAND SOUTH 53° 22'30" EAST 1135 FEET; THENCE SOUTH 36° 37'30" WEST 40 FEET TO A POINT IN THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND AND THE TRUE POINT OF BEGINNING, THENCE ALONG THE SOUTHERLY LINE OF SAID 80 FOOT STRIP OF LAND SOUTH 53° 22'30" EAST 50 FEET TO A POINT; SAID POINT BEING ALSO THE NORTHEASTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO CELIA M. G. TANNER, RECORDED IN BOOK 17520 PAGE 372, OFFICIAL RECORDS OF SAID COUNTY; THENCE SOUTH 36°37'30" WEST TO A POINT IN THE LINE OF ORDINARY HIGH TIDE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO A LINE WHICH BEARS SOUTH 36 37'30" WEST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 36° 37'30" EAST TO THE TRUE POINT OF BEGINNING, TOGETHER WITH THAT PORTION OF THE 80 FOOT STRIP OF LAND CONDEMNED BY DECREE OF CONDEMNATION ENTERED IN CASE NO. 135650, SUPERIOR COURT. (A CERTIFIED COPY OF SAID DECREE BEING RECORDED IN BOOK 9434 PAGE 338, OFFICIAL RECORDS) LYING SOUTHERLY OF THE SOUTHERLY LINE OF THE 100 FOOT WIDE STRIP OF AND (PACIFIC COAST HIGHWAY), CONVEYED TO THE STATE OF CALIFORNIA BY THE DEED RECORDED IN BOOK 20716 PAGE 385, SAID OFFICIAL RECORDS, AND BETWEEN THE NORTHERLY PROLONGATION OF THE SIDE LINES OF THE ABOVE DESCRIBED PARCEL.

EXCEPT ALL OIL, GAS, HYDROCARBON SUBSTANCES IN OR ON SAID LAND, BUT WITHOUT RIGHT OF ENTRY, AS RESERVIED IN DEED FROM MARBLEHEAD LAND COMPANY, RECORDED IN BOOK 17520, PAGE 372, OFFICIAL RECORDS.

ALSO EXCEPT ALL LITTORAL RIGHTS TOGETHER WITH THE FULL AND EXCLUSIVE RIGHT TO PRESERVE AND PROTECT SAID LITTORAL RIGHTS AS CONTAINED IN THE ABOVE DEED.

00 0258774

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED MAIL (Article No. 7001 0320 0004 6449 4161) and REGULAR MAIL

January 29, 2003

Ronald J Myers, Trustee of Fossil II Trust
c/o Jeff W. Lane, Esq.
11400 West Olympic Blvd., Ninth Floor
Los Angeles, CA 90064-1565

Subject: **Notice of Intent to Commence Cease and Desist Order Proceedings**

Violation No.: V-4-01-006

Location: 30718 Pacific Coast Highway (APN 4469-026-007) Malibu, Los Angeles County

Violation Description: Noncompliance with the approved plans and conditions of approval of CDP 4-99-154, as a result of the following unpermitted development:

1. construction of residence not according to approved plans, including construction of a wall on the sandy beach under the seaward toe of the deck in non-compliance with Standard Condition Three;
2. construction of non-visually permeable structures (including solid wood gates and fencing, a deck, a stairway, two planters, and installation of new landscaping which obstruct the recorded public view corridors on site in non-compliance with Special Conditions Two and Seven;
3. placement of private property signs on the sandy beach in non-compliance with Special Condition Five;
4. construction of fencing and landscaping within a sensitive dune habitat area and failure to fully implement required dune habitat restoration program in non-compliance with Special Condition Two, and
5. failure to remove previously existing unpermitted landscaping within public view corridor in non-compliance with Special Condition Two.

Dear Mr. Lane:

The purpose of this letter is to notify you, as an attorney representing Ronald J. Myers, Trustee of the Fossil-II Trust, of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist

EXHIBIT 7
CCC-03-CD-1
(FOSSIL-II & MYERS)

Order for violations of the Coastal Act which have occurred at 30718 Pacific Coast Highway (APN 4469-026-007) in Malibu, Los Angeles County ("subject property"). The persons or entities subject to the Cease and Desist Order, which may be issued pursuant to this notice of intent letter are the Fossil-II Trust, as owner of the subject property, Ronald J. Myers, as Trustee of the Fossil-II Trust, as well as the agents, contractors, employees of the Fossil-II Trust and any persons acting in concert with any of the foregoing.

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that ... is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings since development has occurred at the subject property which is inconsistent with a coastal development permit (CDP) previously issued by the Commission, CDP 4-99-154, and development has occurred which requires a CDP or an amendment to CDP 4-99-154, without such a permit being issued.

Since the development activities listed in the violation description on the first page of this letter occurred in violation of the conditions of a previously issued permit, CDP 4-99-154, the Commission staff has decided to initiate Cease and Desist Order proceedings to seek compliance with the conditions of this permit. The Commission has the authority to enforce conditions of CDPs issued by the Commission prior to the certification of the Malibu Local Coastal Program.

The decision of the Commission staff to initiate Cease and Desist Order proceedings is also prompted by the lack of sufficient response to the enforcement staff's communications regarding the nature of the violation and requested methods of resolution. The enforcement staff first notified Mr. Myers of the violations in a letter sent on July 24, 2002. Thereafter, the enforcement staff described the steps necessary to resolve the violation in numerous telephone calls, site meetings on August 14, 2002 and January 22, 2003 and a letter sent on September 4, 2002. Although you or other agents of the owner of this property have indicated a willingness to take action to resolve some of the violations, the Commission staff is initiating the proceedings for issuance of a Cease and Desist Order to ensure that all of the violations at the subject property are resolved in a timely manner.

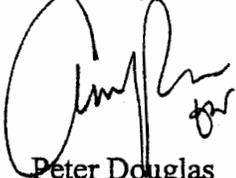
The Cease and Desist Order will direct the parties subject to the order to cease and desist from performing or maintaining any development that is subject to the permit requirements of the Coastal Act without a coastal development permit, or from performing or maintaining any development that is inconsistent with a previously issued CDP and will compel the removal of the unpermitted development. Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit or amendment to an existing permit, pursuant to the Coastal Act.

In accordance with Section 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Abe Doherty, no later than February 18, 2003.**

In addition to other remedies, if the Commission issues a Cease and Desist Order, section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties up to \$6,000 per day for any intentional or negligent violation of the order for each day in which the violation persists.

If you have any questions regarding this letter or are interested in discussing ways to resolve this violation, please call Abe Doherty at (415) 396-9708 or send correspondence to his attention at the address listed on the letterhead.

Sincerely,



Peter Douglas
Executive Director

cc: Abe G. Doherty, Headquarters Enforcement Officer
Lisa Haage, Chief of Enforcement
John Bowers, Staff Counsel
Amy Roach, Deputy Chief Counsel
Steve Hudson, Southern California Enforcement Supervisor
Tom Sinclair, South Central District Enforcement Officer

Enc. Statement of Defense Form for Cease and Desist Order

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-5200

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than February 18, 2003** to the Commission's enforcement staff at the following address:

**Abe Doherty, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105**

If you have any questions, please contact **Abe Doherty** at (415) 904-5297.

JEFF W. LANE
ATTORNEY AT LAW
11400 WEST OLYMPIC BOULEVARD, NINTH FLOOR
LOS ANGELES, CALIFORNIA 90064-1565

Also admitted in New York
* Certified Specialist in Estate Planning,
Trust & Probate Law

Telephone: (310) 575-0606
Telecopier: (310) 575-3266
E-mail: jwllaw99@aol.com

February 11, 2003

BY OVERNITE EXPRESS

Mr. Abe Doherty, Legal Division
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, California 94105-2219

RECEIVED
FEB 13 2003

CA COASTAL COMMISSION
LEGAL DIVISION

Re: 30718 Pacific Coast Highway
Coastal Development Permit 4-99-154

Dear Abe:

As you know, I represent Ronald J. Myers, Trustee of the Fossil-II Trust (the "Trust"). The Trust is the owner of the above-referenced property (the "Property").

In furtherance of your letter dated January 29, 2003 and our subsequent telephone conversations, I am enclosing the following:

1. Letter from the Trust authorizing the undersigned to act on behalf of the Trust with regard to all matters pertaining to the California Coastal Commission.
2. Dune Restoration Plan (revised as of January 5, 2000) prepared by Klaus Radtke, Ph.D.
3. Letter from Geo Safety, Inc. (Dr. Radtke's company) regarding the status of the dune restoration, together with a recent photograph of the dune.
4. Statement Of Defense form. As we discussed, I have marked the form "See Attached Response" and stapled the actual responses to the form.

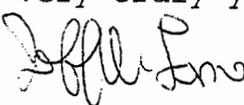
As we discussed, you are preparing a "Consent Decree" for my review which incorporates the discussions which we have had on the various issues. Please send me a draft thereof at your earliest convenience.

EXHIBIT 8
CCC-03-CD-1
(FOSSIL-II & MYERS)

JEFF W. LANE
ATTORNEY AT LAW

Mr. Abe Doherty
February 11, 2003
Page 2

If you have any questions, please feel free to call.

Very truly yours,

JEFF W. LANE

JWL:gs
Enclosures

cc: Ms. Dalia Leon
Ronald J. Myers, C.P.A.
(each with enclosures other than
Dune Restoration Plan)

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1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):**

RECEIVED
FEB 13 2003

SEE ATTACHED RESPONSE

CA COASTAL COMMISSION
LEGAL DIVISION

2. **Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):**

SEE ATTACHED RESPONSE

3. **Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

SEE ATTACHED RESPONSE

SEE ATTACHED RESPONSE

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**
-
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-

SEE ATTACHED RESPONSE

Ronald J. Myers, Trustee of Fossil-II Trust
January 29, 2003

SEE ATTACHED RESPONSE

ATTACHMENT TO STATEMENT OF DEFENSE

30718 Pacific Coast Highway
Coastal Development Permit 4-99-154

NOTE: EXCEPT AS INDICATED BELOW, WHEREVER IT IS INDICATED THAT OWNER "AGREES" TO PERFORM A CERTAIN ACT, THE TIME FOR THE COMPLETION OF SUCH ACT IS APRIL 15, 2003, WEATHER PERMITTING.

SEE CHART ON FOLLOWING PAGE

Wall on Beach under the Seaward Toe	Owner Agrees to Remove Wall
<p>Non-visually Permeable Structures</p> <ol style="list-style-type: none"> 1. Solid Wood Gates 2. Fencing 3. Deck/stairway on side of residence 4. Two Planters/Landscaping 5. Vegetation in view corridor 	<ol style="list-style-type: none"> 1. Owner agrees to install permeable or slated gates (parallel to Pacific Coast Highway). 2. Fences which run perpendicular to the beach to remain. The fences do not block the view of the public from Pacific Coast Highway and are essential for privacy and safety. 3. Owner will remove the deck/stairway. 4. Owner will remove all plants/foilage within the planters which might block the view of the public from Pacific Coast Highway. The planters will not be removed; the planters do not block the view of the public from Pacific Coast Highway. 5. Owner will trim vegetation to comply with "2 foot" high rule where applicable.

<p>Sign On Beach</p>	<p>Owner will replace sign with a sign which contains language approved by the Commission:</p> <p>Suggested language:</p> <p>"Environmentally sensitive dune restoration area, please keep off" [citation to applicable code or statute"].</p>
<p>Dune Habitat Area</p> <p>1. Fencing and landscaping</p> <p>2. Dune Habitat Restoration plan</p>	<p>Owner will remove "lawn" area within dune habitat area. If necessary, the height of the fence will be adjusted so that dune restoration can be performed contiguous to the existing dune restoration. The fence is necessary for privacy and safety.</p> <p>As described in the attached letter, (a) the dune restoration has been performed and (b) enclosed herewith is a copy of the dune restoration plan.</p>
<p>Landscaping within the public view corridor</p>	<p>Owner is applying for permission from Cal Trans to cut the trees/foilage on Pacific Coast Highway (outside the property line).</p> <p>The timing for the completion of this matter is not under Owner's control because permission of a governmental agency is required.</p>

CEASE AND DESIST ORDER CCC-03-CD-01

1.0 TERMS AND CONDITIONS

Pursuant to its authority under Public Resources Code Section 30810, the California Coastal Commission (hereinafter referred to as the "Commission") hereby orders and authorizes Ronald J. Myers as Trustee of Fossil-II Trust, and any successor Trustee, his employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter referred to as "Ronald J. Myers"), to undertake the activities specifically required and authorized by this Cease and Desist Order and to cease and desist from performing any development or action that (a) is in non-conformance with the requirements of Coastal Development Permit (CDP) 4-99-154, or (b) otherwise violates the requirements of the Coastal Act. Accordingly, the Commission orders and authorizes the above-identified persons to comply with the preceding statement and the following terms and conditions:

- 1.1 Within 30 days of the issuance of this Cease and Desist Order, Ronald J. Myers shall submit to the Executive Director for review and written approval plans that address the following elements:
 - a. Project Description: The project description shall include a detailed description of each of the following:
 1. removal of the unpermitted wall under the seaward toe of the deck on the sandy beach, so that the development conforms with the project description of CDP 4-99-154 and final project plans for CDP 4-99-154 which were approved by Commission staff on March 1, 2000 (hereafter "approved plans");
 2. replacement of the existing gates and fencing with gates and fencing that are either (a) as shown on the approved plans, and are visually permeable in a manner that is in conformance with the requirements of Special Condition Seven of CDP 4-99-154 to minimize adverse effects to public views, or (b) an alternative visually permeable design that is consistent with Special Condition Seven and serves to minimize adverse effects to public views, as demonstrated through a detailed view analysis which must be submitted with the Project Description, within 30 days of the issuance of the Order, if option b is chosen;
 3. removal of the unpermitted elevated exit stairway and landing located within the western view corridor, so that the development conforms with the approved plans;
 4. removal of the unpermitted planters and associated landscaping in the recorded public view corridors, or replacement of the planters and associated landscaping with shorter planters and low-lying vegetation such that the combined height of the planters and vegetation does not exceed two feet in height, so that the development conforms with the approved plans and conditions of CDP 4-99-154;

5. removal of the existing signs and, at the option of Ronald J. Myers, installation of new temporary signs within the open space deed restricted area, for the duration of the dune restoration project, with language such as "please do not disturb sensitive habitat restoration project", but with no language such as "private beach" or "private property", so that the development conforms with the approved plans and conditions of CDP 4-99-154;
 6. removal of the unpermitted fencing and landscaping (lawn) from the dune habitat restoration area shown on Exhibit 3 of CDP 4-99-154;
 7. implementation of the required dune restoration project, in accordance with the approved plans, the dune restoration project plans and Special Condition Two of CDP 4-99-154, including through the restoration of the area currently planted with lawn and surrounded by a fence and through the submittal of required monitoring reports; and
 8. removal of all vegetation located between the proposed residence and Pacific Coast Highway, including the existing *Myorporum* and other invasive vegetation, as required by Special Condition Two and the approved landscaping plan.
- b. Project Plans: Detailed project plans, certified by a licensed engineer, are required to show items 1 through 3 of Section 1.1a of this Cease and Desist Order, and at the option of Ronald J. Myers, the new planters (item 4 of Section 1.1 a) and temporary signs (item 5 of Section 1.1.a). If the installation of temporary signs is proposed, the plans must include the proposed language, sign dimensions, sign style and a site plan showing all sign locations. For all plans, submit two copies of both large plans with a scale of 1"= 10' and reduced (8.5" x 11") copies.
- c. The plan shall identify the location of the receptor site for the debris and construction materials that will be removed from the site as a result of the removal of the development required by the Cease and Desist Order. If the receptor site is located within the coastal zone, a CDP may be required.
- 1.2 The Executive Director shall review the plans submitted according to Section 1.1 of this Cease and Desist Order and determine in writing whether they are consistent with the requirements of this order or whether revisions are required. Any revisions that are required must be submitted to the Commission with 15 days of the Executive Director's written determination. Within 45 days of the Executive Director's written determination that the plans are consistent with this Cease and Desist Order, Ronald J. Myers shall complete the work described in the project description and project plans, in strict compliance with the final plans approved by the Executive Director.

2.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is subject to this Cease and Desist Order is described as 30718 Pacific Coast Highway (APN 4469-026-007) in Malibu, Los Angeles County.

3.0 DESCRIPTION OF VIOLATION

The violations of CDP 4-99-154 that are the subject of this Cease and Desist Order are the following: noncompliance with the approved plans required by Special Condition One; noncompliance with Standard Condition Three; and noncompliance with Special Conditions Two (Landscape, Erosion Control, and Dune Habitat Restoration Plan), Five (Sign Restriction), Seven (Public View Corridor), Eight (Assumption of Risk/Shoreline Protection), and Nine (Open Space Deed Restriction), as a result of the following unpermitted development or actions:

1. residence, fence, gates, signs and landscaping not in compliance with the final plans approved by the Commission staff on March 1, 2000, including a wall on the sandy beach under the seaward toe of the deck and the development described below in numbers 2-5;
2. non-visually permeable structures, including solid wood gates and fencing, a stairway and associated landing, two planters, and landscaping in the recorded public view corridors, which obstruct the view corridors;
3. private property signs on the sandy beach;
4. fencing and landscaping within a sensitive dune habitat area and failure to fully implement required dune habitat restoration program; and
5. failure to remove all vegetation located between the proposed residence and Pacific Coast Highway, including the existing *Myorporum* and other invasive vegetation which obstruct the recorded public view corridors.

4.0 PERSONS SUBJECT TO CEASE AND DESIST ORDER

The persons subject to this order are Ronald J. Myers as Trustee of Fossil-II Trust, or any successor Trustee, his employees, agents, and contractors, and any persons acting in concert with any of the foregoing.

5.0 FINDINGS

This Cease and Desist Order is issued on the basis of the findings adopted by the Commission, as set forth in the attached document entitled "Staff Report for Cease and Desist Order No. CCC-03-CD-01."

6.0 EFFECTIVE DATE

This Cease and Desist Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

7.0 EXTENSION REQUESTS

At least 10 days prior to expiration of the deadlines established by this Cease and Desist Order, Ronald J. Myers may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and directed to the attention of Abe Doherty in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Ronald J. Myers has diligently worked to comply with his obligations under this Cease and Desist Order, but cannot meet deadlines due to unforeseen circumstances or other factors beyond his control.

8.0 COMPLIANCE OBLIGATION

Strict compliance with this Cease and Desist Order by all parties subject thereto is required. Failure to comply with any term or condition of this order, including any deadline contained in this order, unless an extension is granted by the Executive Director, will constitute a violation of this order and may result in the imposition of civil penalties of up to \$6,000 per day for each day in which such compliance failure persists pursuant to Public Resources Code Section 30821.6, and imposition of damages and civil liability as a result of the lack of compliance with the order and for the underlying Coastal Act violations as described herein, as provided in Public Resources Code Section 30822 and 30820.

9.0 APPEAL AND STAY

Pursuant to Public Resource Code §30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

On behalf of the Coastal Commission:

Peter Douglas, Executive Director

Date