

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585 - 1800

Filed: 10/25/03  
180<sup>th</sup> Day: 04/22/04 (waived)  
90 Day Extension: 6/24/04  
Staff: JLA - Ven. *ja*  
Staff Report 5/25/04  
Hearing Date: 6/9/04

**RECORD PACKET COPY****STAFF REPORT: PERMIT AMENDMENT****APPLICATION NO.:** 4-97-243-A1**APPLICANT:** Beverly Higgins**PROJECT LOCATION:** 33406 Pacific Coast Highway, City of Malibu (Los Angeles County)

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Request for the after-the-fact approval of the construction of a rock revetment at the toe of a coastal bluff across three vacant beachfront parcels to protect an existing driveway and residence, remedial grading (40 cu. yds. cut and 170 cu. yds. fill) to buttress damaged roadway. The application also includes the new construction of retaining walls (ranging in height from 2 ft. to 6 ft.) along roadway and below existing residence, paving existing driveway on the bluff face, installation of drainage devices, and offer to dedicate a lateral public access easement.

**DESCRIPTION OF AMENDMENT:** Demolition and removal of an unpermitted 160-foot long concrete stairway adjacent to an existing roadway down a coastal bluff. In addition, the applicant is requesting approval to increase the amount of remedial grading from 40 cu. yds. cut and 170 cu. yds. fill to 180 cu. yds. cut and 400 cu. yds. fill.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit Nos. 4-95-105 and 4-97-243; Agreement to Compromise and Settle Disputed Claims Mutual Release of Claims between the California Coastal Commission and Beverly Higgins.

**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1. The Executive Director determines that the proposed amendment is a material change,
2. Objection is made to the Executive Director's determination of immateriality, or
3. The proposed amendment affects conditions required for the purpose of

protecting a coastal resource or coastal access.

If the applicants or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material (14 Cal. Code of Regulations Section 13166). In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect previously imposed special conditions required for the purpose of protecting coastal resources.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends approval of the amendment request pursuant to two revised Special Conditions related to: 7) Revised Compliance Condition and 8) Revised Implementation Plan. In addition, pursuant to a writ of mandate, Case No. Sc 061313, the Court ordered the Commission to modify Special Condition 6 (Revised Plans) and Delete Special Condition 8 (Geologic Hazard Restricted Use Area). Special Condition 6 (Revised plans) is no longer necessary given the applicant has submitted revised plans as part of this amendment. The changes to the special conditions are reflected below under Section II of the staff report. The proposed demolition and removal of the unpermitted concrete stairway and the minor increase in remedial grading consistent with the provisions of the City of Malibu Local Coastal Program

## **I. STAFF RECOMMENDATION**

### **MOTION**

*I move that the Commission approve with special conditions Coastal Development Permit Amendment 4-97-243-A1 per the staff recommendation as set forth below.*

### **Staff Recommendation of Approval:**

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution to Approve the Permit:**

The Commission hereby approves an amendment to the coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the Malibu Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or

alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. SPECIAL CONDITIONS.

**NOTE:** All standard and special conditions attached to the previously approved permit (4-97-243) remain in effect, with the exception of Special Conditions 6 and 8 which are deleted. Special Condition 6 is no longer necessary and Special Condition 8 was deleted pursuant to Los Angeles Superior Court writ of mandate action, Case No. SC061313. In addition, Special Condition 7 is renumbered to Special Condition 6, Special Condition 9 has been revised and renumbered to Special Condition 7 and Special Condition 10 has been revised and renumbered to Special Condition 8.

### 6. Revised Plans

~~Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised grading plans which show that the graded areas of the driveway to the beach have been reduced in width to a maximum of 15 feet and that no new paving is provided on the roadway. The revised plans may also incorporate a drainage feature, such as a swale or v-ditch, within the 15-foot width of the roadway, that conveys drainage from the bluff face to the beach below. All areas outside the 15-foot maximum width shall be revegetated as required by Condition 7 below.~~

### 6. Bluff Revegetation Plan

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a detailed bluff revegetation plan prepared by a qualified Landscape Architect, resource specialist or biologist. The plan shall be reviewed and approved by the geotechnical consultant to ensure that the plans are in conformance with the consultants' geotechnical recommendations. The plans shall include, but not be limited to, the following criteria:

- a. Provisions and specifications for removal of all non-native plants, including provisions for phasing of removal, if necessary, to minimize the extent of area devoid of vegetation.
- b. Bluff revegetation program which utilizes only native drought resistant plants, endemic to coastal bluffs. The revegetation program shall use a mixture of seeds and container plants to increase the potential for successful revegetation. All areas of the bluff face not developed with the driveway, revetment, or retaining walls approved in Permit 4-97-243 shall be planted for erosion control and visual enhancement purposes. No hydroseeding shall occur in areas of the bluff where native plant material is already established. A temporary irrigation system may be used until the plants are established, as determined

by the consulting landscape architect or resource specialist, but in no case shall the irrigation system be in place longer than three (3) years.

- c. An interim erosion control plan for the interim stabilization of disturbed areas on the coastal bluff. The interim erosion control measures shall include, but not limited to: sand bag barriers or silt fencing, installation of geotextiles or mats for disturbed areas on the bluff and measures to ensure stockpiled materials are stabilized. These interim erosion control measures shall be maintained until the permanent drainage system is installed and the disturbed areas are revegetated.
- d. Monitoring and maintenance program to ensure the successful revegetation of the bluff. The bluff revegetation plan shall be implemented within 30 days of the completion of the roadway, drainage, and retaining wall improvements. However, the removal of exotic vegetation and revegetation with native species may be carried out in several phases to minimize bluff disturbance. The plan shall specify the areas for phased removal and the timing necessary for each phase. Revegetation shall provide 90 percent coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. This time period may be extended by the Executive Director for good cause.

Five years from the date of the issuance of this permit, the applicant shall submit, for the review and approval of the Executive Director, a revegetation monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the bluff revegetation is in conformance with the revegetation plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the revegetation is not in conformance with or has failed to meet the performance standards specified in the revegetation plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental revegetation plan for the review and approval of the Executive Director. The revised revegetation plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

#### **8. ~~Geologic Hazard Restricted Use Area~~**

- A. ~~No development, as defined in Section 30106 of the Coastal Act, shall occur on the bluff face portions of Assessor's Parcels Number 4473-019-003, 004, 005, 006, and 007, as shown in Exhibit 5 except for:~~

- ~~1. Construction of the rock revetment and drainage structures, remedial driveway grading limited to 15 foot width, retaining walls, and bluff revegetation approved under Coastal Development Permit 4-97-243.~~
  - ~~2. Repair and maintenance of development approved under Coastal Development Permit 4-97-243, provided that such repair or maintenance is in conformance with a Commission approved amendment or new coastal development permit, unless the Executive Director determines that no amendment or coastal development permit is required.~~
- ~~B. Prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated geologic hazard restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.~~

**7. Revised Condition Compliance.**

Within 180 days of Commission action on this coastal development permit amendment application, or within such 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. Governmental delays caused by no fault of the applicant shall be deemed to be good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

**8. Revised Implementation of Project Plans**

Within 180 days of issuance of this permit the applicant shall remove the unpermitted concrete stairway and implement the approved project plans to stabilize the bluff, including the revetment, buttress, retaining walls, paving, drainage devices and revegetation. The Executive Director may grant an extension of the above deadline for good cause. Governmental delays caused by no fault of the applicant shall be deemed to be good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

**III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

**A. Project Description and Background**

The applicant seeks approval to demolish and remove a 160 foot long unpermitted concrete stairway adjacent to an existing roadway down a coastal bluff. In addition the applicant is requesting approval for an increase in the amount of remedial grading from 40 cu. yds. cut and 170 cu. yds. fill to 180 cu. yds. cut and 400 cu. yds. fill (Exhibit 3).

The applicant's proposed project site is located on the seaward side of Pacific Coast Highway in the Encinal Beach area of the City of Malibu (Exhibit 1). Encinal Beach is a narrow sandy beach backed by high, steep bluffs. The bluffs backing this beach contain areas of highly erodible deposits, as well as bedrock outcrops of harder materials. This beach is located in an area between Nicholas Canyon County Beach and the three pocket beaches that make up the Robert H. Meyer Memorial State Beach (El Pescador, La Piedra, and El Matador Beaches).

The applicant owns five parcels that make up the project site. The parcel map for the project site is shown in Exhibit 2. Access to the project site is provided by a private access driveway from Pacific Coast Highway. Two of the parcels contain area on the top of a coastal bluff, as well as area on the face of this bluff. The western lot contains the applicant's residence and the eastern lot is developed with a driveway and yard area associated with the applicant's residence. The three other parcels owned by the applicant are vacant and are located seaward of the other two. These three parcels contain bluff face as well as sandy beach areas. There is a private beach access driveway which descends the bluff face to the beach below on the applicant's property.

On February 17, 2000, the Commission granted after-the-fact approval, under coastal development permit 4-97-243, for a rock revetment at the toe of a coastal bluff across three vacant parcels; and remedial grading (40 cu. yds. cut and 170 cu. yds. fill) to buttress the roadway. The Commission also approved the construction of two new retaining walls (ranging in height from 2 ft. to 6 ft.) along the roadway below the existing residence, installation of drainage devices adjacent to the roadway and the applicant's offer to dedicate a lateral public access easement. The Commission imposed ten special conditions of approval including: 1) Assumption of Risk, 2) Offer to Dedicate Lateral Public Access, 3) Conformance with Geologic Recommendations, 4) Construction responsibilities, 5) Sign Restrictions, 6) Revised Plans, 7) Bluff Revegetation Plan, 8) Geologic Hazard Restricted Use Area, 9) Condition Compliance and 10) Implementation of Project Plans (Exhibit 4).

The applicant instituted a lawsuit, Case No. SC 061313, against the Commission seeking a writ of mandate in connection with Commission's conditional approval of the coastal development permit. The court ordered that Special Condition 6

(Revised Plans) be modified and Special Condition 8 (Geologic Hazard Restricted Use Area) be deleted (Exhibit 5).

Special Condition 6 (Revised Plans) required revised project plans that illustrated the graded areas of the roadway reduced to a maximum width of 15 feet including any drainage features and prohibited paving of the road. The condition required that all areas outside the 15-foot width be revegetated as required by special Condition 7. The court modified this condition to allow for a paved road surface of 15 feet.

Special Condition 8 (Geologic Hazard Restricted Use Area) of the permit required a geologic restricted use area deed restriction over five of the bluff parcels owned by the applicant. This restriction prohibited all development on the five parcels with the exception of development authorized under this permit and repair and maintenance of this development in the future. The court found that Condition 8 should be deleted because there was not substantial evidence to support Condition 8.

The applicant and the Commission have entered into a settlement agreement to resolve the litigation in this case (Exhibit 6). A provision of the settlement agreement allowed for the applicant to submit an amendment request to retain or remove the unpermitted concrete stairway on the bluff adjacent to the roadway. The applicant is seeking approval for the demolition and removal of the stairway through this amendment.

#### **B. Bluff/Shoreline Development**

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. 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 bluff/shoreline development that are applicable to the proposed development:

Sections 30253 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that:

##### ***Section 30253:***

##### ***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.**
- 4.15 Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired provided that such repair and maintenance do not increase the extent of nonconformity of the structure. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements comply with the current standards and policies of the LCP and do not increase the extent of nonconformity of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not be permitted unless such structures are brought into conformance with the policies and standards of the LCP.**
- 4.23 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.**
- 4.27. 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.**



- 5.54 Existing, lawfully established structures built prior to the effective date of the Coastal Act that do not conform to the provisions of the LCP may be maintained, and repaired. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. Substantial additions to non-conforming structures on a blufftop or on the beach are not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. Demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure is not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. Non-conforming uses may not be increased or expanded into additional locations or structures.**

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 and structural integrity. The LCP imposes a minimum 100 ft. setback (which may be reduced to 50 feet if specific geologic criteria are met) from bluff edges for all structures with the exception of ancillary structures such as decks, patios, and walkways, for which the setback is 15 feet. The LCP prohibits the construction of permanent structures on bluff faces, with the exception of stairways or other accessways that provide public access.

Coastal bluffs are unique geomorphic features that are characteristically unstable and subject to erosion from sheet flow runoff from the top of the bluff and from wave action at the base of the 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 erosional features, development (with the exception of public accessways) on a bluff face is prohibited in the Malibu LCP. The LCP also prohibits development on a bluff face in order to protect visual resources, public access, and sensitive marine and coastal bluff habitats.

The applicant is proposing to demolish and remove an unpermitted 160 foot long concrete stairway that is not in compliance with the bluff setback requirements of the Malibu LCP (Exhibits 3). The Commission permitted the installation of the drainage system adjacent to the road. The applicant has submitted revised plans that include the drainage system that consist of V-ditches on both sides of the road; catch basins; and drainage pipes to convey runoff off the road and bluff. At the curves in the roadway the V-ditches transition into a concrete apron with a catch basin to ensure runoff at peak flows do not overflow the drainage system and flow over bluff face in an uncontrolled manner. The proposed drainage system will ensure runoff from the paved road will not result in erosion of the bluff.

The applicant has also submitted revised project plans that illustrate a paved 15 foot road surface which is in compliance with the above court order. The revised plans include a minor increase in the amount remedial grading necessary to support the road and drainage improvements. The remedial grading amounts have increased

from 40 cu. yds. of cut to 170 cu. yds. of fill to 180 cu. yds. of cut and 400 cu. yds. of fill. The increase in grading does not result in a change to the road design or amount of landform alteration over what was originally approved by the Commission. In addition, the changes to the grading plans and will not result in any additional visual or landform alteration impacts over and above what was originally approved by the Commission.

The removal of the stairway and remedial grading will result in some disturbance of the bluff area and if these areas are not stabilized with appropriate native landscaping these areas could erode and destabilize the bluff and endanger the residence above. The Commission 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 areas of the site with native plants compatible with the surrounding environment. Special Condition 7 of the permit, renumbered to Special Condition 6, requires that all disturbed areas on the bluff face be revegetated with appropriate native plant species and interim erosion control measures implemented to ensure erosion of the bluff is minimized after construction. To ensure the applicant's proposal to demolish and remove the unpermitted stairway and ensure the bluff stabilization measures are implemented in a timely manner, Special Condition 8 requires the applicant to implement the project plans and bluff revegetation within 180 days of the issuance of the coastal development permit. In addition, the drainage plan for permanent drainage system ensures runoff will be conveyed off the roadway in a non-erosive manner

Therefore, the Commission finds that the proposed amendment, as conditioned above, is consistent with the applicable policies of the Malibu LCP.

### **C. Unpermitted Development**

The proposed amendment request is for the demolition and removal of an unpermitted 160-foot long concrete stairway and a minor increase in remedial grading. The Commission previously granted after-the-fact approval of a rock revetment and remedial grading

In order to ensure that the unpermitted development is resolved in a timely manner, revised **Special Conditions 7** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 180 days of Commission action, or within such additional time as the Executive Director may grant for good cause. To ensure the applicant's proposal to demolish and remove the unpermitted concrete stairway and ensure the proposed bluff stabilization measures are implemented in a timely manner, **Special Condition 8** requires the applicant to implement the project plans and bluff revegetation within 180 days of the issuance of the coastal development permit. All of the elements approved in this project are related to improving slope stability on the proposed project site. It is

important that these elements be completed within the same time frame to assure that slope stability is improved.

Consideration of this amendment 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.

**D. 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 that the activity may have on the environment.

The Commission finds that, the proposed amendment, as conditioned, will not have any 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 City of Malibu Local Coastal Program.

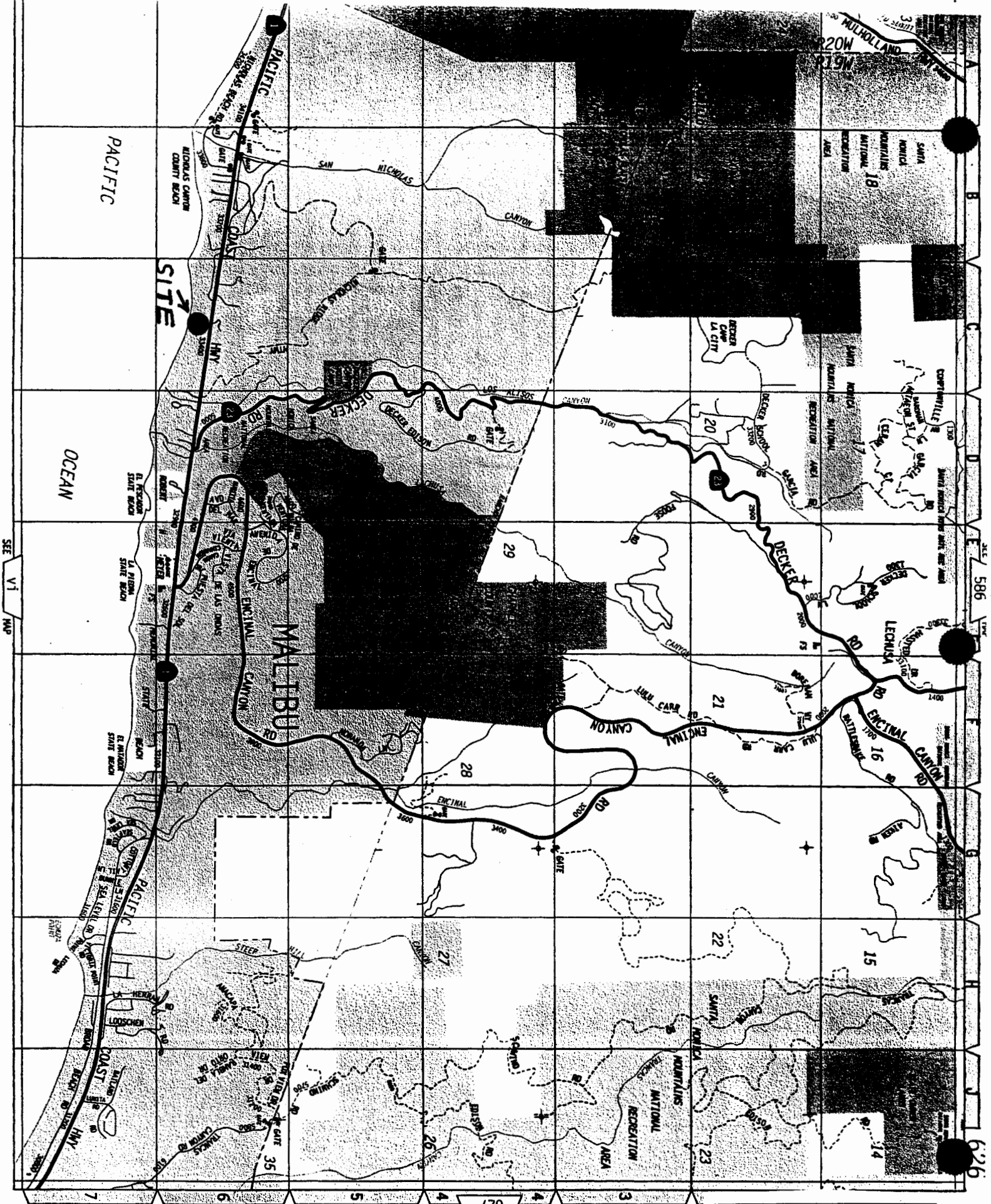
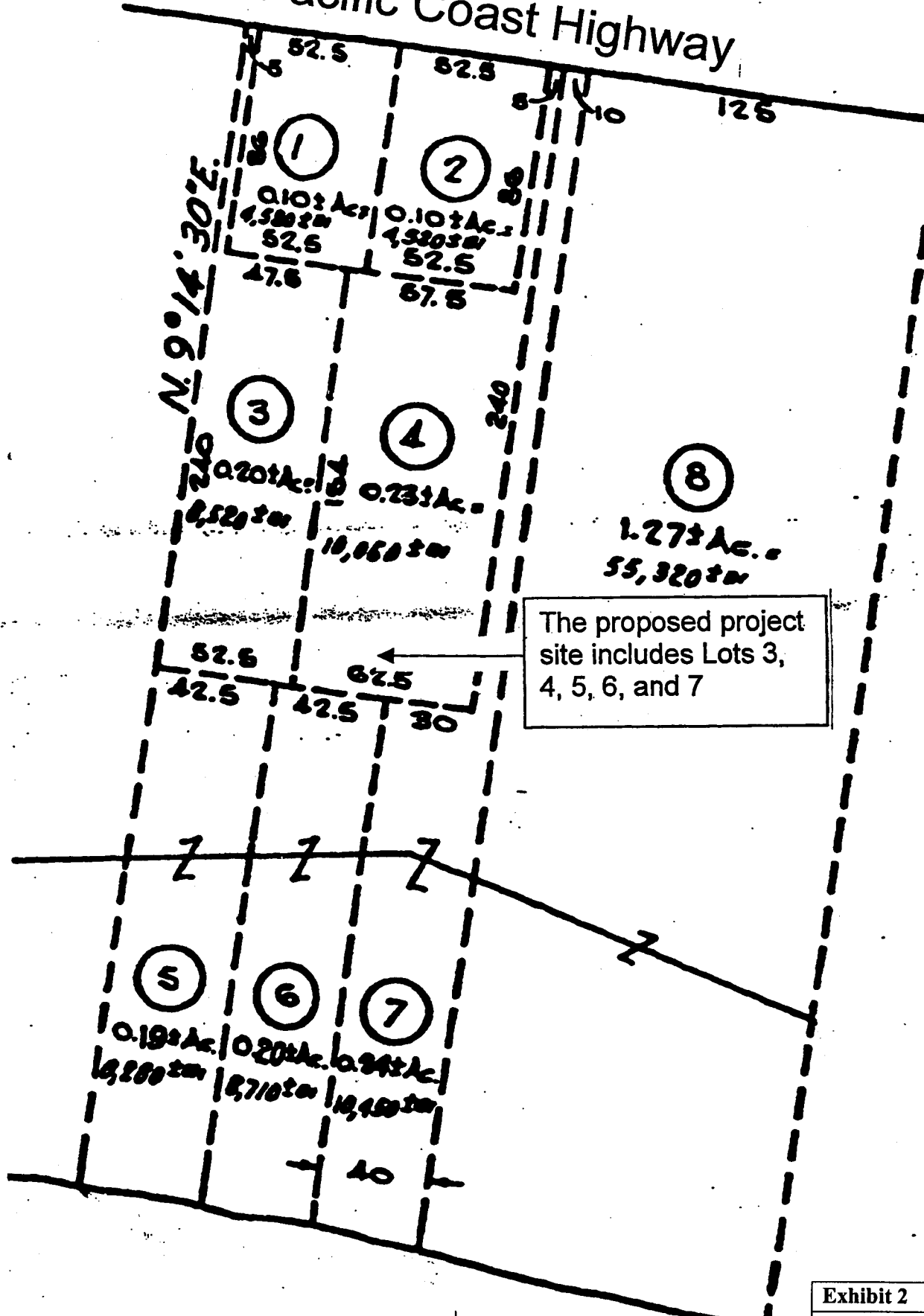


Exhibit 1  
CDP 4-97-243-A1  
Location Map

SEE VI MAP

SEE 627 MAP

# Pacific Coast Highway



Pacific Ocean

Exhibit 2

CDP 4-97-243-A1

Parcel Map

000785

# BASIS OF BEARINGS:

THE BEARING OF S 80°45'30" E ON THE CENTER LINE OF PACIFIC COAST HIGHWAY AS DESCRIBED IN A DEED RECORDED IN BOOK 15228, PAGE 342 OF OFFICIAL RECORDS OF LOS ANGELES WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

# BENCHMARK:

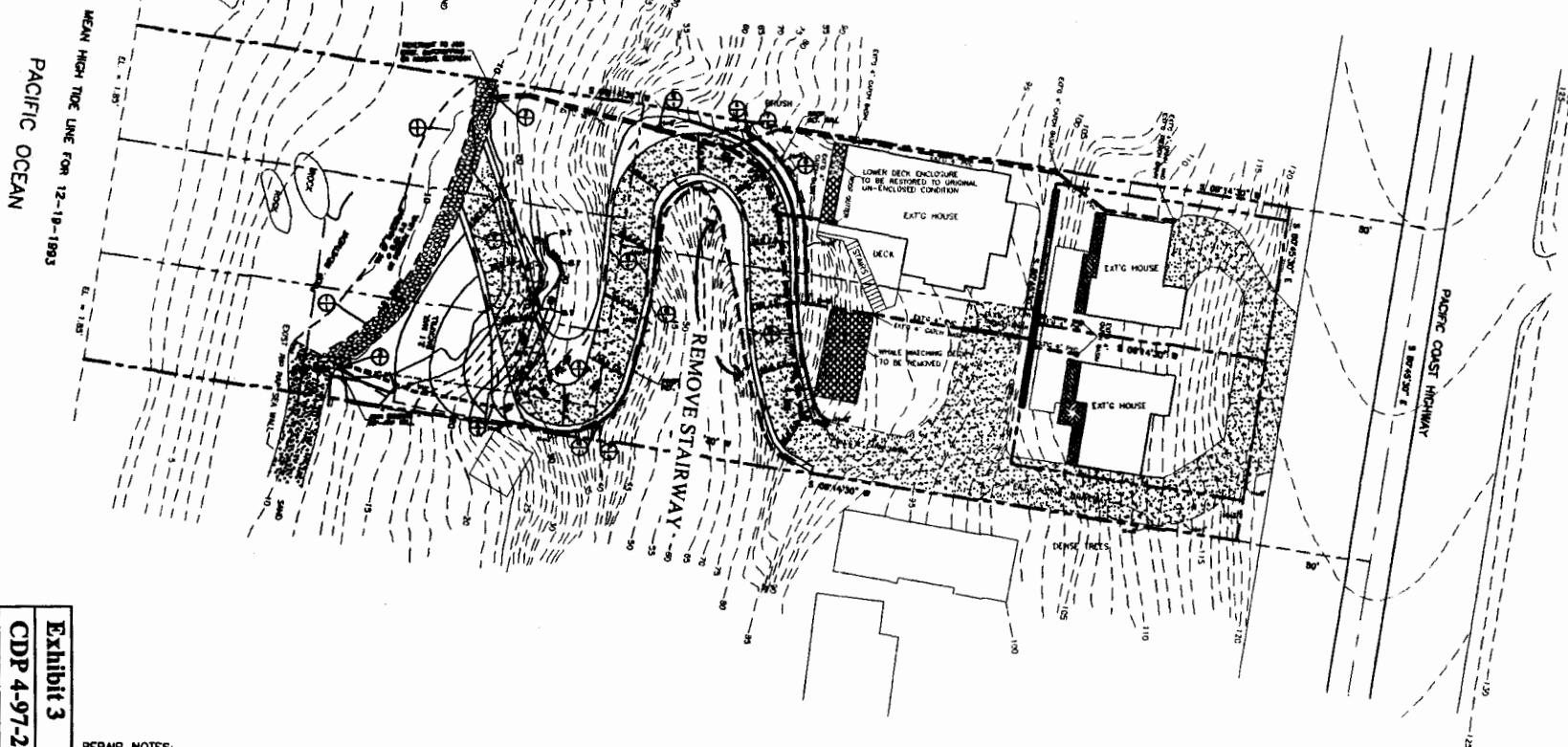
L.A.C.E. B.M. #DY-9087  
EL=113.402 (1990 ADJ.)

# LEGAL DESCRIPTION

A PARCEL OF LAND IN THE CITY OF MALIBU, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1, PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY.

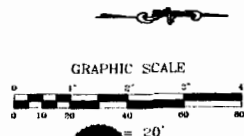
# SURVEYOR'S NOTES:

1. MEAN HIGH TIDE ELEVATION USED FOR THIS MAP IS 1.85'.
2. THIS MAP IS A COMPILATION OF A MAP PREPARED BY LAND & AIR SURVEYING AND A MAP SUPPLIED BY MALIBU VISTA. A COPY OF BOTH MAPS AND THE COMPILATION ARE IN THE OFFICE OF LAND & AIR SURVEYING.



# REPAIR NOTES:

THIS IS AN EMERGENCY REMEDIAL BLUFF RESTORATION PLAN AND IS INTENDED TO REPAIR THE BEACH ROAD, AND REPLACE THE DAMAGED ASPHALT CONCRETE PAVEMENT.  
VERIFICATION OF ALL DRAINAGE STRUCTURES SHALL BE VERIFIED DURING CONSTRUCTION AND REPAIRED AS NECESSARY.  
EXISTING STRUCTURES SHALL BE MOVED AND ADJUSTED AS NECESSARY TO ACHIEVE ADEQUATE DRAINAGE DURING CONSTRUCTION, AND REPLACED AS NECESSARY.  
IMPROVEMENTS AND PROPOSED IMPROVEMENTS ARE APPROXIMATE ONLY, AND SHOULD BE VERIFIED DURING CONSTRUCTION.  
A "BUILT" REPORT SHALL BE FILED WITH THE CITY OF MALIBU, AT THE COMPLETION OF THE REMEDIAL REPAIR.  
THE OBJECT CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE SITE CONDITIONS AND EXISTING FACILITIES.  
THE OBJECT GEOLOGIST SHALL REVIEW AND APPROVE ALL IMPROVEMENTS DURING AND AT THE COMPLETION OF THE REMEDIAL REPAIR.  
A "BUILT" REPORT SHALL BE FILED WITH THE CITY GEOLOGIST.  
STABILITY OF EXISTING & PROPOSED SLOPES SHOULD BE ADDRESSED BY THE PROJECT GEOLOGIST.



PHASE 1: EMERGENCY BLUFF RESTORATION  
& PAVEMENT PLAN

# GRADING AND DRAINAGE PLAN

33400 PACIFIC COAST HIGHWAY  
MALIBU, CALIFORNIA 90265  
OWNER: REVERLEY HODGINS

ADDRESS:  
OWNER:

11500 HARBOR ST.  
SUITE 200  
MALIBU, CALIF. 90265  
TEL: (310) 411-1111  
FAX: (310) 411-1111

**PEG**  
Professional Engineering  
Civil and Structural Engineering

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**CALIFORNIA COASTAL COMMISSION**

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



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Date: December 7, 2000

Permit Application No. 4-97-243

**NOTICE OF INTENT TO ISSUE PERMIT**


On February 17, 2000, the California Coastal Commission granted to Beverley Higgins, permit 4-97-243, subject to the attached conditions, for development consisting of: Request for the after-the-fact approval of the construction of a rock revetment at the toe of a coastal bluff across three vacant beachfront parcels to protect an existing driveway and residence, remedial grading (40 cu. yds. cut and 170 cu. yds. fill) to buttress damaged roadway. The application also includes the new construction of retaining walls (ranging in height from 2 ft. to 6 ft.) along roadway and below existing residence, paving existing driveway on the bluff face, installation of drainage devices, and offer to dedicate a lateral public access easement. This permit is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 33400 Pacific Coast Highway, City of Malibu.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1-10, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS  
Executive Director

  
By: Barbara Carey  
Coastal Program Analyst

**ACKNOWLEDGMENT:**

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. \_\_\_\_\_, and fully understands its contents, including all conditions imposed.

\_\_\_\_\_  
Date\_\_\_\_\_  
Permittee

Please sign and return one copy of this form to the Commission office at the above address.

<b>Exhibit 4</b>
<b>CDP 4-97-243-A1</b>
<b>Notice of Intent to Issue Permit 4-97-243</b>



## NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 7  
Permit Application No. 4-97-243

### STANDARD CONDITIONS:

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

### SPECIAL CONDITIONS:

1. Assumption of Risk/Shoreline Protection
  - A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
    1. The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
    2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
    3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.

EXHIBIT 4 (cont)

## NOTICE OF INTENT TO ISSUE PERMIT

Page 3 of 7  
Permit Application No. 4-97-243

4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
  5. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-97-243, as shown on Exhibit 3, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall include a legal description of the applicant's entire parcel and an exhibit showing the location of the shoreline protective device approved by this permit. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

### **2. Offer to Dedicate Lateral Public Access**

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line landward to the toe of the rock revetment, as shown on the Grading and Drainage Plan prepared by VPL Engineering, dated 11/10/99.

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

EXHIBIT 4 (CONT.)

## NOTICE OF INTENT TO ISSUE PERMIT

Page 4 of 7  
Permit Application No. 4-97-243

### 3. Geology

All recommendations contained in the Geologic Memoranda, dated 6/17/98, 2/19/98, 12/26/97, 2/7/94; Response to Geology and Geotechnical Engineering Review Sheet, dated 10/15/98; Engineering Geologic Report for Proposed Single Family Residence, dated 1/3/91, all prepared by Donald B. Kowalewsky, as well as all recommendations contained in the Wave Uprush Study Update, dated 3/3/99, prepared by Pacific Engineering Group and the Response to Coastal Commission Staff Report, dated 2/8/95; Response to Coastal Commission Permit Application Review, dated 3/9/94; Report of On-Site Observations, dated 3/1/93; and Wave Uprush Study, dated 3/13/90, all prepared by David C. Weiss shall be incorporated into all final project plans and designs and shall be implemented during construction, and all plans must be reviewed and approved by the geotechnical and coastal engineering consultants prior to commencement of construction. Prior to the issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director's satisfaction that the geotechnical and coastal engineering consultants have reviewed and approved all final project plans and designs and construction procedures as incorporating their recommendations, and have so indicated by stamping and signing all relevant final plans and drawings.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or a new coastal development permit. The Executive Director shall determine whether any changes to the plans approved by the Commission constitute a "substantial change."

### 4. Construction Responsibilities and Debris Removal

No stockpiling of construction materials or storage of equipment shall occur on the beach and no machinery will be allowed in the intertidal zone at any time. The permittee shall immediately remove from the beach area any and all debris that results from the construction activities.

### 5. Sign Restrictions

No signs shall be posted on the property subject to this permit (and/or on immediately adjacent properties) which (a) explicitly or implicitly indicate that the portion of the beach on Assessor's Parcel Numbers (APN) 4473-019-005, 4473-019-006, or 4473-019-007 located seaward of the bulkhead approved by Coastal Development Permit 4-97-243 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read "Private Beach" or "Private Property." To effectuate the above prohibitions, the permittee is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

## **NOTICE OF INTENT TO ISSUE PERMIT**

Page 5 of 7  
Permit Application No. 4-97-243

### **6. Revised Plans**

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised grading plans which show that the graded areas of the driveway to the beach have been reduced in width to a maximum of 15 feet and that no new paving is provided on the roadway. The revised plans may also incorporate a drainage feature, such as a swale or v-ditch, within the 15-foot width of the roadway, that conveys drainage from the bluff face to the beach below. All areas outside the 15-foot maximum width shall be revegetated as required by Condition 7 below.

### **7. Bluff Revegetation Plan**

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a detailed bluff revegetation plan prepared by a qualified Landscape Architect, resource specialist or biologist. The plan shall be reviewed and approved by the geotechnical consultant to ensure that the plans are in conformance with the consultants' geotechnical recommendations. The plans shall include, but not be limited to, the following criteria:

- a. Provisions and specifications for removal of all non-native plants, including provisions for phasing of removal, if necessary, to minimize the extent of area devoid of vegetation.
- b. Bluff revegetation program which utilizes only native drought resistant plants, endemic to coastal bluffs. The revegetation program shall use a mixture of seeds and container plants to increase the potential for successful revegetation. All areas of the bluff face not developed with the driveway, revetment, or retaining walls approved in Permit 4-97-243 shall be planted for erosion control and visual enhancement purposes. No hydroseeding shall occur in areas of the bluff where native plant material is already established. A temporary irrigation system may be used until the plants are established, as determined by the consulting landscape architect or resource specialist, but in no case shall the irrigation system be in place longer than three (3) years.
- c. An interim erosion control plan for the interim stabilization of disturbed areas on the coastal bluff. The interim erosion control measures shall include, but not limited to: sand bag barriers or silt fencing, installation of geotextiles or mats for disturbed areas on the bluff and measures to ensure stockpiled materials are stabilized. These interim erosion control measures shall be maintained until the permanent drainage system is installed and the disturbed areas are revegetated.

## NOTICE OF INTENT TO ISSUE PERMIT

Page 6 of 7  
Permit Application No. 4-97-243

- d. Monitoring and maintenance program to ensure the successful revegetation of the bluff. The bluff revegetation plan shall be implemented within 30 days of the completion of the roadway, drainage, and retaining wall improvements. However, the removal of exotic vegetation and revegetation with native species may be carried out in several phases to minimize bluff disturbance. The plan shall specify the areas for phased removal and the timing necessary for each phase. Revegetation shall provide 90 percent coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. This time period may be extended by the Executive Director for good cause.

Five years from the date of the issuance of this permit, the applicant shall submit, for the review and approval of the Executive Director, a revegetation monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the bluff revegetation is in conformance with the revegetation plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the revegetation is not in conformance with or has failed to meet the performance standards specified in the revegetation plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental revegetation plan for the review and approval of the Executive Director. The revised revegetation plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

### **8. Geologic Hazard Restricted Use Area**

- A. No development, as defined in Section 30106 of the Coastal Act, shall occur on the bluff face portions of Assessor's Parcels Number 4473-019-003, -004, -005, -006, and -007, as shown in Exhibit 5 except for:
1. Construction of the rock revetment and drainage structures, remedial driveway grading limited to 15-foot width, retaining walls, and bluff revegetation approved under Coastal Development Permit 4-97-243.
  2. Repair and maintenance of development approved under Coastal Development Permit 4-97-243, provided that such repair or maintenance is in conformance with a Commission-approved amendment or new coastal development permit, unless the Executive Director determines that no amendment or coastal development permit is required.

EXHIBIT 4. (CONT.)

## NOTICE OF INTENT TO ISSUE PERMIT

Page 7 of 7

Permit Application No. 4-97-243

- B. Prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated geologic hazard restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

### **9. Condition Compliance**

Within 90 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.

### **10. Implementation of Project Plans**

Within 60 days of issuance of this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall implement the approved project plans to stabilize the bluff, including the revetment, buttress, retaining walls, paving, and drainage devices. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Mar 30 01 04:26p

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/30/01

DEPT. WEL

HONORABLE VALERIE BAKER~

JUDGE N. HERMSEN~

DEPUTY CLERK

HONORABLE  
#8

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE~

Deputy Sheriff

NONE~

Reporter

4:00 pm

SC061313

Plaintiff

Counsel

NO APPEARANCE

BEVERLEY HIGGINS

VS

Defendant

Counsel

NO APPEARANCE

CALIFORNIA COASTAL COMMISSION E  
AL.

## NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER - PETITION FOR WRIT OF  
MANDATE

After considering the papers filed and counsel's oral arguments at the hearing on March 29, 2001, this court finds that judgment should be entered directing the Respondent to set aside Condition 8 in its entirety; and to set aside the portion of Condition 6 which precludes resurfacing of the road. In other respects, the court denies the Petition.

The court's decision herein is based on grounds set forth in its written tentative ruling which was filed with the minutes of March 29, 2001. See also reporter's notes of the hearing.

Within one week, the Petitioner Higgins shall prepare, file and serve a (proposed) Judgment, in accordance with the court's ruling herein. CCP 1094.5(f).

The administrative record lodged with the court is ordered returned to counsel for the Petitioner. Counsel for the Petitioner is ordered to pick up said record within one week.

A copy of this minute order shall be mailed and faxed to counsel as follows:

ALLAN ROBERT BLOCK  
MICHAEL N. FRIEDMAN

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/30/01

DEPT. WEL

HONORABLE VALERIE BAKER

JUDGE

N. HERMSEN

DEPUTY CLERK

HONORABLE  
#8

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

4:00 pm SC061313

Plaintiff

Counsel

NO APPEARANCE

BEVERLEY HIGGINS

VS

Defendant

CALIFORNIA COASTAL COMMISSION E  
AL.

Counsel

NO APPEARANCE

## NATURE OF PROCEEDINGS:

1901 AVENUE OF THE STARS, SUITE 1610  
LOS ANGELES, CA 90067-6001NEDRA E. AUSTIN  
300 SOUTH SPRING STREET, ROOM S212  
LOS ANGELES, CA 90013ALLEN ROBERT BLOCK & MICHAEL N. FRIEDMAN: (310) 552-  
1850

NEDRA E. AUSTIN: (213) 897-2801

.Dated: March 30, 2001

**VALERIE L. BAKER**  
Valerie L. Baker, Judge



Tentative - March 29, 2001, 9:30 am, Dept. L, Santa Monica, Judge Valerie Baker

*This is just a tentative. The court invites oral argument from both sides at the hearing. In their argument, counsel are encouraged wherever appropriate to cite to the Administrative Record.*

HIGGINS v. CALIFORNIA COASTAL COMMISSION - SC 061313

**PETITIONER HIGGINS' PETITION FOR WRIT OF MANDATE**

After reading the Moving, the Opposition and the Reply papers, this court's preliminary findings include the following:

I. *Standard of Review*: Contrary to Petitioner's assertions, this court finds that the standard of review is that of "substantial evidence" rather than "independent" review. CCP Section 1094.5(c) & Public Resources Code Section 30801. As Respondent asserts, an administrative agency's decision is presumed to be supported by substantial evidence and the burden is on the petitioner to show there is no substantial evidence whatsoever to support the findings of the agency. See Respondent's Opposition, pages 4 - 6 and cases cited by the parties including, Goat Hill 6 CA 4<sup>th</sup> 1519, 1527 and Bolsa Chica Land Trust 71 CA 4<sup>th</sup> 493, 502-503 (1999).

II. *Special Condition No. 6 (Restriction of road to an unpaved, 15-foot wide path)*: Plaintiff is entitled to repave the road destroyed by the disaster, pursuant to Public Resources Code Section 30610(g), on the condition that the road's width be limited to 15 feet.

(A) Referring to Public Resources Code Section 30610(g), it does appear that the subject road was a "structure ...destroyed by disaster." See the Section's broad, general definition of "structure" and "disaster". The evidence establishes that the road was eroded by storms, particularly the El Nino storms. See e.g. 6 AR 755; 9 AR 1304-1305; and 9 AR 1320. There is insubstantial evidence to support the Respondent's assertion that the road deteriorated over time through erosion. There is inadequate support for the Respondent's suggestion that Petitioner did not properly engage in the procedure for claiming an exemption under this provision. There is a letter in the record which Higgins sent to the Coastal Commission requesting an exemption under CCP 30610(g) and upon which it is written across the top, "Not Exempt." 1 AR 54. See also 1 AR 55 & 72.

(1) The remaining issues are whether the replacement road, proposed by the Petitioner, is the same width as the destroyed structure or an impermissible enlargement; and whether the replacement road can be paved.

(2) On the above referenced issue of the width of the road, there appears to be sufficient evidence that the width has been no more than 15-20 feet and can therefore be limited to 15 feet. See 9 AR 1321. Another words, the Petitioner has failed to meet her burden of showing that the 15 foot limitation is not supported by substantial evidence. Although the Petitioner refers to historic maps of the area, the maps do not adequately assist the court in arriving at a measurement of the historic width of the road. Petitioner fails to specify the

evidence supporting her position that the 15 foot limit is improper. Indeed, as the Respondent asserts, there is no clear evidence setting forth the roadway dimensions advocated by the Petitioner.

(3) On the above referenced issue of paving, it appears that the Petitioner should prevail. There is a lack of support in the record for the condition that Petitioner reduce the road to a dirt path. First, the evidence establishes that historically the road was paved. See e.g. 1 AR 55 & 60; 3 AR 207; 6 AR 818, 835 & 1157. Moreover, the evidence cited shows the positive effects that paving or resurfacing of the road would have on drainage, ground saturation and overall bluff stability. 1 AR 62; 3 AR 332; 7 AR 1149 - 1150 & 1153; 8 AR 1261-1262; 9 AR 1320 - 1321; 11 AR 1889-1890. Respondent does not cite sufficient evidence to the contrary. (9 AR 1321 is unsupported, as Petitioner asserts.) In sum, the Petitioner meets here burden of proof in this area.

III. *Condition 8: (Condition that Petitioner execute deed restriction declaring her three beachfront lots a "Geologic Hazard Restricted Use Area")* - This condition should be deleted essentially because there is not an application pending to development those lots. There is no evidence that the Petitioner is seeking to develop the lots at this time. (See e.g. Petitioner's Memorandum filed on 2/22/01, page 17 and the evidence cited therein.) Respondent exercise of power here was unreasonable and unsupported by substantial evidence where the requirement imposed does not bear a nexus to the proposed development, i.e. a seawall to protect the bluff and existing residence. In other words, substantial evidence does not support Condition 8.

EXHIBIT 5. (CONT)

COPY

1 AGREEMENT TO COMPROMISE AND SETTLE DISPUTED CLAIMS  
2 AND MUTUAL RELEASE OF CLAIMS

3 THIS AGREEMENT to Compromise and Settle Disputed Claims and Mutual  
4 Release of Claims ("Agreement") is made and entered into by and between the CALIFORNIA  
5 COASTAL COMMISSION (hereinafter referred to as the "COASTAL COMMISSION") and  
6 BEVERLEY HIGGINS ("HIGGINS").

7 WITNESSETH

8 WHEREAS HIGGINS is the owner of real property located at 33400-33406  
9 Pacific Coast Highway, City of Malibu, California, Los Angeles County, and designated by  
10 Assessor's Parcel Numbers (APN) 4473-019-003, -004, -005, -006 and -007 ("Subject Property");

11 WHEREAS HIGGINS has instituted an action against the COASTAL  
12 COMMISSION in the Los Angeles Superior Court entitled *Beverly Higgins vs. California*  
13 *Coastal Commission*, Case No. SC 061313, seeking a writ of mandate in connection with the  
14 COASTAL COMMISSION's conditional approval of Coastal Development Permit Application  
15 No. 4-97-243 ("CDP No. 4-97-243"), and the COASTAL COMMISSION has instituted a cross-  
16 action against HIGGINS for declaratory relief, injunctive relief and civil fines and penalties  
17 pursuant to Public Resources Code section 30820 for violations of the Coastal Act (Pub.  
18 Resources Code, § 30000 et seq.) and resource damage on the Subject Property;

19 WHEREAS HIGGINS has instituted a second action against the COASTAL  
20 COMMISSION entitled *Beverley Higgins vs. California Coastal Commission*, Los Angeles  
21 Superior Court Case No. SS 009779, seeking a writ of mandate in connection with the COASTAL  
22 COMMISSION'S conditional approval of Coastal Development Permit Application No. 4-95-105  
23 ("CDP No. 4-95-105");

24 WHEREAS, both of the aforementioned actions are currently pending ("pending  
25 actions"); and

1 WHEREAS HIGGINS and the COASTAL COMMISSION wish to fully and  
2 finally settle and resolve the disputes which have led to the filing of the pending actions on the  
3 terms and conditions hereinafter set forth, without admission by either party of any of the  
4 allegations contained in those pending actions;

5 NOW THEREFORE, in consideration of the recitals set forth above and the  
6 covenants and agreements contained herein, HIGGINS and the COASTAL COMMISSION agree  
7 as follows:

8 TERMS & CONDITIONS OF SETTLEMENT:

9 1) HIGGINS agrees that in the settlement of this action, HIGGINS shall  
10 execute a stipulation for entry of the judgment attached hereto as Exhibit 1 and incorporated  
11 herein by this reference. Said judgment may be entered against HIGGINS and recorded against  
12 the Subject Property if HIGGINS defaults on any of the terms set forth in this Agreement.

13 2) Within five (5) days after HIGGINS has fully complied with the terms of  
14 this Agreement, HIGGINS and the COASTAL COMMISSION shall execute and cause to be filed  
15 all appropriate documents to effectuate the dismissal, with prejudice, of the pending actions in  
16 their entirety.

17 3) HIGGINS will pay to the COASTAL COMMISSION a civil penalty in the  
18 amount of \$20,000 payable as follows: Within five (5) days after the entry of this Agreement,  
19 HIGGINS shall deliver to the California Coastal Commission, 45 Fremont Street, Suite 2000, San  
20 Francisco, California 94105, attention Amy Roach, Esq., Deputy Chief Counsel, a certified or  
21 cashier's check in the amount of \$5,000 payable to: "California Coastal Commission, Violation  
22 Remediation Account." A second payment of \$5,000 shall be due on the first day of the sixth (6)  
23 month following the first payment, and shall be made in the same manner. A third payment of  
24 \$5,000 shall be on the first day of the sixth month following the second payment, and shall be  
25 made in the same manner. A fourth payment of \$5,000 shall be on the first day of the sixth month  
26 following the third payment, and shall be made in the same manner.

4) HIGGINS will accept the terms and conditions of CDP Nos. 4-97-243 and 4-95-105, except as set forth below, and will perform all of the work required and authorized by said permits.

6) The time periods to commence construction to satisfy all of the special conditions of CDP Nos. 4-97-243 and 4-95-105 will be 90 days after building permits are issued by the City of Malibu. Construction shall be completed within 90 days after construction is commenced. The COASTAL COMMISSION may extend the 90 day completion deadline for good cause. Governmental delays caused by no fault of HIGGINS shall be deemed to be good cause. HIGGINS will apply to the City of Malibu for building permits within 30 days after this Agreement is fully executed.

8) HIGGINS shall apply for an amendment to CDP 4-97-243 to retain or remove the existing concrete stairs along the roadway of the Subject Property within 90 days after this Agreement is entered. If the COASTAL COMMISSION denies the amendment for retention, HIGGINS shall apply for an amendment to CDP 4-97-243 to remove the concrete stairs within 90

1 days after the denial. HIGGINS shall implement the permit amendment for removal of the  
2 unpermitted development within the time frame set forth in such amendment. The permit  
3 amendment/filing fee shall be waived by the COASTAL COMMISSION.

4           9) Costs and Attorney's Fees: Each party to this Agreement shall bear its own  
5 costs, including attorney fees incurred in connection with the prosecution or defense in the  
6 pending actions and any and all related actions.

7           10) Settlement of Claims: This Agreement effects the compromise and  
8 settlement of disputed and contested claims and nothing contained herein shall be construed as an  
9 admission by any party hereto of any liability of any kind to any other party or as an agreement to  
10 reimburse the other for any expense or costs incurred in connection with this Agreement.

11           11) Effective Date of Agreement: Notwithstanding anything contained herein  
12 to the contrary, this Agreement shall not be deemed effective or binding upon any of the parties  
13 until actual execution by all parties or their agents or attorneys.

14           12) Enforcement of Settlement Agreement: In the event that HIGGINS fails to  
15 fully comply with the terms and conditions set forth herein, the COASTAL COMMISSION shall  
16 be entitled to pursue whatever remedies it may have to enforce the terms of this Agreement or  
17 otherwise to seek remedies under Chapter 9 of the Coastal Act for a violation of the requirements  
18 of that law. Those actions may include but are not limited to:

- 19           a) Entering and recording the judgment in the form described above and  
20 attached hereto as Exhibit 1;  
21           b) Injunctive relief to require full compliance with the requirements of this  
22 Agreement; and  
23           c) Collection of penalties under section 30820(a) for violation of Coastal Act  
24 section 30600.

25           Additionally, the COASTAL COMMISSION and HIGGINS stipulate, covenant  
26 and agree that this Agreement shall be enforceable by any Judge of the Superior Court of the

1 County of Los Angeles as if the Agreement itself is a judgment enforceable pursuant to California  
2 Code of Civil Procedure section 128.4.

3 13) Waiver of the Benefits of Civil Code Section 1542: Having been fully  
4 apprised of the nature and effect of the provisions of section 1542 of the California Civil Code,  
5 each of the parties waive all rights which they may have against the other under the pending  
6 actions, both known and unknown which might otherwise exist by virtue of the provisions of  
7 Section 1542 which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO  
8 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
10 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

11 14) Lot Line Adjustment Excluded: This Agreement expressly excludes the  
12 existing violation on the Subject Property wherein HIGGINS has, to date, failed to obtain a  
13 Coastal Development Permit for the lot line adjustment that occurred through Certificate of  
14 Compliance No. 100,879, which was recorded on May 2, 1990, as document number 90-82550.  
15 HIGGINS has sought to resolve this unpermitted lot line adjustment through Coastal  
16 Development Permit application 4-00-220, but said application is incomplete at this time and the  
17 alleged violation remains unresolved.

18 15) Representation: HIGGINS and the COASTAL COMMISSION represent  
19 and warrant that they have been afforded adequate opportunity to review, and have in fact  
20 reviewed, the contents of this Agreement with counsel of their own choosing and accept the terms  
21 and conditions of this Agreement thereof based upon such advice of counsel.

22 16) Severability: The invalidity, either in whole or in part, or the  
23 unenforceability of one or more clauses or portions of this Agreement shall not detract from the  
24 validity or enforceability of the remaining clauses or portions of the Agreement which shall  
25 survive in all respects as if the invalid or unenforceable portions were not a part thereof.

17) Interpretation: HIGGINS and the COASTAL COMMISSION

acknowledge and agree that this Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects. The paragraph headings have been inserted for convenience of reference only and shall not affect the meaning or context in which this Agreement is interpreted.

18) Integration: This Agreement and Exhibit I attached hereto constitute the

entire agreement of the parties pertaining to the disputes which gave rise to the filing of the pending actions, and they supersede all prior or contemporaneous understandings, representations, warranties and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. This Agreement, which includes Exhibit 1 attached hereto, is entire in and of itself and may not be modified or amended except by an instrument in writing signed by all the parties. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement, and the parties hereto further intend and agree that no extrinsic evidence whatsoever may be introduced in any judicial proceeding or quasi-judicial proceeding, if any, in connection with the enforcement or interpretation of this Agreement.

19) Execution in Counterparts: HIGGINS and the COASTAL

COMMISSION, in order to more expeditiously implement the compromise and settlement terms set forth herein, agree that the Agreement may be executed in two or more counterparts as if all parties signed one document and each executed counterpart shall be regarded as if it is an original document.

20) Remedies for Breach of Agreement: Should any party to this Agreement

violate any term or condition herein, the non-breaching party shall retain all rights and remedies available under the law including, but not limited to, the Coastal Act and remedies arising under contract law as well as those provided by this Agreement. The breaching party shall retain the right to raise all applicable defense in response to any claim brought by the non-breaching party.



1           21) Binding on Successors-in-Interest: This Agreement is binding upon the  
2 parties, and their successors-in-interest, transferees and assignees. To ensure notice of the  
3 requirements of this Agreement to potential successors-in-interest, transferees and assigns, this  
4 Agreement shall be recorded against title to the Subject Property.

5           22) Attorneys' Fees: Should either party be required to enforce any part of this  
6 Agreement, the prevailing party shall be entitled to its costs including reasonable attorneys' fees  
7 expended in such enforcement proceeding if the prevailing party establishes to the Superior  
8 Court's satisfaction that the other party's non-compliance was unreasonable and based on bad  
9 faith.

10 ////

11 ////

12 ////

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15 ////

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18 ////

1 IN WITNESS WHEREFORE, the parties have caused this AGREEMENT TO  
2 COMPROMISE AND SETTLE DISPUTED CLAIMS AND MUTUAL RELEASE OF CLAIMS  
3 BY ALL PARTIES consisting of eight pages to be executed:  
4

5 DATE: \_\_\_\_\_

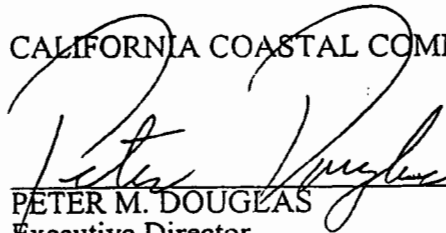
BEVERLEY HIGGINS

8 DATE: \_\_\_\_\_

ALAN ROBERT BLOCK  
Attorney for  
BEVERLEY HIGGINS

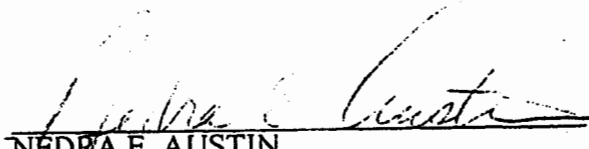
13 DATE: 5/13/03

CALIFORNIA COASTAL COMMISSION

  
PETER M. DOUGLAS  
Executive Director  
CALIFORNIA COASTAL COMMISSION

BILL LOCKYER, Attorney General  
of the State of California  
RICHARD M. FRANK,  
Chief Assistant Attorney General  
J. MATTHEW RODRIQUEZ  
Senior Assistant Attorney General  
JOHN A. SAURENMAN  
Supervising Deputy Attorney General  
NEDRA E. AUSTIN  
Deputy Attorney General

23 DATE: 5/19/03

  
NEDRA E. AUSTIN  
Attorneys for  
CALIFORNIA COASTAL COMMISSION

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4  
5 DATE:

4-14-03

  
BEVERLEY HIGGINS

6  
7  
8 DATE:

4-21-03

  
ALAN ROBERT BLOCK  
Attorney for  
BEVERLEY HIGGINS

9  
10  
11 CALIFORNIA COASTAL COMMISSION

12  
13 DATE:

14  
15 PETER M. DOUGLAS  
Executive Director  
CALIFORNIA COASTAL COMMISSION

16  
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of the State of California  
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Supervising Deputy Attorney General  
21 NEDRA E. AUSTIN  
Deputy Attorney General

22  
23 DATE:

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25 NEDRA E. AUSTIN  
Attorneys for  
CALIFORNIA COASTAL COMMISSION

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT