

Item W 7e

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

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

Appeal Filed: 7/19/05
49th Day: 9/6/05
Substantial Issue Found: 8/12/05
Staff: Carey
Staff Report: 11/2/05
Hearing Date: 11/16/05



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STAFF REPORT: APPEAL DE NOVO REVIEW

APPEAL NO.: A-4-MAL-05-085

APPLICANT: William and Jacqueline Gould

APPELLANTS: Commissioners Caldwell and Kruer

LOCAL GOVERNMENT/ LOCAL DECISION: City of Malibu, Approval with Conditions

PROJECT LOCATION: 20758 Pacific Coast Highway, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a two-story, 3,089 sq. ft. single-family residence including a 360 sq. ft. garage, roof deck, bulkhead, return walls, and an alternative onsite wastewater treatment system.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for City of Malibu Coastal Development Permit No. 04-019/Variance No. 99-020; City of Malibu Planning Commission Resolution No. 05-33; Coastal Development Permits 4-99-237 (Gould); 5-87-695 (Condon); 5-83-122 (Condon)

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **approval** of the proposed project with 11 special conditions regarding offer to dedicate lateral access, construction responsibilities and debris/excavated material removal, geologic and engineering recommendations, sign restriction, assumption of risk, shoreline protective structure, drainage and polluted runoff, and public view corridor, deed restriction, and lighting requirements. As conditioned, the proposed development will be consistent with all applicable policies and standards of the City of Malibu Local Coastal Program and the access and recreation policies of the Coastal Act.

The project site is a vacant, 7,500 square foot beachfront lot located in the Big Rock Beach area of the City of Malibu, Los Angeles County. The proposed development will be located landward of the mean high tide line and is consistent with the applicable stringlines. The entire residence will be supported on a cast-in-place concrete friction pile and grade beam foundation system bearing into competent bedrock. However, since the entire project site is subject to wave uprush, the proposed bulkhead and return walls are necessary to provide protect the onsite wastewater treatment system from wave uprush and erosion.

The Commission previously found that this appeal raised substantial issue with respect to the project's consistency with the applicable public access, visual, and water quality policies of the LCP. The standard of review for the de novo review of the project is whether the proposed development is in conformity with the certified City of Malibu Local Coastal Program and the public access policies of the Coastal Act. During the De Novo hearing, testimony may be taken from all interested persons.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject properties to the terms and conditions.

SPECIAL CONDITIONS

1. Offer to Dedicate Lateral Public Access

In order to implement the applicants' 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 applicants agree to complete the following prior to issuance of the permit: the landowners shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the dripline of the proposed decks. The dripline of the decks is illustrated on the site plan prepared by Trygvi Thorsteinsson Associates, received in the Commission office on September 27, 2005 (Exhibit 4).

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. The recording document shall include a formal legal description¹ and graphic depiction, prepared by a licensed surveyor, of both the applicants' entire parcel 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.

2. Plans Conforming to Geotechnical Engineer's Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the RJR Engineering Group reports dated January 19, 2001, December 10, 1998, and June 6, 1993 and Pacific Engineering Group, dated November 15, 2000 and November 4, 1998. All recommendations shall be incorporated into all final design and construction, including recommendations concerning foundations, grading, and drainage, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any

- B. 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.
- C. 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.
- D. 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.

6. 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 Pacific Coast Highway to the Pacific Ocean.
- b. No structures, vegetation, or obstacles, including the parking of any vehicle 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 the west side of the proposed building as shown on Exhibit 4.
- 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.

7. Erosion Control, Drainage and Polluted Runoff Control Plans

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

- Provide sanitary facilities for construction workers.
- Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.

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

- Site design, source control and treatment control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
- Pre-development peak runoff rate and average volume
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Expected post-development peak runoff rate and average volume from the site with all proposed non-structural and structural BMPs
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Measures to treat, infiltrate, or filter runoff from impervious surfaces (e.g., roads, driveways, parking structures, building pads, roofs, patios, etc.) on the subject parcel(s) and to discharge the runoff in a manner that avoids erosion, gullyng on or downslope of the subject parcel, ponding on building pads, discharge of pollutants (e.g., oil, heavy metals, toxics) to coastal waters, or other potentially adverse impacts. Such measures may include, but are not limited to, the use of structures (alone or in combination) such as on-site desilting basins, detention ponds, dry wells, biofilters, etc.
- A long-term plan and schedule for the monitoring and maintenance of all drainage-control devices. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, installation of additional BMPs, repairs of eroded area, as needed, should be carried out prior to the next rainy season.
- Post-construction Treatment Control BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs.

- 2) Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.
- 3) The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

No light source will be directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area and that no lighting around the perimeter of the site, the beach area or for aesthetic purposes shall be allowed.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicants propose the construction of a two-story, 3,089 sq. ft. single-family residence including a 360 sq. ft. garage, roof deck, bulkhead, return walls, and an alternative onsite wastewater treatment system on a beachfront parcel. A Minor Modification is also proposed to allow the required front yard setback to be reduced from 8 feet to 4 feet, and to allow the side yard on the east side of the property (opposite side yard from the 20% percent view corridor) setback to be reduced from 5 feet, 2 inches to 4 feet, 1 inch. Variances are proposed to allow the proposed project to be constructed on slopes greater than 2 ½ :1 and to modify the requirement for off-street parking requirements.

The applicants are proposing two modifications to the project that was approved by the City of Malibu. The applicants are proposing to record an offer to dedicate lateral public access along the width of the project site from the dripline of the proposed deck to the mean high tide line. Additionally, the applicants have modified the project plans such that no off-street parking spaces would be provided within the view corridor.

B. Background

Local Government Action and Filing of Appeal

On June 20, 2005, the City of Malibu Planning Commission approved Coastal Development Permit 04-019 and Variance 99-020 for the single family residence project. The Coastal Development Permit was approved subject to 15 standard conditions and 16 special conditions. The special conditions include the following: landscaping, color restriction, lighting, geology, water quality (storm runoff), and solid waste recycling.

project. Apparently, the applicants recorded an offer to dedicate an easement for lateral access. However, other requirements (subordination agreement, title report, etc.) were never provided and the condition was not considered to be satisfied. This permit was never issued and has since expired.

C. Shoreline Protective Devices

The proposed project includes the construction of a 54 foot long, 17 foot high, timber bulkhead with two 23 foot long return walls ranging from 17 to 20 feet in height. The proposed bulkhead will be located 33 feet seaward of the Pacific Coast Highway right-of-way/property line. The proposed bulkhead will be located entirely beneath the proposed structure (approximately 14 feet landward of the proposed deck dripline).

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

As described in the discussion below, there is evidence that the proposed development along this section of Big Rock Beach will require a shoreline protective device and that such development has the potential to adversely impact natural shoreline processes. Therefore, it is necessary to review the proposed project for its consistency with Sections 30235, 30250(a), and 30253 of the Coastal Act and with past Commission action.

Section 30235 of the Coastal Act, which is incorporated as part of the Malibu LCP, states:

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

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states:

- 4.35 *All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.*
- 4.36 *New development on or along the shoreline or a coastal bluff shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.*
- 4.37 *Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.*
- 4.39 *All shoreline protection structures shall be sited as far landward as feasible regardless of the location of protective devices on adjacent lots. In no circumstance shall a shoreline protection structure be permitted to be located further seaward than a stringline drawn between the nearest adjacent corners of protection structures on adjacent lots. A stringline shall be utilized only when such development is found to be infill and when it is demonstrated that locating the shoreline protection structure further landward is not feasible.*
- 4.42 *As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.*
- 4.43 *As a condition of approval of a shoreline protection structure, or repairs or additions to a shoreline protection structure, the property owner shall be required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. The restrictions shall also acknowledge that the intended purpose of the subject structure is solely to protect existing structures located on the site, in their present condition and location, including the septic disposal system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the*

dripline of the proposed decks) will be located approximately 47 feet seaward of the Pacific Coast Highway right-of-way line (approximately 34 feet landward of the 1961 mean high tide line). The staff of the State Lands Commission has reviewed the proposed project and have stated that they presently assert no claim that the project intrudes onto sovereign lands or that it would lie in an area subject to the public easement in navigable waters or that it falls within the LCP's 10-foot setback requirement. Based on the submitted information, the Commission notes that the proposed development will be located more than ten feet landward of the most landward recorded (1961) mean high tide line and should not extend onto public tidelands under normal conditions.

b. Wave Uprush

Although the proposed structure will be located landward of the 1961 mean high tide line, the "Addendum Wave Uprush Study," prepared by Pacific Engineering Group, dated November 15, 2000 (and Addendum #2 dated January 24, 2005), indicates that the maximum wave uprush at the subject site will occur seven feet landward of the Pacific Coast Highway right-of-way line (landward of the proposed residence). The applicants' coastal engineering consultant has indicated that although the proposed residence will be constructed seaward of the maximum wave uprush limit, the residence will be supported by a concrete friction pile and grade beam foundation system bearing into competent bedrock and will not require any form of shoreline protection to ensure structural stability. In addition, the proposed project includes the installation of a new alternative onsite wastewater treatment system. The Commission notes that the proposed septic system is located as far landward as feasible. However, the seaward extent of the wastewater treatment system (with leachfield) (located approximately 27 feet seaward of the Pacific Coast Highway right-of-way line) will still be within the wave uprush limit and will require a shoreline protection device to ensure the stability of the system. The Commission notes that no portion of the subject site will be located landward of the maximum wave uprush limit and that, therefore, it is not possible to construct any type of wastewater treatment system that would not be subject to periodic wave action without the construction of some form of shoreline protection. Therefore, the Commission notes that the proposed bulkhead and two return walls are necessary to protect the proposed wastewater treatment system from wave uprush and erosion.

Based on the above discussion, the Commission finds that the proposed bulkhead is required to protect the wastewater treatment system that will service the proposed residential development. The Commission further finds that the proposed timber bulkhead and return walls, which will be located as far landward as feasible, will be subject to wave action during storm and high tide events. Therefore, the following discussion is intended to evaluate the impacts of the proposed timber bulkhead and return walls on the beach, based on the above information which identified the specific structural design, location of the structure, and shoreline geomorphology.

a. Beach Scour

Scour is the removal of beach material from the base of a cliff, seawall, or revetment due to wave action. The scouring of beaches as a result of seawalls is a frequently observed occurrence. When waves impact a hard surface such as a coastal bluff, rock revetment, or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. In the case of a vertical bulkhead, return walls are typically constructed in concert with the seawall, and, thus, wave energy is also directed to the return walls causing end erosion effects. This reflected wave energy in conjunction with incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature on the subject acknowledges that seawalls affect the supply of beach sand.

The "Addendum Wave Uprush Study," prepared by Pacific Engineering Group, dated November 15, 2000, indicates that the proposed bulkhead and return walls will be located seaward of the maximum wave uprush limit and will, therefore, periodically be subject to wave action. In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering: "Seawalls usually cause accelerated erosion of the beaches fronting them and an increase in the transport rate of sand along them."² In addition, experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement regarding the adverse effects of shoreline protective devices:

These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.³

The above statement, which was made in 1981 and signed by 94 respected coastal geologists, indicates that sandy beach areas available for public use can be harmed through the introduction of seawalls. Thus, in evaluating an individual project, the Commission assumes that the principles reflected in that statement are applicable. To do otherwise would be inconsistent with the Commission's responsibilities under the

² "Saving the American Beach: A Position Paper by Concerned Coastal Geologists," Skidaway Institute of Oceanography, March 1981, page 4.

³ "Saving the American Beach: A Position Paper by Concerned Coastal Geologists," Skidaway Institute of Oceanography, March 1981, page 4.

San Diego County, construction of vertical seawalls along the base of the bluffs to protect existing residential development at the top of the bluffs, has resulted in preventing the bluffs' contribution of sand to the beaches, resulting in a narrowing of those beaches.

As set forth previously, the subject site is located on Big Rock Beach, which is a narrow and oscillating beach. The applicants' coastal engineering consultant has indicated that the proposed bulkhead and return walls will be acted upon by waves during storm conditions. The applicants' consultant has also indicated that seasonal foreshore slope movement can be as much as 40 feet. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a bulkhead and return walls on the subject site, then the subject beach would also accrete at a slower rate. The Commission notes that many studies performed on both oscillating and eroding beaches have concluded that a loss of beach occurs on both types of beaches where a shoreline protective device exists. Therefore, the Commission notes that the proposed bulkhead and return walls, over time, will result in potential adverse effects to the beach sand supply, resulting in increased seasonal erosion of the beach, and longer recovery periods.

In addition, the impacts of potential beach scour are important relative to beach use for two primary reasons. Public access is one major concern. The subject property is located approximately one half of a mile west (upcoast) from a vertical public coastal accessway and approximately 120 feet east (downcoast) from an existing offer to dedicate a vertical public access. If the beach scours at the base of the bulkhead, even minimal scouring in front of the 54 foot long bulkhead and two 23 foot long return walls will translate into a loss of beach sand available through erosion than would otherwise occur under a normal winter season if the beach were unaltered. The second impact relates to the potential turbulent ocean condition that may be created. Scour at the face of a seawall will result in greater interaction with the wall and, thus, make the ocean along Big Rock Beach more turbulent than it would be normally be along an unarmored beach area. Thus, the Commission has ordinarily required that shoreline protection devices be located as far landward as possible, in order to reduce adverse effects from scour and erosion. In the case of this project, the Commission notes that the proposed timber bulkhead and return walls will be located as far landward as feasible in order to provide protection for the proposed septic system, which has also been located as far landward as feasible, in order to minimize adverse effects from scour and erosion.

In their report dated November 15, 2000, Pacific Engineering Group states:

The septic system . . . represents the most landward location for such a system. Current Health Code dictates that the bulkhead sheathing cannot be closer than five (5) feet from the field with clean sand between the bulkhead and the field. Hence the proposed bulkhead location 33 feet seaward of the PCH right-of-way line represents the most landward location for the required bulkhead.

lateral public access easement, a historical shoreline analysis based on site specific studies would be necessary. Although this level of analysis has not been submitted by the applicants, the Commission notes that because the applicants have proposed as part of the project an offer to dedicate a lateral public access easement along the entire southern portion of the lot, as measured from the dripline of the proposed decks, it has not been necessary for Commission staff to engage in an extensive analysis as to whether the imposition of an offer to dedicate would be required here absent the applicants' proposal. As such, **Special Condition No. 1** has been required in order to ensure that the applicants' offer to dedicate a lateral public access easement is recorded on the deed prior to the issuance of the coastal development permit.

b. End Effects

End scour effects involve the changes to the beach profile adjacent to the shoreline protection device at either end. One of the more common end effects comes from the reflection of waves off of the shoreline protection device in such a way that they add to the wave energy which is impacting the unprotected coastal areas on either end. In addition, the Commission notes that the literature on coastal engineering repeatedly warns that unprotected properties adjacent to any shoreline protective device may experience increased erosion. Field observations have verified this concern. Although it is difficult to quantify the exact loss of material due to end effects, in a paper written by Gerald G. Kuhn of the Scripps Institute of Oceanography, it is concluded that erosion on properties adjacent to a rock seawall is intensified when wave runup is high.⁷

An extensive literature search on the interaction of seawalls and beaches was performed by Nicholas Kraus in which he found that seawalls will have effects on narrow beaches or beaches eroded by storm activity. His research indicated that the form of the erosional response to storms that occurs on beaches without seawalls which are adjacent to beaches with seawalls is manifested as more localized toe scour, with end effects of flanking and impoundment at the seawall.⁸ Dr. Kraus' key conclusions were that seawalls could be accountable for retention of sediment, increased local erosion and increased end erosion. Kraus states:

At the present time, three mechanisms can be firmly identified by which seawalls may contribute to erosion at the coast. The most obvious is retention of sediment behind the wall which would otherwise be released to the littoral system. The second mechanism, which could increase local erosion on downdrift beaches, is for the updrift side of the wall to act as a groin and impound sand. This effect appears to be primarily theoretical rather than actualized in the field, as a wall would probably fail if isolated in the surf zone. The third mechanism is flanking i.e. increased local erosion at the ends of walls.

7 "Coastal Erosion along Oceanside Littoral Cell, San Diego County, California," Gerald G. Kuhn, Scripps Institute of Oceanography, 1981.

8 "Effects of Seawalls on the Beach," Nicholas Kraus, Ph.D., Journal of Coastal Research, Special Issue #4, 1988.

Thus, the offshore profile has a certain "demand" for sand and this is "satisfied" by erosion of the upland on a natural beach or as close as possible to the natural area of erosion on an armored shoreline...¹¹

As explained, the proposed timber bulkhead and return walls will protect the new alternative onsite wastewater treatment system from continued loss of sediment and wave uprush. However, the result of this protection, particularly on a narrow beach, is a loss of sediment on the sandy beach area that fronts the seawall. Furthermore, as explained previously, this loss of sediment from the active beach leads to a lower beach profile, seaward of the protective device, where the seawall will have greater exposure to wave attack.

In past permit actions, the Commission has required that all new development on a beach, including the construction of new single family residences or shoreline protection devices, provide for lateral public access along the beach in order to mitigate adverse effects to public access from increased beach erosion. The applicants are proposing to dedicate a lateral public access easement, which would provide for public access along the entire beach under all tidal conditions as measured seaward from the deck dripline to the mean high tide line. The Commission notes that the lateral public access easement which the applicants have offered to dedicate as part of this project will be consistent with other lateral public access easements which have been recorded on properties along Big Rock Beach and in the Malibu area.

As stated previously, in order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes and the adequacy of the proposed lateral public access easement, a historical shoreline analysis based on site specific studies would be necessary. Although this level of analysis has not been submitted by the applicants, the Commission notes that because the applicants have proposed, as part of their project, an offer to dedicate a lateral public access easement along the entire southern portion of the lot, as measured from the dripline of the proposed decks, it has not been necessary for Commission staff to engage in an extensive analysis as to whether the imposition of an offer to dedicate would be required here absent the applicants' proposal. As such, **Special Condition No. 1** has been required in order to ensure that the applicants' offer to dedicate a lateral public access easement is recorded on the deed prior to the issuance of the coastal development permit.

4. Past Commission Actions on Residential Shoreline Development

Many portions of the Malibu coastline are intensely developed with single family residences. The eastern portion of the Malibu coastline, including Las Tunas, Big Rock, La Costa, and Carbon beaches form an almost solid wall of residential development along a five mile stretch of the shoreline. This residential development

¹¹ "Responding to Changes in Sea Level: Engineering Implications," National Academy of Sciences, National Academy Press, Washington D.C., 1987, page 74.

Another characteristic of largely developed beachfront communities is that many, but not all, existing single family residences have some form of shoreline protective device. In Malibu, all beachfront homes utilize a septic system or alternative onsite wastewater treatment system which, when determined to be subject to wave uprush by a coastal engineer, are required to have a shoreline protective device to protect the system. This requirement of assessing the wave uprush applies to all new development, extensive remodels, reconstruction, as well as any changes to an existing septic system or proposals for a new septic system.

In infill development situations only, as described above, the Commission has found in past permit actions in Malibu pursuant to Section 30235 of the Coastal Act, that seawalls, revetments, or other types of shoreline protective devices can be permitted to protect existing structures or the onsite wastewater treatment system for a new structure that constitute infill development and when designed and engineered to eliminate or mitigate adverse impacts on the shoreline. The Commission has also found, in past permit actions in Malibu, that in beach areas largely committed to residential development having shoreline protective devices, the construction of shoreline protective devices should tie into adjacent seawalls where appropriate or possible. Policy 4.31 of the Malibu LUP provides the parameters that apply to infill development.

The Commission recognized that the infilling of residential development between existing structures would not result in significant adverse effects to coastal resources within these existing developed shoreline areas. Faced with the prospect of denying beachfront residential development with protective devices due to an inconsistency with Section 30235 of the Coastal Act, the Commission has approved infill development through permit actions on beachfront lots in Malibu. The Commission has found that infilling these gaps would not cause significant further impacts on shoreline processes or adverse impacts on other coastal resources given the prevailing development pattern along these sections of the Malibu coast.

The Commission notes that the area surrounding the subject site is characterized as a substantially developed beach. In the case of the proposed development, one single family residence with a timber bulkhead, return walls, and onsite wastewater treatment system can be considered as infill development within an existing developed area.

b. Seaward Encroachment

In 1981, the Commission adopted the "District Interpretive Guidelines" for the Malibu Santa Monica Mountains area of the coastal zone. These guidelines established specific standards and criteria for shoreline development along the Malibu Coast. These guidelines included the "stringline" policy for the siting of infill development:

In a developed area where new construction is generally infilling and is otherwise consistent with Coastal Act policies, no part of a proposed new structure, including

wastewater treatment system that would not be subject to periodic wave action without the construction of some form of shoreline protection. Therefore, the Commission notes that the proposed timber bulkhead and return walls are necessary to protect the proposed wastewater treatment system from wave uprush and erosion.

As discussed above, the Commission notes that the new bulkhead, return walls, and wastewater treatment system will be located as far landward as possible. However, the Commission further notes that the purpose of the shoreline protective device authorized by this permit is solely to protect the wastewater treatment system on the subject site and that no shoreline protective device is required to protect the residence authorized by this permit. If the septic system approved under this permit were replaced or abandoned, then the bulkhead and return walls approved under this permit to protect the wastewater treatment system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating it further landward. Additionally, any future improvements to the proposed seawall that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access.

Therefore, to ensure that the proposed project does not result in new future adverse effects on shoreline sand supply and public access and that future impacts are reduced or eliminated, **Special Condition No. 4** requires the applicants, by accepting this permit, to acknowledge that a new coastal development permit for the shoreline protective device authorized this permit shall be required if the proposed wastewater treatment system is replaced or abandoned for any reason (including the installation of a sewer system along Pacific Coast Highway) and that if a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the wastewater treatment system, then the shoreline protective device authorized by this permit shall be removed. Likewise, **Special Condition No. 4** prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device. **Special Condition No. 9** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In past permit actions, the Commission has required that all new development on a beach, including the construction of new single family residences or shoreline protection devices, provide for lateral public access along the beach in order to mitigate adverse effects to public access from increased beach erosion. As stated previously, in this case, the applicants are proposing to dedicate a lateral public access easement, which would provide for public access along the entire beach under all tidal conditions as measured seaward from the deck dripline to the ambulatory mean high tide line. The Commission notes that the lateral public access easement that the applicants have offered to dedicate as part of this project will be consistent with other lateral public

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

- 4.2. All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.**
- 4.4. On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.**
- 4.5. Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.**
- 4.10. New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.**
- 4.11 New development involving a structure dependent on a wastewater disposal system shall utilize secondary treatment, at a minimum, and evapotranspiration waste disposal systems or other innovative measures, where feasible.**
- 4.22 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.**
- 4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.**
- 4.24 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.**
- 4.26 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:**

bulkhead should be supported on concrete piles that are independent of the foundation of the proposed residence.

Their report goes on to state:

The minimum elevation of the top of the structural concrete slab for the bottom floor of the proposed residence shall not be lower than elevation +20.50 Ft. MSL-NGVD29. . . .

As stated previously, the referenced geotechnical and engineering reports prepared by RJR Engineering dated January 19, 2001, December 10, 1998, and June 6, 1993 and Pacific Engineering Group, dated November 15, 2000 and November 4, 1998 include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the consultant have been incorporated into all proposed development, the Commission, as specified in **Special Condition No. 2**, requires the applicant to incorporate the recommendations cited in the Geology Report into all final design and construction plans. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

As discussed above, the Commission notes that the applicants' geotechnical engineering consultant has indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, in their report entitled "Addendum Wave Uprush Study," dated November 15, 2000, Pacific Engineering Group states:

The owner should realize that there will always be certain risks associated with building or living on the beach and assume such risks. Further the Engineer makes no warranty or guarantee that the structures outlined in this report will survive natural forces from any and all storm conditions. . . . Because of the unpredictability of the ocean environment, the above design standards are meant to minimize storm wave damage and not eliminate it. Tsumani or hurricane generated waves were not analyzed in this report because of their extreme low probability . . . However the possibility of these events producing damage to the subject property does exist, and hence no warranties are provided should these events occur.

Thus, as stated above by the applicants' coastal engineering consultant, the proposed development is located on a beachfront lot in the City of Malibu and will be subject to some inherent potential hazards. The Commission notes that the Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences. The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges, and high tides.

Past occurrences have caused property damage resulting in public costs through emergency responses and low interest, publicly subsidized reconstruction loans. In the winter of 1977 to 1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage

siltation of coastal waters. Further, any excavated materials that are placed in stockpiles are subject to increased erosion. The Commission also notes that additional landform alteration would result if the excavated material were to be retained on site.

To ensure that landform alteration and adverse effects to the marine environment are minimized, **Special Condition No. 3** requires the applicants to ensure that stockpiling of dirt or materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of Chapter 4 (Hazards and Shoreline/Bluff Development) of the Malibu LUP, including Section 30253 of the Coastal Act, which is incorporated as part of the LUP, and applicable standards of Chapter 9 (Hazards) of the Malibu LUP.

E. Public Access

The Malibu Local Coastal Program (LCP) mandates the provision of maximum public access and recreational opportunities along the coast. The Malibu LCP incorporates Sections 30210, 30211, 30212, and 30220 of the Coastal Act applicable to new development along the beach. In addition to being incorporated as part of the LCP, the access and recreation policies of the Coastal Act are also a standard of review for appealed projects that are considered de novo.

Section 30210 of the Coastal Act states:

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

Coastal Act Section 30211 states:

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

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

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

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

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

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. The proposed project is located on Big Rock Beach, approximately one half mile west (upcoast) from an existing vertical public coastal accessway and approximately 150 feet east (downcoast) from a vertical public coastal accessway that has been offered, but not yet accepted or opened. Furthermore, there are several lateral public access easements located on several lots near the project site.

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

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

adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline, eventually affecting the profile of a public beach. Fourth, if not sited as far landward as possible, in a location that insures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate wave energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

In past permit actions, the Commission has required new shoreline protection devices to be located as far landward as possible in order to reduce adverse effects on sand supply and public access from the development. In the case of this project, the Commission notes that the new bulkhead and septic system will be located as far landward as possible. However, the Commission further notes that any future improvements to the proposed seawall that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access. Therefore, to ensure that the proposed project does not result in new future adverse effects to public access, **Special Condition No. 4** requires the applicants to acknowledge that any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit will be prohibited if such activity extends the seaward footprint of the subject shoreline protective device.

Likewise, the Commission further notes that the purpose of the shoreline protective device authorized by this permit is solely to protect the onsite wastewater treatment system proposed as part of the project and that no shoreline protective device is required to protect the residence authorized by this permit. If the onsite wastewater treatment system approved under this permit were replaced or abandoned, then the bulkhead and return walls approved under this permit to protect the onsite wastewater treatment system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating it further landward. As a result, **Special Condition No. 4** requires the applicants to acknowledge that a new coastal development permit for the shoreline protective device authorized this permit shall be required if the proposed onsite wastewater treatment system is replaced or abandoned for any reason (including the installation of a sewer system along Pacific Coast Highway) and that if a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the onsite wastewater treatment system, then the shoreline protective device authorized by this permit shall be removed. **Special Condition No. 9** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

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

engage in an extensive analysis as to whether the imposition of an offer to dedicate would be required here absent the applicants' proposal. As such, **Special Condition No. 1** has been required in order to ensure that the applicants' offer to dedicate a lateral public access easement is recorded prior to the issuance of the coastal development permit.

The Commission has also found that there are potential impacts to public access that can result from the provision of an inadequate amount of off-street parking, particularly associated with commercial, industrial, or institutional uses. If such uses do not provide a sufficient amount of parking for patrons and employees, then on-street parking spaces that would be otherwise available for the general public will be utilized. If the on-street parking spaces are located in areas where the general public could park for beach access, then the use of the on-street parking for other uses would impact public access. In the case of single family residential uses, the Malibu LIP (Section 3.12.3) requires 2 enclosed and 2 unenclosed spaces for each residence. The proposed project includes a two-car garage. As described below, the proposed project includes a minor modification to allow a front setback of four feet. With the reduction of this setback, there is not adequate depth between Pacific Coast Highway and the front edge of the structure to provide unenclosed parking spaces in the driveway, where such spaces are typically provided on beachfront parcels. The applicants originally proposed to provide two unenclosed parking spaces within the view corridor on the west side of the parcel. However, as discussed below, vehicle parking in this area would not provide an ocean view across the property, which is inconsistent with the view corridor requirements. The applicants have revised the proposed project to delete parking spaces from the view corridor area. As revised, the project will not provide 2 unenclosed parking spaces. The applicant has requested a variance from the requirements of Section 3.12.3 to allow the project to provide only two enclosed spaces (in the proposed garage) and no unenclosed spaces. Section 13.26 of the Malibu LIP provides for the approval of variances from the standards of the LCP for specific situations and if certain findings are made. The findings applicable to the subject variance request include the following:

There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The granting of the variance will not constitute a special privilege to the applicant or property owner.

The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

and Recreation) of the Malibu LUP, the standards of Chapter 12 (Public Access) of the Malibu LIP and the Access and Recreation policies of Chapter 3, (Sections 30210, 30211, 30212, and 30220) of the Coastal Act.

F. Visual Resources

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 of the Coastal Act, which is incorporated as part of the Malibu LCP, states that:

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

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

- 6.1 ***The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.***
- 6.2 ***Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.***

- 6.15 *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.*
- 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.*
- 6.23 *Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.*

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

The project site is located on Big Rock Beach, a built-out area of Malibu primarily consisting of residential and commercial development. The Commission notes that the visual quality of the Big Rock Beach area in relation to public views from Pacific Coast Highway have been significantly degraded from past residential and commercial development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential and commercial related development between Pacific Coast Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels that have not yet been developed. The Commission notes that the construction of large individual residential

this case, the reduction proposed is less than 20 percent. As discussed in this report, the project, as conditioned herein, will be consistent with the Malibu LCP and other applicable state and local requirements. The provision of one contiguous view corridor will enhance visual resources in the area and the proposed reduction of side setback by 1 foot, 1 inch and reduction of the front setback by four feet will not result in any significant impact to the character of the surrounding neighborhood.

To ensure that public coastal views will be protected, **Special Condition No. 6** requires the applicants to agree that no less than 20 percent of the lineal frontage of the project site shall be maintained as a contiguous public view corridor. Development within the public view corridor shall be limited to fencing of visually permeable designs and materials, such as wrought iron or non-tinted glass materials. The project that was originally proposed and approved by the City of Malibu included one view corridor on the west side of the property that constituted 20 percent of the width of the parcel. The project also included the designation of the area within the view corridor as two tandem unenclosed parking spaces. However, the use of the view corridor for vehicle parking is not consistent with the intent of the view corridor policies of the LCP. The intent is for a view across the project site to the ocean to be available to motorists traveling along Pacific Coast Highway. Since the subject project site near the road would be at approximately the same grade as the road, the parking of vehicles in the view corridor would block any ocean views across the site. Although cars or other vehicles are not structures, the impact of placing them within the view corridor would be the same, no views would be provided across the site. The Commission cannot find that siting off-street parking spaces, even if they are unenclosed, within the view corridor is consistent with Policy 6.18 of the Malibu LUP. Subsequent to the Commission's determination of substantial issue on the subject appeal, the applicants redesigned the proposed project such that no parking spaces are provided within the 20 percent view corridor on the west side of the site. The Commission notes that certain types of visually permeable fencing, including certain types of ~~glass walls~~, may be allowed within a public view corridor if such structures do not interfere with public views of the beach and ocean from Pacific Coast Highway. In addition, **Special Condition No. 6** also limits vegetation within the public view corridor to low-lying vegetation of no more than two feet in height in order to preserve public coastal views.

The Commission has found that night lighting of areas in the Malibu / Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Policy 6.23 of the Malibu LCP specifically restricts exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area in order to eliminate the adverse individual and cumulative visual impacts associated with the lighting of such areas visible from public areas. In order to mitigate any potential future visual and environmental impacts of the proposed project, the Commission finds it necessary to require that exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no

Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.

- 3.102 *Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.*
- 3.110 *New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.*
- 3.111 *New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.*
- 3.125 *Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.*
- 3.126 *Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.*
- 3.127 *OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.*
- 3.128 *New development shall be sited and designed to provide an area for a backup soil absorption field in the event of failure of the first field.*
- 3.130 *Subsurface sewage effluent dispersal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath nonporous paving or surface covering.*
- 3.131 *New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and should avoid the use of garbage disposals to minimize hydraulic and/or organic overloading of the OSTs.*
- 3.132 *New development may include a separate greywater dispersal system where approved by the Building Safety Department.*

expected to leave the site. The cumulative effect of increased impervious surface is that the peak water discharge is increased and the peak occurs much sooner after precipitation events. Additionally, grading, excavations and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion of disturbed soils and in sedimentation of the ocean.

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

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the preparation of a Storm Water Management Plan (SWMP) for all projects that require a coastal development permit or a Water Quality Mitigation Plan (WQMP) for new residential developments on beachfront parcels that involve result in the creation or addition or replacement of 2,500 sq. ft. or more of impervious surface. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to minimize or prevent adverse effects of the project on water quality. A WQMP requires treatment control (or structural) BMPs, in addition to site design and source control BMPs that are required for a SWMP, to minimize or prevent the discharge of polluted runoff from a project site. In this case, the project involves the construction of more than 2,500 sq. ft. of impervious surface area on a vacant beachfront site. Therefore, pursuant to the requirements of the Malibu LCP, and to ensure the proposed project will not adversely impact water quality or coastal resources, the Commission finds it necessary to require the preparation of a WQMP for the subject site, that utilizes site design, source control and treatment control BMPs, as specified in **Special Condition No. 7.**

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from runoff during construction. The Malibu LCP

G. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

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

The lectures will occur at 7:00 p.m. on Tuesday November 8, 2005, at the Chase Palm Park building at 236 E. Cabrillo Blvd. in Santa Barbara and Wednesday November 9, 2005, at the Channel Islands National Park Robert J. Lagomarsino Visitor Center located at 1901 Spinnaker Drive in the Ventura Harbor. The programs are free and open to the public.

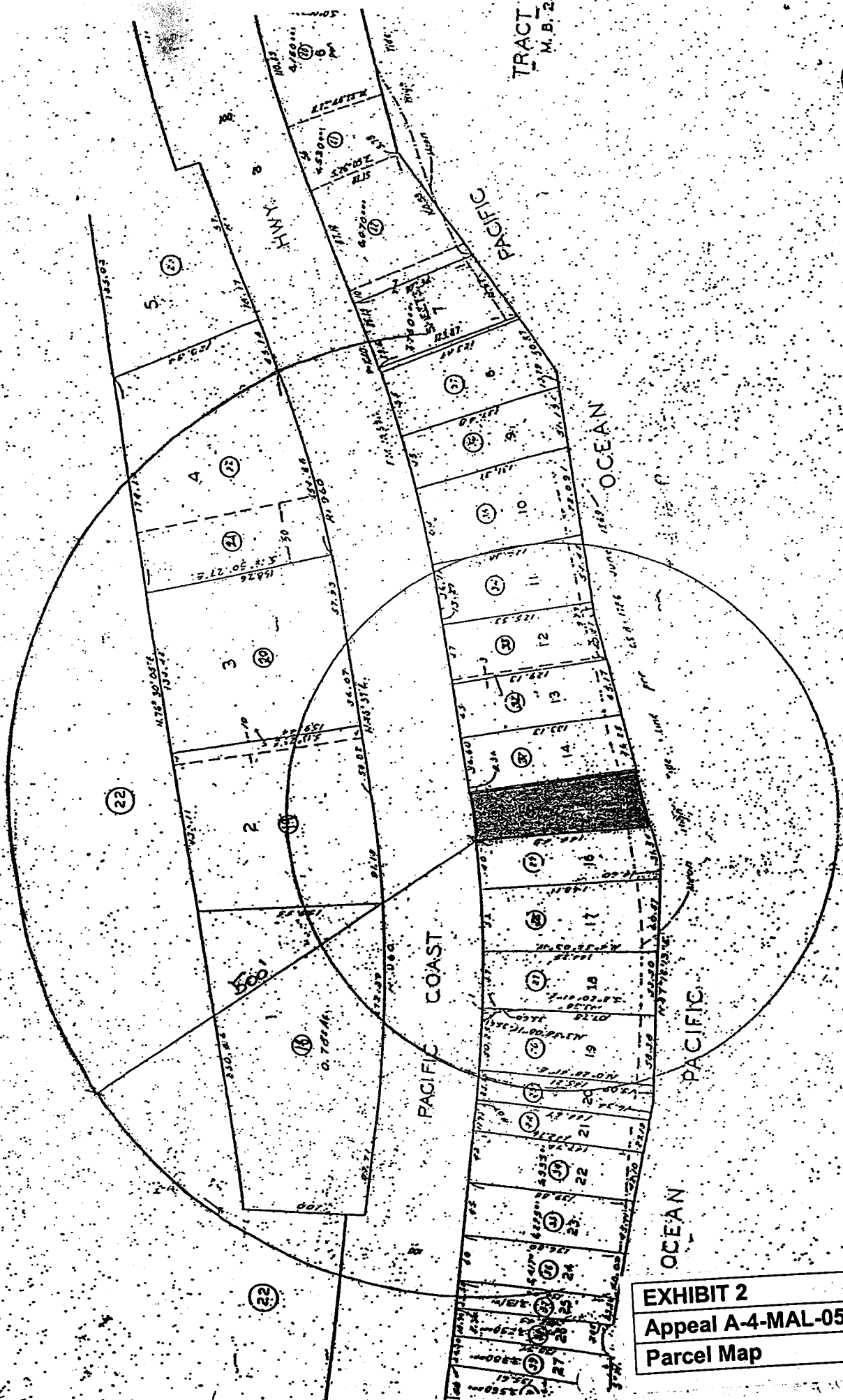
The lecture series schedule and this publication are available on line at:

<http://www.nps.gov/chis/press102405.htm>

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TRACT
M.B. 2

EXHIBIT 2
Appeal A-4-MAL-05-085
Parcel Map

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: June 20, 2005

7. Local government's file number (if any): CDP No. 04-019, Variance No. 99-020

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

William and Jacqueline Gould
C/O Tryggvi Thorsteinsson
2324 Michigan Avenue
Santa Monica, CA 90404

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1)

(2)

(3)

(4)

contiguous view corridor that is 20 percent of the width of the parcel (10 feet, 4 inches). Although not discussed in the staff report, it appears from the project plans (reduced copies) that the applicant is proposing to place two tandem open parking spaces within this view corridor area. Provision of parking in this area will not be consistent with the intent of the view corridor provisions. Parking of vehicles at the same elevation as Pacific Coast Highway will prevent any ocean views from the road across the project site. Additionally, the approved project does not include any condition of approval that would restrict any other future development (such as fencing or landscaping) within the view corridor.

WASTEWATER TREATMENT SYSTEM

Also, the approved project does not include special conditions ensuring that the on-site wastewater treatment system will be maintained, operated, and monitored in a manner consistent with the protection of water quality and marine resources, as required by Section 18.9 of the Malibu LIP.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

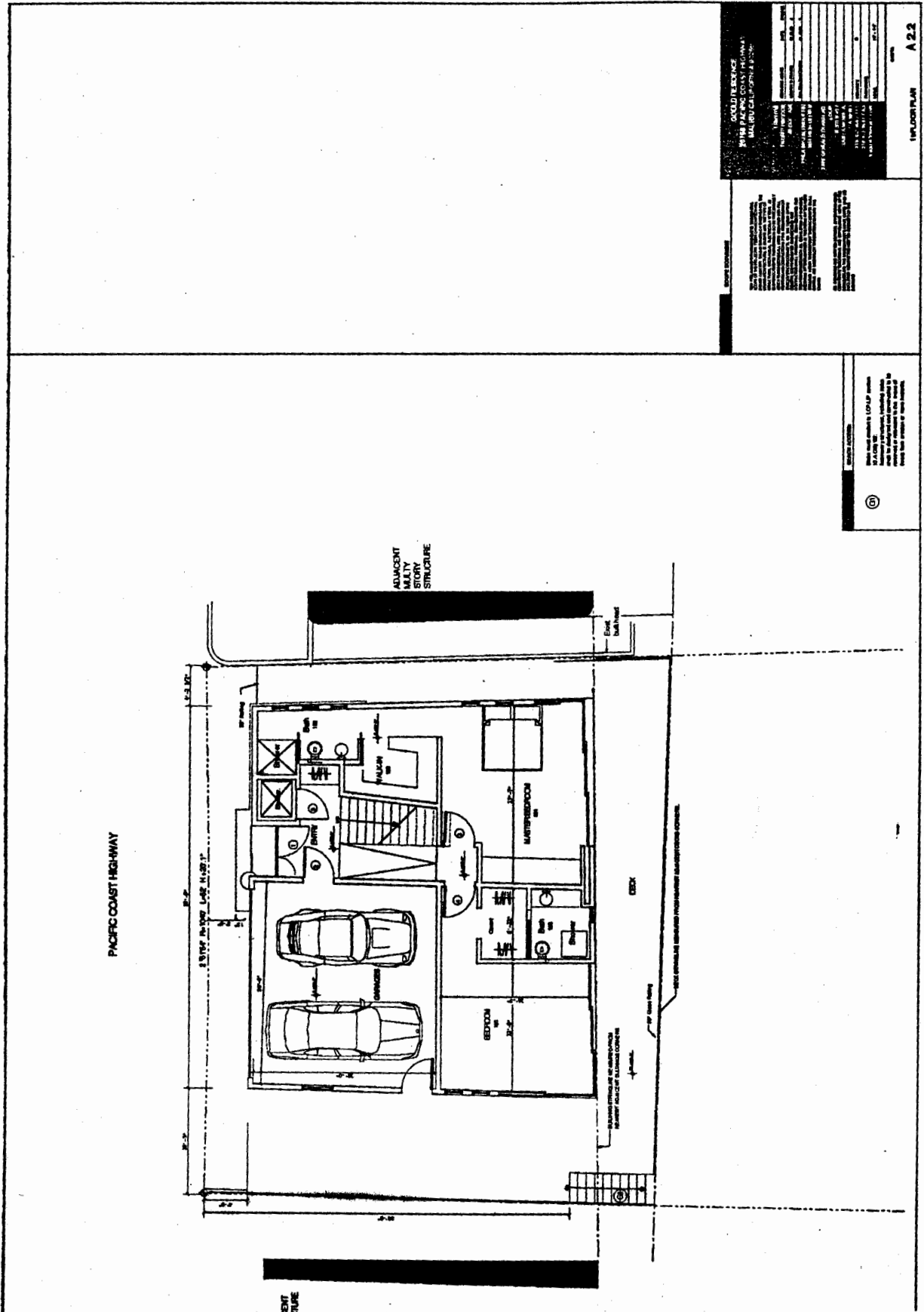
Signed: 
Appellant or Agent

Date: 7/19/05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____



QUALIFICATION

2018 PACIFIC COAST HIGHWAY
 10000 S.W. 10th Ave., Suite 100
 Portland, OR 97204

NO.	NAME	DATE	REVISION
1	PREPARED BY		
2	CHECKED BY		
3	DATE		
4	PROJECT NO.		
5	DATE OF ISSUE		
6	SCALE		
7	PROJECT NAME		
8	PROJECT ADDRESS		
9	PROJECT CITY		
10	PROJECT STATE		
11	PROJECT ZIP		
12	PROJECT PHONE		
13	PROJECT FAX		
14	PROJECT E-MAIL		
15	PROJECT WEBSITE		
16	PROJECT URL		

FLOOR PLAN A 2.3

NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE NOTED.

2. ALL WALLS ARE 1/2" THICK UNLESS OTHERWISE NOTED.

3. ALL DOORS ARE 3'0" WIDE UNLESS OTHERWISE NOTED.

4. ALL WINDOWS ARE 6'0" WIDE UNLESS OTHERWISE NOTED.

5. ALL CEILING HEIGHTS ARE 8'0" UNLESS OTHERWISE NOTED.

6. ALL FLOOR FINISHES ARE TO BE DETERMINED BY THE OWNER.

7. ALL WALL FINISHES ARE TO BE DETERMINED BY THE OWNER.

8. ALL CEILING FINISHES ARE TO BE DETERMINED BY THE OWNER.

9. ALL MECHANICAL, ELECTRICAL, AND PLUMBING ARE TO BE DETERMINED BY THE OWNER.

10. ALL STRUCTURAL REQUIREMENTS ARE TO BE DETERMINED BY THE ENGINEER.

GENERAL NOTES:

1. THIS PLAN IS A PART OF THE LUP-AP PROJECT.

2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT MANUAL.

3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT SPECIFICATIONS.

4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT DRAWINGS.

5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT CONTRACT.

6. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT AGREEMENT.

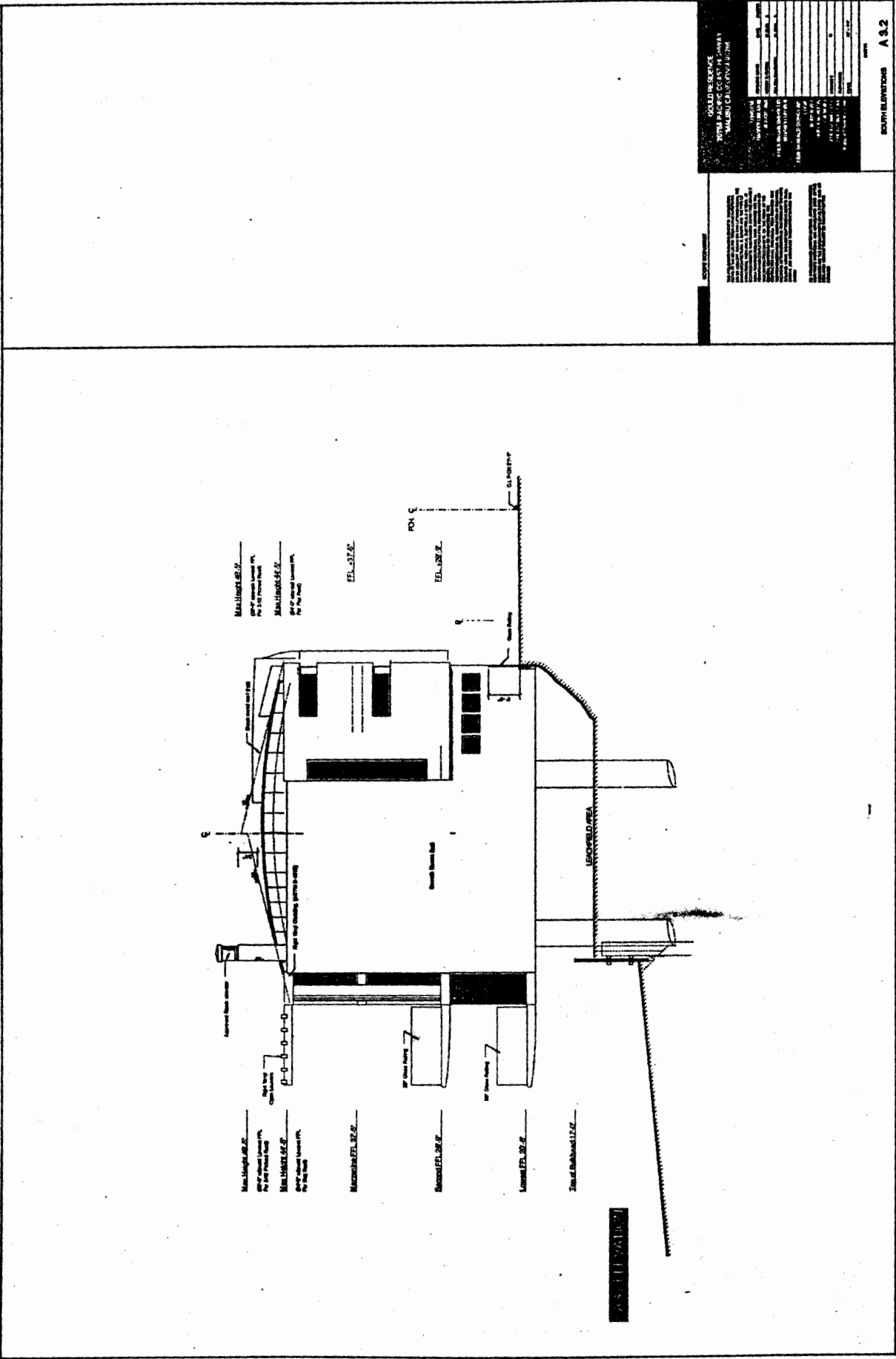
7. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT ORDER.

8. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT REQUEST.

9. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT INQUIRY.

10. ALL WORK SHALL BE IN ACCORDANCE WITH THE LUP-AP PROJECT COMPLAINT.

Exhibit 7
Appeal A-4-MAL-05-085
1st Floor Plan



DOUGLAS SERVICE
NOTES PACIFIC COAST HIGHWAY
WALSH CULVERTS

NO.	DATE	BY	CHKD.
1	10/1/58	J. H. B.	J. H. B.
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99	10/1/58	J. H. B.	J. H. B.
100	10/1/58	J. H. B.	J. H. B.

SOUTH ELEVATION A 3.2

