

# Item TU 14C

## CALIFORNIA COASTAL COMMISSION

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Filed: 7/11/02  
49th Day: 8/29/02  
180th Day: 1/7/03 (Waived)  
270<sup>th</sup> Day: 4/7/03  
Staff: Carey *JH*  
Staff Report: 2/13/03  
Hearing Date: 3/4-7/03



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### STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-01-169

**APPLICANT:** John and Marcia Carsey      **AGENT:** Pamela Schmidt, Jeffer, Mangels, Butler & Marmaro

**PROJECT LOCATION:** 28118 and 28126 Pacific Coast Highway, City of Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Repair and reconstruction of a coastal bluff slope, including the removal of an existing gunite slope protection layer, cutting the slope back to a 2:1 angle, removal of 3,778 cu. yds. of cut material, construction of a series of retaining walls (no greater than 6 feet in height above grade) supported on caissons; revegetation of slope with drought tolerant, native bluff plant species; and construction of paved cart path approximately 5 feet in width to provide access to two existing homes at the base of the bluff.

**LOCAL APPROVALS RECEIVED:** City of Malibu Approval in Concept, Geologic Review

#### STAFF NOTE

This application was filed on July 11, 2002. Under the provisions of the Permit Streamlining Act, the latest possible date for Commission action is April 7, 2003. As such, the Commission must act on Application 4-01-169 at the March 4-7 Hearing.

#### SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project subject to ten special conditions. Conditions include the applicant's assumption of risk, construction responsibilities, conforming to geologic recommendations, erosion control, drainage, and polluted runoff control plans, revegetation plans, color restriction, lighting restriction, deed restriction condition, and condition compliance. Historical photos of the site and other information indicate that the main residence and two beach level residential structures existed on the project site (comprised of two legally created parcels) prior to the effective date of the Coastal Act. Slope grading, retaining wall, placement of gunite, and a paved path

were all constructed on the bluff slope above the beach level structures between 1979 and 1982 without the required coastal development permits. This development was not successful in stabilizing the bluff slope so the applicants are now proposing this project to remove the unpermitted development, to repair the bluff slope, provide protection for the beach level structures, and to provide access for residents of these structures as well as emergency personnel.

**SUBSTANTIVE FILE DOCUMENTS:**

City of Malibu Local Coastal Program, adopted September 13, 2002

Geologic reports for the site, all prepared by the J. Byer Group, Inc.: 1) Response to California Coastal Commission letter, dated May 23, 2002; 2) Geologic and Soils Engineering Memorandum Alternative Repair Plans, dated April 26, 2002; 3) Addendum Geologic and Soils Engineering Report, dated January 9, 2001; 4) Addendum Geologic and Soils Engineering Report, dated December 12, 2000; 5) Plan Review—Proposed Slope Stabilization, dated October 3, 2000; 6) Addendum Geologic and Soils Engineering Report, dated June 29, 2000; 7) Addendum Geologic and Soils Engineering Report, dated June 5, 2000; and 8) Geologic and Soils Engineering Exploration Proposed Remedial Slope Repair, dated January 24, 2000

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following 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 effects on the environment within the meaning of the California Environmental Quality Act.

**II. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall

be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. **Special Conditions**

#### 1. **Assumption of Risk**

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, storm waves, surges, erosion, landslide and flooding.
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.

#### 2. **Construction Responsibilities and Debris Removal**

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt shall occur on the beach; b) that all grading shall be properly covered 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 any and all debris that result from the construction period.

### 3. Disposal of Excavated Material

Prior to issuance of a coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material, including gunite, from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.

### 4. Plans Conforming to Geologic Recommendations

All recommendations contained in the submitted geologic reports, all prepared by the J. Byer Group, Inc.: 1) Response to California Coastal Commission letter, dated May 23, 2002; 2) Geologic and Soils Engineering Memorandum Alternative Repair Plans, dated April 26, 2002; 3) Addendum Geologic and Soils Engineering Report, dated January 9, 2001; 4) Addendum Geologic and Soils Engineering Report, dated December 12, 2000; 5) Plan Review—Proposed Slope Stabilization, dated October 3, 2000; 6) Addendum Geologic and Soils Engineering Report, dated June 29, 2000; 7) Addendum Geologic and Soils Engineering Report, dated June 5, 2000; and 8) Geologic and Soils Engineering Exploration Proposed Remedial Slope Repair, dated January 24, 2000 as well as in all reports referenced therein shall be incorporated into all final design and construction including foundations, construction, grading, and drainage. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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

### 5. Erosion Control, Drainage and Polluted Runoff Control Plans

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

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

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

**b) Storm Water Management Plan**, for the management of post construction storm water and polluted runoff shall at a minimum include the following:

- Site design and source control BMPs that will be implemented to minimize or

- prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development, including, but not limited to:
  - Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the 100 year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the Caltrans "Hydraulic Design and Procedures Manual"). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for 2-year, 10-year and 100-year flow rates, and the required storage volume of the basin/facility is to be based upon 1-inch of rainfall over the proposed impervious surfaces plus 1/2-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street & gutter, shall be sized to cumulatively convey a 100 year clear flow storm event to the detention facility, or;
  - Demonstrating by submission of hydrology/hydraulic report by a California Registered Civil Engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;
  - Constructing necessary off-site storm drain improvements to satisfy b. above, or;
  - Other measures accomplishing the goal of mitigating all offsite/downstream impacts

## 6. Landscaping and Erosion Control Plans

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

**A. Plant Species**

1. Plantings shall be native, drought-tolerant plant species endemic to coastal bluffs, and shall blend with the existing natural vegetation and natural habitats on the site.
2. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu's Invasive Exotic Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.

**B. Timing of Landscaping**

All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.

**C. Landscaping Coverage Standards**

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

**7. Color Restriction**

All retaining walls shall incorporate veneers, texturing and colors that blend with the natural environment. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all the retaining walls authorized by the approval of coastal development permit 4-01-169. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones.

**8. Lighting Restriction**

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

- (1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be

limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.

(2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

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

**9. Deed Restriction Condition**

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

**10. Condition Compliance**

Within 120 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.



#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. Project Description**

The applicant proposes to repair and reconstruct a coastal bluff slope, including the removal of existing gunite slope protection layer, cutting slope back to a 2:1 angle, removal of 3,778 cu. yds. of cut material, construction of a series of retaining walls (no greater than 6 feet in height above grade) supported on caissons; revegetation of slope with drought tolerant, native bluff plant species; and construction of paved cart path approximately 5 feet in width to provide access to two existing homes at the base of the bluff.

The proposed development would be located on the bluff slope behind two existing (constructed prior to the effective date of the Coastal Act) beach level structures. Given this location, the proposed slope repair has no potential to impact public access or recreation.

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

##### **B. Background**

Review of Commission permit records indicates that no coastal development permits have been issued for the proposed project site.

###### **1. Lot Configuration**

The proposed project site is comprised of two parcels: 1) Assessor Parcel Number 4460-033-011 (Parcel 11) which is approximately 3-acres in size; and 2) Assessor Parcel Number 4460-033-010 (Parcel 10), which is approximately 10,000 sq. ft. in size. These parcels are shown on Exhibit 2. The applicants' agent has provided evidence that these lots are two separate, legally created parcels. A grant deed was recorded in 1944 splitting the property into Parcels 10 and 11 (and into Parcel 12, an adjacent lot that is not owned by the current applicant). The applicants have recently submitted a certificate of compliance issued by the City of Malibu (February 3, 2003) for Parcel 10.

## 2. Site Development

There is existing development on the project site. There is a main residence with accessory structures (tennis court, detached garage, guesthouse, gazebo, etc.) on the bluff top. Additionally, there are two residential structures on the beach at the base of the bluff. Finally, there is a paved path down the bluff face with gunite and retaining walls. The main house and the westernmost beach level structure are located on Parcel 11, as described above, and the easternmost beach level structure is located on Parcel 10. The path and gunite slope occupy a portion of Parcels 10 and 11.

The applicant has supplied local government (Los Angeles County) permit information, as well as aerial photographs of the site that provides incomplete evidence of when different development took place on the site. Development of the project site began as early as 1942. A building permit was issued in 1942 for a "boat shelter- not to be occupied by human beings". A building permit was issued in 1945 for a new dwelling. A photo dated 1949 shows these two structures existing on the site. The boat shelter is at beach level at the west edge of the site, while the residence is located on the bluff top. A staircase provided access down the bluff face to the boat shelter. Various additions to the main residence were approved in 1949 and 1951. A photo from 1951 shows the boat house, stairway, and main residence existing on the site.

In 1952, a building permit was issued for new 372 sq. ft. beach cabana on piling foundation. Another permit was issued later in the same year for the addition of a 144 sq. ft. bedroom to the beach cabana. There are records for numerous plumbing and electrical permits issued for the project site throughout the 1950's. Staff would note that the microfilm copies of these records are difficult to read and because there was one address for the whole property, it is not possible to discern which structure these permits relate to. As such, it is not possible to determine when the boat shelter and beach cabana were converted from accessory structures to residences. However, a photo from 1959 shows that the boat shelter has been substantially increased in size. The beach cabana is located at beach level on the east edge of the site (Parcel 10). Additionally, there is a road that descends the bluff from the project site, across the adjacent parcel to the east, ending above beach level. The cut into the bluff above (landward of) this road appears to be fairly recent in the 1959 photo, given the lack of vegetation. There are two stairways that extend from the end of this road to the two beach-level structures on the project site.

In a photo from 1969 (provided by the applicant), the beach cabana is larger in size and access is still provided to the beach level structures on the site by two stairways from the road that terminated on the adjacent parcel. The bluff face above these structures is well vegetated and appears to be unaltered, aside from the existing stairway to the western structure (originally the boat shelter).

Photos in Commission records from 1973 and 1975 show that the bluff road and stairways were still utilized to access the two beach level structures on the project site. The bluff face is well vegetated in these photos.

### **3. Development on the Bluff Slope**

In 1978, the property owner applied for a grading permit and building permit for a slope repair including 1000 cu. yds. of grading, installing drains, repairing slope, retaining walls and replacement of stairs. According to the grading permit, this work was completed in 1982. It is unclear what precipitated the need for a slope repair. However, a geologic investigation performed in 1978 (Slope Damage and Recommended Repair, prepared by Kovacs-Byer and Associated, dated March 31, 1978) states that:

The mudflow which occurred above the residential structure was most likely caused by saturation of the surficial materials during heavy rains. Saturation was enhanced by poor drainage control from above. The mud moved downslope and currently rests against the north wall of the residential structure [western structure on the project site].

This report also states that the existing stairway was destroyed by the mudslide. Finally, this report discusses the feasibility of constructing a driveway on the bluff to the house below.

A 1979 report addresses the slope work that was carried out on the site (Final Geologic and Compaction Report, prepared by Kovacs-Byer and Associated, dated July 12, 1979). This report states that:

Construction of the retaining wall has been completed. The wall is performing well and provides excellent protection for the existing residence. Regrading of the slope face was limited to the upper 30 feet. The grading contractor was of the opinion that the removal and recompaction of the lower 40 feet of the slope could not be performed within reasonable safety precautions. The grading contractor did grade two drainage terraces on the slope above and did create a compacted fill area.

The report concludes that:

The major structure with respect to safety of the residence and stability of the slope is the retaining wall which has been placed at the toe of the slope. This wall prevents debris from moving downslope and serves as a slough catchment area. Also of major importance is the installation of the drains which prevent surface waters from flowing over the slope face. Regrading of the upper portions of the slope has helped to lessen the potential for major failure of the slope.

No information has been provided regarding the necessity for gunite on the slope, or why the slope repairs reviewed by the geologists in 1979 were not signed off as final by Los Angeles County until 1982. Additionally, it is not known when the bluff path that is currently existing on the site was constructed. It was not present on the site in 1975. The slope repair permits include the replacement of stairs, but no mention is made of a path. It does not seem likely that the path could have been constructed after the slope

was covered in gunite. Therefore, the evidence indicates that the path was constructed after the slope repairs were constructed in 1979. It is clear that all of this development on the bluff slope took place after the effective dates of the Coastal Act (1973 and 1977) and that no coastal development permits were issued for the development.

The next available (Commission records) photographs that show the site are from 1986. In these photos, the large expanse of gunite is visible. The bluff road still exists in 1986. A new tennis court exists landward of the main residence. A photograph from 1993 shows that the bluff road significantly reduced in size and overgrown with vegetation.

In addition to the unpermitted development on the bluff slope discussed above, there is other unpermitted development on the project site that is not included as part of the subject permit application. This includes the construction of a tennis court, several septic system improvements, and the construction of a shoreline protective device. These developments are not related to the development addressed in the subject permit application. The disposition of these unpermitted developments will either be addressed through a separate permit or enforcement action by the City of Malibu pursuant to its authority under the adopted Malibu Local Coastal Program, or by the Commission's enforcement unit.

### **C. Bluff/Shoreline Development and Hazards**

The proposed development is located on a bluff top/ beach property 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/Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. Coastal bluffs, such as the one located on the subject site, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. In addition, due to their geologic structure and soil composition, these bluffs are susceptible to surficial failure, especially with excessive water infiltration. Further, removal of native vegetation and/or grading on bluffs increases the likelihood of slope instability.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and blufftop/shoreline development that are applicable to the proposed development.

Sections 30235 and 30253 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that new development shall:

**Section 30235:**

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

**Section 30253 states in pertinent part:**

**New development shall:**

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

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

- 4.2. All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.**
- 4.4. On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.**
- 4.5. Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.**
- 4.10. New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.**
- 4.16 All applications for new development on a beach, beachfront or blufftop property shall include a wave uprush and impact report and analysis prepared by a licensed civil engineer with expertise in coastal engineering which addresses and demonstrates the effects of said development in relation to the following:**
  - The profile of the beach;**
  - Surveyed locations of mean high tide lines acceptable to the State Lands Commission;**
  - The availability of public access to the beach;**

- *The area of the project site subject to design wave uprush;*
  - *Foundation design requirements;*
  - *The need for a shoreline protection structure over the life of the project;*
  - *Alternatives for protection of the septic system;*
  - *The long term effects of proposed development on sand supply;*
  - *Future projections in sea level rise; and,*
  - *Project alternatives designed to avoid or minimize impacts to public access.*
- 4.23 *New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.*
- 4.24 *All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.*
- 4.26 *Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:*
- *No stockpiling of dirt or construction materials shall occur on the beach;*
  - *All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;*
  - *Measures to control erosion shall be implemented at the end of each day's work;*
  - *No machinery shall be allowed in the intertidal zone at any time to the extent feasible;*
  - *All construction debris shall be removed from the beach.*
- 4.27. *All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.*
- 4.29 *No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.*

- 4.37 Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.**
- 4.38 No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave uprush or if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures including, but not limited to, cabanas, patios, pools, stairs, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.**
- 4.42 As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.**

## **1. Blufftop Development**

The LCP contains numerous development standards applicable to all new development on sites located in or near an area subject to geologic hazards. This includes the requirement to submit a geologic, soils, and geotechnical reports addressing the proposed development, and that all recommendations of the geologic consultants are incorporated into the project. The LCP standards require that new development on landslides, steep slopes, unstable soils or other identified geologic hazard adhere to a factor of safety of 1.5 (static) as demonstrated by a quantitative slope stability analysis. Additional standards provide that measures to remediate or stabilize landslides or unstable slopes that endanger existing structures or threaten public health be designed to be the least environmentally damaging alternative, and to incorporate maximum feasible mitigation measures, and best management practices (BMPs) to control drainage and erosion.

The Malibu LCP policies require that new development minimize risk to life and property in areas of high geologic, flood and fire hazard and assure stability, structural integrity or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. In addition, the LCP requires that revetments, seawalls and cliff retaining walls shall be permitted when required to protect existing structures in danger from erosion when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Coastal bluffs are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow runoff from the top of the bluff and from wave action at the base of the bluff. The Commission, through permit actions, has typically prohibited new development directly on a bluff. Bluffs that have been altered through past removal of natural vegetation, grading and/or other construction for development such as roads, paths, stairways, gazebos, cabanas, etc. are more susceptible to erosion and slope failure. Given that bluffs are by definition an erosional feature, development on a blufftop may eventually be endangered. In order to ensure that new development will be safe from erosion and failure of bluff slopes, the Commission has required that new development provide a maximum setback from the edge of coastal bluffs. Although the Commission has acted to ensure that new development is sited and designed to minimize hazards associated with coastal bluffs and to minimize any future need for the construction of protective devices (such as seawalls at the base of bluffs, and retaining walls on bluffs), there is existing development in Malibu that is located either at the base of a bluff, on a bluff face or near the edge of a blufftop.

In this case, there are two existing structures on the beach level at the base of the coastal bluff on the project site. As described above, these structures were constructed prior to the effective date of the Coastal Act. One of the structures is on a separate legal parcel. The bluff slope above the beach level structures is experiencing surficial failure. A previous slope stabilization project included the placement of fill on the slope. This material is now moving downslope. A layer of gunite that was placed on top of the slope and fill material has broken down, allowing runoff to infiltrate to the slope. The fill material beneath the gunite has moved downslope, further cracking the gunite. If the slope were to completely fail, the material would likely cause major damage or destruction to one or both of the beach level structures.

## **2. Proposed Development**

The applicants propose to repair and reconstruct the coastal bluff slope, including the removal of the existing gunite slope protection layer (to be disposed of in an offsite location), cutting the slope back to a 2:1 angle, removal of 3,778 cu. yds. of cut material, construction of a series of retaining walls (no greater than 6 feet in height above grade) supported on caissons; revegetation of the slope with drought tolerant, native bluff plant species; and construction of a paved cart path approximately 5 feet in width down the bluff slope to provide access to the two existing homes at the base of the bluff.



The applicants have submitted the following geologic reports regarding the proposed project site, all prepared by the J. Byer Group, Inc.: 1) Response to California Coastal Commission letter, dated May 23, 2002; 2) Geologic and Soils Engineering Memorandum Alternative Repair Plans, dated April 26, 2002; 3) Addendum Geologic and Soils Engineering Report, dated January 9, 2001; 4) Addendum Geologic and Soils Engineering Report, dated December 12, 2000; 5) Plan Review—Proposed Slope Stabilization, dated October 3, 2000; 6) Addendum Geologic and Soils Engineering Report, dated June 29, 2000; 7) Addendum Geologic and Soils Engineering Report, dated June 5, 2000; and 8) Geologic and Soils Engineering Exploration Proposed Remedial Slope Repair, dated January 24, 2000.

The geologic consultant concluded that after the proposed slope repair, the slope would be stable. The January 24, 2000 report states that: "The analysis shows that the subject property and the proposed slope will be grossly stable with a factor of safety in excess of 1.5". Further, the June 5, 2000 report states that:

Relative to Section 111 [Malibu Building Code], it is the finding of The J. Byer Group that following the implementation of the recommendations contained in this report, the subject property will be free of potential geologic and geotechnical hazards such as landsliding, slippage, settlement, fault rupture, and liquefaction. The proposed development and grading will not adversely effect the site or adjoining properties.

### **3. Project Alternatives**

Commission staff requested that the applicants' consultants analyze alternative projects for the repair of the bluff slope. Alternatives considered (Geologic and Soils Engineering Memorandum Alternative Repair Plans, dated April 26, 2002) include: 1) no grading; 2) re-gunite existing slope; 3) removal of beach level structures and regrading slopes; 4) 25 ft. high retaining wall; 5) trim slope to natural grade; and 6) stairway instead of path. The first alternative considered was essentially the no project alternative. This would include leaving the slope in its present condition or to limit the project to just removing the gunite layer. This alternative was determined to result in a hazardous condition on the site. Failure of the slope could lead to damage or destruction of the beach level structures.

The second alternative would be removing the damaged gunite layer and installing new gunite on the bluff slope. While new gunite would prevent infiltration of surface runoff, it would not retain the slope and would not increase the stability of the slope. The third alternative considered includes the removal of the existing beach level structures and regrading the slopes (including cut and fill). While the majority of the slope would be stable under this scenario, the consultant found that portions of the slope at the margins would be overly steep and not grossly stable. Alternative No. 4 would consist of a 25-foot high retaining wall built at the base of the slope, trimming the slope to a 2:1 gradient, 20-foot high retaining wall at the top of the cut slope, and a 2:1 compacted fill slope above. While this would result in slope stability, the consultant rejected the fourth

alternative because the City of Malibu allows a six-foot maximum height on retaining walls. Staff would note that while the view of the retaining wall at the base of the bluff would be screened by the existing beach level structures, a 20-foot high wall on the slope would have significant visual resource impacts.

The fifth alternative would be to trim the slope to a gradient ranging from 1:1 to 1.35:1 with two level drainage benches. The consultants determined that this alternative would result in a slope that would not be grossly or surficially stable, with a factor of safety less than 1.5. Finally, the sixth alternative identified by the applicants' consultants included a series of retaining walls up to six feet in height, trimming the slopes to 2:1, and construction of a stairway to provide access to the beach level structures. This alternative is essentially the same as the proposed project, except that it does not include the paved cart path. The geologists determined that this alternative is feasible and would result in a slope that is grossly and surficially stable.

#### **4. Analysis**

As noted above, the Commission has required that new development be located a sufficient distance from the edge of coastal bluffs to ensure that new development will be safe from erosion and failure of bluff slopes. Additionally, the Commission has not permitted the construction of development on bluff faces. The City of Malibu LCP policies provide that new development may not be located on bluffs and that development on bluffs must provide an adequate setback to all a minimum 100-year economic life of any structures. Although the Commission has acted to ensure that new development is sited and designed to minimize hazards associated with coastal bluffs and to minimize any future need for the construction of protective devices (such as seawalls at the base of bluffs, and retaining walls on bluffs), there is existing development in Malibu that is located either at the base of a bluff, on a bluff face or near the edge of a blufftop. In such cases, the Commission has recognized that shoreline or bluff protection may be necessary to protect existing development. Policy 4.37 of the LCP does provide for bluff protection structures to protect structures that existed prior to the effective date of the Coastal Act when it can be demonstrated that the structures are at risk from identified hazards, the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate impacts to local sand supply.

In this case, the applicants propose a slope repair, including the construction of retaining walls on a bluff face, in order to protect existing, beach level residential structures that were constructed prior to the effective date of the Coastal Act (1973 and 1977). The bluff slope has been subject to past surficial failure. Past grading, retaining wall and gunite on the slope did not successfully repair the slope (at least not in the long term). Without protection, the bluff slope will eventually fail, causing damage or destruction to the beach level structures below. The consultants' reports demonstrate that the existing structures are at risk from slope failure. Alternative project designs have been considered. The alternative chosen will minimize risks to life and property from hazards, as well as minimize impacts to visual resources, by limiting the height of

the retaining walls and providing revegetation of the slope with native bluff plant species. In this case, the proposed bluff protective structures will not affect shoreline sand supply, because the existing structures are located between the ocean and the base of the bluff. As such, the bluff does not contribute material to the littoral system.

The proposed project also includes the construction of a paved path to provide access down the bluff slope to the residences below. As described above, the existing path on the site was not permitted. Therefore, the proposed project cannot be considered repair and maintenance of an existing structure. Access to the beach level structures was previously obtained from a road on the bluff that ended on the neighboring parcel to the east and two stairways from that road. That parcel is not owned by the applicants and the road is overgrown at this point. So, it does not appear to be feasible to provide access in that manner. Prior to construction of the existing path, there was also a stairway that descended the bluff slope to provide access to the westernmost beach structure. The path itself does not contribute to the stability of the bluff repair. As described above, the sixth alternative project reviewed by the geologic consultant is a slope repair with stairs instead of the proposed path. That alternative project would be stable and would provide protection for the existing beach level structures. As such, a stairway is a feasible alternative to provide access to the existing beach level structures.

However, the applicants' representatives have stated that the path is the minimum necessary to provide access for people and supplies from the main house to the beach structures. They also assert that some members of the household are older and require such a path to gain access. Finally, the applicants' representatives have stated that the proposed path, along with an electric golf cart (a model that can accommodate a stretcher) is the most reasonable mode of access with regard to fire and or emergency personnel. The Los Angeles County Fire Department has reviewed the applicants' plan for the path with golf cart and determined that: "...this will provide access that meets the spirit of the Fire Code".

While the proposed path is not an element of the project that is necessary to assure slope stability, the path can be incorporated into the overall stabilization and slope repair. The proposed retaining walls are necessary to stabilize the slope. These walls can be designed such that the path is incorporated. The path itself will have no visual resource or other impacts beyond those associated with the remainder of the slope repair project. Therefore, the Commission concludes that in this particular case, given the existing (prior to the effective date of the Coastal Act) beach level development, the need to repair the failing bluff slope to protect the existing development, and the need for adequate access to these structures in the case of emergency, the incorporation of the path into the slope repair can be permitted.

## **5. Conclusion**

As discussed above, the proposed project will serve to repair the existing bluff slope, protect the existing beach level structures on the site, and to ensure general geologic and structural integrity. However, the submitted geologic reports include a number of

recommendations to ensure the geologic stability and geotechnical safety of the site. To ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into all new development, **Special Condition No. 4** requires the applicant to submit project plans certified by the consulting geologist and geotechnical engineer as conforming to all geologic and geotechnical recommendations, as well as any new or additional recommendations by the consulting geologist and geotechnical engineer to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, sewage disposal and drainage. Any substantial changes to the proposed development approved by the Commission that may be recommended by the consultants shall require an amendment to the permit or a new coastal development permit.

The Commission also finds that due to the possibility of erosion, landslide, and flooding, 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 that may occur as a result of the permitted development. In addition, the Malibu LCP specifically requires that land owners of bluff and beachfront properties subject to wave action and erosion shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The applicant's assumption of risk, as required by **Special Condition No. 1**, when executed and recorded on the property deed (as required by **Special Condition No. 9**), 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.

The Commission also finds that the minimization of site erosion will add to the stability of the site. In addition, the Malibu LCP requires that graded and disturbed areas be revegetated to minimize erosion. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants endemic to coastal bluffs and compatible with the surrounding environment. In past permit actions, the Commission has found that invasive and non-native plant species are typically characterized as having a shallow root structure in comparison with their high surface/foilage weight and/or require a greater amount of irrigation and maintenance than native vegetation. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize bluff slopes and bluff top areas and that such vegetation results in potential adverse effects to the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foilage weight but also by their low irrigation and maintenance requirements. Further, they can be maintained without the use of permanent irrigation systems, which can cause excessive infiltration of water into the bluff, potentially leading to slope failures. Therefore, in order

to ensure the stability and geotechnical safety of the site, **Special Condition No. 6** requires that all proposed disturbed and graded areas on subject site are stabilized with native bluff vegetation.

The project will increase the amount of impervious coverage on-site which may increase both the quantity and velocity of stormwater runoff. If not controlled and conveyed off-site in a non-erosive manner, this runoff may result in increased erosion, affect site stability, and impact downslope water quality. The applicant's geologic / geotechnical consultant has recommended that site drainage be collected and distributed in a non-erosive manner. In addition, Malibu LCP policy 4.10 requires that "new development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams". Therefore, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by **Special Condition No. 5** (the specific provisions of this requirement are discussed in the water quality section below), to submit drainage and polluted runoff management plans for the construction and post-construction phases of development that are prepared by the consulting engineer.

To ensure excess excavated material, including gunite, is moved off site so as not to contribute to unnecessary landform alteration and to minimize erosion and sedimentation from stockpiled excavated soil, the Commission finds it necessary to require the applicant to dispose of the material at a appropriate disposal site or to a site that has been approved to accept fill material, as specified in **Special Condition No. 2**.

Finally, **Special Condition No. 9** requires the applicant to record a deed restriction that imposes all terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of the Malibu LCP.

#### **D. WATER QUALITY**

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

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

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

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

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

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

- 3.102 *Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour storm event for volume-based BMPs and/or the 85<sup>th</sup> percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.*
- 3.110 *New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.*
- 3.111 *New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.*
- 3.115 *Permits for new development shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required BMPs. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility.*
- 3.116 *The City, property owners, or homeowners associations, as applicable, shall be required to maintain any drainage device to insure it functions as designed and intended. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.*
- 3.118 *Some BMPs for reducing the impacts of non-point source pollution may not be appropriate for development on steep slopes, on sites with low permeability soil conditions, or areas where saturated soils can lead to geologic instability. New development in these areas should incorporate BMPs that do not increase the degree of geologic instability.*
- 3.119 *New development that requires a grading permit or Local SWPPP shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.50. Any landscaping that is required to control erosion shall use native or drought-tolerant non-invasive plants to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.*
- 3.120 *New development shall protect the absorption, purifying, and retentive functions of natural systems that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner.*



*Disturbed or degraded natural drainage systems shall be restored, where feasible, except where there are geologic or public safety concerns.*

The proposed project also includes the repair of a bluff slope, including the construction of retaining walls, grading, and the construction of a paved path to provide access down the bluff slope to the residences below. As described above, the existing retaining wall, gunite, and path on the slope were not permitted. Given this history, the proposed retaining walls and path will represent a decrease in the permeable surfaces on the site over the natural condition. The Commission notes that the reduction in permeable surface leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak stream discharge is increased and the peak occurs much sooner after precipitation events. Changes in the stream flow result in modification to stream morphology. Additionally, grading, excavations and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion of disturbed soils and in sedimentation of nearby coastal stream and waters. As discussed above, it is particularly important in this case to control erosion in order to assure geologic stability.

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

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the preparation of a Storm Water Management Plan (SWMP) for all projects that require a coastal development permit or a Water Quality Mitigation Plan (WQMP) for new residential developments that involve one acre or more of disturbance or redevelopment projects that result in the creation or addition or replacement of 5,000 sq. ft. or more of impervious surface. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to



minimize or prevent adverse effects of the project on water quality. A WQMP requires treatment control (or structural) BMPs, in addition to site design and source control BMPs that are required for a SWMP, to minimize or prevent the discharge of polluted runoff from a project site. In this case, the new area of impervious surface is less than 5,000 square feet and therefore requires a SWMP as specified by the Malibu LCP. Therefore, the Commission finds that it is necessary to require the preparation of a SWMP for the subject site, as specified in **Special Condition No. 5**.

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from runoff during construction. The Malibu LCP requires that a Local Storm Water Pollution Prevention Plan (SWPPP) be prepared for all development that requires a Coastal Development Permit and a grading or building permit, and it shall apply to the construction phase of the project. The SWPPP includes measures and BMPs to prevent erosion, sedimentation and pollution of surface and ocean waters from construction and grading activities. In this case, the proposed project does involve grading and construction that requires grading and building permits. Therefore, pursuant to the Malibu LCP and to ensure the proposed development does not adversely impact water quality or coastal resources during the construction phase of the project, the Commission finds it necessary to require the applicant to submit a Local SWPPP for the subject site, consistent with the requirements specified in **Special Condition No. 5**.

The Commission finds that based on the above findings the proposed slope repair and paved path, as conditioned, will not result in adverse impacts to water quality and is consistent with the Malibu LCP.

### **E. Visual Resources**

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP policies require that new development not be visible from scenic roads or public viewing areas. The LCP policies limit the maximum height of retaining walls and require that walls that will be visible incorporate veneers, texturing, and colors that blend with the surrounding earth materials in order to minimize the visual impact of such structures.

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

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

*prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.*

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

- 6.1 *The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.*
- 6.2 *Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.*
- 6.3 *Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.*
- 6.9 *All new development shall be sited and designed to minimize alteration of natural landforms by:*
  - *Conforming to the natural topography.*
  - *Preventing substantial grading or reconfiguration of the project site.*
  - *Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.*
  - *Requiring that man-made contours mimic the natural contours.*
  - *Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.*
  - *Minimizing grading permitted outside of the building footprint.*
  - *Clustering structures to minimize site disturbance and to minimize development area.*
  - *Minimizing height and length of cut and fill slopes.*
  - *Minimizing the height and length of retaining walls.*
  - *Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.*
- 6.14 *The height of permitted retaining walls shall not exceed six feet. Stepped or terraced retaining walls up to twelve feet in height, with planting in between, may be permitted. Where feasible, long continuous walls shall be broken into sections or shall include undulations to provide visual relief. Where feasible, retaining walls supporting a structure should be incorporated into the foundation system in a stepped or split level design. Retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.*

- 6.16 *Blufftop development shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure, as detailed in Policy 4.27.*
- 6.23 *Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.*
- 6.29 *Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:*
- *Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.*
  - *Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.*
  - *Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.*
  - *Lawn shall not be located on any geologically sensitive area such as coastal blufftop.*
  - *Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.*

The project site is located immediately seaward of Pacific Coast Highway. The proposed development would be above the beach, just east (downcoast) of Paradise Cove. The project includes the removal of existing gunite, grading a bluff slope, construction of several retaining walls, and a paved path

As discussed above, the alternative chosen will minimize risks to life and property from hazards, as well as minimize impacts to visual resources, by limiting the height of the retaining walls and providing revegetation of the slope with native bluff plant species. The proposed retaining walls are necessary to stabilize the slope. These walls can be designed such that the path is incorporated. The path itself will have no visual resource or other impacts beyond those associated with the remainder of the slope repair project.

The Commission has found that in highly scenic areas, the color of a structure can adversely impact a viewshed if the color is not consistent with the surrounding environment. For example, white structures are highly visible from long distances and can adversely impact the visual resources from scenic highways, trails, and public view areas. Structures that have exterior colors and materials that are compatible with the surrounding environment are less visually obtrusive. Policy 6.14 of the Malibu LCP

requires that retaining walls be no greater than six feet in height. Additionally, this policy provides that retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. In this case, all of the proposed retaining walls on the bluff slope are six feet or less in height. The retaining walls are proposed to be constructed of concrete with caisson foundations. No information has been provided regarding the exterior surface treatment of the retaining walls. Therefore, in order to ensure that the exterior side of each retaining wall will incorporate veneers, textures, and colors that will blend with the earth, rocks, and other features of the surrounding environment, **Special Condition No. 7** provides for the preparation of a color palette and material specifications for all retaining walls consistent with the LCP policy. Additionally, as discussed above, **Special Condition No. 6** requires the preparation and implementation of a revegetation plan for the bluff slope. Revegetation of the slope after the grading and construction of retaining walls will not only hold the soil on the slope, minimizing erosion and sedimentation, but it will also help to soften and screen the retaining walls and path, thereby minimizing the visual impacts of these structures.

The Commission has also found that night lighting of areas in the Malibu / Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Policy 6.23 of the Malibu LCP specifically requires exterior lighting to be concealed so that no light source is directly visible from public viewing areas. Therefore, **Special Condition No. 8** restricts the use of exterior lighting on the subject property to the minimum necessary for safety purposes.

Finally, **Special Condition No. 9** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

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

## **F. Violation**

Unpermitted development has taken place prior to submission of this permit application including slope grading, construction of a retaining wall, construction of a paved bluff path, and placement of gunite. The subject application addresses this unpermitted development on the bluff slope, including the removal of the gunite, removal of fill material, and removal of the bluff path, as well as new development proposed at this time, including additional slope grading, retaining walls, revegetation, and construction of a new bluff path. In order to ensure that the matter of unpermitted development on the bluff slope is resolved in a timely manner,

**Special Condition 9** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 120 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

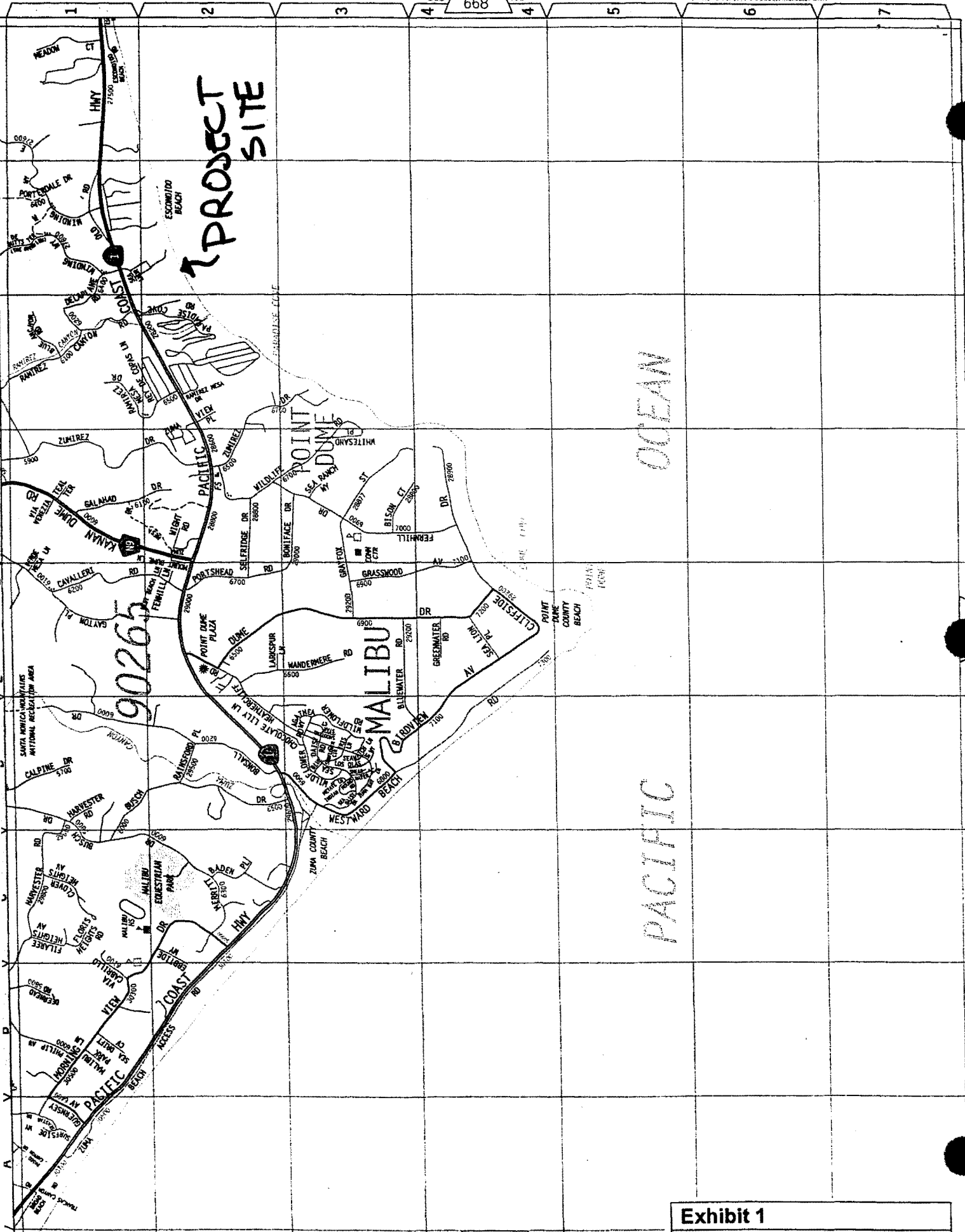
In addition to the unpermitted development on the bluff slope discussed above, there is other unpermitted development on the project site that is not included as part of the subject permit application. This includes the construction of a tennis court, several septic system improvements, and the construction of a shoreline protective device. The disposition of the unpermitted developments not addressed by this application will either be addressed through a separate permit or enforcement action by the City of Malibu pursuant to their authority under the adopted Malibu LCP or by the Commission's enforcement unit.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

#### **G. California Environmental Quality Act**

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

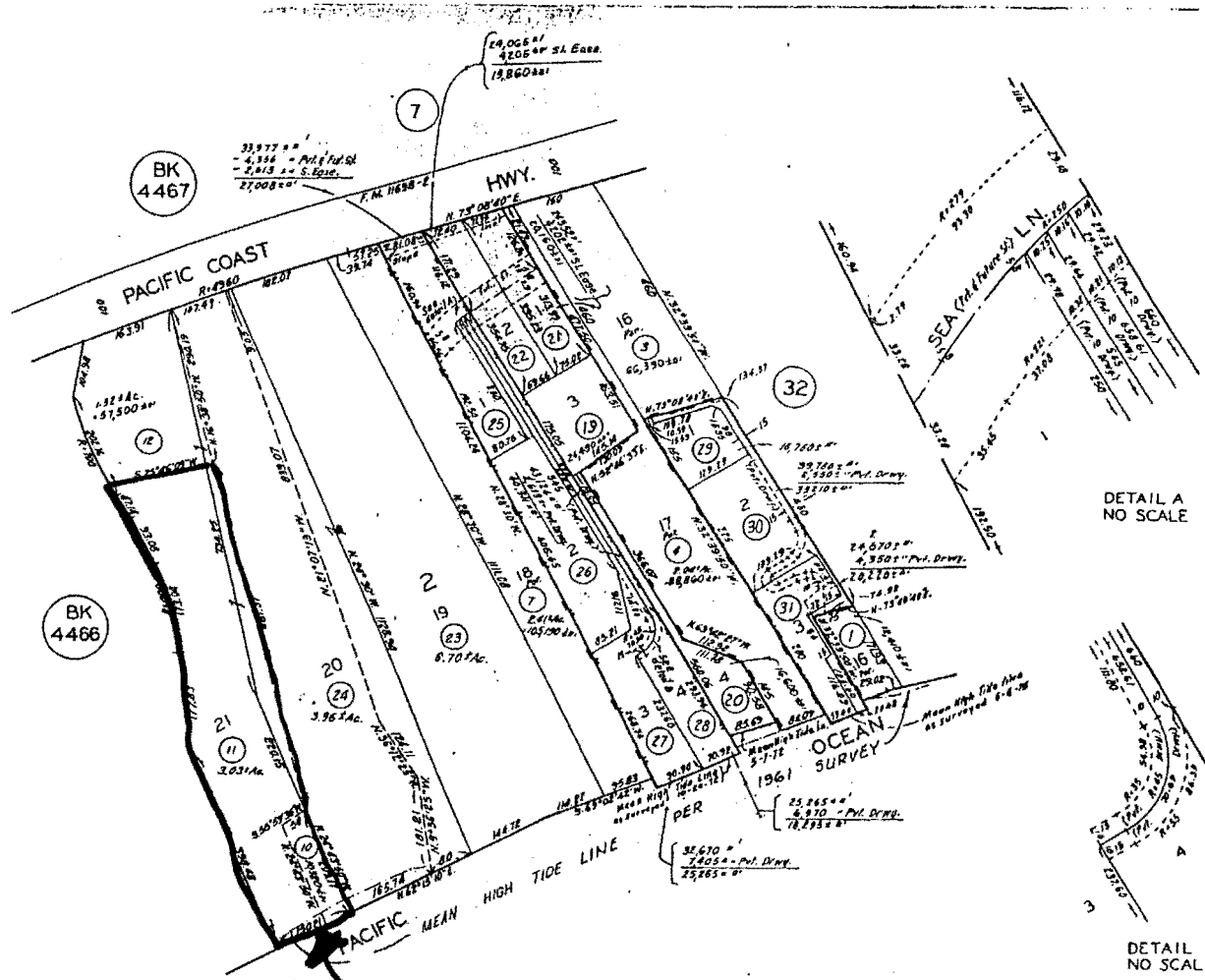
The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be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



**Exhibit 1**  
**Permit 4-01-169 (Carsey)**  
**Vicinity Map**

4460 33  
SCALE 1" = 200'

1992



720920101  
130820103  
730914  
731205  
741223202  
75054601  
750904  
780713002  
910605

DETAIL A  
NO SCALE

DETAIL B  
NO SCALE

PROJECT SITE

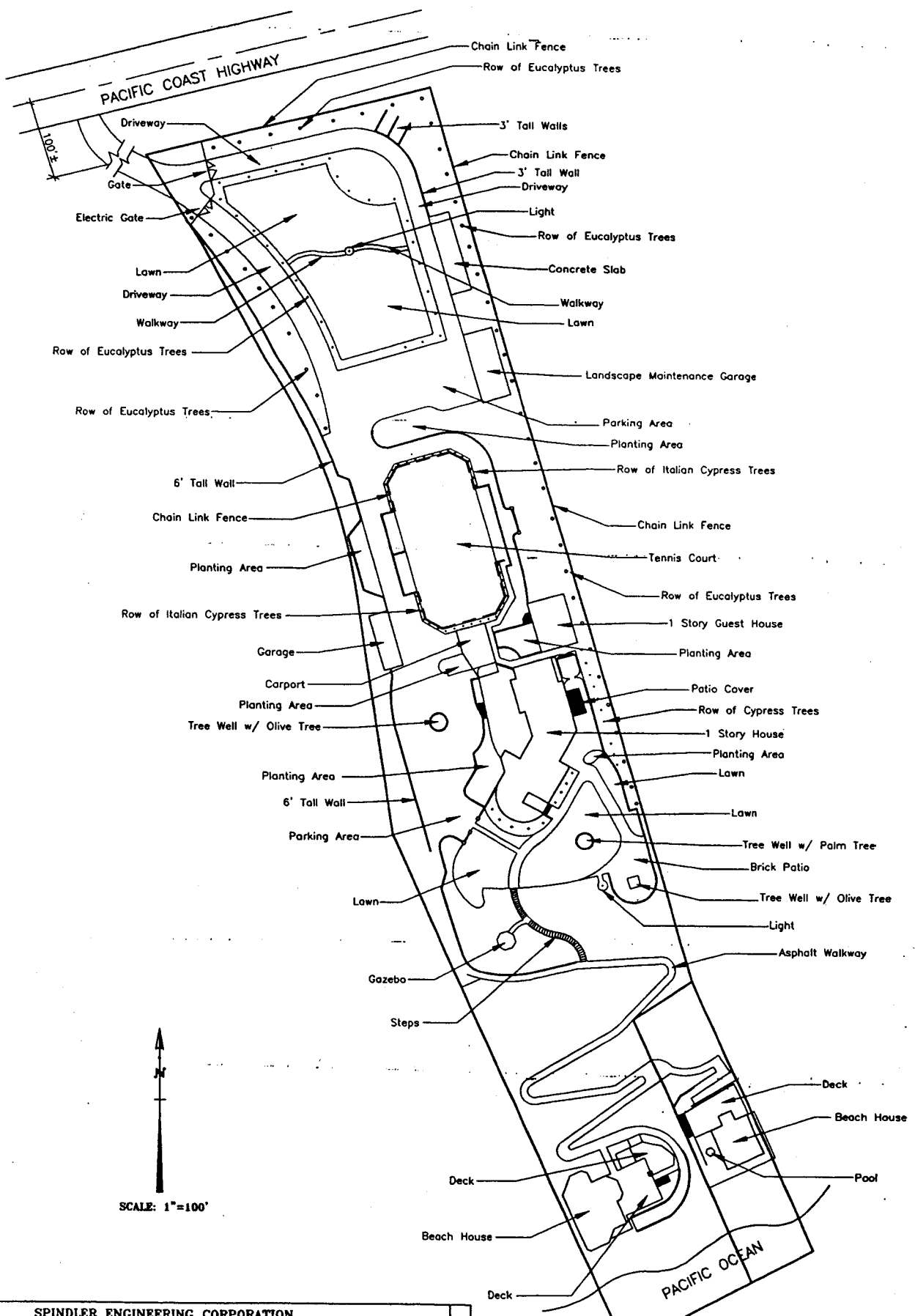
Exhibit 2  
Permit 4-01-169 (Carsey)  
Parcel Map


CODE  
10853


FOR PREV. ASSM'T SEE:  
4460 - 33

PARCEL MAP . . . . . P. M. 73 - 100  
TRACT NO. 12935 . . . . . M. B. 248 - 39 - 40  
PARCEL MAP . . . . . P. M. 39 - 85  
PARCEL MAP . . . . . P. M. 46 - 68

ASSESSOR'S MAP  
COUNTY OF LOS ANGELES, CALIF.



  
 SCALE: 1"=100'

<b>SPINDLER ENGINEERING CORPORATION</b> 16823 SATICOY STREET VAN NUYS, CA 91406 (818) 782-2788 (323) 873-1788 FAX: (818) 782-0111 RONALD W. SPINDLER R.C.E. 13194	
JOB NO. 3733.00	CLIENT 28126 PACIFIC COAST HIGHWAY; MALIBU, CA 90265
PURCHASER DATE NOV 2001	PROJECT PLOT PLAN
SCALE 1"=50'	

**Exhibit 3**  
**Permit 4-01-169 (Carsey)**  
**Overall Site Plan**





NOTE: ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.  
 ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.  
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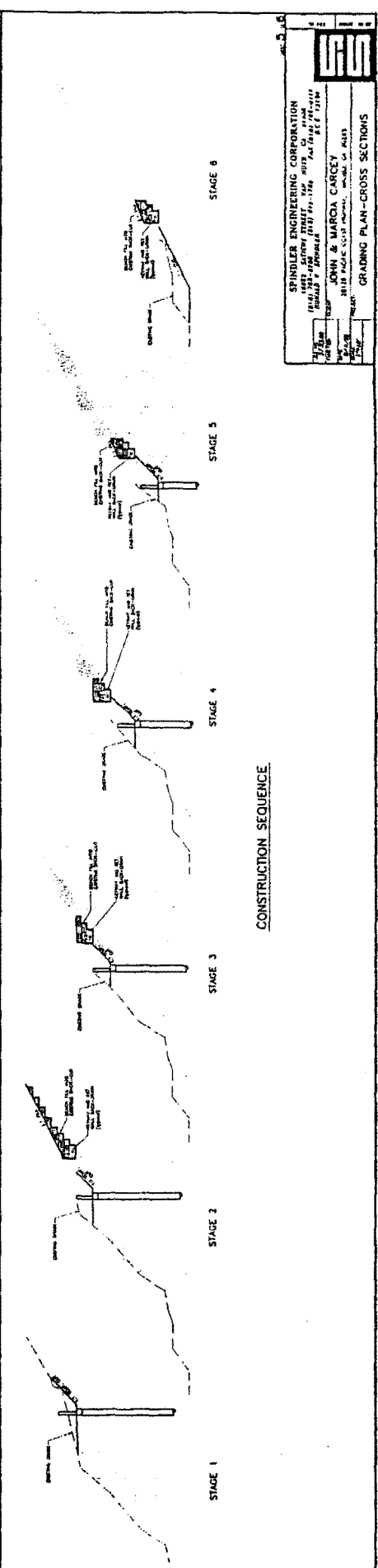
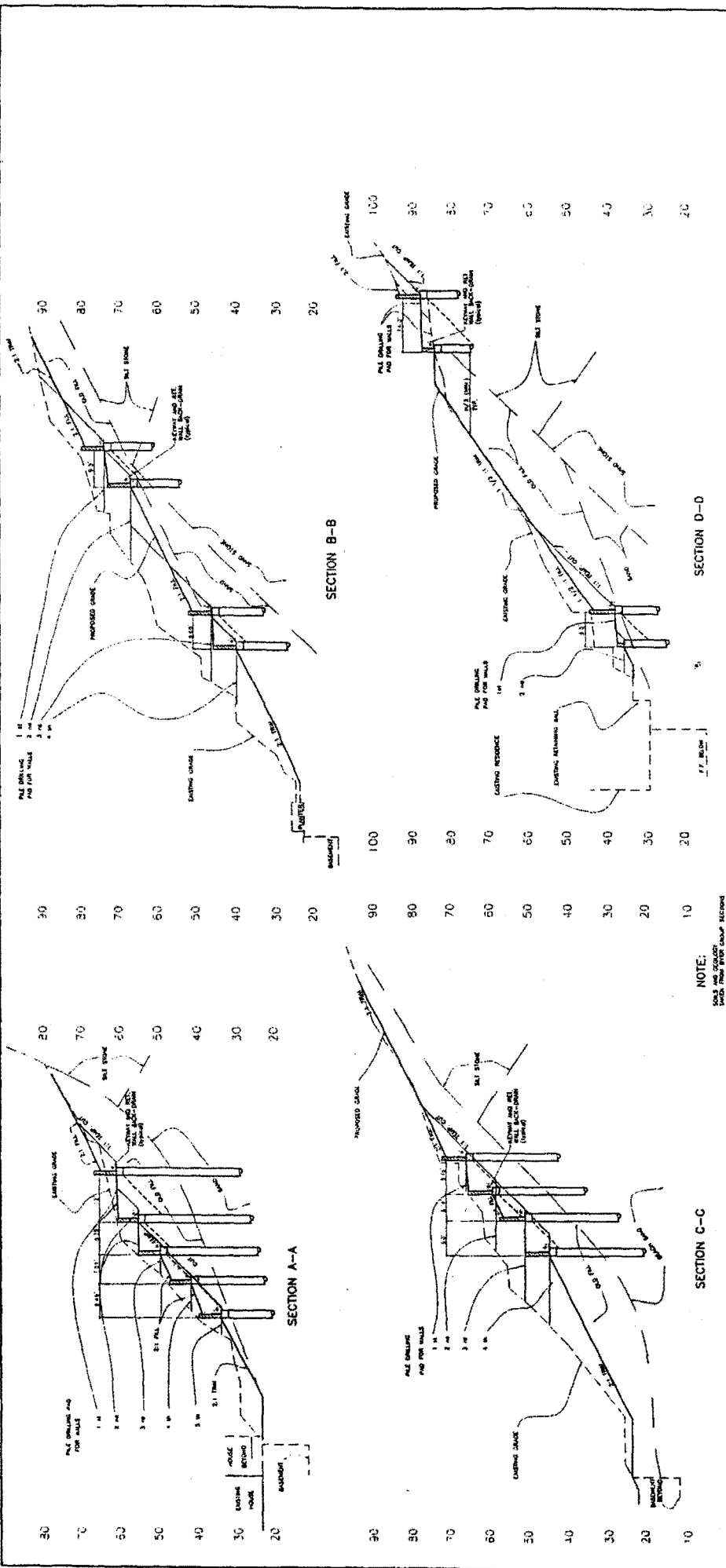
SHEET 3 OF 6

**SHUGLER ENGINEERING CORPORATION**  
 160, 170-172  
 210 170-172  
 170 170-172

**JOHN A. SHUGLER, P.E.**  
 170 170-172  
 170 170-172

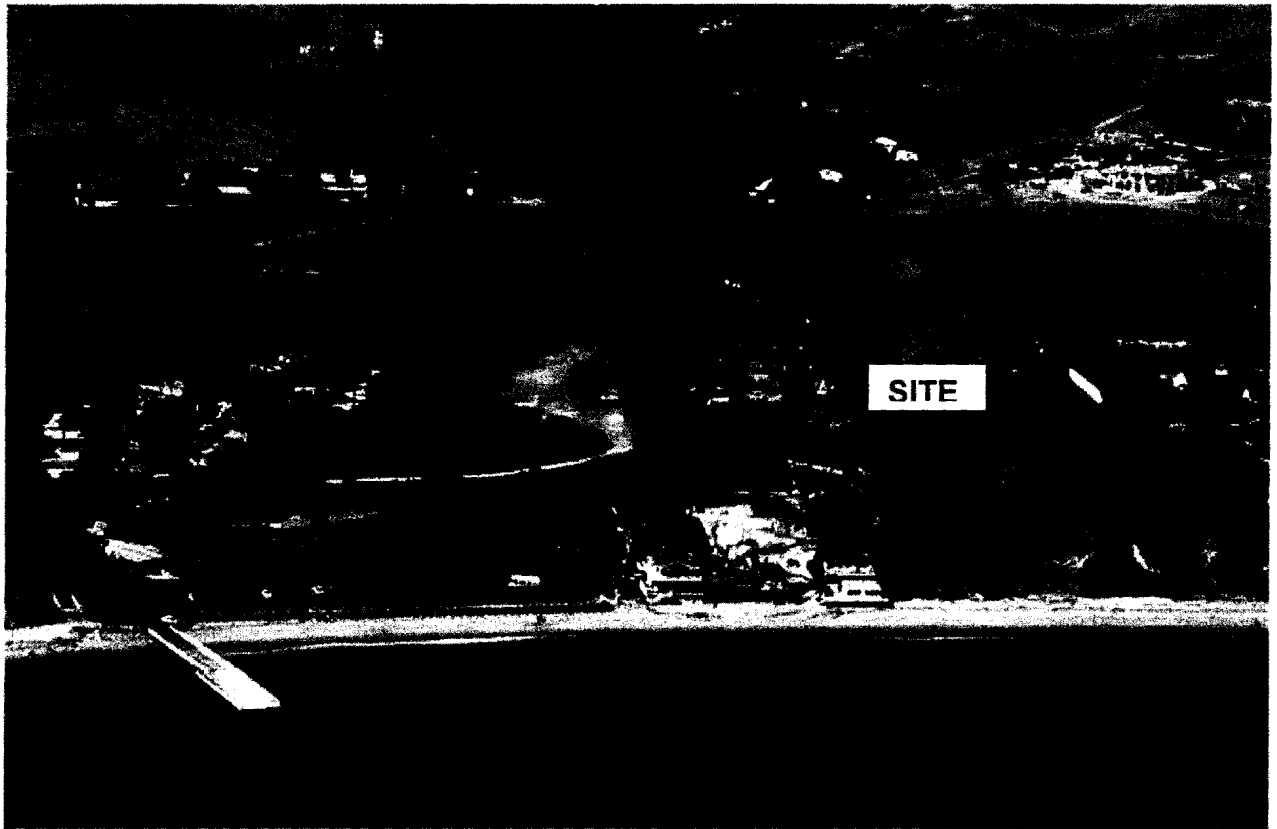
**SLIDE RESTORATION**

**Exhibit 4**  
**Permit 4-01-169 (Carsey)**  
**Grading Plan**



SPINDLER ENGINEERING CORPORATION	
1111 1/2 N. 1st St. Ste. 100	Portland, Oregon 97208
Phone: 503-228-1111	Fax: 503-228-1112
Project: PERMIT 4-01-169	Client: CITY OF PORTLAND
Prepared by: JOHN & MARCO CARCEY	Checked by: JACOB
Date: 11/18/2010	Scale: AS SHOWN
GRADING PLAN - CROSS SECTIONS	

**Exhibit 5**  
**Permit 4-01-169 (Carsey)**  
**Cross Sections**



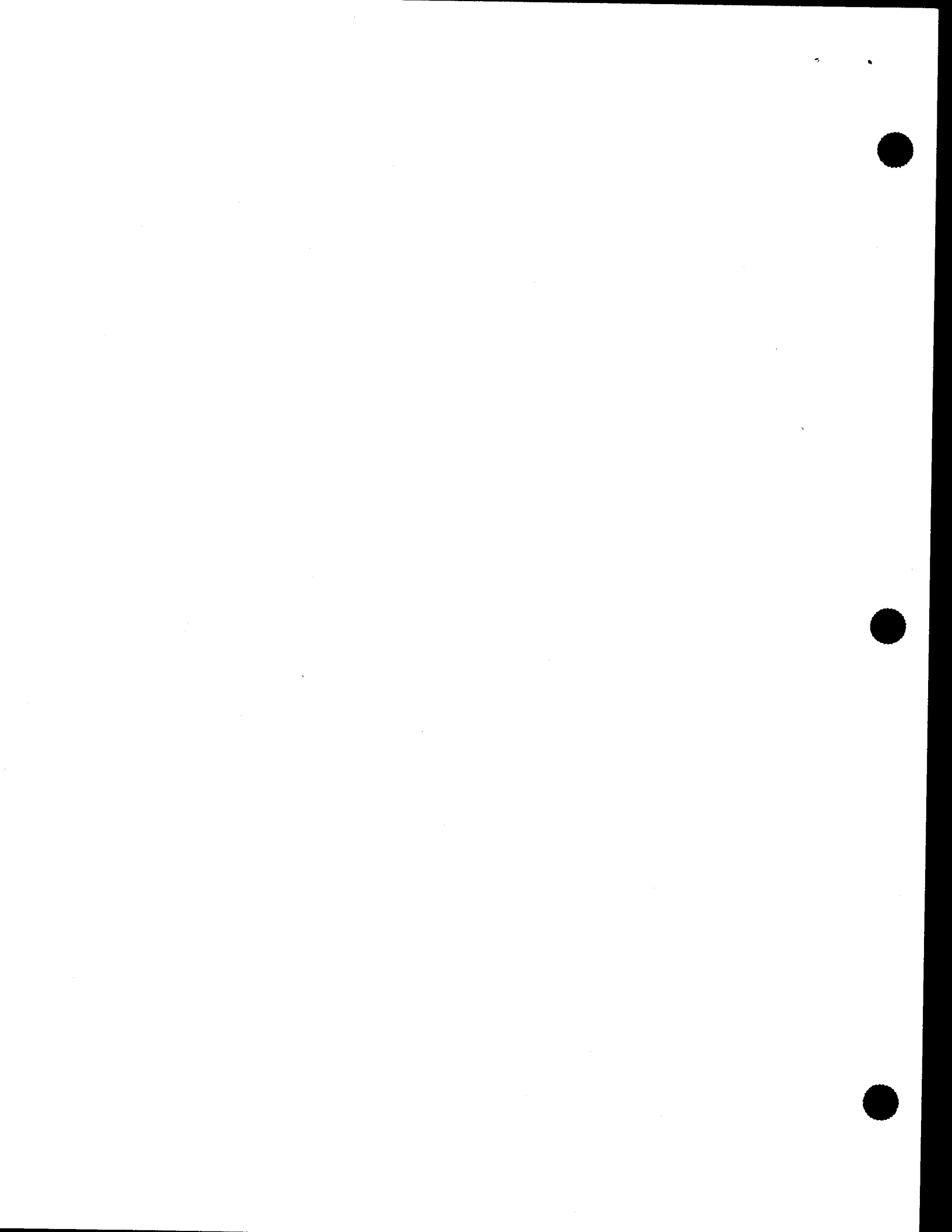
Copyright © 2002-2003 Kenneth Adelman, California Coastal Records Project

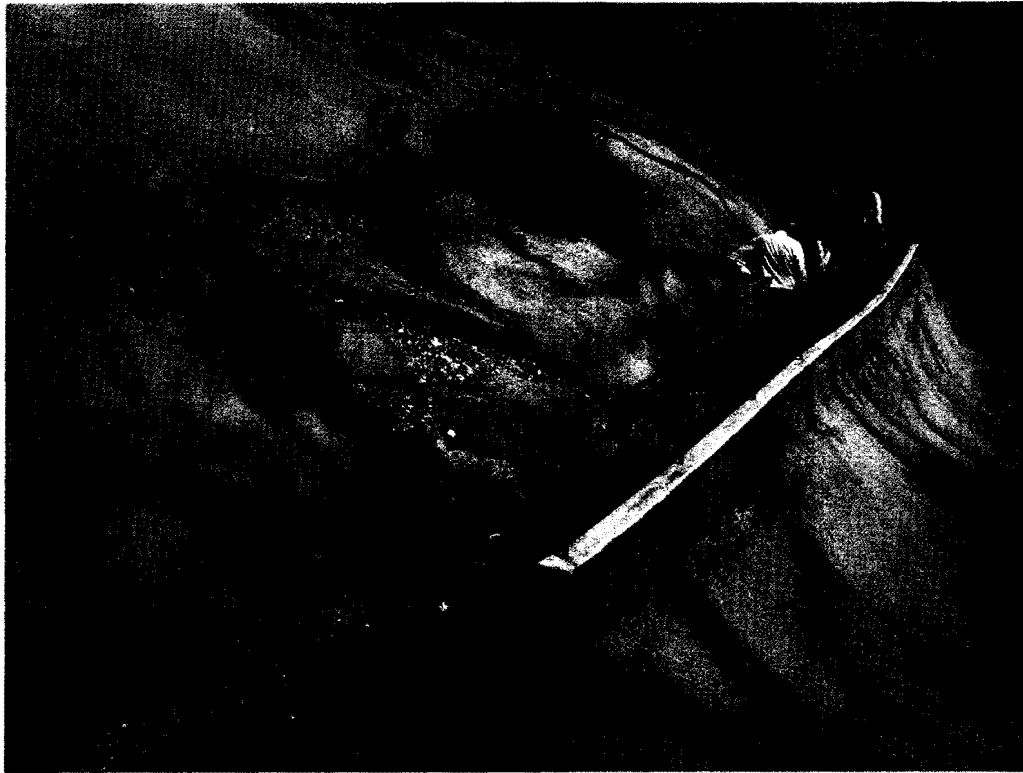
The proposed project site is located just downcoast of the Paradise Cove Pier. The gunite slope is highly visible, with the existing beach level structures below.

**Exhibit 6**

**Permit 4-01-169 (Carsey)**

**Aerial Photograph**





View of deteriorating gunite and failing fill material on bluff slope.



View from beach below. Existing beach level structures are in the foreground.

<b>Exhibit 7</b>
<b>Permit 4-01-169</b>
<b>(Carsey)</b>
<b>Photos</b>

