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CALIFORNIA COASTAL COMMISSION
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RECORD PACKET COPY

Request Filed: 3/7/03
Staff: J Johnson
Staff Report: 6/26/03
Hearing Date: 7/12/03
Commission Action:

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NO.: 4-02-166-R

APPLICANT: LAS Investments **AGENT: Alan Block**

PROJECT LOCATION: 24166 Malibu Road, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Proposal to demolish retaining wall, and construct 2-story 4,871 sq. ft. single-family home, 742 sq. ft. garages, bulkhead retaining wall, concrete piles, alternative septic system, below-grade slide retention structure, 291 cu. yds. of grading, and no landscaping.

COMMISSION ACTION: Approved with standard and special conditions.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **Deny** the reconsideration request. The Commission approved a coastal permit for the requested application to construct a new residence with two special conditions requiring that the residence be redesigned to provide for a continuous public view corridor along 20% of the street frontage completely open without any visual obstructions.

The Commission made clear and supportable findings as to why these required special conditions were necessary pursuant to the applicable standard of review: the City of Malibu Local Coastal Program (LCP) which includes the Land Use Plan (LUP).

The applicant argues three legal error issues: 1) the Commission reconsider its decision on the basis of relevant new evidence which was not available at the time of the hearing, the City proposes to Amend their Local Coastal Program to include the language of Malibu Municipal Code Section 9.1.10(c)(2); 2) The decision was legally erroneous as a matter of law as the Commission was estopped from applying the September 2002 Malibu Land Use Plan pursuant to Malibu Municipal Code Section 9.1.10(c)(2); and 3) as result of the Appellate Court's decision in "Marine Forest", the Commission exceeded its constitutional authority in certifying the September 2002 Malibu LCP. Staff has reviewed each of these contentions presented in Alan Block's letter dated March 7, 2003 (Exhibit A), his letter dated March 10, 2003 (Exhibit B) and the letter from Drew Purvis dated March 5, 2003 (Exhibit C). Staff recommends that the Commission deny this request because these allegations are not supported by the information in the record or the applicable law.

Procedural Note:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an

application, or of any term or condition of a coastal development permit which has been granted (California Code of Regulations, Title 14, Sections 13109.1 et seq.)

The regulations state further that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627 which states in applicable part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

Applicant's Contentions:

The applicants contend that three legal errors occurred:

1) The Commission reconsider its decision on the basis of relevant new evidence which was not available at the time of the hearing, the City proposes to Amend their Local Coastal Program to include the language of Malibu Municipal Code Section 9.1.10(c)(2);
2) The decision was legally erroneous as a matter of law as the Commission was estopped from applying the September 2002 Malibu Land Use Plan pursuant to Malibu Municipal Code Section 9.1.10(c)(2); and
3) As a result of the Appellate Court's decision in "Marine Forest", the Commission exceeded its constitutional authority in certifying the September 2002 Malibu LCP.

Each of these claims will be examined in detail in the findings below. The full text of the Applicant's reconsideration request is attached as two separate letters in Exhibits A and B. Staff has reviewed both of these letters.

I. Motion and Resolution

MOTION:

"I move that the Commission grant reconsideration of the conditional approval of Coastal Permit No. 4-02-166."

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

The Staff recommends a NO vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION: The Commission hereby denies the request for reconsideration of the Commission's decision on Coastal Development Permit No. 4-02-166 on the grounds that there is no new relevant evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has there been an error of fact or law that has the potential of altering the Commission's initial decision.

II. Findings and Declarations

The Commission finds and declares as follows:

A. Background:

The subject site located within the City of Malibu, is located seaward of Malibu Road about east of Malibu Bluffs State Park Recreation Area and west of Malibu Colony Plaza. The applicants submitted an application to demolish a retaining wall, and construct a 2-story 4,871 sq. ft. single-family home, 742 sq. ft. garages, one two car, the second a one car garage, bulkhead retaining wall, concrete piles, alternative septic system, below-grade slide retention structure, 291 cu. yds. of grading (25 cubic yards of cut and 266 cubic yards of fill, 242 cubic yards of imported fill), and no landscaping

The Commission approved a coastal development permit (CDP) for the LAS project subject to conditions on February 6, 2003. The Commission's basis for the public view corridor requirements on the subject lot (Conditions Ten and Eleven, Exhibit D) was that the standard of review for coastal permits applications, after the adoption of the City of Malibu Local Coastal Program, is the Malibu LCP. Pursuant to the requirements of Public Resources Code section 30166.5, the Commission adopted the Malibu LCP on September 13, 2002. The Malibu LCP provides that, for CDP applications that were filed by the Commission and are still pending at the time of approval of the LCP, the applicant has the option of withdrawing the application and filing it with the City, or it may remain with the Commission for completion of review. The LCP expressly states that review of pending applications that remain with the Commission "shall determine consistency with the Certified Local Coastal Program." (Malibu LCP, Local Implementation Plan section 13.10.2 (D)). LAS did not withdraw its application and it remained with the Commission. The Commission approved the LAS project with eleven Special Conditions; the last two are the Conditions of concern to the applicant (Exhibit D). Special Condition No. Ten requires the applicant to submit revised plans providing for a continuous 20% public view corridor along the street frontage. Special Condition No. Eleven requires that this 20% continuous view corridor be maintained from Malibu Road to the Pacific Ocean.

B. Contentions and Responses:

The applicant submitted a letter dated March 7, 2003 which states:

On February 6, 2003 the Commission approved CDP No. 4-02-166 subject to numerous Special Conditions over the objection of the Applicant who strenuously objected to Special Condition Nos. 10 and 11.

Specifically, the Applicant requested the deletion of Special Condition Nos. 10 and 11 because they unreasonably required the applicant to submit revised plans for the review and approval of the Executive Director evidencing that a continuous 20% frontage view corridor along the frontage street be provided to the public. The applicants request to delete Special Conditions Nos. 10 and 11 was denied by the Commission on the ground that the September 2002 Malibu Land Use Plan ("LUP") required a 20% contiguous view corridor for development on Malibu Road without exception. The applicant hereby requests the Commission reconsider its February 6, 2003 on the basis of relevant new evidence which was not available at the time of the hearing on February 6, 2003, as well as the fact that the decision was legally erroneous as a matter of law, in that the Commission was estopped from applying the September 2002 Malibu Land Use Plan ("LUP") to the Applicants CDP application pursuant to Malibu Municipal Code S9.1.10(c)(2).

1. Applicant's First Claim of Legal Error

a. Text of Applicant's Claim:

The applicants letter dated March 7, 2003 requesting revocation, alleges that:

The Commission Was Estopped Pursuant to Malibu Municipal Code S 9.1.10(c)(2) From Applying The 2002 Land Use Plan To The Subject Project.

The applicant argues that:

"As a matter of law, the Commission was estopped from applying the September 2002 Malibu LUP to the Applicant's CDP application. Although acquisition of a vested right is generally predicted upon issuance of a building permit, the premise of the doctrine is that the issuance of the permit constitutes a *promise* by the approving agency that a subsequent adopted ordinance will not prohibit the proposed use. *Hock Investment Company v. City and County of San Francisco,* (1989) 215 Cal. App.3d 438, 448-449. In *Hock*, the appellate court found that an *express promise* by the approving agency that the application [for development] will be evaluated under the ordinance at the effective date of submittal is equivalent to issuance of a building permit under vested rights analysis, and that as long as an applicant reasonably relies upon the express promise to its significant detriment in completing and filing its application, the approving agency would be estopped from applying a new ordinance to the application. *Id.* At 449. The court further found that the existence of an estoppel is a question of law when existence of estoppel is the only reasonable conclusion that can be drawn from the evidence. *Id.*

Here, the applicant purchased the subject property in the Fall of 1999. The application for the proposed development was deemed complete by the City of Malibu in March 2000. After more than two years of costly design and engineering,

the project was approved by the City, and the project received the applicable approval in concept by the City in March 2002 and in August 2002, the CDP application for the project was deemed complete by the Commission.

During the entire process the subject project was processed pursuant to the City's local ordinances and the guidelines set forth in the Commission's certified 1986 Malibu/Santa Monica LUP. There is no dispute that the Applicant's reliance on the 1986 Malibu/Santa Monica LUP was reasonable and justified in that the application for proposed development was accepted as complete by the City of Malibu in March 2000. Nor is there any question that the Applicant will suffer severe detriment and manifest injustice if the September 2002 Malibu LUP is applied to the subject project when the implementation of Special Condition Nos. 10 and 11 would require the complete redesign of the proposed residence, a loss of approximately 25% of the total square footage of the proposed residence, and subject the Applicant to a "continuous public viewing corridor" on Malibu Road that had never been imposed previously on any property owner along Malibu Road.

At the time the Applicant's CDP application was deemed complete by the City of Malibu in March 2000 and the Commission in August 2002, the 1986 Malibu/Santa Monica LUP was in effect. The 1986 Malibu/Santa Monica Mountains LUP has provided the guidelines for development in Malibu since its certification, and does not contain any policy relating to public view corridors on Malibu Road. The only reference to "20% public view corridors" in the 1986 LUP related only to new development on Pacific Coast Highway, a designated scenic corridor.

Malibu Municipal Code S 9.1.10(c)(2) required the City to process the application for the proposed development pursuant to the ordinances in effect at the time the application was accepted as complete by the City. Said ordinance provides as follows:

> "Applications accepted by the City shall be processed and approved or denied subject to the provisions of this Article that were in effect at the time that the application was accepted as complete by the City."

As stated by the Court of Appeal in Hock:

> "The purposed of a regulation providing an express promise that a subsequently adopted ordinance will not prohibit the proposed use is manifest. It attempts to provide some degree of certainty to the developer that its application will be evaluated in accordance with the law in effect at a particular time. It recognizes the problem for the developer that the approval process is a lengthy one, and much time and effort are expended on the project even as the developer pursues the necessary approvals. It gives the developer some assurance of being able to complete the project, or at least being able to obtain the permits in accordance with the law in effect at a particular time." *Hock* at 447-448.

Malibu Municipal Code S 9.1.10(c)(2) was obviously intended to provide some legislative assurance to the developer that once the application process is

completed and submitted, the rules would not change, and serves the same purpose with respect to development as Government Code S66474.2, the map-filing freeze provision of the Subdivision Map Act, does for subdivision map approvals. Section 66474.2 provides that:

> "In determining whether to approve or disapprove a tentative map, the approving agency must apply only the ordinances, policies, and standards in effect on the date on which the application for the tentative map is considered to be complete."

The Commission in applying the 2002 Malibu LUP policies to the subject development, was in essence applying a subsequently enacted City "ordinance" or requirement of law to the pending application. Clearly, the September 2002 Malibu LUP is a City "ordinance', although prepared and certified by the Commission. Pursuant to the above stated California appellate court law, it cannot do so. Clearly, if the City was hearing new applications for CDPs it could not apply the standards of the 2002 Malibu LUP. Neither can the Commission. To permit the same would result in inconsistent decisions which would obviously deny equal protection to similarly situated applicants.

Thus, pursuant to Malibu Municipal Code S 9.10.1(c)(2), since the Applicant's application for the proposed project was deemed complete by both the City of Malibu and the Commission prior to adoption of the September 2002 Malibu LUP, and since the applicant reasonably relied on the 1986 Malibu/Santa Monica LUP for over three years prior thereto, the Commission should, as a matter of law, be estopped from applying the September 2002 Malibu LUP to the Applicant's CDP application because to do so would cause manifest injustice and significant detriment to the Applicant. "

b. Commission's Response:

It was not an error of law for the Commission to apply the policies and standards of the Malibu LCP in its review of the LAS project. As stated above, the LCP provides that for applications that were filed by the Commission and still pending when the Commission approved the Malibu LCP, the applicable standard of review is the 2002 Malibu Local Coastal Program. (Local Implementation Plan section 13.10.2 (D)). The 1986 Malibu/Santa Monica Mountains Land Use Plan is not applicable to this project. The 1986 Malibu/Santa Monica Mountains Land Use Plan was drafted and adopted by the County of Los Angeles, prior to incorporation of the City of Malibu. The County LUP is not binding on the Commission because the Commission has not certified a complete Local Coastal Program for the County. The LUP is considered *guidance* by the Commission for project sites located within the County of Los Angeles, however, as stated above, it is not binding on the Commission. For projects in the County, the California Coastal Act continues to be the standard of review. Following incorporation of the City of Malibu in 1991, the policies of the Coastal Act continued to be the standard of review for projects located within the City, until the Commission adopted the Malibu LCP in September 2002. Upon adoption of the Malibu LCP, the policies and

standards of the LCP became the standard of review for development in the City of Malibu, including the LAS project. (Local Implementation Plan section 13.10.2. (D)).

One component of the 2002 Malibu Local Coastal Program is the Land Use Plan which includes policies that state:

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 ***New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.***

6.4 ***Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.***

6.7 ***The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.***

6.15 ***Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.***

6.16 ***Blufftop development shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure, as detailed in Policy 4.27.***

6.16 ***Where parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive descend from the roadway, new development shall be sited and designed to preserve bluewater ocean views by:***

- ***Allowing structures to extend no higher than the road grade adjacent to the project site, where feasible.***
- ***Limiting structures to one story in height, if necessary, to ensure bluewater views are maintained over the entire site.***
- ***Setting fences away from the road edge and limiting the height of fences or walls to no higher than adjacent road grade, with the exception of fences that are composed of visually permeable design and materials.***
- ***Using native vegetation types with a maximum growth height and located such that landscaping will not extend above road grade.***

6.18 For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:

- ***Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.***
- ***The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor.***
- ***No portion of any structure shall extend into the view corridor.***
- ***Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.***
- ***In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 70 percent maximum of the total lineal frontage of the overall project site and that the remaining 30 percent is maintained as one contiguous view corridor.***

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.***

The applicant argues that Malibu Municipal Code section 9.1.10(c)(2) prevents application of the Malibu LCP public view corridor policies to this project. This is incorrect. The provisions of the Malibu Municipal Code, including Section 9.1.10(c)(2) are not binding on the Coastal Commission. Local ordinances set forth in the City's Municipal Code cannot limit the discretion of the Coastal Commission. The Malibu LCP does not contain any policy or standard that is comparable to Malibu Municipal Code section 9.1.10(c)(2). Recognizing this, the City Council apparently asked to the Planning Director to draft a proposed amendment that would add such language to the LCP; however, no such amendment has been submitted to the Commission. Upon adoption by the Commission in September 2002, the policies and standards of the

Malibu LCP became applicable to any decision on an application for development in Malibu made after that date. Since the Malibu LCP does not contain language comparable to Municipal Code section 9.1.10(c)(2), the provisions of that ordinance are not applicable to the Commission's review of pending CDP applications for development in Malibu, including the LAS application.

The applicant argues that the Commission, in applying the Malibu LCP to this pending application, was effectively implementing City ordinances, and therefore should also comply with the City Municipal Code. This argument ignores the fact that, even if the City was the entity making the decision on this application, it could not rely on Municipal Code section 9.1.10(c)(2) as the basis for ignoring the public view corridor requirements of the LCP. The certified Malibu LCP specifically addresses the situation present here, where a Malibu ordinance is in conflict with a requirement of the certified Malibu LCP. The LCP states:

> **"1.3.1 Conflict with Other Provisions**
>
> If there is a conflict between a provision of the Malibu LCP and a provision of the General Plan, or any other City-adopted plan, resolution, or ordinance not included in the LCP, and it is not possible for the development to comply with both the LCP and such other plan, resolution or ordinance, the LCP shall take precedence and the development shall not be approved unless it complies with the LCP provision."

Accordingly, the Malibu LCP expressly provides that, if application of a city ordinance would result in a different outcome than is required by the provisions of the Malibu LCP, the LCP takes precedence and the development must comply with the LCP. Here, applying Municipal Code section 9.1.10(c)(2), as the applicant requests, would result in a failure to comply with the public view corridor requirements of the Malibu LCP Land Use Plan. The Malibu LCP Local Implementation Plan mandates the opposite outcome: the development must comply with the LCP provisions, rather than the city ordinance. In other words, the view corridor requirements of the LCP may not be ignored based on the provision in the city municipal code that is not included in the LCP. This would be true regardless of whether the Commission or the City was making the decision on the permit application.

In addition, the applicant's argument that the City's preliminary approval of the project creates a vested right is erroneous. The applicant received *preliminary* approval from the City for its preferred site plan and public view corridor alignment. As the applicant knew or reasonably should have known, the approval of the Coastal Commission was *also* required before it had all governmental approvals that were necessary to build the proposed project. A vested right to construct development does not exist until *all* required government approvals have been obtained. *Billings v. California Coastal Commission* (1980) 103 Cal.App.3d 729, 735. The fact that the City of Malibu has chosen to adopt an ordinance restricting its authority to apply newly adopted standards to pending applications for development, does not in any way limit the authority of the Coastal Commission. The Coastal Commission is not subject to any rule, regulation or statute that restricts its discretionary review of applications for development in this

manner. Therefore, the standards that the Commission applies to a permit application are the standards that exist at the time of the agency's decision. *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 793-795. When the Legislature has intended to restrict an agency's ability to apply new standards to pending development proposals, it has done so through an express statutory provision, as in the Subdivision Map Act example cited by the applicant. (Government Code Section 66474.2). Likewise, the applicant's discussion of the Court of Appeal decision in *Hock Investment Company v. City and County of San Francisco*, (1989) 215 Cal.App.3d 438, refers to an applicant's reasonable reliance on an approving agency's *express promise* that an application for development will be evaluated under the ordinances in effect at the time of submittal. There was no such promise by the Coastal Commission in this matter.

Because the knowledge of the Coastal Commission is continually evolving and conditions change, it is not uncommon for the Commission to apply new conditions to protect coastal resources, sensitive habitat, water quality and public views of the ocean, for example, that differ from the requirements that the Commission has previously imposed.

The applicant argues that it relied on the City approval of its plans to its detriment, and should not have to incur the expense of preparing the revised plans that the Commission required. The applicant had no vested right to obtain Commission approval of the same plans that the City approved. The Commission may impose conditions to reduce impacts to coastal resources. One of these conditions may require an applicant to revise the project plans to modify the size, location, height, or design of structures. It is not reasonable to rely on the City's preliminary approval as a guarantee that the Coastal Commission will not require preparation of revised plans for the project.

Finally, the applicant also argues that the Commission is estopped from applying the new public view corridor standards of the Malibu LCP to its project. Estoppel can only apply where good faith reliance on a governmental representation has resulted in a substantial detriment. *Patterson v. Central Coast Regional Commission* (1976) 58 Cal.App.3d 833, 844. In this case, the Commission has approved a permit allowing the applicant to built a large residence. Even with the required continuous 20% view corridor, which the applicant alleges will reduce the size of its proposed development by 25%, the applicant may still build a residence of over 4,000 square feet that includes one or two garages. In light of this approval, the applicant has not suffered any substantial detriment and the Commission cannot be estopped. Furthermore, the Commission did not make any representation to the applicant that it would not require protection of public views of the ocean in this matter or would apply particular public view corridor requirements, that the applicant could have reasonably relied on. Accordingly, estoppel does not apply to the Commission's decision on the LAS application.

In conclusion, the Commission finds that the Applicant's first claim of error in law that "the Commission was estopped pursuant to Malibu Municipal Code S9.1.10(c)(2) from applying the 2002 Malibu LCP Land Use Plan requirements to the subject project is not supported by the information in the record or by applicable law. The Commission finds

that it was not an error of law to apply the public view corridor requirements of the Malibu LCP to the project.

2. Applicant's Second Claim of Legal Error

a. Text of Applicant's Claim:

The applicants letter dated March 7, 2003 requesting revocation, alleges that:

> **"The City of Malibu Preparation of a LUP Amendment incorporating the language of Malibu Municipal Code S 9.1.10 (c)(2) into the 2002 LUP, as well as deleting the reference to Malibu Road in Policy 6.18 is relevant new evidence."**

The applicant argues that:

> "In order to ensure that the legislative intent of Malibu Municipal Code S9.1.10 (c)(2) is preserved, and that the absurd results discussed above do not occur, the Malibu City Council, on February 10, 2003, requested it's Director of Planning, Mr. Drew Purvis, to draft an amendment to the September 2002 Malibu LUP incorporating the language of the Malibu Municipal Code S 9.1.10©(2). As stated by Mr. Purvis in his letter to my office, dated March 5, 2003:"
>
> > "In their discussion on February 10, 2003, the City Council specifically requested this office to include in the proposed LUP amendment text which would incorporate the language of Malibu Municipal Code S 9.1.10©(2) regarding Standard of Review as follows:
> >
> > > Coastal Development Permit Applications accepted by the City shall be processed and approved or denied subject to the provisions of the Land Use Plan that were in effect at the time that the application was accepted as complete by the City."
> >
> > Mr. Purvis' letter further provides as follows:
> >
> > > [T]he City Council has requested the proposed LUP Amendment to include text that would revise Policy 6.18 of the LUP to delete both 1) the word "continuous" from said policy to the effect that future construction on any lot be limited to 80% of the entire lineal street frontage in order to maintain an open public viewing corridor not be required to be continuous, and 2) that the reference to Malibu Road be deleted from the policy in that Malibu Road has never been designated a scenic highway, is substantially built out, and fails to provide for continuous east/west traffic due to restricted access from the west."
> >
> > There is no question but that the recent City action subsequent to the Commission's decision in approving the Applicant's CDP application with the contested Special Condition Nos. 10 and 11 constitutes "relevant new

evidence which, in the exercise of reasonable diligence, could not have been presented at the February 6, 2003, hearing on this matter."

c. Commission's Response:

The action of the City Council of Malibu to request their staff to draft proposed LUP amendment text is not relevant new information or evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter.

Any action of the local government with jurisdiction on the subject property commenced after the Commission's public hearing and decision on the applicant's Coastal Development Permit is simply not relevant. The City Council's action on March 5, 2003, to request their staff to draft a proposed amendment adding the language of Malibu Municipal Code section 9.1.10(c)(2) to the LCP and modifying requirements for public view corridors does not constitute an applicable standard of review for the proposed project. First, in its action on the LAS application, the Commission is required to apply the policies and standards of the Malibu LCP as they exist at the time of the decision. The possibility of future amendments to the LCP simply is not relevant to the Commission's decision on this application. Second, the proposed LCP amendment referred to in the Planning Director's letter may never become effective. It must first be approved by the City Council and then certified by the Coastal Commission as the effective standard of review. Whether this will occur is speculative..

In conclusion, the Commission finds that the action of the City Council of Malibu to request their staff to draft proposed LUP amendment text is not relevant new information.

3. **Applicant's Third Claim of Legal Error**

a. Text of Applicant's Claim:

The applicants letter dated March 7, 2003 requesting revocation, alleges that:

"In light of the Appellate Court's decision in "Marine Forest" The Commission exceeded it's Constitutional Authority in Certifying the September 2002 Malibu LUP."

The applicant argues that:

"The appellate court in *Marine Forest* concluded that as an executive agency the Commission's make up was improper due to the fact that eight of the twelve members of the Commission were not appointed by the executive branch of state government.

Should the *Marine Forest* decision become final the Commission adoption of the September 2002 Malibu LUP must be found to be invalid act in that an unconstitutional agency could not take the legislative action of certifying a LUP.

If the Commission is compelled to take further action on the Malibu LUP at a later date in light of *Marine Forest,* the effective date of the Malibu LUP would be in the future, and as such, the Commission should not have applied the policies of the 2002 Malibu LUP on the Applicant's pending application."

b. Commission's Response

There is no error in law relative to this allegation. The decision of the Court of Appeal in the *Marine Forests* case is on appeal to the California Supreme Court. Accordingly, the Court of Appeal decision has been depublished and has no effect. The Commission believes that the manner of appointment of Commissioners (prior to amendment of the applicable law that became effective in May 2003) fully complied with the California Constitution. Similarly, the Commission believes that the courts will determine that the Commission approval of the Malibu LCP was valid and was required pursuant to the requirements of Public Resources Code section 30166.5. Therefore, the Commission finds that it did not constitute legal error for the Commission to apply the provisions of the Malibu LCP to the LAS application.

C. Conclusion

In conclusion, the Commission finds that there is no relevant new evidence that, in the exercise of reasonable diligence, could not have been presented at the hearing on the application. Further, the Commission finds that there has not been an error of law or fact that has the potential of altering the Commission's decision. Therefore, the request for reconsideration is denied.

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March 7, 2003

VIA OVERNIGHT MAIL AND FAX (805) 641-1732

California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Attention: Jack Ainsworth

Re: Coastal Development Permit (CDP) No. 4-02-166 (LAS Investments)
REQUEST FOR RECONSIDERATION

Project Address: 24166 Malibu Road, Malibu, CA

Project Description: Demolish retaining wall, construction of a 4,871 square foot, two story, single family residence, 742 square foot garages. bulkhead retaining wall, concrete piles, alternative septic system, below grade slide retention structure, and 291 cubic yards of grading.

Dear Mr. Ainsworth:

As you know, this office represents LAS Investments ("Applicant") with regard to the proposed two story, 28 foot high, 4,871 sq. ft., single family residence, to be constructed on one of the last vacant buildable lots on Malibu Road, located at 24166 Malibu Road, Malibu.

On February 6, 2003 the Commission approved CDP No. 4-02-166 subject to numerous Special Conditions over the objection of the Applicant who strenuously objected to Special Condition Nos. 10 and 11.

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Specifically, the Applicant requested the deletion of Special Condition Nos. 10 and 11 because they unreasonably required the applicant to submit revised plans for the review and approval of the Executive Director evidencing that a continuous 20% frontage view corridor along the frontage street be provided to the public. The Applicants request to delete Special Condition Nos 10 and 11 was denied by the Commission on the ground that the September 2002 Malibu Land Use Plan ("LUP") required a 20% contiguous view corridor for development on Malibu Road without exception.

The Applicant hereby requests the Commission reconsider its February 6, 2003 decision on the basis of relevant new evidence which was not available at the time of the hearing on February 6, 2003, as well as the fact that the decision was legally erroneous as a matter of law, in that the Commission was estopped from applying the September 2002 Malibu Land Use Plan ("LUP") to the Applicants CDP application pursuant to Malibu Municipal Code §9.1.10(c)(2).

Applicable Law

Title 14, California Code of Regulations, §13109.2 provides in relevant part as follows under Initiation of Proceedings:

> "Any time within thirty (30) days following a final vote upon an application for a coastal development, the applicant of record may request the commission to grant reconsideration of . . . any term or condition of a coastal development permit which has been granted."

The grounds for reconsideration are set out in Public Resources Code § 30627, which provides:

> "The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision."

The Commission Was Estopped Pursuant to Malibu Municipal Code §9.1.10(c)(2) From Applying The 2002 Land Use Plan To The Subject Project

As a matter of law, the Commission was estopped from applying the September 2002 Malibu LUP to the Applicant's CDP application. Although acquisition of a vested right is generally predicated upon issuance of a building permit, the premise of the doctrine is that the issuance of the permit constitutes a *promise* by the approving agency that a subsequently adopted ordinance will not prohibit the proposed use. *Hock Investment Company v. City and County of San Francisco,* (1989) 215 Cal.App.3d 438, 448-449. In *Hock*, the appellate court found that an *express promise* by the approving agency that the application [for development] will be evaluated under the ordinance at the effective date of submittal is equivalent to issuance of a building permit under vested right analysis, and that as long as an applicant reasonably relies upon the express promise to its significant detriment in completing and filing its application, the approving agency would be estopped from applying a new ordinance to the application. *Id.* at 449. The court further found that the existence of an estoppel is a question of law when the existence of estoppel is the only reasonable conclusion that can be drawn from the evidence. *Id.*

Here, the applicant purchased the subject property in the Fall of 1999. The application for the proposed development was deemed complete by the City of Malibu in March 2000. After more than two years of costly design and engineering, the project was approved by the City, and the project received the applicable approval in concept by the City in March 2002 and in August 2002, the CDP application for the project was deemed complete by the Commission.

During the entire process the subject project was processed pursuant to the City's local ordinances and the guidelines set forth in the Commission's certified 1986 Malibu/Santa Monica LUP. There is no dispute that the Applicant's reliance on the1986 Malibu/Santa Monica LUP was reasonable and justified in that the application for proposed development was accepted as complete by the City of Malibu in March 2000. Nor is there any question that the Applicant will suffer severe detriment and manifest injustice if the September 2002 Malibu LUP is applied to the subject project when the implementation of Special Condition Nos. 10 and 11 would require the complete redesign of the

proposed residence, a loss of approximately 25 % of the total square footage of the proposed residence, and subject the Applicant to a "continuous public viewing corridor" on Malibu Road that had never been imposed previously on any property owner along Malibu Road.

At the time the Applicant's CDP application was deemed complete by the City of Malibu in March 2000 and the Commission in August 2002, the 1986 Malibu/Santa Monica LUP was in effect. The1986 Malibu/Santa Monica Mountains LUP has provided the guidelines for development in Malibu since its certification, and does not contain any policy relating to public view corridors on Malibu Road. The only reference to "20% public viewing corridors" in the 1986 LUP related only to new development on Pacific Coast Highway, a designated scenic corridor.

Malibu Municipal Code §9.1.10(c)(2) required the City to process the application for the proposed development pursuant to the ordinances in effect at the time the application was accepted as complete by the City. Said ordinance provides as follows:

> "Applications accepted by the City shall be processed and approved or denied subject to the provisions of this Article that were in effect at the time that the application was accepted as complete by the City."

As stated by the Court of appeal in Hock:

> "The purpose of a regulation providing an express promise that a subsequently adopted ordinance will not prohibit the proposed use is manifest. It attempts to provide some degree of certainty to the developer that its application will be evaluated in accordance with the law in effect at a particular time. It recognizes the problem for the developer that the approval process is a lengthy one, and much time and effort are expended on the project even as the developer pursues the necessary approvals. It gives the developer some assurance of being able to complete the project, or at least being able to obtain the permits in accordance with the law in effect at a particular time." *Hock* at 447-448.

Malibu Municipal Code §9.1.10(c)(2) was obviously intended to provide some legislative assurance to the developer that once the application process is completed and submitted, the rules would not change, and serves the same purpose with respect to development as Government Code §66474.2, the map-filing freeze provision of the Subdivision Map Act, does for subdivision map approvals. Section 66474.2 provides that:

> "In determining whether to approve or disapprove a tentative map, the approving agency must apply only the ordinances, policies, and standards in effect on the date on which the application for the tentative map is considered to be complete."

The Commission in applying the 2002 Malibu LUP policies to the subject development, was in essence applying a subsequently enacted City "ordinance" or requirement of law to the pending application. Clearly, the September 2002 Malibu LUP is a City "ordinance", although prepared and certified by the Commission. Pursuant to the above stated California appellate court law, it cannot do so. Clearly, if the City was hearing new applications for CDPs it could not apply the standards of the 2002 Malibu LUP. Neither can the Commission. To permit the same would result in inconsistent decisions which would obviously deny equal protection to similarly situated applicants.

Thus, pursuant to Malibu Municipal Code §9.1.10(c)(2), since the Applicant's application for the proposed project was deemed complete by both the City of Malibu and the Commission prior to adoption of the September 2002 Malibu LUP, and since the applicant reasonably relied on the 1986 Malibu/Santa Monica LUP for over three years prior thereto, the Commission should, as a matter of law, be estopped from applying the September 2002 Malibu LUP to the Applicant's CDP application because to do so would cause manifest injustice and significant detriment to the Applicant.

The City of Malibu Preparation Of A LUP Amendment Incorporating The Language of Malibu Municipal Code §9.1.10(c)(2) Into The 2002 LUP, As Well As Deleting The Reference To Malibu Road In Policy 6.18 Is Relevant New Evidence

In order to ensure that the legislative intent of Malibu Municipal Code §9.1.10(c)(2) is preserved, and that the absurd results discussed above do not occur, the Malibu City Council, on February 10, 2003, requested it's Director of Planning, Mr. Drew Purvis, to draft an amendment to the September 2002 Malibu LUP incorporating the language of Malibu Municipal Code §9.1.10(c)(2). As stated by Mr. Purvis in his letter to my office, dated March 5, 2003:

> "In their discussion on February 10, 2003, the City Council specifically requested this office to include in the proposed LUP amendment text which would incorporate the language of Malibu Municipal Code §9.1.10(c)(2) regarding Standard of Review as follows:
>
> Coastal Development Permit Applications accepted by the City shall be processed and approved or denied subject to the provisions of the Land Use Plan that were in effect at the time that the application was accepted as complete by the City."
>
> Mr. Purvis' letter further provides as follows:
>
> "[T]he City Council has requested the proposed LUP Amendment to include text that would revise Policy 6.18 of the LUP to delete both 1) the word "continuous" from said policy to the effect that future construction on any lot be limited to 80% of the entire lineal street frontage in order to maintain an open public viewing corridor not be required to be continuous, and 2) that the reference to Malibu Road be deleted from the policy in that Malibu Road has never been designated a scenic highway, is substantially built out, and fails to provide for continuous east/west traffic due to restricted access from the west."

A copy of Mr. Purvis's letter to this office, dated March 5, 2003, evidencing the February 10, 2003, action of the Malibu City Council is attached hereto as **Exhibit 1** and hereby incorporated by reference.

There is no question but that the recent City action subsequent to the Commission's decision in approving the Applicant's CDP application with the contested Special Condition Nos 10 and 11 constitutes "relevant new evidence

which, in the exercise of reasonable diligence, could not have been presented at the February 6, 2003, hearing on this matter.

In Light Of The Appellate Court's Decision In "Marine Forest" The Commission Exceeded It's Constitutional Authority In Certifying The September 2002 Malibu LUP

The appellate court in *Marine Forest* concluded that as an executive branch agency the Commission's make up was improper due to the fact that eight of the twelve members of the Commission were not appointed by the executive branch of the state government.

Should the *Marine Forest* decision become final the Commission adoption of the September 2002 Malibu LUP must be found to be invalid act in that an unconstitutional agency could not take the legislative action of certifying a LUP.

If the Commission is compelled to take further action on the Malibu LUP at a later date in light of *Marine Forest,* the effective date of the Malibu LUP would be in the future, and as such, the Commission should not have applied the policies of the 2002 Malibu LUP on the Applicant's pending application.

Conclusion

In light of the relevant new facts, as well as errors of law that occurred during the Commission's consideration of the subject CDP on February 6, 2003, the Commission exceeded its authority by applying the policies of the September 2002 Malibu LUP to the subject application, and it's conditional approval of the same should be reconsidered.

I look forward to discussing this matter with you at your earliest convenience.

Thank you for your courtesy and anticipated cooperation.

Very truly yours,

LAW OFFICES OF
ALAN ROBERT BLOCK
A Professional Corporation

ALAN ROBERT BLOCK

ARB:aw

enclosure

cc: John Staff
Drew Purvis

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1901 AVENUE OF THE STARS, SUITE 470
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ALAN ROBERT BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

March 10, 2003

VIA MAIL & FAX

Ralph Faust, Esq.
Chief Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re:

Re: Coastal Development Permit (CDP) No. 4-02-166 (LAS Investments)
REQUEST FOR RECONSIDERATION

Project Address: 24166 Malibu Road, Malibu, CA

Project Description: Demolish retaining wall, construction of a 4,871 square foot, two story, single family residence, 742 square foot garages. bulkhead retaining wall, concrete piles, alternative septic system, below grade slide retention structure, and 291 cubic yards of grading.

Dear Mr. Faust:

As you know, this office represents LAS Investments ("Applicant") with regard to the proposed two story, 28 foot high, 4,871 sq. ft., single family residence, to be constructed on one of the last vacant buildable lots on Malibu Road, located at 24166 Malibu Road, Malibu. On Friday afternoon I filed the attached Request For Reconsideration, dated March 7, 2003, to the Commission's Ventura District Office.

Because this Request For Reconsideration involves legal issues I thought it was important to provide you with a copy for your review and consideration. If you recall when this matter was heard by the Commission on February 6, 2002, numerous members of the Commission seemed to agree with the applicant's contention that it was unfairly being treated differently than all other owners of property along Malibu Road, without adequate basis, despite the Commission's

certification of the September 2002 Malibu Land Use Plan (LUP).

This office vigorously contends that the Commission was estopped from applying the September 2002 Malibu LUP to the Applicant's CDP application. Although acquisition of a vested right is generally predicated upon issuance of a building permit, the premise of the doctrine is that the issuance of the permit constitutes a *promise* by the approving agency that a subsequently adopted ordinance will not prohibit the proposed use. *Hock Investment Company v. City and County of San Francisco,* (1989) 215 Cal.App.3d 438, 448-449.

In *Hock*, the appellate court found that an *express promise* by the approving agency that the application [for development] will be evaluated under the ordinance at the effective date of submittal is equivalent to issuance of a building permit under vested right analysis, and that as long as an applicant reasonably relies upon the express promise to its significant detriment in completing and filing its application, the approving agency would be estopped from applying a new ordinance to the application. *Id.* at 449. The court further found that the existence of an estoppel is a question of law when the existence of estoppel is the only reasonable conclusion that can be drawn from the evidence. *Id.*

Here, the applicant purchased the subject property in the Fall of 1999. The application for the proposed development was deemed complete by the City of Malibu in March 2000. After more than two years of costly design and engineering, the project was approved by the City, and the project received the applicable approval in concept by the City in March 2002 and in August 2002, the CDP application for the project was deemed complete by the Commission.

During the entire process the subject project was processed pursuant to the City's local ordinances and the guidelines set forth in the Commission's certified 1986 Malibu/Santa Monica LUP. *Malibu Municipal Code §9.1.10(c)(2) required the City to process the application for the proposed development pursuant to the ordinances in effect at the time the application was accepted as complete by the City.* Said ordinance provides as follows:

> "Applications accepted by the City shall be processed and approved or denied subject to the provisions of this Article that were in effect at the time that the application was accepted as complete by the City."

As stated by the Court of appeal in *Hock*:

> "The purpose of a regulation providing an express promise that a subsequently adopted ordinance will not prohibit the proposed use is manifest. It attempts to provide some degree of certainty to the developer that its application will be evaluated in accordance with the law in effect at a particular time. It recognizes the problem for the developer that the approval process is a lengthy one, and much time and effort are expended on the project even as the developer pursues the necessary approvals. It gives the developer some assurance of being able to complete the project, or at least being able to obtain the permits in accordance with the law in effect at a particular time." *Hock* at 447-448.

Malibu Municipal Code §9.1.10(c)(2) was intended to provide legislative assurance to the developer that once the application process is completed and submitted, the rules would not change, and serves the same purpose with respect to development as Government Code §66474.2, the map-filing freeze provision of the Subdivision Map Act, does for subdivision map approvals. Section 66474.2 provides that:

> "In determining whether to approve or disapprove a tentative map, the approving agency must apply only the ordinances, policies, and standards in effect on the date on which the application for the tentative map is considered to be complete."

At the time the Applicant's CDP application was deemed complete by the City of Malibu in March 2000 and the Commission in August 2002, the 1986 Malibu/Santa Monica LUP was in effect. The 1986 Malibu/Santa Monica Mountains LUP has provided the guidelines for development in Malibu since its certification, and does not contain any policy relating to public view corridors on Malibu Road. *Although the Commission prepared and certified the September 2002 Malibu LUP it remains a City document.* The Commission in applying the 2002 Malibu LUP policies to the subject development, was in essence applying a subsequently enacted City "ordinance" to the pending application which Malibu Municipal Code §9.1.10(c)(2) prohibits it from doing.

Clearly, if and when the City hears new applications for CDPs it could not apply the standards of the 2002 Malibu LUP to the pending application in light of

Malibu Municipal Code §9.1.10(c)(2). Neither should the Commission be permitted to do so. To permit the same would result in inconsistent decisions which would obviously deny equal protection to similarly situated applicants.

In order to ensure that the legislative intent of Malibu Municipal Code §9.1.10(c)(2) is preserved, and that the absurd results discussed above do not occur, the Malibu City Council, on February 10, 2003, requested it's Director of Planning, Mr. Drew Purvis, should it not prevail in the pending trial court litigation between the City and Commission challenging the Commission's September 2003 certification of the Malibu LUP, to draft an amendment to the September 2002 Malibu LUP incorporating the language of Malibu Municipal Code §9.1.10(c)(2), as well as requesting deletion of "Malibu Road" from Policy 6.18.

Clearly the Commission was concerned with the appropriateness of the proposed recommendation of Special Condition Nos. 10 and 11 which required the contested "20% continuous viewing corridor" along the frontage of the applicants property. As evidenced by the following comments in the Certified Transcript as prepared by the Commission's reporter:

Chairman Reilly: I guess my question is from a legal standpoint what latitude does the Commission have relative to applyi9ng standards we apply for a project that was deemed complete prior to the adoption of the Malibu LUP?" "I have a feeling of being hoisted on our own petard, and I also feel sympathetic with the dilemma of the applicants in this particular circumstance..." Certified Transcript page 22, lines 19-22, page 31, lines.24-25, page 32, lines 1-2.

Commissioner Kruer: "Well Chairman, looking at this project and I understand the LUP, but if ever an exception should be made with these conditions, it is this house. This is a travesty, what will happen, if we apply this.. . . I have a lot of compassion for these applicants in this particular case, ... This would be devastating to these particular applicant... " Certified Transcript page 23, lines 12-16, page 24, lines 1-7..

Commissioner McClain -Hill: "The LCP is adopted. . . . And, it is unfortunate, from my perspective, that we find ourselves in a situation where either knowingly, or unknowingly, we have included in the list of roads that are covered by this view corridor requirement. . . . It is horrible because they are

being treated so differently from we very other homeowner on that block, which means to me that maybe Malibu Road shouldn't have been included in the list, and the only way to fix that is through a plan amendment". "Then I guess my final question . . . is there any mechanism,. or the means, or is it kind of the Commission on its own volition, amend the LCP?" Certified Transcript page 25, lines 1-5, page 26, lines 2-5, page 35, lines 15-19.

Commissioner Potter: "...the element of retroactivity that we are looking at here, one that reaches back almost three years at the local level, plus the fact that they are now in construction drawing review with Malibu City level really warrants a consideration for these people that does, in my mind, create a special circumstance similar to the issue we dealt within Santa Monica.. . .I would very strongly recommend that we concur with Commissioner Kruer's comments, and that we grant these people approval of the plan they submitted". It is a legal mess, everywhere we turn. I am just gong to say that I think there is a fair and reasonable right enjoyed by others here . . ." Certified Transcript page 28, lines 6-21, page 35, lines 7-10.

Commissioner Dresser: "We are between a rock and a hard place. . . .I am very concerned about the equal protection arguments that get raised if we approve something like this. I am concerned about the inconsistencies as a Commission. . . . It is really the last parcel, they are the last folks, can you think of any legal doctrine that could get us to - - could allow us to approve this, without opening ourselves to all kinds of other problems? Because, . . . We are inconsistent, and there are legal protection arguments". Certified Transcript page 32, lines 10-23.

Commissioner Wan: " Clearly I got the same sense of not wanting to impose something new on this applicant. It is a real problem. . . . I am concerned about this being probably the only one we are gong to see for quite some time". Certified Transcript page 34, lines 10-17. A copy of the applicable pages of the Reporters Transcript is attached hereto for your review.

The Commission was clearly looking for an avenue in which to approve the subject application without the contested Special Conditions. This office vigorously maintains that the relevant new facts contained in the request for reconsideration, as well as the error of law in not applying Malibu Municipal Code §9.1.10(c)(2) provide the Commission with the valid basis to reconsider

this matter and grant approval without the contested conditions.

It would be greatly appreciated if you would contact the undersigned to discuss the merits of the pending Request for Reconsideration.

As always, thank you for your continued courtesy and cooperation.

Very truly yours,

LAW OFFICES OF
ALAN ROBERT BLOCK
A Professional Corporation

ALAN ROBERT BLOCK

ARB:aw

enclosures

cc: John Staff
Jack Ainsworth

City of Malibu

23815 Stuart Ranch Rd • Malibu, California • 90265-4861
(310) 456-2489 • fax (310) 456-7650
www.ci.malibu.ca.us

March 5, 2003

Alan Robert Block, Esq.
1901 Avenue of the Stars, Suite 1610
Los Angeles, CA 900067

Re: Plot Plan Review No. 00-053, Site Plan Review No. 02-010
24166 Malibu Road (LAS Investments)
Proposed Amendment To Land Use Plan

Dear Mr. Block:

This letter is written to confirm our conversation of yesterday morning wherein I advised you that should the litigation between the City of Malibu and California Coastal Commission now pending in the Los Angeles Superior Court result in a final decision that would require the City to process the Malibu Land Use Plan ("LUP") that was certified by the California Coastal Commission on September 13, 2003, the City Council, on February 10, 2003, requested this office to prepare a proposed amendment to the LUP for consideration by the Council on the evening of April 14, 2003, which would, in part, have substantial effect on the project single family home to be located at 24166 Malibu Road.

In their discussion on February 10, 2003, the City Council specifically requested this office to include in the proposed LUP amendment text which would incorporate the language of Malibu Municipal Code Section 9.1.10(C)(2) regarding Standard of Review as follows:

"Coastal Development Permit Applications accepted by the City shall be processed and approved or denied subject to the provisions of the Land Use Plan that were in effect at the time that the application was accepted as complete by the City."

In addition, the City Council specifically requested that the text of the proposed LUP amendment include language which would modify Policy 6.18 of the LUP to delete both 1) the word "continuous" from said policy to the effect that future construction on any lot be limited to 80% of the entire lineal street frontage in order to maintain an open public viewing corridor from the frontage street to the Pacific Ocean, but that said open public viewing corridor not be required to be continuous, and 2) that the reference to Malibu Road be deleted from the policy in that Malibu Road has never been designated a scenic highway, is substantially built out, and fails to provide for continuous east/west traffic due to restricted access from the west.

Exhibit C
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City of Malibu Letter
March 5, 2003
Page 1 of 2

March5, 2003

If you have any questions regarding this matter, you may reach me at (310) 456-2489, extension 243.

Sincerely,

Drew D. Purvis
Planning Director

Cc: Katie Lichtig, City Manager
Vic Peterson, Environmental Building & Safety Official
Case File

Coastal Permit No. 4-02-166
Special Conditions 10 & 11

10. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which show that:

As consistent with Special Condition Eleven (11), proposed development (including a portion of the proposed residence, decks, fireplace, walls, trash enclosure) located within the continuous view corridor, as designated in Exhibit 3 on either the west side or east side of the subject parcel, is deleted to create a continuous 20% street frontage view corridor (Alternative 1 or 2 View Corridor, a total of 13 feet wide) completely open areas without structures, decks, fireplaces, walls, trash enclosures or roof overhangs. Fencing consisting of visually permeable designs and materials (e.g. wrought iron or non-tinted glass material) and low-lying (maximum two feet high from finished grade) vegetation may be allowed on the revised plans and or with a future coastal development permit or amendment. No vegetation is proposed by the applicant in this application.

11. Public View Corridor

By acceptance of this permit, the applicant acknowledges and agrees that:

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

b. As consistent with Special Condition Ten (10), 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 continuous public view corridor on either the west or east side of the proposed building as shown on Exhibit 3.

c. Fencing within the continuous public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials).

d. Vegetation within the continuous public view corridor shall be limited and maintained to be low-lying vegetation of no more than 2 ft. in height above finished grade.

Exhibit No. D
4-02-166-R
Special Conditions