

CALIFORNIA COASTAL COMMISSION

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

W 8c

Appeal Filed: 4/10/06
49th Day: 5/29/06
Substantial Issue
Found: 5/11/06
Staff: Deanna Christensen
Staff Report: 7/20/06
Hearing Date: 8/9/06

**STAFF REPORT: APPEAL**
DE NOVO REVIEW

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-MAL-06-043

APPLICANT: Moses Lerner

APPELLANTS: Patt Healy and Malibu Coalition for Slow Growth

PROJECT LOCATION: 31858 Sea Level Drive, Malibu, Los Angeles County

PROJECT DESCRIPTION: Installation of a swimming pool on a property developed with an existing 3,965 sq. ft. single-family residence.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for City of Malibu Coastal Development Permit No. 05-162; City of Malibu Planning Commission Resolution No. 06-23; Coastal Development Permit No. 5-89-325 (Lerner); Coastal Development Permit No. 5-89-1037 (Lerner).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **DENIAL** of the proposed project on the basis that the project does not conform to the applicable Environmentally Sensitive Habitat Area or water quality policies and provisions contained in the certified Local Coastal Program. The standard of review for consideration of this de novo CDP is the policies and provisions of the City of Malibu Local Coastal Program.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. A-4-MAL-06-043 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified Local Coastal Program for the City of Malibu. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. PROCEDURAL HISTORY

On March 20, 2006, the City of Malibu Planning Commission approved a coastal development permit (CDP No. 05-162) with conditions. The City's complete Notice of Final Action was received by Commission staff on April 7, 2006. The Commission's ten-working day appeal period for this action began on April 10, 2006 and concluded at 5:00 pm on April 21, 2006. An appeal of the City's action was filed by Pat Healy and Malibu Coalition for Slow Growth on April 10, 2006, on the first day of the appeal period. The appeal contends that the approved project is not consistent with ESHA buffer, maximum development area, and water quality provisions of the certified LCP.

On May 11, 2006 the Commission found that a substantial issue existed in terms of the project's conformance with the City of Malibu's certified LCP regarding ESHA and accepted jurisdiction over the coastal development permit for the project. At that time, the Commission continued the de novo hearing to a later date.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The proposed project consists of the installation of a pre-fabricated, 8-ft. by 15-ft. by 39-in. swimming pool on an 11,720 sq. ft. parcel with an existing 3,965 sq. ft. single-family residence at 31858 Sea Level Drive, Malibu (**Exhibit 1, 2, and 6**). Approximately 50 cubic yards of excavation is required for installation of the pool. The proposed pool site

is situated at the rear of the existing residence, approximately 40 feet east of the center line of Encinal Canyon Creek, a blue-line stream mapped as an Environmentally Sensitive Habitat Area stream corridor on the Malibu LCP ESHA maps. The entire parcel is within the 100-foot ESHA buffer.

Past Commission Actions on the Project Site

The Commission has previously approved coastal development permit applications for development associated with the subject parcel. Staff would note that the applicant for the pool project considered herein is the same individual who has twice been granted CDPs for development on the project site.

Permit 5-89-325 (Lerner) was approved for resubdivision of 10 lots into 3 lots, lot line adjustments for the 3 lots, demolition of existing structures, and the construction of a single-family residence on one of the three lots (lot adjacent to subject lot). The three parcels created in this permit are all located on the west side of Sea Level Drive and each contains a portion of the eastern bank of Encinal Creek. The site considered herein is the center parcel of the three. The parcel to the south of the subject site contains the home approved in CDP 5-89-325.

This permit was approved subject to seven special conditions of approval, including revised lot line adjustment plans, open space easement offer to dedicate, revegetation and landscape plans, future improvements deed restriction, assumption of risk, revised development plans, and archaeological recovery plan (**Exhibit 3**). Special Condition No. 2 of CDP 5-89-325 required the applicant to record an offer to dedicate (OTD) an easement for open space, view preservation, and habitat protection/restoration. The terms of the easement prohibit grading, clearance, development, removal of vegetation, and placement of structures, decks, or fences within the open space area. This easement area was required to be located next to Encinal Creek, along the west property line of each of the three parcels approved under this CDP. The open space area generally followed the top of the creek bank and was required to ensure that development would not encroach into the creek ESHA or impact eucalyptus trees that provide overwintering habitat area for Monarch butterflies. The applicant recorded this easement OTD across all three parcels, including the subject lot, in 1991. The mapped and recorded location of this easement is shown on **Exhibit 4**.

Special Condition No. 4 of CDP 5-89-325 required the recordation of a future improvements deed restriction across the three parcels approved in this permit. This restriction specifies that any future improvements to the property require a new CDP. Additionally, the restriction states, in part, that:

...all development, with the exception of the house shown in Exhibit 2 [This is the house approved on the southernmost of the three parcels as part of CDP 5-89-325] shall be located no less than 15 feet away from the easement established in condition 3. Decks at grade that do not require grading or excavation may also be permitted.

This requirement results in an ESHA buffer for all development, except at grade decks, of approximately 15 feet from the top of the creek bank and is designed to ensure that structural development will not impact the eucalyptus trees and other vegetation within the open space area. This deed restriction was also recorded by the applicant in 1991.

Coastal Development Permit No. 5-89-1037 (Lerner) was subsequently approved for construction of two single-family residences on the remaining two of the three lots (one of which is the subject lot) created pursuant to Permit 5-89-325, demolition of an existing tennis court, and removal of trees (**Exhibit 5**). In approving this permit, the Commission found that all of the conditions of 5-89-325 would remain in full force and effect on the property, including the open space easement and future improvements deed restriction. Further, the Commission required that 70% of the area between the proposed residence and the top of the creek bank be revegetated with suitable riparian plants and other replacement roosts for the butterflies and to delete a concrete slab patio, guardrails, and retaining walls from this area of the project site. The Commission found that to allow this type of development would: "...subject the Eucalyptus trees that provide roosting area to the Monarch butterflies to root zone stress from soil compaction and runoff".

City of Malibu Approval of the Proposed Project

In approving the proposed pool project, the City did not specifically address ESHA buffer requirements. The staff report states that:

The subject parcel is located in an ESHA zone and near a blue line stream, as designated in the Malibu Local Coastal Program LIP. The project has been reviewed by the City Biologist and is determined to have no impact upon environmentally sensitive habitat, since it is to be developed upon an existing pad.

Although the Notices of Intent to Issue Coastal Development Permit for CDP 5-89-325 and 5-89-1037 are part of the record for this project and attached to the staff report, the provisions of the future improvements deed restriction were also not addressed by the City. Based on Commission review of the City's record, it appears that the City did not consider an accurate depiction of the open space easement area in its approval of the project. The project plans provided by the applicant to the City show a "view corridor" along the west portion of the site. The City required a condition of approval requiring the applicant to re-site the pool "nearer the existing residence to ensure that the proposed pool and any associated fencing are not located within the open space easement area".

However, the "view corridor" mapped by the applicant is apparently a separate easement recorded as part of an agreement between the applicant and a neighboring property owner. It does not match the location of the open space easement area. The project plans do not actually depict the recorded open space easement area required in CDP 5-89-325. There is correspondence in the record in which the project planner requests the applicant to provide a surveyed map of all easements on the property that are listed on the applicant's title report. However, the surveyed map of easements

provided by the applicant to the City did not show the open space easement and the City did not make an additional request for it.

The only plan in the City's record that depicts the open space easement area is the onsite wastewater treatment system plan reviewed and approved by the City Health Services Department. This plan, which is a reduced copy of the approved house plans and is difficult to read, is shown in Exhibit 2 with emphasis added to show the open space easement area more clearly. There is no indication that the City reviewed this plan to determine the location of the open space easement area. Further, it is clear that the City did not apply the development restriction (required by the future improvements deed restriction as per CDP 5-89-325) to the area within 15 feet of the open space easement, as the proposed pool is 5 feet away from easement boundary (top of creek bank).

B. Consistency with Local Coastal Program Policies – Standard of Review

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of developments (including new development located within 100 feet of any stream, such as the proposed project). In this case, the proposed development has been previously appealed to the Commission, which found, during a public hearing on May 11, 2006, that a substantial issue was raised.

As a "de novo" application, the standard of review for the proposed development is the policies and provisions of the City of Malibu Local Coastal Program (LCP), which was certified by the Commission on September 13, 2002. The LCP consistency issues raised by the proposed development are discussed in the following sections.

C. ESHA and Water Quality

The following policies of Chapter Three of the Coastal Act are incorporated as part of the City of Malibu LUP:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and

entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Certified Land Use Plan Policies

In addition, the City of Malibu certified LUP contains policies that protect the environmentally sensitive habitat areas of the City. The LUP Environmentally Sensitive Habitat Areas (ESHA) Map shows the areas that are designated ESHA. In undeveloped areas, entire canyon habitats have been designated, including riparian corridors, coastal sage scrub, chaparral, and woodlands. Within developed areas, riparian corridors are designated as ESHA.

The LUP policies establish the protection of areas adjacent to ESHA through the provision of buffers. Natural vegetation buffer areas must be provided around ESHA that are of sufficient size to prevent impacts that would significantly degrade these areas. Development, including fuel modification, shall not be permitted within required buffer areas.

LUP Policy 3.8 states that Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

Policy 3.23 states the following:

Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.

Policy 3.31 of the LUP states that permitted development located within or adjacent to ESHA and/or parklands that adversely impact those areas may include open space or conservation restrictions or easements over ESHA, ESHA buffer, or parkland buffer in order to protect resources.

Further, the following water quality policies require that natural drainage features and vegetation, including riparian areas, are protected and that adequate buffers are provided in order to minimize impacts to water quality.

Policy 3.95

New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:

- Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.
- Limiting increases of impervious surfaces.
- Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.
- Limiting disturbance of natural drainage features and vegetation.

Policy 3.122

Natural vegetation buffer areas that protect riparian habitats shall be maintained. Buffers shall function as transitional habitat and provide a separation from developed areas to minimize adverse impacts. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the riparian habitat, but in no case shall the buffer be less than 100 feet, except for development permitted pursuant to Policy 3.10.

Certified Local Implementation Plan Policies

The certified Local Implementation Plan (LIP) contains standards and policies to implement the Land Use Plan. Chapter 4 of the LIP specifically addresses environmentally sensitive habitat areas (ESHA). The ESHA overlay provisions apply to those areas designated ESHA on the Malibu LIP ESHA overlay map and those areas within 200 feet of designated ESHA. Additionally, those areas not mapped as ESHA, but found to be ESHA under the provisions of Section 4.3 of the Malibu LIP are also subject to these provisions. The purpose of the ESHA overlay zone is to protect and preserve areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. The environmentally sensitive habitat overlay zone not only extends over an ESHA area itself but also includes buffers necessary to ensure continued protection of habitat areas. Only uses dependent on the environmentally sensitive habitat areas and which do not result in significant disruption of habitat values are permitted in the ESHA overlay zone.

Section 4.6.1 of the Malibu LIP states, in part, the following with regard to buffers:

4.6.1. Buffers

New development adjacent to the following habitats shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers except as provided in Section 4.6.1 (E) or (F) of the Malibu LIP. The following buffer standards shall apply:

A. Stream/Riparian

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

Analysis

The proposed project consists of the installation of a pre-fabricated, 8-ft. by 15-ft. by 39-in. swimming pool on a parcel with an existing 3,965 sq. ft. single-family residence. Approximately 50 cubic yards of excavation is required for installation of the pool. Encinal Canyon Creek, a blue-line stream mapped as a Environmentally Sensitive Habitat Area stream corridor on the Malibu LCP ESHA maps, runs along the west side of the subject parcel. The proposed pool site is situated at the rear of the existing residence, approximately 40 feet east of the center line of Encinal Canyon Creek (**Exhibit 6**). The pool, as proposed, would be located approximately 5 feet from the top of the stream bank. In this area of the stream, there is little to no riparian canopy so the ESHA boundary would be located at the top of the bank. Therefore, as proposed, the proposed project would provide an ESHA buffer of approximately 5 feet.

The Commission has found in past CDP actions and in adopting the Malibu LCP, that siting and designing new development such that an adequate buffer is provided between the outer edge of the canopy of riparian ESHA and development will minimize adverse impacts to these habitats. Providing a significant distance between new development and riparian areas ensures that removal or thinning of native vegetation for fuel modification will not be required to provide fire protection. Additionally, the transitional “ecotones” between different habitat types are particularly valuable areas with a higher diversity of plants and animals. The provision of adequate buffers around streams and riparian corridors protects the ecotone.

Natural vegetation buffers also protect riparian habitats by providing area for infiltration of runoff, minimizing erosion and sedimentation. Finally, buffers minimize the spread of invasive exotic vegetation that tend to supplant native species. The presence of surface or subsurface water throughout the year makes riparian areas especially susceptible to invasion by non-native species that can in many instances out compete native plants. Invasive plant species do not provide the same habitat values as natural riparian areas.

In this case, the 100-foot ESHA buffer, required by the Malibu LIP, would be measured from the top of stream bank and would extend across the entire project site. As such, it would not be feasible to provide a 100-foot buffer. Although the existing residential development on the site was approved by the Commission prior to the adoption of the Malibu LCP, the Los Angeles County Malibu/Santa Monica Mountains Land Use Plan was in place at the time and that plan also required a 100-foot buffer. However, it was not feasible to develop a residential use on the site that could provide the buffer and so a 100-foot buffer was not applied at the time. Rather, the Commission ensured protection of the stream ESHA by requiring an open space easement across the stream portion of the site, to the top of bank. The top of the stream bank generally follows the boundary of the open space easement area, as shown on Exhibit 2. Additionally, an ESHA buffer was provided by requiring development (except for at-grade decks) to be no less than 15 feet from the open space easement area, through the recordation of the future improvements deed restriction. While a buffer of 15 feet is, at best, a minimal separation between structures and riparian habitat, it was intended to provide for some area for infiltration of runoff and to minimize the spread of invasive vegetation.

Further, as stated previously, the Commission required native plant revegetation and preservation of ESHA and butterfly habitat within this ESHA buffer (open space easement) as per Special Condition No. 3 of CDP 5-89-325. Additionally, in approving development of a single-family residence on the subject parcel pursuant to CDP 5-89-1037, the Commission required that 70% of the area between the proposed residence and the top of the creek bank to be revegetated with suitable riparian plants and other replacement roosts for the butterflies and to delete a concrete slab patio, guardrails, and retaining walls from this area of the project site. These requirements were designed to enhance the riparian and monarch butterfly habitat within this reach of Encinal Creek.

The maximum development area standard for new development within ESHA or ESHA buffer (pursuant to Section 4.7 of the LIP) was not applied to the existing residential development on the site as it was approved prior to the adoption of the LCP. Nonetheless, the Commission did establish the appropriate area of the site for development, through the recordation of the open space easement offer-to-dedicate (OTD) and the prohibition of development (except for at-grade decks) within the area 15 feet from the open space area. Therefore, in order to ensure that the proposed pool provides adequate setbacks to protect ESHA on the site, it is necessary to determine if the approved pool conforms to the ESHA buffer provisions required in the recorded open space easement OTD and the future improvements deed restriction.

Commission staff's review of the recorded open space easement document and proposed project plans demonstrate that the proposed pool would be located just 5 feet away from the open space easement area and top of the creek bank (**Exhibit 2**). As such, the pool would not provide the 15-foot setback from the open space easement area that is required in conformance with the recorded future improvements deed restriction. In fact, staff's review of this plan demonstrates that the applicant chose to design the existing residential development on the site such that the residence itself is located approximately 15 feet outside the open space easement area. Thus, the

applicant chose to develop all of the allowable development area with the house. As such, no development (except at-grade decks) would be allowed anywhere within almost the entire rear yard area and 70 percent of this area should be planted with native plant species, in accordance with the conditions of CDP 5-89-325 and CDP 5-89-1037.

Staff visited the proposed project site on July 11, 2006 and confirmed that existing development has essentially built-out the entire parcel outside of the 15-foot ESHA buffer and no feasible alternative pool locations exist on the site that would avoid or minimize impacts to ESHA. The front yard area adjacent to the road is developed with the driveway and a pond feature, so there is no area in the front yard for placement of the pool. In addition, staff found that the open space easement area and associated 15-foot ESHA buffer were composed entirely of ornamental landscaping and both non-native and invasive plant species that lack Monarch butterfly and riparian habitat value, which is in non-compliance with the conditions of the underlying coastal development permits.

Procedurally, in order to allow new development within this restricted ESHA buffer area on the property, an amendment to the underlying coastal development permits (CDPs 5-89-325 and 5-89-1037) that is approved by the Commission would be required. However, to approve a reduced ESHA buffer in order to accommodate new development 5 feet from an ESHA stream bank would avoid or lessen the intended effect of deed restrictions and would not minimize impacts to ESHA, as required by the Coastal Act, and would result in adverse impacts to coastal resources. Therefore, such an amendment could not be found consistent with the ESHA policies and provisions of the Coastal Act.

The Commission finds that the proposed project does not conform to the ESHA buffer provisions required in the recorded open space easement OTD and the future improvements deed restriction. Again, to approve the proposed pool within the ESHA buffer established pursuant to prior Commission action would lessen the intent and effect of the required ESHA buffer provisions and result in adverse impacts to coastal resources. As such, the Commission concludes that the proposed project is not consistent with the ESHA buffer provisions of the certified LCP.

Therefore, for the reasons discussed above, the Commission finds that the project is not consistent with the applicable ESHA policies and provisions of the certified Local Coastal Program.

D. 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.

As described above, in CDP 5-89-325, the Commission established the allowable development area on the subject site, through the recordation of an open space easement OTD and a future improvements deed restriction. There were alternative development designs available for the construction of a single family residence and other accessory uses, such as a pool, within the development area (more than 15 feet from the top of bank). As approved in CDP 5-89-1037, the applicant chose an alternative that included a residence that occupied the whole development area, with no accessory uses. This alternative was found to be consistent with the open space and future improvements provisions. The project alternative proposed in the subject application includes a residence that occupies the entire development area with an accessory swimming pool located approximately 5 feet from the stream ESHA. As described above, this alternative is not consistent with the ESHA and water quality policies and provisions of the LCP. There is an alternative available that would lessen the impacts of the proposed development. That alternative is to retain the existing residence on the site, with no development within the 15-foot wide buffer from the stream ESHA. The Commission finds that the proposed project will have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970, and that there is an alternative. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act.

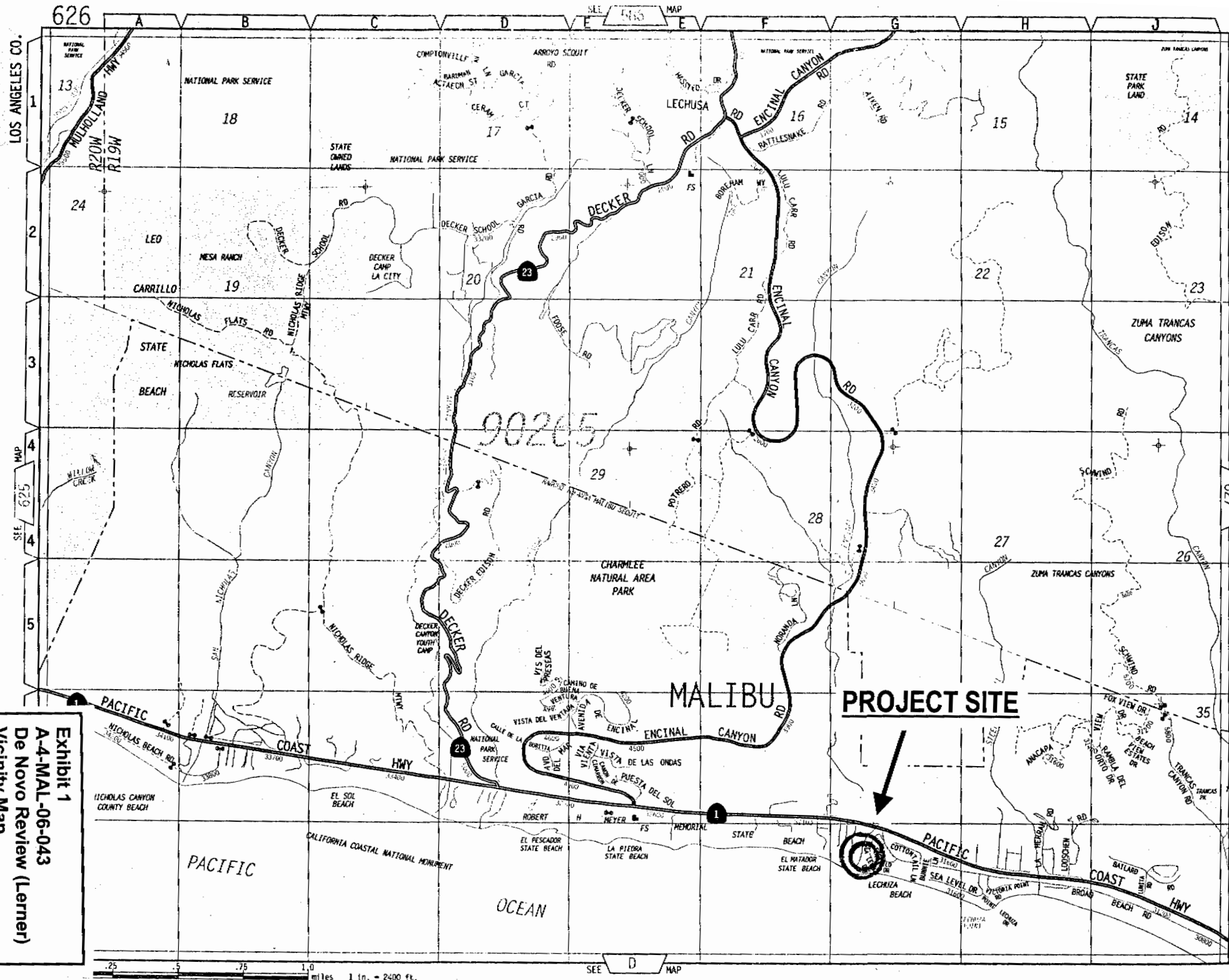


Exhibit 1
A-4-MAL-06-043
De Novo Review (Lerner)
Vicinity Map

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SEE 627 MAP

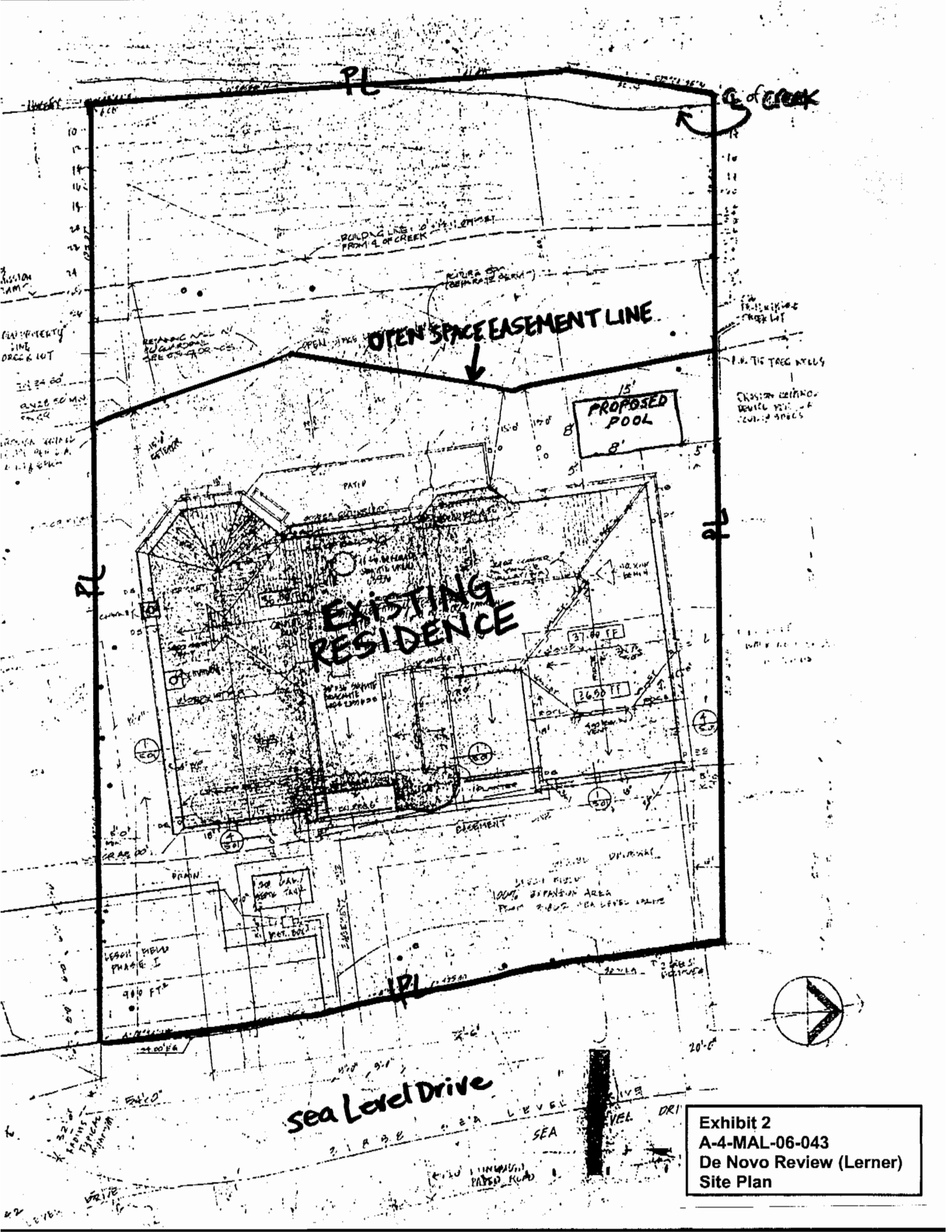


Exhibit 2
A-4-MAL-06-043
De Novo Review (Lerner)
Site Plan

DEC - 8 1989

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 WEST BROADWAY, SUITE 380

LONG BEACH, CA 90802

(213) 590-5071

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Date: December 7, 1989

Permit Application No. 5-89-325

NOTICE OF INTENT TO ISSUE PERMIT

On November 16, 1989, the California Coastal Commission granted to MOSES LERNER Permit 5-89-325, subject to the attached conditions, for development consisting of

Resubdivide 10 lots into three lots; demolish septic system on one additional lot, record certificates of compliance (lot line adjustments) for the three new lots; demolish single family house and septic system tennis court and other buildings, construct one single family house, garage, pool landscaping and septic system, remove trees.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 31842 Sea Level Drive; Malibu, CA.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1 - 7, 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 on December 7, 1989.

PETER DOUGLAS
Executive Director

By: Pam Cen
Title: Staff Analyst

Review to Special Conditions per Chuck
11/16/89
See file 3151
ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-89-325, 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.

EXHIBIT B

Exhibit 3
A-4-MAL-06-043
De Novo Review (Lerner)
CDP 5-89-325 NOI

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 6
Permit Application No. 5-89-325

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. Lot line adjustment

Prior to issuance of the permit the applicant shall provide evidence that a lot line adjustment has been approved by the Executive Director and recorded with the County of Los Angeles that shows the following:

Parcel 1. Lot 157 shall be included within the boundaries of Parcel one.

Parcel 2 and 3. The applicant shall demonstrate to the satisfaction of the Executive Director that there is adequate space on each created parcel for a septic system and replacement system, or submit an enforceable easement, approved by the Los Angeles County Department of Health Services, over an adjacent parcel for the purposes of constructing a leach field and a replacement area.

This leach field and replacement area shall be set back no less than 50 feet from the ~~edge of the riparian area, defined in this case as the top of the ravine, shown as the break in slope of the ravine (where the slope becomes 2:1 or steeper), at approximately elevation 30 in present lots 161, 162, 163, 164, (parcels 2 and 3) and portion parcel 1) and elevation 25 in the southerly portion of parcel 1 (creek lot and lot 159).~~ The line is shown on Exhibit 2. AKB

2. Easement for Open Space and Habitat Protection:

Prior to transmittal of permit, the applicant shall map and record an irrevocable offer to dedicate to a public agency or private association acceptable to the Executive Director, an easement for open space, view preservation, and habitat protection/restoration. The right to enter, restore and maintain habitat on this easement shall be included in the offer. Pending acceptance of the offer, the responsibility of the easement shall be held by a homeowners association created by the applicant. The easement shall restrict the applicant and successors in interest from grading, clearance, development, removal of vegetation and placement of structures, decks or fences within the area described as "portion of parcel one", or as assessors parcel 4450-19-36, described in certificate of compliance 100463, and those portions of the newly created parcels that lie northerly of the line indicated on Exhibit 2. (the canyon lot and the mature cypress trees.) This easement shall not apply the the approved house footprint shown in Exhibit 2. The easement shall allow entry for educational and scientific observation and shall permit one controlled trail along the southern edge of the canyon, if developed with a coastal development permit. The easement shall be described in metes and bounds, following the line depicted in Exhibit 2. The easement shall permit and require revegetation with native plants and selective removal and replacement of trees consistent with a revegetation and habitat management plan and fuel modification plan required in condition number 3, or prepared by an accepting agency and submitted to the Commission as a Coastal Development Permit.

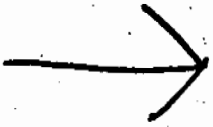
The easement shall be subject to the review and approval of the Executive Director in consultation with the Santa Monica Mountains Conservancy. The offer shall be recorded free of prior liens and encumbrances except for tax liens, and shall be binding on heirs, assigns and successors in interest. The offer shall run with the land in favor of the People of the State of California. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

3. Revegetation and Landscape Plans.

Prior to transmittal of permit the applicant shall submit for review and approval of the Executive Director, plans prepared by a wildlife biologist that show a plan for revegetation and preservation of ESHA and butterfly habitat (trees over 30 feet in height and the open space easement described above). The plan shall retain existing trees along the top of the ravine, and keep the stream bed clear of tree-like vegetation.

The plans shall provide for the staged removal of introduced ground cover plants and re-establishment of appropriate native Southern California Coastal riparian plants (as defined in standard reference texts or in or in the Nov 23 1988 California Native Plant society publication "Recommended Native Plant species for Landscaping Wildland Corridors in the Santa Monica Mountains".) The plan shall provide for replacement of trees removed by development, maintenance of the trees along the canyon edge and replacement of dead or diseased trees in the same location by trees of similar height and volume. The plan shall include a schedule of completion. The objective of the plan shall be to restore riparian habitat, establish landscape cover for erosion control, provide wildlife cover, and preserve roosting spots for birds and Monarch butterflies. Pursuant to this no more than 15 percent of the plant cover and the no more than 15 percent of the present number of trees 30 feet or more in height may be removed at any one time. The next stage of restoration shall not begin until the replacement plants and trees are established in equivalent volume and and performing the function of the present vegetation in terms of cover and roosting. The plans shall reflect the requirements of the Los Angeles County Fire Marshall's fuel modification requirements.

4. Future Improvements.



Prior to authorization of permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-89-325 is for the approved development only, and that any future additions or improvements to the property including clearing of vegetation and grading will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The deed restriction shall specify that all development, with the exception of the house shown on Exhibit 2 shall be located no less than 15 feet away from the easement established in condition 3. Decks at grade that do not require grading or excavation may also be permitted. The deed restriction shall be binding on all successors in interest, heirs and assigns, for the life of the improvement approved with this action. permit 5-89-325. It shall be recorded free of prior liens.

5. Applicant's Assumption of Risk

Prior to transmittal of permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide (a) that the applicant understands that the site may be subject to extraordinary hazard from fire, flood and wave damage and applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Revised Plans

Prior to issuance of a permit the applicant shall submit revised plans for the review and approval of the Executive Director. These plans shall show:

a) ~~Revised engineered grading plans for the site that show: i) no grading or disturbance within the drip line of the viable cypress canopy shown in Exhibit 2. ii) If indicated in an archaeology report, engineering for capping the site for purposes of archaeological protection. The cap may be up to three feet in depth; approved septic systems and driveways may be constructed without capping.~~ 15721

b) ~~Revised house plans for the proposed single family house on parcel one showing the preservation of the three trees on the bluff top at the interface of the canyon and the beach. Such plans may show removal of the three trees identified as sick and damaged in the applicant's tree surgeon report. The house and all development except for decks and the pool shall maintain a set back of no less than 25 feet from the edge of the sea bluff. The dead and diseased trees cut down as part of this development shall be replaced with native trees 20 feet or more in height on a one to one basis.~~ ARB

c) Revised foundation plans showing the depth of existing excavations. No additional excavation into the midden shall be required for the pool or for cellars. The house shall use pier or continuous footings instead of slabs.

d) Plans showing no portion of the structure more than 35 feet above natural grade or the soil cap that has been placed on the midden.

e) Revised plans for the septic systems showing location of all septic systems and the replacement areas no less than 50 feet from the break in slope at the arroyo established in condition one and no less than 25 feet from the edge of the coastal bluff.

7) An Archaeological Recovery and Protection Plan

Prior to transmittal of the permit the applicant shall provide for the review and approval of the Executive Director a phase II archaeological study, preservation and recovery plan for LAN 114. The plan shall include methods for capping the site and for recovery, study and monitoring of the portions of the site to be disturbed during construction, including the foundations, holes for tree planting and the leachfields. The Executive Director shall approve the study, preservation and recovery plan only after review by the ~~California State Office of Historic Preservation, by representatives of Native American groups identified by the Native American Heritage Commission as professional monitors, qualified to review work in Chumash sites in the Santa Monica Mountains portions of Los Angeles County, and by professional archaeologists who have published studies concerning the Santa Monica Mountains. The study shall be consistent with the Archaeological impact standards established by the State Office of Historic Preservation, and shall include a signed contract~~ ATC

for archaeological salvage that follows current professional practice. Before approving the plan, the Executive Director shall determine whether the study, recovery and preservation plan requires an amendment to the permit because it changes the basic scope of preservation or changes the location of development on the site.

*NOTE: The documents needed to comply with Conditions 1 - 7 will be sent to you from our San Francisco Office AFTER THE Commission meeting. When you receive the documents, if you have any questions, please contact the Legal Department at (415) 543-8555.

0098M:PE/gf

EXHIBIT C, page 2 of 2

91 044455

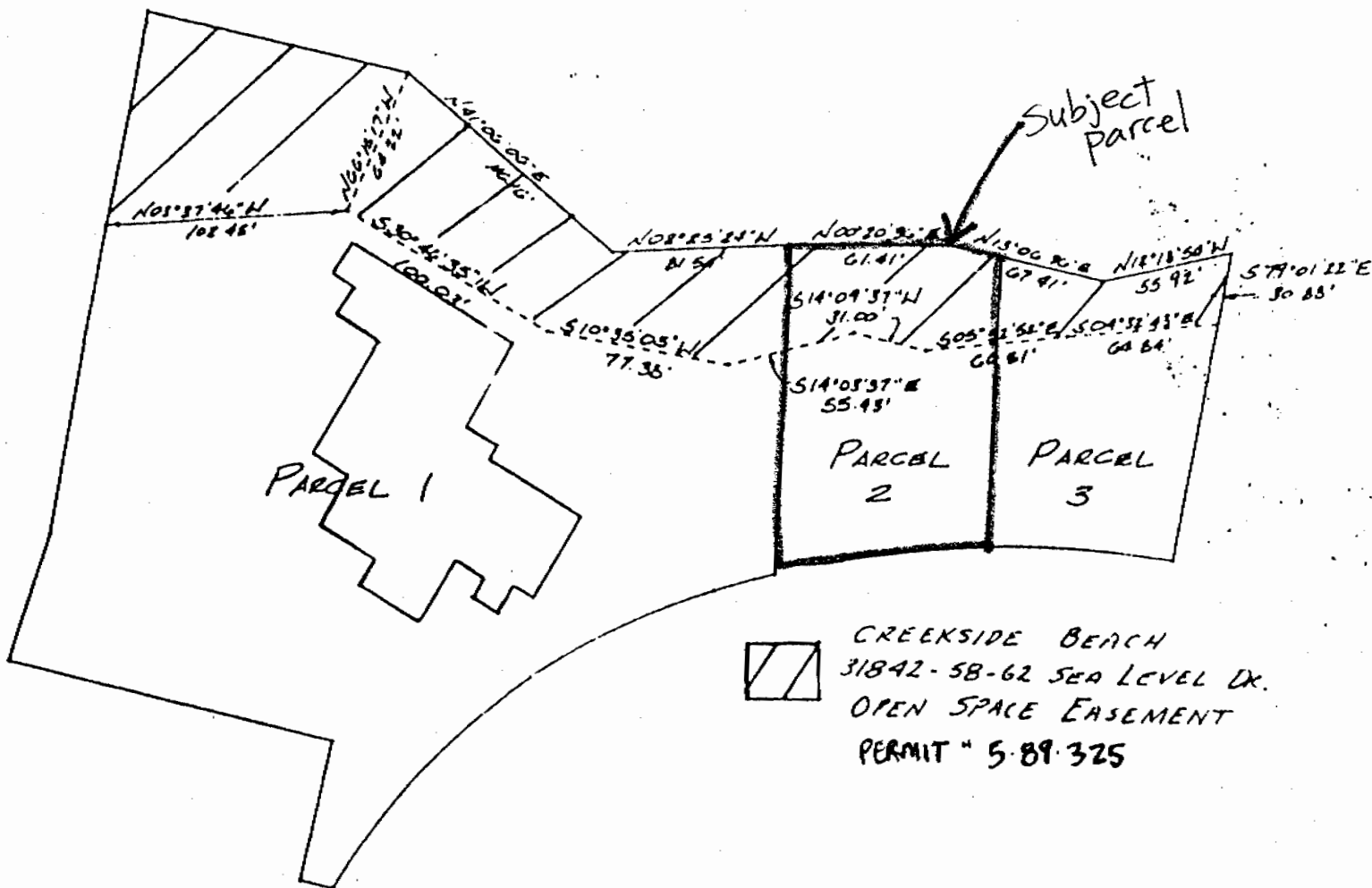


Exhibit 4

A-4-MAL-06-043

De Novo Review (Lerner)

Recorded Open Space

Easement

CALIFORNIA COASTAL COMMISSION

7TH COAST AREA

WEST BROADWAY, SUITE 380

LONG BEACH, CA 90802

(510) 590-5071

Page 1 of 1

Date: May 17, 1990

Permit Application No. 5-89-1037

NOTICE OF INTENT TO ISSUE PERMIT

On March 13, 1990, the California Coastal Commission granted to Moses Lerner Permit 5-89-1037, subject to the attached conditions, for development consisting of:

Demolition of a tennis court and removal of trees and the construction of two single family residences on two lots: a 5,813 sq. ft. single family residence, garage, decks, and septic system on a 11,720 sq. ft. lot, and a 5,430 sq. ft. single family residence, garage, deck and septic system on a 10,724 sq. ft. lot.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 31858 and 31862 Sea Level Drive, Malibu

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1-3, 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 on March 13, 1990.

PETER DOUGLAS
Executive Director

By: Gary J. [Signature] for Bill Ponder
Title: Staff Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-89-1037, and fully understands its contents, including all conditions imposed.

5/22/90
Date

[Signature]
Permittee

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

Exhibit 5
A-4-MAL-06-043
De Novo Review (Lerner)
CDP 5-89-1037 NOI

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 3
Permit Application No. 5-89-1037

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. Revegetation and Landscape Plans.

Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate the portion of lots 1 and 2 between the proposed residences on each lot and the top of the creekbank on each lot. The plans shall provide that a minimum of 70% of this area will be revegetated with suitable plants and other replacement roosts for the butterflies as part of the revegetation process of these disturbed sites, similar to what the Commission is requiring the applicant to do as part of the revegetation of the creekbanks that comprise the open space area approved in coastal development permit no. 5-89-325. The plans shall provide for the staged removal of introduced ground cover plants and re-establishment of appropriate native Southern California Coastal riparian plants (as defined in standard reference texts or in or in the Nov 23 1988 California Native Plant society publication "Recommended Native Plant species for Landscaping Wildland Corridors in the Santa Monica Mountains".) The plan shall provide for replacement of trees removed by development, maintenance of the trees along the canyon edge and replacement of dead or diseased trees by trees of similar height and volume. Said plan shall be submitted to, reviewed by and approved in writing by the Executive Director.

2. Revised Plans.

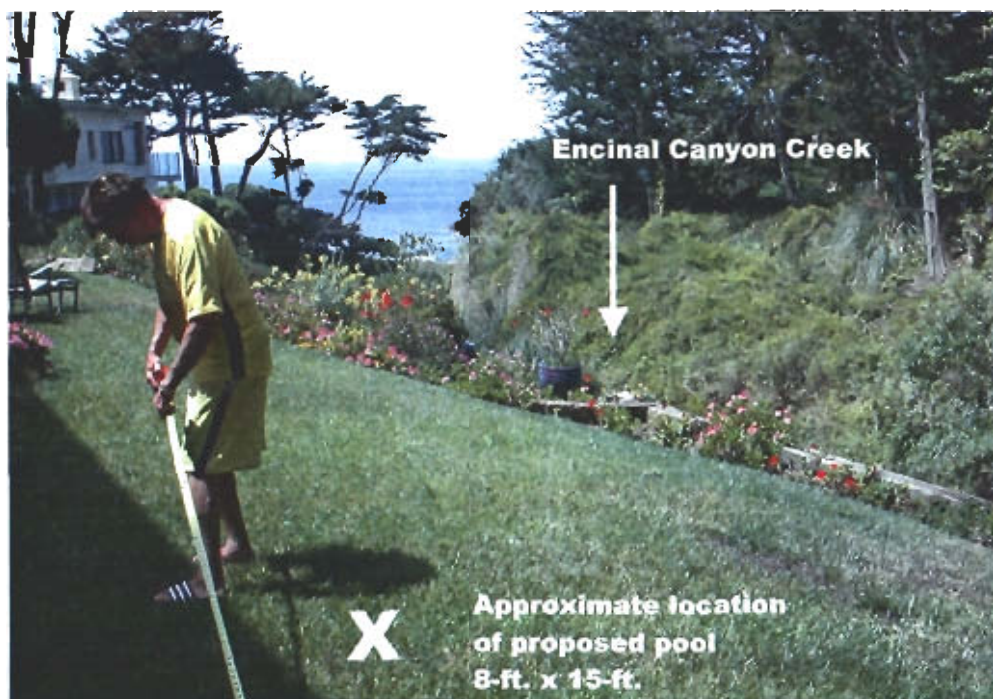
Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised building plans indicating the height of the pitched roofs of both residences which are the subject of this permit will extend no higher than 28 feet above existing grade.

3. Prior Permit.

All special conditions and provisions of the previously-approved coastal development permit, CDP# 5-89-325, are binding and remain in force.



Rear yard of residence, looking north and upstream



Rear yard of residence, looking south and downstream

Exhibit 6
A-4-MAL-06-043
De Novo Review (Lerner)
Site Photos