



Exhibit 1: Map showing location of the Ackerberg property.

State of California, George Deukmejian, Governor

California Coastal Commission
SOUTH COAST DISTRICT
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

FILE COPY

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1/24/85
findings

REGULAR CALENDAR
STAFF REPORT AND RECOMMENDATION

Application No. 5-83-360 (Trueblood)

Applicant: Ralph Trueblood
22486 Pacific Coast Highway
Malibu, CA 90265

Agent: Kevin Kelly & Assoc.

Description: Construction of a 140 foot wood pile-supported, wood-sheathed bulkhead in the Carbon Beach area of Malibu.

Site: 22486 Pacific Coast Highway, Malibu, Los Angeles County.

SUMMARY

Staff recommends the Commission approve the project with conditions addressing public access and wave hazard liability.

STAFF RECOMMENDATION

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.



II. Special Conditions

This permit is subject to the following special conditions:

1. Lateral Access. Prior to transmittal of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission, irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. The easement shall include all areas from the mean high tide line landward to the toe of the bulkhead. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Applicant's Assumption of Risk. Prior to transmittal of the permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that bind the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicant understands that the site may be subject to extraordinary hazard from erosion, flooding or wave damage, and the applicant assumes the liability from those hazards; (b) the applicant unconditionally waives any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the applicant understands construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of erosion, flooding, or wave damage.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Project Description. The applicant proposes to construct an approximately 140 foot long wood pile-supported, wood-sheeted bulkhead with a 40 foot long return on the east portion of the parcel (see Exhibit 3 for height specifications). The western end of the bulkhead will tie-in with a previously approved (but not constructed) bulkhead (5-81-521, Sherman).

B. Shoreline Access/Protective Structures. Article X Section 4 of the California Constitution provides:

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(Ackerberg)

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose ... and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof." (emphasis added)

The Coastal Act Sections which carry out the Constitutional direction on public access are 30210, 30211 and 30212, as follows:

Section 30210.

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.

Section 30211.

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.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

The legislature has also provided guidance as to the time, place and manner of public access.

Section 30214(a) provides:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Additionally, the legislature expressed its intent that the Commission consider the equities and balance the rights of the individual property owner with the public's constitutional right of access to the coast (Section 30214(b)).

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

Finally, Section 30604(c) of the Coastal Act requires that:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The proposed development is for the construction of a "new" bulkhead built on the sandy beach in order to protect existing development on the applicant's parcel. When the Commission determines that a shoreline project constitutes "new development", access is required. In the recent "Sea Ranch Association vs. California Coastal Commission, C-74-1320"

decision, the court ruled that it is within the Commission's power to require dedications of access as a condition of a development permit. The opinion also states, in part, that . . . "It is clear the Commission would be in violation of the policies and its duties as spelled out under the Act if it had not formulated or imposed the challenged conditions. . . ."

In 1979, the Commission began work on the Interpretive Guidelines for public access in order to provide a comprehensive review of the policies developed in permits in the previous 2½ years. These Guidelines were and are intended to provide the public, including permit applicants, with a general description of how the Coastal Act has been applied in previous cases and indicate the general approach the Commission would use in future actions. They are not regulations, do not supercede the statute and need not be followed in any particular case.

The major question presented in this case is how much access is appropriate given the circumstances. The question of the appropriate width and description of lateral accessways was one of the more important issues addressed in the Guidelines. Permit decisions by the State Commission and six Regional Commission decisions had been somewhat inconsistent prior to 1980 when the Guidelines were adopted.

The Coastal Act's basic policy is that maximum access must be provided in new development projects, in a time, place and manner responsive to the facts and circumstances outlined in Section 30214. The Commission, through a long line of permit decisions and in the Guidelines, has developed a policy approach which implements these requirements. Although each permit is reviewed on its own merits, many cases contain similar factual circumstances. The Commission has attempted to provide a uniform and consistent policy approach which protects both private and public interests by ensuring that landowners in similar factual circumstances are treated similarly and ensuring that dedicated accessways can be properly and efficiently managed for the enjoyment of the public and the protection of neighboring private uses.

The Guidelines discuss the general case of development located on the beach when they conclude that: "A 25 foot accessway along the dry, sandy beach for passive recreational use by the public has been found to offset the burden new development projects generally impose on public access". The 25 foot accessway is described as a minimum area for public use. An examination of the permit history in Malibu clearly demonstrates that the most common development is located on an existing parcel or on immediately adjacent to the beach.

However, the Guidelines also state:

Describing an Accessway From a Fixed Inland Point. The most efficient way to describe an accessway is as a distance from a fixed line landward of and parallel to the mean high tide line and extending seaward to the seaward property line (mean high tide line). When this description is used, the area of dry sand beach may vary from wide areas of sandy beach available for public uses during the low tide conditions, to vary narrow stretches of sandy beach resulting in little area for public use during high tide or storms. To account for the potential changes in the waterline, the area included in the accessway should be sufficient to assure that the public will have the ability to use some dry sandy beach at all times of the year. Because the landward boundary of this accessway is fixed, the landowners/residents of the beachfront parcels, are afforded a greater degree of certainty of where public rights exist than that additional beach area may be required to protect the public's right of access to and along

the shoreline. The public also benefits from this approach, since the public and the accepting agency can more readily determine where public rights exist. However, the public trade off for this certainty is that during storms and high tides, the accessways designated may be entirely submerged.

To determine the point at which such an accessway should begin the Commission should consider the variations in the high water line during the year, the topography of the site, the location of other lateral accessways on neighboring lands and the privacy needs of the property owner. Any such fixed point should, however, give the greatest amount of assurance that the public would retain the right of access and use along the shoreline during the majority of the year.

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Thus, the discussion in the Guidelines regarding the 25 foot accessway as being generally sufficient unless extraordinary burdens on access are shown, does not announce a rule or standard for application to all circumstances. Rather it describes the Commission's experience in the most frequently encountered circumstances when development is located on or near the beach. In balancing the private and public interest in these cases, the Commission concluded the 25 foot easement for public access is consistent with the Coastal Act.

The guidelines make clear, however, that a lateral access requirement should be meaningful in light of all the circumstances of the site. Most important is the physical characteristics of the beach. Certainty in locating the inland extent of the accessway is primary in importance in reducing potential for conflict between beach users and property owners. Because the location of a 25 foot ambulatory access changes hourly, the guidelines prefer to establish the inland extent by means of a fixed inland point. . . "the most efficient way to describe an accessway is as a distance from a fixed line landward of and parallel to the mean high tide line. . . ."

Only where it is difficult to locate a fixed inland point do the guidelines suggest an ambulatory accessway. Using a fixed inland point creates greater certainty for both public and the landowner. In addition, because a 25 foot ambulatory easement is far more difficult to locate, those members of the public visiting the beach can be more easily intimidated by landowners who wish to exclude the public from use of the state tidelands. A fixed point can be easily mapped or described on signs educating the public to the actual public-private boundary.

In prior actions the Commission has used the fixed inland point to describe accessways: 1) nearly uniformly where a bluff fronts on the beach (See: Goldberg & Fisher A-264-80, Rehberger A-217-79, Auguste A-29-79, Voger A-164-79 and Gershwin A-160-78 and A-259-79); 2) nearly always where a seawall is placed on the beach (See Mussel Shoals A-158-81 to 162-81 and Robertson A-345-79) except where a retaining wall to contain septic systems rather than protect the residence is located under the house or very narrow beaches (See Couson 191-79 and Larronde 199-79) where a 25 foot ambulatory easement was required; and 3) occasionally where terrestrial vegetation clearly demands a significant change in beach features (See Bernfeld 294-79 and Seadrift permits).

Where a beach is bounded on the inland side by bluff, seawall or significant vegetation, the width of the beach is generally defined at some time, often regularly, by this upland barrier. In the case of bulkheads/seawalls designed to protect inland structures from wave damage,

once waves reach the seawall, the reflected energy causes the sand in front of the seawall to be scoured out, thus leaving the seawall to define the upland/ocean boundary for a larger period of time. Vertical seawalls reflect more wave energy and cause greater sand scour, in general, than sloping seawalls or irregular rock walls, bluff faces or vegetation boundaries. All of the boundaries reflect more energy than a steep sandy or cobble beach. Thus, the definition of an inland extent of the beach by a natural or manmade feature is an indication that public access in front of the feature is probably severely limited or non-existent for at least the time of highest water.

If the accessway is defined as or by this inland boundary feature, the landowner is more secure from wave attack behind the barrier, while public access is diminished. Because of these relative benefits and burdens, the Commission finds that the accessway should be defined as an area seaward of the boundary feature so as to ensure greater and off-setting public access if the width of the beach fluctuates from season to season. In this way, the Commission can carry out the Constitutional and statutory mandates that access "always be attainable" and "maximum access. . . be provided for all the people." Private developments which create impediments to public access along the shoreline by eliminating sandy beach areas impose a burden on the ability of the public to enjoy and use of a public resource -- one to which access is guaranteed through Sections 30210 and 30211 of the Coastal Act and Article X Section 4 of the California Constitution.

Given the requirement of Section 30604(c) of the Coastal Act projects located between the first public road and the sea be in conformity with the access policies of the Coastal Act, a shoreline protective work which runs the risk of exacerbating shoreline erosion and loss of shoreline sand supply must mitigate or eliminate such adverse impacts. While it is difficult for such works to wholly eliminate adverse impacts, it has been the experience of the Commission, through many permit actions on similar projects, to mitigate those impacts through the provision of increased public access to and along the shoreline (Appeal No. 2-79, Isla Vista; Appeal No. 165-79, Blue Lagoon Community Association, Inc.; Permit No. 5-81-568, Schafer, et al, to name a few) as a more feasible means of meeting the requirements of the Coastal Act.

In addition to the aforementioned previous permit actions by the Commission on applications or appeals on similarly related projects, the Commission approved a permit with conditions for the reconstruction of a seawall for the Blue Lagoon Community Association, Inc. in South Laguna, Orange County (Appeal No. 165-79). The Commission found that due to the construction of the seawall, public access along the shoreline was adversely affected. Due to the physical impairment to access during periods of low sand supply on the beach, in part created by the seawall, lateral access was required as a condition of approval as well as the provision of enhanced lateral access during periods of low sand supply through the construction of stairways for "emergency public access" to and along the community road for use by the public for the sole purpose of access to the beach when tidal or wave action prevented safe passage along the beach seaward of the approved development.

In considering the impacts of shoreline protective works on shoreline processes and shoreline sand supply, additional Coastal Act policy concerns are applicable and must be addressed. Sections 30235 and 30253(1) and (2) of the Coastal Act state, in part:

Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosions 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.

New development shall:

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

Previous attempts in the Malibu area to protect homes from storm wave damage and erosion have included the construction of wooden or concrete seawalls and the placement of rip-rap. Such structures tend to cause the loss of sand from beach areas in front of and adjacent to them (according to "Planning for an Eroding Coast", a report to the Coastal Commission by Frank Broadhead, Shore Protection Manual, Army Corps of Engineers, 1977, and Saving the American Beaches: A Position Paper by Concerned Coastal Geologists, Pilkey, et al, 1981). The impenetrable surfaces of the structures or boulders reflect the energy generated by the breaking waves, resulting in the scouring away of the sandy areas in front of and up and down coast from the structures. And, by artificially building up and steepening the slope in the vicinity of such structures, two additional effects occur: (1) wave energy is not gradually reduced, as would occur on a more gently, sloping beach, but is increased, thus exacerbating the scouring effect on adjacent sandy beach areas; and (2) the structures tend to cause a landward retreat of the mean high tide line, potentially affecting the boundary between public and private lands along beaches adjacent to the project as well as on the project site itself.

The U.S. Army Corps of Engineers' Shoreline Processes Manual, Vol. 11, states:

5.22 Limitations. These structures (seawalls, revetments, bulk-heads, etc.) afford protection only to the land immediately behind them, and none to adjacent areas up or downcoast. When built on receding shoreline, the recession will continue and may be accelerated on adjacent shores. Any tendency toward loss of beach material in front of such structures may well be intensified. Where it is desired to maintain a beach in the immediate vicinity of such structures, companion works may be necessary. (Page 5-3)

5.26. Erosion updrift from such a structure will continue unabated after the wall is built, and downdrift erosion will probably be intensified. (Page 5-4)

In addition, the State Interpretive Guidelines reference "projects whose burden on public access may not be successfully mitigated with only a 25 foot accessway", with particular emphasis placed on the impact of shoreline protective devices:

"Shoreline protective devices, particularly vertical seawalls, have serious adverse effects on coastal resources. Such seawalls increase scour from their base and, thus, decrease the area of usable beaches. Also, because shoreline protective devices are intended to halt the landward progress of erosion, they tend to define the shoreline in areas subject to erosion. As such, they tend to limit public passage on beaches especially at high tides and storm conditions. Further, construction of shoreline protective devices eliminates dune material as a source of beach sand, and further limits the ability of the shoreline to migrate as it would in a natural state. Given these additional direct burdens on the availability of sandy beach and the resultant impacts on public access to the state-owned tidelands, it is only with additional provisions for public access that this burden can be sufficiently mitigated and thus that construction of such devices can be found consistent with Section 30212 of the Coastal Act."

It has been the Commission's experience, based on the review of previous similar shoreline protective devices and of scientific and engineering data pertinent to the subject, that such devices have an adverse impact on shoreline sand supply and a direct adverse impact on public access along the shoreline. Such development, therefore, is inconsistent with the requirement of Section 30235 of the Coastal Act which allows such structure only ". . .when designed to eliminate or mitigate adverse impacts on shoreline sand supply. . ." since the primary purpose of revetment is to protect landward structures and property. As mentioned earlier, however, the Commission has approved such projects with a condition to ensure that any potential or expected loss of sandy beach for use by the public shall be mitigated through a requirement that applicants offer to dedicate a lateral access easement for public use along the shoreline from the mean high tide line to the toe of any such shoreline protective device.

In conclusion, the Commission finds that the proposed project does place burdens on public access and coastal resources, and that an access dedication from the mean high tideline to the toe of the proposed bulk-head represents an appropriate balancing of the public and private

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(Ackerberg)

burdens and benefits. The Commission finds that the proposed development as conditioned is consistent with Sections 30210, 30211, 30212, 30214 and 30604(c) of the Coastal Act of 1976.

C. Wave Hazard. Section 30253(1) and (2) of the Coastal Act states:

Section 30253.

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Oceanfronting parcels in Malibu, such as the subject property, are susceptible to flooding and wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low-interest loans) in the millions of dollars in the Malibu area alone. Section 30001.5 of the Coastal Act states, in part, that the economic needs of the people of the State are a basic consideration:

Section 30001.5.

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

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The experience of the Commission in evaluating the consistency of proposed developments with the policies of the Coastal Act regarding development in areas subject to problems associated with geologic instability, flood, wave, or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, landslides, or other such occurrences. Recent episodes on December 1, 1982 and January 27, 1983, re-affirm the fact that damage from high tides, storm surge, and storm waves is a likely occurrence during the expected duration of the residences. In addition, the area in which the proposed development will occur, is an area described as critical for present development. According to the Assessment and Atlas of Shoreline Erosion along the California Coast, prepared by the Department of Navigation and Ocean Development (now known as the Department of Boating and Waterways), the Big Rock Beach portions of the Malibu coast is subject to damage during high wave conditions. As a means of allowing continued development in areas subject to those hazards while avoiding placing the economic

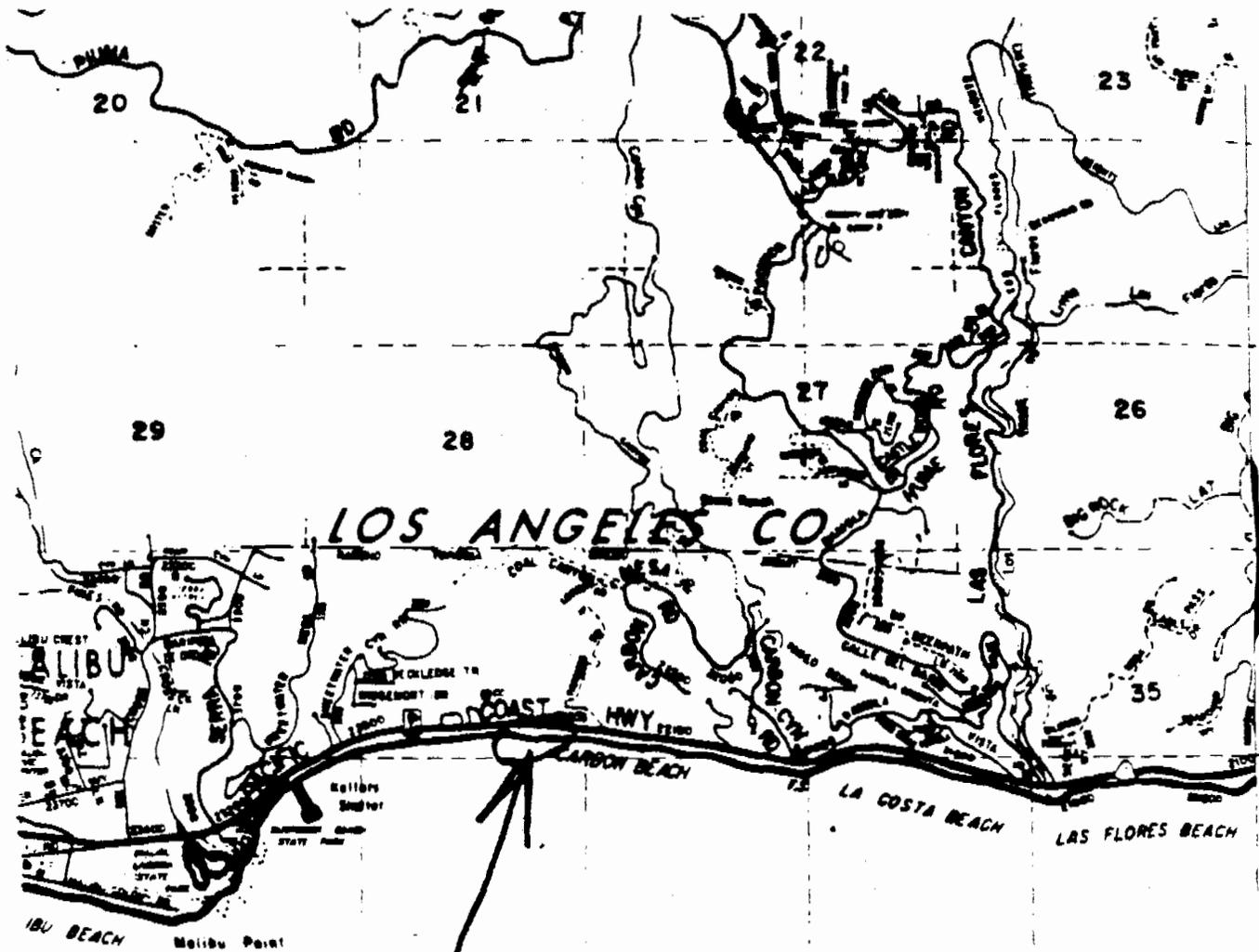
burden on the people of the State for costs arising from the damage to private development, the Commission has regularly required that the applicants agree to waive any claims of liability on the part of the Commission or any other public agency for allowing the development to proceed. As conditioned, the Commission finds that the proposed development will be consistent with Section 30001.5 of the Coastal Act.

D. Local Coastal Program. Section 30604(a) of the Coastal Act states, in part:

Section 30604.

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The County of Los Angeles Board of Supervisors adopted the Land Use Plan portion of the Malibu/Santa Monica Mountains area Local Coastal Program on December 28, 1982, for submittal to the Coastal Commission for certification. At a public hearing on March 24, 1982, the Commission voted not to certify the Land Use Plan as submitted; further hearings have not been scheduled at this time. Since the proposed development is otherwise consistent with the policies of Chapter 3 of the Coastal Act, as mentioned earlier, the Commission finds that approval of this project as conditioned will not prejudice the ability of the County of Los Angeles to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.



PACIFIC OCEAN

4452 2
Scale 1" = 50'

SITE

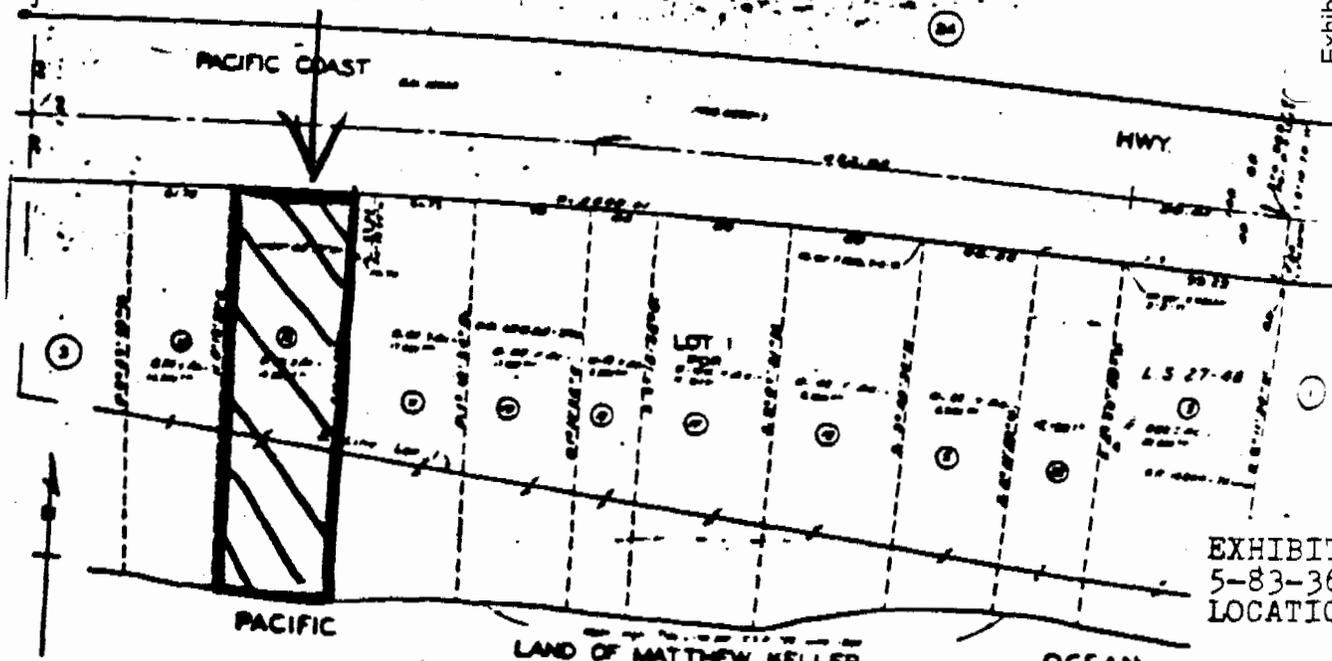
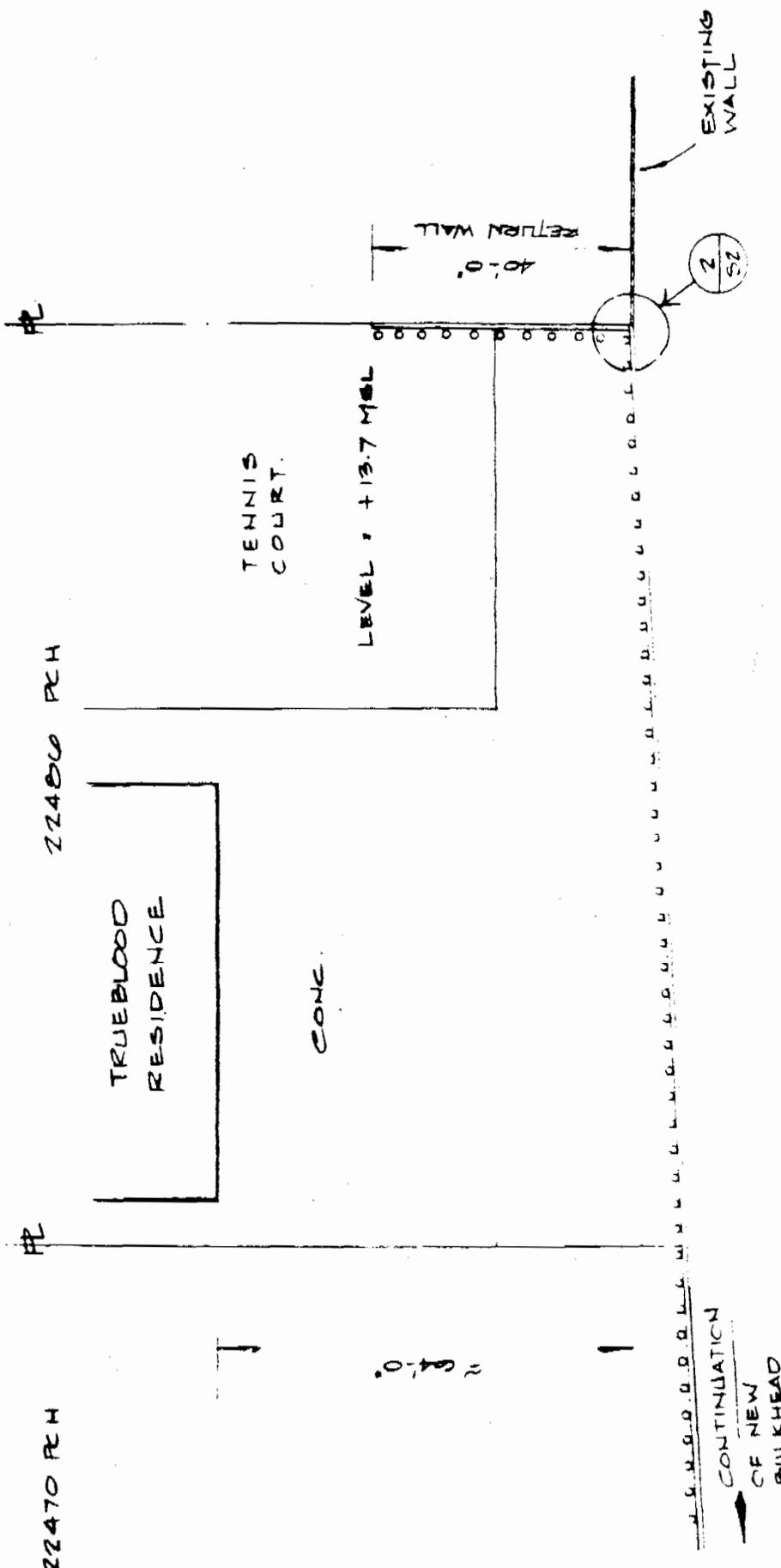


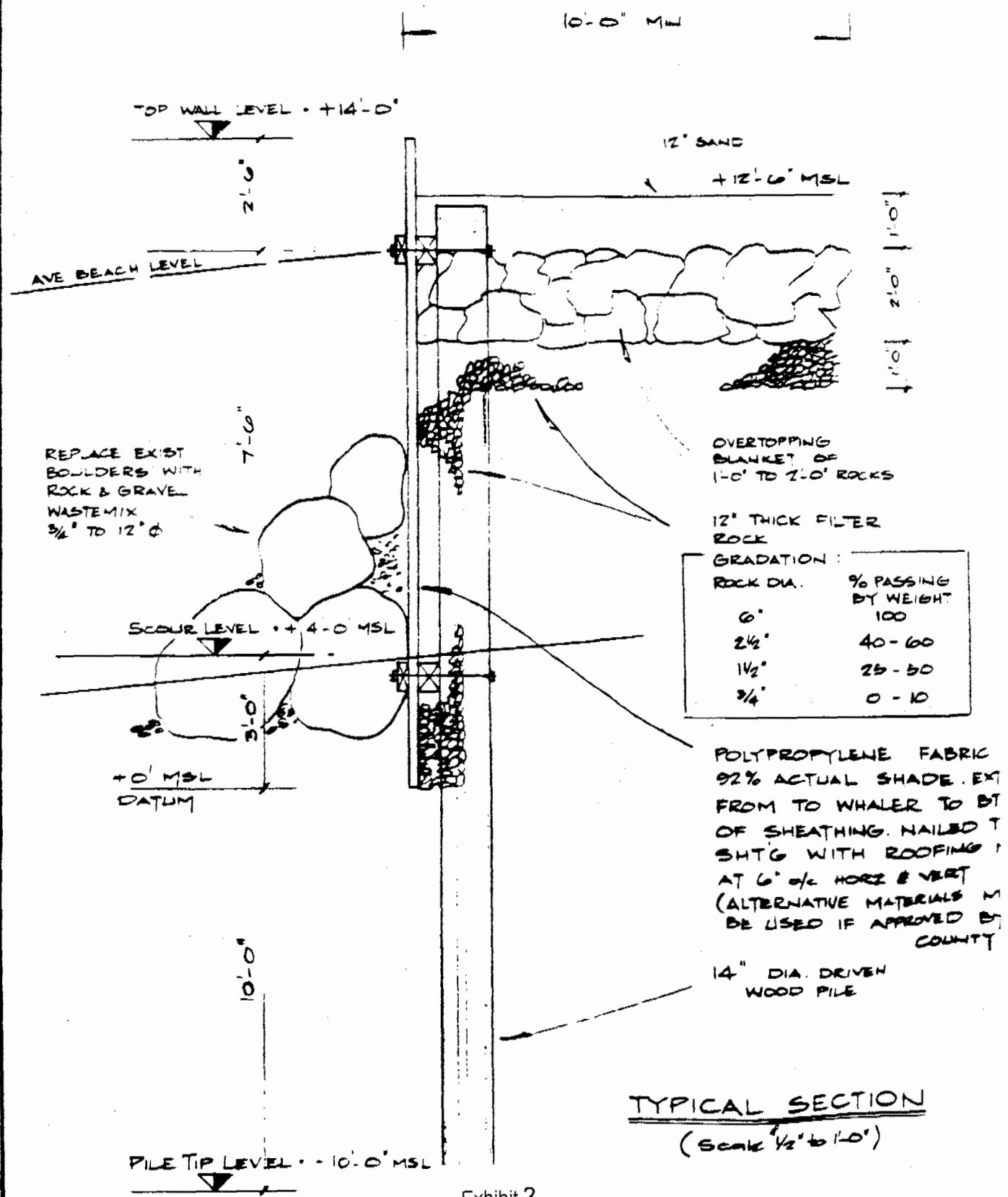
EXHIBIT 1
5-83-360
LOCATION

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LAYOUT OF BULKHEAD WALL
 (Scale 1/16" to 1'-0")

EXHIBIT 2
 5-83-360
 BULKHEAD



OVERTOPPING BLANKET OF 1'-0" TO 2'-0" ROCKS

12" THICK FILTER ROCK

GRADATION:	
ROCK DIA.	% PASSING BY WEIGHT
6"	100
2 1/2"	40-60
1 1/2"	25-50
3/4"	0-10

POLYPROPYLENE FABRIC 92% ACTUAL SHADE. EXT FROM TO WHALER TO BT OF SHEATHING. NAILED T SHTG WITH ROOFING AT 6" o/c HORIZ & VERT (ALTERNATIVE MATERIALS M BE USED IF APPROVED BY COUNTY)

14" DIA. DRIVEN WOOD PILE

TYPICAL SECTION
(Scale 1/2" to 1'-0")

8/25/83

State of California, George Deukmejian, Governor

California Coastal Commission
South Coast District
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COASTAL DEVELOPMENT PERMIT NO. 5-83-360

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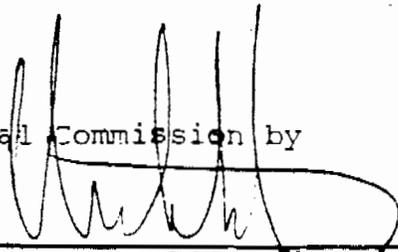
On June 9, 1983, The California Coastal Commission granted to
Ralph Trueblood, 14 Oakmount Drive, Los Angeles, CA 90049

this permit for the development described below, subject to the attached
Standard and Special conditions.

Construction of a 140 foot wood pile-supported, wood-sheeted
bulkhead in the Carbon Beach area of Malibu.

SITE: 22486 Pacific Coast Highway, Malibu

Issued on behalf of the California Coastal Commission by



MICHAEL L. FISCHER
Executive Director
and



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**REPEATED: THE PERMIT IS NOT VALID
UNLESS AND UNTIL A COPY OF THE PERMIT
WITH THE SIGNED ACKNOWLEDGEMENT HAS
BEEN RETURNED TO THE COMMISSION OFFICE.**

ACKNOWLEDGEMENT

The undersigned permittee acknowledges
receipt of this permit and agrees to abide
by all terms and conditions thereof.

Date

Signature of Permittee



STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction 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 construction 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 development during construction, 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. Lateral Access. Prior to transmittal of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission, irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. The easement shall include all areas from the mean high tide line landward to the toe of the bulkhead. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years such period running from the date of recording.

2. Applicant's Assumption of Risk. Prior to transmittal of the permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that bind the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicant understands that the site may be subject to extraordinary hazard from erosion, flooding or wave damage, and the applicant assumes the liability from those hazards; (b) the applicant unconditionally waives any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the applicant understands construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans

Exhibit 2
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(Ackerberg)

for repair, replacement, or rehabilitation of the property in the event of erosion, flooding or wave damage.

Recording Requested by and
When Recorded, Made To:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

83-137

FREE N

IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT

AND

DECLARATION OF RESTRICTIONS

THIS IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND
DECLARATION OF RESTRICTIONS (hereinafter "offer") is made this 11 day
of July, 19 83, by RALPH W. TRUEBLOOD, JR.,
(hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain real
properties located in the County of Los Angeles, State of
California, and described in the attached Exhibit A (hereinafter referred to as
the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone as
defined in Section 30103 of the California Public Resources Code (which code is
hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred to
as the "Act") creates the California Coastal Commission (hereinafter referred to
as the "Commission") and requires that any development approved by the
Commission must be consistent with the policies of the Act set forth in Chapter
3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, Pursuant to the Act, Grantor applied to the Commission
for a permit to undertake development as defined in the Act within the Coastal
zone of Los Angeles County (hereinafter the "Permit"); and

V. WHEREAS, a coastal development permit (Permit No. 5-83-360)
was granted on June 9, 19 83, by the Commission in

This document filed for recording by Equity
Title Company as an accomodation only.
It has not been examined as to its execution,
or as to its effect upon the title.

Exhibit 3
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

DRY PAPER
STATE OF CALIFORNIA
1113 (REV. 8-72)
D&P

1 accordance with the provision of the Staff Recommendation and Findings,
2 Exhibit B, attached hereto and hereby incorporated by reference, subject to
3 the following condition:

4 1. Lateral Access. Prior to transmittal of permit, the Executive
5 Director shall certify in writing that the following condition has
6 been satisfied. The applicant shall execute and record a document,
7 in a form and content approved in writing by the Executive Director
8 of the Commission, irrevocably offering to dedicate to a public
9 agency or a private association approved by the Executive Director,
10 an easement for public access and passive recreational use along
11 the shoreline. The document shall also restrict the applicant
12 from interfering with present use by the public of the areas
13 subject to the easement prior to acceptance of the offer. The
14 easement shall include all areas from the mean high tide line
15 to the toe of the bulkhead. Such easement shall be recorded
16 free of prior liens except for tax liens and free of prior encum-
17 brances which the Executive Director determines may affect the
18 interest being conveyed.

19 The offer shall run with the land in favor of the People of the
20 State of California, binding successors and assigns of the applicant
21 or landowner. The offer of dedication shall be irrevocable for a
22 period of 21 years, such period running from the date of recording.
23

24 VI. WHEREAS, the subject property is a parcel located between the first
25 public road and the shoreline; and

26 VII. WHEREAS, under the policies of Sections 30210 through 30212 of the
27 California Coastal Act of 1976, public access to the shoreline and along
the coast is to be maximized, and in all new development projects located
between the first public road and the shoreline shall be provided; and

VIII. WHEREAS, the Commission found that but for the imposition of the
above condition, the proposed development could not be found consistent with
the public access policies of Section 30210 through 30212 of the California
Coastal Act of 1976 and that therefore in the absence of such a condition, a
permit could not have been granted;

1 IX. WHEREAS, it is intended that this Offer is irrevocable and shall
2 constitute enforceable restrictions within the meaning of Article XIII, Section
3 8 of the California Constitution and that said Offer, when accepted, shall
4 thereby qualify as an enforceable restriction under the provision of the
5 California Revenue and Taxation Code, Section 402.1;

6 NOW THEREFORE, in consideration of the granting of Permit No. 5-83-³⁶⁰ to
7 the owner(s) by the Commission, the owner(s) hereby offer(s) to dedicate to the
8 People of California or the Commission's designee an easement in perpetuity for
9 the purposes of Public access and passive recreational use along
10 shoreline

11
12 located on the subject property and shall include all areas from the
13 mean high tide line to the toe of the bulkhead

14 and as specifically set forth by attached Exhibit C hereby incorporated by
15 reference.

16 1. BENEFIT AND BURDEN. This Offer shall run with and burden the
17 Property and all obligations, terms, conditions, and restrictions hereby
18 imposed shall be deemed to be covenants and restrictions running with the land
19 and shall be effective limitations on the use of the Property from the date of
20 recordation of this document and shall bind the Grantor and all successors and
21 assigns. This Offer shall benefit the State of California.

22 2. DECLARATION OF RESTRICTIONS. The Grantor is restricted from
23 interfering with the use by the public of the area subject to the offered
24 easement for public access. This restriction shall be effective from the time
25 of recordation of this Offer and Declaration of Restrictions.

26 //

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Exhibit 3
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

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3. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the opening of the accessway, the Grantee, in consultation with the Grantor, may record additional reasonable terms, conditions, and limitations on the use of the subject property in order to assure that this Offer for public access is effectuated.

4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions, obligations, and reservations contained in this Offer shall be binding upon and inure to the benefit of the successors and assigns of both the Grantor and the Grantee, whether voluntary or involuntary.

6. TERM. This irrevocable offer of dedication shall be binding for a period of 21 years. Upon recordation of an acceptance of this Offer by the Grantee, this Offer and terms, conditions, and restrictions shall have the effect of a grant of access easement in gross and perpetuity that shall run with the land and be binding on the parties, heirs, assigns, and successors. The People of the State of California shall accept this offer through the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

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1 Acceptance of the Offer is subject to a covenant which runs with the
2 land, providing that any offeree to accept the easement may not abandon it but
3 must instead offer the easement to other public agencies or private
4 associations acceptable to the Executive Director of the Commission for the
5 duration of the term of the original Offer to Dedicate.

6 Executed on this 11 day of July 1983, at Los Angeles
7 _____, California.

8 Dated: July 11, 1983 Signed Ralph W Trueblood
9 _____
Owner

10 RALPH W. TRUEBLOOD, JR.
11 Type or Print

12 Signed _____
13 _____
14 Type or Print

15 NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons signing
16 on behalf of a corporation, partnership, trust, etc., please use the correct
17 notary jurat (acknowledgment) as explained in your Notary Public Law Book.
18 State of California,)

19)SS
20 County of LOS ANGELES)

21 On this 22 day of July, in the year '83, before
22 me LAURA E. SEDOTA, a Notary Public, personally appeared
23 RALPH W. TRUEBLOOD, JR.

24 personally known to me

25 I proved to me on the basis of satisfactory evidence
26 to be the person(s) whose name is subscribed to this instrument, and
27 acknowledged that he/she/they executed it.

Laura E Sedota
NOTARY PUBLIC IN AND FOR SAID COUNTY AND
OFFICIAL SEAL
LAURA E SEDOTA
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires JUL 11, 1986

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1 This is to certify that the Offer to Dedicate set forth above is hereby
2 acknowledged by the undersigned officer on behalf of the California Coastal
3 Commission pursuant to authority conferred by the California Coastal Commission
4 when it granted Coastal Development Permit

5 No. 83-360 on June 9, 1983 and the California
6 Coastal Commission consents to recordation thereof by its duly authorized
7 officer.

8 Dated: August 9 1983

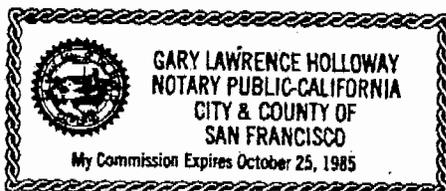
9 Cynthia K Long
10 CYNTHIA K LONG, STAFF COUNSEL
11 California Coastal Commission

12
13 STATE OF California)

14)
15 COUNTY OF San Francisco)

16 On 9 August 1983, before me Gary Lawrence Holloway,
17 a Notary Public, personally appeared Cynthia K. Long, personally known to
18 me to be the person who executed this instrument as the Staff Counsel
19 TITLE

20 and authorized representative of the California Coastal Commission and
21 acknowledged to me that the California Coastal Commission executed it.



26
27

Gary Lawrence Holloway
Notary Public in and for said County and
State

1

EXHIBIT A

PARCEL 1:

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

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 80 FOOT STRIP OF LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS, OF SAID COUNTY, SAID POINT OF BEGINNING BEING WESTERLY ALONG SAID SOUTHERLY LINE FOLLOWING THE ARC OF A CIRCULAR CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 5608.01 FEET, A DISTANCE OF 638.47 FEET FROM A POINT BEING DISTANT SOUTH 6° 11' 30" WEST 40 FEET FROM HIGHWAY ENGINEER'S CENTERLINE STATION 989 + 65.17 AT THE WESTERLY EXTREMITY OF THAT CERTAIN COURSE DESCRIBED IN SAID DEED AS SOUTH 83° 48' 30" EAST 2153.25 FEET, THENCE EASTERLY ALONG SAID SOUTHERLY LINE 86.54 FEET, THENCE LEAVING SAID SOUTHERLY LINE SOUTH 0° 33' 09" 42.93 FEET; THENCE NORTH 88° 48' 38" WEST 10.70 FEET; THENCE SOUTH 1° 11' 23" WEST TO THE ORDINARY HIGH TIDE LINE OF THE PACIFIC OCEAN; THENCE WESTERLY ALONG SAID TIDE LINE TO THE INTERSECTION WITH A LINE BEARING SOUTH 0° 13' 30" WEST FROM THE POINT OF BEGINNING; THENCE NORTH 0° 13' 30" EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, AS CONTAINED IN VARIOUS DEEDS FROM MARBLEHEAD LAND COMPANY, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(A) ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES AND RIPARIAN RIGHT, CONTAINED IN, ON, WITHIN AND UNDER SAID LAND BUT WITHOUT RIGHT OF ENTRY.

(B) ALL LITTORAL RIGHTS WITH THE FULL AND EXCLUSIVE RIGHT TO PRESERVE AND PROTECT SAID LITTORAL RIGHT.

EXHIBIT A

PARCEL 2

That portion of the Rancho Topanga Malibu Sequit, in the County of Los Angeles, State of California, as confirmed to Matthew Keller by patent recorded in Book 1, Page 407 et seq., of Patents in the office of the County Recorder of said County, particularly described as follows:

Beginning at a point in the southerly line of the 80 foot strip of land described in Deed to the State of California recorded in Book 15228, Page 342 of Official Records of said County, said point of beginning being westerly along said southerly line following the arc of a circular curve concave southerly having a radius of 5608.01 feet, a distance of 490.17 feet from a point being distant South 6° 11' 30" West 40 feet from Engineer's centerline station 989 plus 65.17 feet at the westerly extremity of that certain course described in said Deed as South 83° 48' 30" East 2153.25 feet, thence westerly along said curve 61.76 feet, thence leaving said southerly line and curve South 0° 33' 09" West 42.93 feet, thence North 88° 48' 37" West 10.70 feet, thence South 1° 11' 23" West to the ordinary high tide line of the Pacific Ocean, thence easterly along said tide line to an intersection with a line bearing South 1° 11' 23" West from the point of beginning, thence North 1° 11' 23" East to the point of beginning;

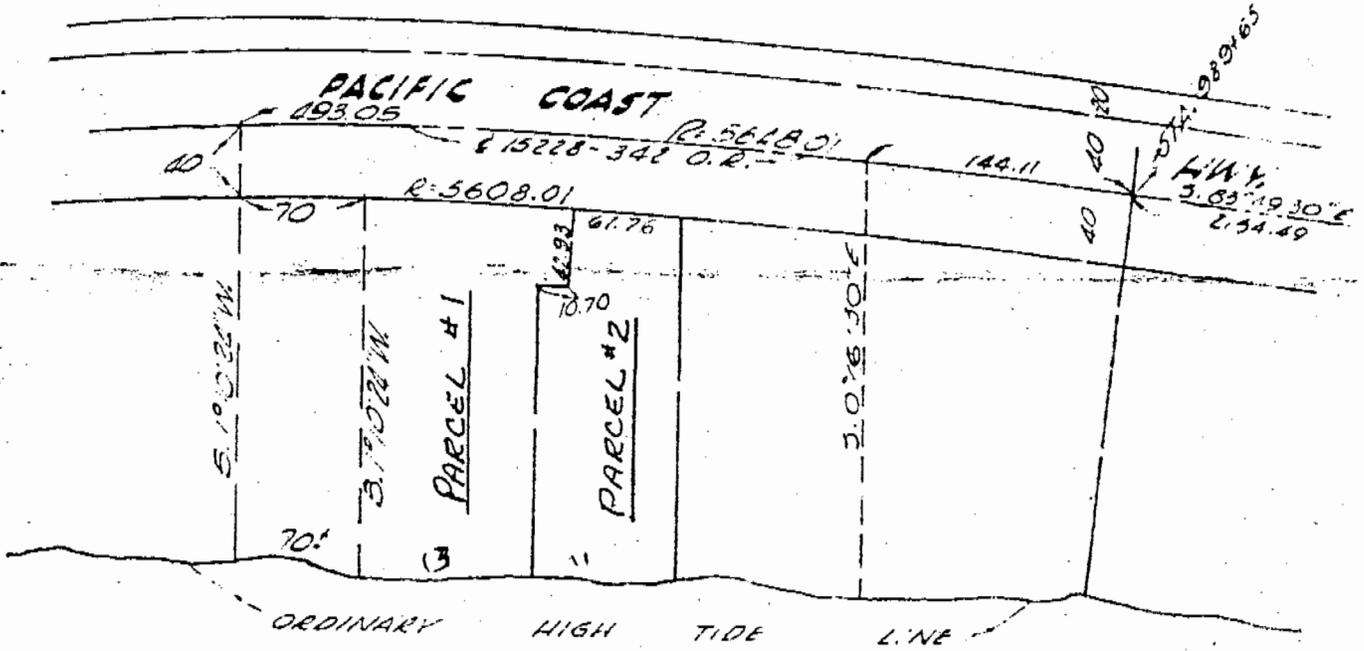
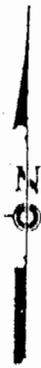
EXCEPTING THEREFROM, as contained in various deeds from Marblehead Land Company, recorded in the office of the County Recorder of said County

- (A) All minerals, oil, petroleum, asphaltum, gas, coal and other hydrocarbon substances and riparian right, contained in, on, within and under said land but without right of entry;
- (B) All littoral rights with the full and exclusive right to preserve and protect said littoral rights;

It is herein noted that the total estate and all rights, including riparian and littoral rights, presently vested in the owners of this property shall hereby pass in their entirety to the Grantee herein.

EXHIBIT A
PARCELS # 1 & 2

PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT



PACIFIC

OCEAN

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State of California, George Deukmeyer Governor

California Coastal Commission
SOUTH COAST DISTRICT
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

FILED: 5-16-83
49th DAY: 7-3-83
180th DAY: 10-31-83
STAFF: D. J. Howell/GG/bp
STAFF REPORT: 5-31-83
HEARING DATE: June 9-10, 1983

REGULAR CALENDAR
STAFF REPORT AND RECOMMENDATION

Application No. 5-83-360 (Trueblood)

Applicant: Ralph Trueblood
22486 Pacific Coast Highway
Malibu, CA 90265

Agent: Kevin Kelly & Assoc.

Description: Construction of a 140 foot wood pile-supported, wood-sheeted bulkhead in the Carbon Beach area of Malibu.

Site: 22486 Pacific Coast Highway, Malibu, Los Angeles County.

SUMMARY

Staff recommends the Commission approve the project with conditions addressing public access and wave hazard liability.

STAFF RECOMMENDATION

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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(Ackerberg)

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II. Special Conditions

This permit is subject to the following special conditions:

1. Lateral Access. Prior to transmittal of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission, irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. The easement shall include all areas from the mean high tide line landward to the toe of the bulkhead. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Applicant's Assumption of Risk. Prior to transmittal of the permit, the applicant shall submit to the Executive Director a deed restriction for recording free of prior liens except for tax liens, that bind the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicant understands that the site may be subject to extraordinary hazard from erosion, flooding or wave damage, and the applicant assumes the liability from those hazards; (b) the applicant unconditionally waives any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the applicant understands construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of erosion, flooding, or wave damage.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Project Description. The applicant proposes to construct an approximately 140 foot long wood pile-supported, wood-sheeted bulkhead with a 40 foot long return on the east portion of the parcel (see Exhibit 3 for height specifications). The western end of the bulkhead will tie-in with a previously approved (but not constructed) bulkhead (5-81-521, Sherman).

B. Shoreline Access/Protective Structures. Article X Section 4 of the California Constitution provides:

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No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose ... and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (emphasis added)

The Coastal Act Sections which carry out the Constitutional direction on public access are 30210, 30211 and 30212, as follows:

Section 30210.

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.

Section 30211.

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.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

The legislature has also provided guidance as to the time, place and manner of public access.

Section 30214(a) provides:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and re-pass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Additionally, the legislature expressed its intent that the Commission consider the equities and balance the rights of the individual property owner with the public's constitutional right of access to the coast (Section 30214(b)).

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

Finally, Section 30604(c) of the Coastal Act requires that:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The proposed development is for the construction of a "new" bulkhead built on the sandy beach in order to protect existing development on the applicant's parcel. When the Commission determines that a shoreline project constitutes "new development", access is required. In the recent "Sea Ranch Association vs. California Coastal Commission, C-74-1320"

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(Ackerberg)

decision, the court ruled that it is within the Commission's power to require dedications of access as a condition of a development permit. The opinion also states, in part, that . . . "It is clear the Commission would be in violation of the policies and its duties as spelled out under the Act if it had not formulated or imposed the challenged conditions. . . ."

In 1979, the Commission began work on the Interpretive Guidelines for public access in order to provide a comprehensive review of the policies developed in permits in the previous 2½ years. These Guidelines were and are intended to provide the public, including permit applicants, with a general description of how the Coastal Act has been applied in previous cases and indicate the general approach the Commission would use in future actions. They are not regulations, do not supercede the statute and need not be followed in any particular case.

The major question presented in this case is how much access is appropriate given the circumstances. The question of the appropriate width and description of lateral accessways was one of the more important issues addressed in the Guidelines. Permit decisions by the State Commission and six Regional Commission decisions had been somewhat inconsistent prior to 1980 when the Guidelines were adopted.

The Coastal Act's basic policy is that maximum access must be provided in new development projects, in a time, place and manner responsive to the facts and circumstances outlined in Section 30214. The Commission, through a long line of permit decisions and in the Guidelines, has developed a policy approach which implements these requirements. Although each permit is reviewed on its own merits, many cases contain similar factual circumstances. The Commission has attempted to provide a uniform and consistent policy approach which protects both private and public interests by ensuring that landowners in similar factual circumstances are treated similarly and ensuring that dedicated accessways can be properly and efficiently managed for the enjoyment of the public and the protection of neighboring private uses.

The Guidelines discuss the general case of development located on the beach when they conclude that: "A 25 foot accessway along the dry, sandy beach for passive recreational use by the public has been found to offset the burden new development projects generally impose on public access". The 25 foot accessway is described as a minimum area for public use. An examination of the permit history in Malibu clearly demonstrates that the most common development is located on an existing parcel or on immediately adjacent to the beach.

However, the Guidelines also state:

Describing an Accessway From a Fixed Inland Point. The most efficient way to describe an accessway is as a distance from a fixed line landward of and parallel to the mean high tide line and extending seaward to the seaward property line (mean high tide line). When this description is used, the area of dry sand beach may vary from wide areas of sandy beach available for public uses during the low tide conditions, to very narrow stretches of sandy beach resulting in little area for public use during high tide or storms. To account for the potential changes in the waterline, the area included in the accessway should be sufficient to assure that the public will have the ability to use some dry sandy beach at all times of the year. Because the landward boundary of this accessway is fixed, the landowners/residents of the beachfront parcels, are afforded a greater degree of certainty of where public rights exist than that additional beach area may be required to protect the public's right of access to and along

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the shoreline. The public also benefits from this approach, since the public and the accepting agency can more readily determine where public rights exist. However, the public trade off for this certainty is that during storms and high tides, the accessways designated may be entirely submerged.

To determine the point at which such an accessway should begin the Commission should consider the variations in the high water line during the year, the topography of the site, the location of other lateral accessways on neighboring lands and the privacy needs of the property owner. Any such fixed point should, however, give the greatest amount of assurance that the public would retain the right of access and use along the shoreline during the majority of the year.

Thus, the discussion in the Guidelines regarding the 25 foot accessway as being generally sufficient unless extraordinary burdens on access are shown, does not announce a rule or standard for application to all circumstances. Rather it describes the Commission's experience in the most frequently encountered circumstances when development is located on or near the beach. In balancing the private and public interest in these cases, the Commission concluded the 25 foot easement for public access is consistent with the Coastal Act.

The guidelines make clear, however, that a lateral access requirement should be meaningful in light of all the circumstances of the site. Most important is the physical characteristics of the beach. Certainty in locating the inland extent of the accessway is primary in importance in reducing potential for conflict between beach users and property owners. Because the location of a 25 foot ambulatory access changes hourly, the guidelines prefer to establish the inland extent by means of a fixed inland point. . . "the most efficient way to describe an accessway is as a distance from a fixed line landward of and parallel to the mean high tide line. . . ."

Only where it is difficult to locate a fixed inland point do the guidelines suggest an ambulatory accessway. Using a fixed inland point creates greater certainty for both public and the landowner. In addition, because a 25 foot ambulatory easement is far more difficult to locate, those members of the public visiting the beach can be more easily intimidated by landowners who wish to exclude the public from use of the state tidelands. A fixed point can be easily mapped or described on signs educating the public to the actual public-private boundary.

In prior actions the Commission has used the fixed inland point to describe accessways: 1) nearly uniformly where a bluff fronts on the beach (See: Goldberg & Fisher A-264-80, Rehberger A-217-79, Auguste A-29-79, Voger A-164-79 and Gershwin A-160-78 and A-259-79); 2) nearly always where a seawall is placed on the beach (See Mussel Shoals A-158-81 to 162-81 and Robertson A-345-79) except where a retaining wall to contain septic systems rather than protect the residence is located under the house or very narrow beaches (See Couson 191-79 and Larronde 199-79) where a 25 foot ambulatory easement was required; and 3) occasionally where terrestrial vegetation clearly demands a significant change in beach features (See Bernfeld 294-79 and Seadrift permits).

Where a beach is bounded on the inland side by bluff, seawall or significant vegetation, the width of the beach is generally defined at some time, often regularly, by this upland barrier. In the case of bulkheads/seawalls designed to protect inland structures from wave damage

once waves reach the seawall, the reflected energy causes the sand in front of the seawall to be scoured out, thus leaving the seawall to define the upland/ocean boundary for a larger period of time. Vertical seawalls reflect more wave energy and cause greater sand scour, in general, than sloping seawalls or irregular rock walls, bluff faces or vegetation boundaries. All of the boundaries reflect more energy than a steep sandy or cobble beach. Thus, the definition of an inland extent of the beach by a natural or manmade feature is an indication that public access in front of the feature is probably severely limited or non-existent for at least the time of highest water.

If the accessway is defined as or by this inland boundary feature, the landowner is more secure from wave attack behind the barrier, while public access is diminished. Because of these relative benefits and burdens, the Commission finds that the accessway should be defined as an area seaward of the boundary feature so as to ensure greater and off-setting public access if the width of the beach fluctuates from season to season. In this way, the Commission can carry out the Constitutional and statutory mandates that access "always be attainable" and "maximum access. . . be provided for all the people." Private developments which create impediments to public access along the shoreline by eliminating sandy beach areas impose a burden on the ability of the public to enjoy and use of a public resource -- one to which access is guaranteed through Sections 30210 and 30211 of the Coastal Act and Article X Section 4 of the California Constitution.

Given the requirement of Section 30604(c) of the Coastal Act projects located between the first public road and the sea be in conformity with the access policies of the Coastal Act, a shoreline protective work which runs the risk of exacerbating shoreline erosion and loss of shoreline sand supply must mitigate or eliminate such adverse impacts. While it is difficult for such works to wholly eliminate adverse impacts, it has been the experience of the Commission, through many permit actions on similar projects, to mitigate those impacts through the provision of increased public access to and along the shoreline (Appeal No. 2-79, Isla Vista; Appeal No. 165-79, Blue Lagoon Community Association, Inc.; Permit No. 5-81-568, Schafer, et al, to name a few) as a more feasible means of meeting the requirements of the Coastal Act.

In addition to the aforementioned previous permit actions by the Commission on applications or appeals on similarly related projects, the Commission approved a permit with conditions for the reconstruction of a seawall for the Blue Lagoon Community Association, Inc. in South Laguna, Orange County (Appeal No. 165-79). The Commission found that due to the construction of the seawall, public access along the shoreline was adversely affected. Due to the physical impairment to access during periods of low sand supply on the beach, in part created by the seawall, lateral access was required as a condition of approval as well as the provision of enhanced lateral access during periods of low sand supply through the construction of stairways for "emergency public access" to and along the community road for use by the public for the sole purpose of access to the beach when tidal or wave action prevented safe passage along the beach seaward of the approved development.

In considering the impacts of shoreline protective works on shoreline processes and shoreline sand supply, additional Coastal Act policy concerns are applicable and must be addressed. Sections 30235 and 30253(1) and (2) of the Coastal Act state, in part:

Section 30235.

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosions 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.

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Previous attempts in the Malibu area to protect homes from storm wave damage and erosion have included the construction of wooden or concrete seawalls and the placement of rip-rap. Such structures tend to cause the loss of sand from beach areas in front of and adjacent to them (according to "Planning for an Eroding Coast", a report to the Coastal Commission by Frank Broadhead, Shore Protection Manual, Army Corps of Engineers, 1977, and Saving the American Beaches: A Position Paper by Concerned Coastal Geologists, Pilkey, et al, 1981). The impenetrable surfaces of the structures or boulders reflect the energy generated by the breaking waves, resulting in the scouring away of the sandy areas in front of and up and down coast from the structures. And, by artificially building up and steepening the slope in the vicinity of such structures, two additional effects occur: (1) wave energy is not gradually reduced, as would occur on a more gently, sloping beach, but is increased, thus exacerbating the scouring effect on adjacent sandy beach areas; and (2) the structures tend to cause a landward retreat of the mean high tide line, potentially affecting the boundary between public and private lands along beaches adjacent to the project as well as on the project site itself.

The U.S. Army Corps of Engineers' Shoreline Processes Manual, Vol. 11, states:

5.22 Limitations. These structures (seawalls, revetments, bulkheads, etc.) afford protection only to the land immediately behind them, and none to adjacent areas up or downcoast. When built on receding shorelines, the recession will continue and may be accelerated on adjacent shores. Any tendency toward loss of beach material in front of such structures may well be intensified. Where it is desired to maintain a beach in the immediate vicinity of such structures, compensation works may be necessary. (Page 5-3)

5.26. Erosion updrift from such a structure will continue unabated after the wall is built, and downdrift erosion will probably be intensified. (Page 5-4)

In addition, the State Interpretive Guidelines reference "projects whose burden on public access may not be successfully mitigated with only a 25 foot accessway", with particular emphasis placed on the impact of shoreline protective devices:

"Shoreline protective devices, particularly vertical seawalls, have serious adverse effects on coastal resources. Such seawalls increase scour from their base and, thus, decrease the area of usable beaches. Also, because shoreline protective devices are intended to halt the landward progress of erosion, they tend to define the shoreline in areas subject to erosion. As such, they tend to limit public passage on beaches especially at high tides and storm conditions. Further, construction of shoreline protective devices eliminates dune material as a source of beach sand, and further limits the ability of the shoreline to migrate as it would in a natural state. Given these additional direct burdens on the availability of sandy beach and the resultant impacts on public access to the state-owned tidelands, it is only with additional provisions for public access that this burden can be sufficiently mitigated and thus that construction of such devices can be found consistent with Section 30212 of the Coastal Act."

It has been the Commission's experience, based on the review of previous similar shoreline protective devices and of scientific and engineering data pertinent to the subject, that such devices have an adverse impact on shoreline sand supply and a direct adverse impact on public access along the shoreline. Such development, therefore, is inconsistent with the requirement of Section 30235 of the Coastal Act which allows such structure only ". . .when designed to eliminate or mitigate adverse impacts on shoreline sand supply. . ." since the primary purpose of revetment is to protect landward structures and property. As mentioned earlier, however, the Commission has approved such projects with a condition to ensure that any potential or expected loss of sandy beach for use by the public shall be mitigated through a requirement that applicants offer to dedicate a lateral access easement for public use along the shoreline from the mean high tide line to the toe of any such shoreline protective device.

In conclusion, the Commission finds that the proposed project does place burdens on public access and coastal resources, and that an access dedication from the mean high tideline to the toe of the proposed bulkhead represents an appropriate balancing of the public and private



burdens and benefits. The Commission finds that the proposed development as conditioned is consistent with Sections 30210, 30211, 30212, 30214 and 30604(c) of the Coastal Act of 1976.

C. Wave Hazard. Section 30253(1) and (2) of the Coastal Act states:

Section 30253.

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Oceanfronting parcels in Malibu, such as the subject property, are susceptible to flooding and wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low-interest loans) in the millions of dollars in the Malibu area alone. Section 30001.5 of the Coastal Act states, in part, that the economic needs of the people of the State are a basic consideration:

Section 30001.5.

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

The experience of the Commission in evaluating the consistency of proposed developments with the policies of the Coastal Act regarding development in areas subject to problems associated with geologic instability, flood, wave, or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, landslides, or other such occurrences. Recent episodes on December 1, 1982 and January 27, 1983, re-affirm the fact that damage from high tides, storm surge, and storm waves is a likely occurrence during the expected duration of the residences. In addition, the area in which the proposed development will occur, is an area described as critical for present development. According to the Assessment and Atlas of Shoreline Erosion along the California Coast, prepared by the Department of Navigation and Ocean Development (now known as the Department of Boating and Waterways), the Big Rock Beach portions of the Malibu coast is subject to damage during high wave conditions. As a means of allowing continued development in areas subject to those hazards while avoiding placing the economic

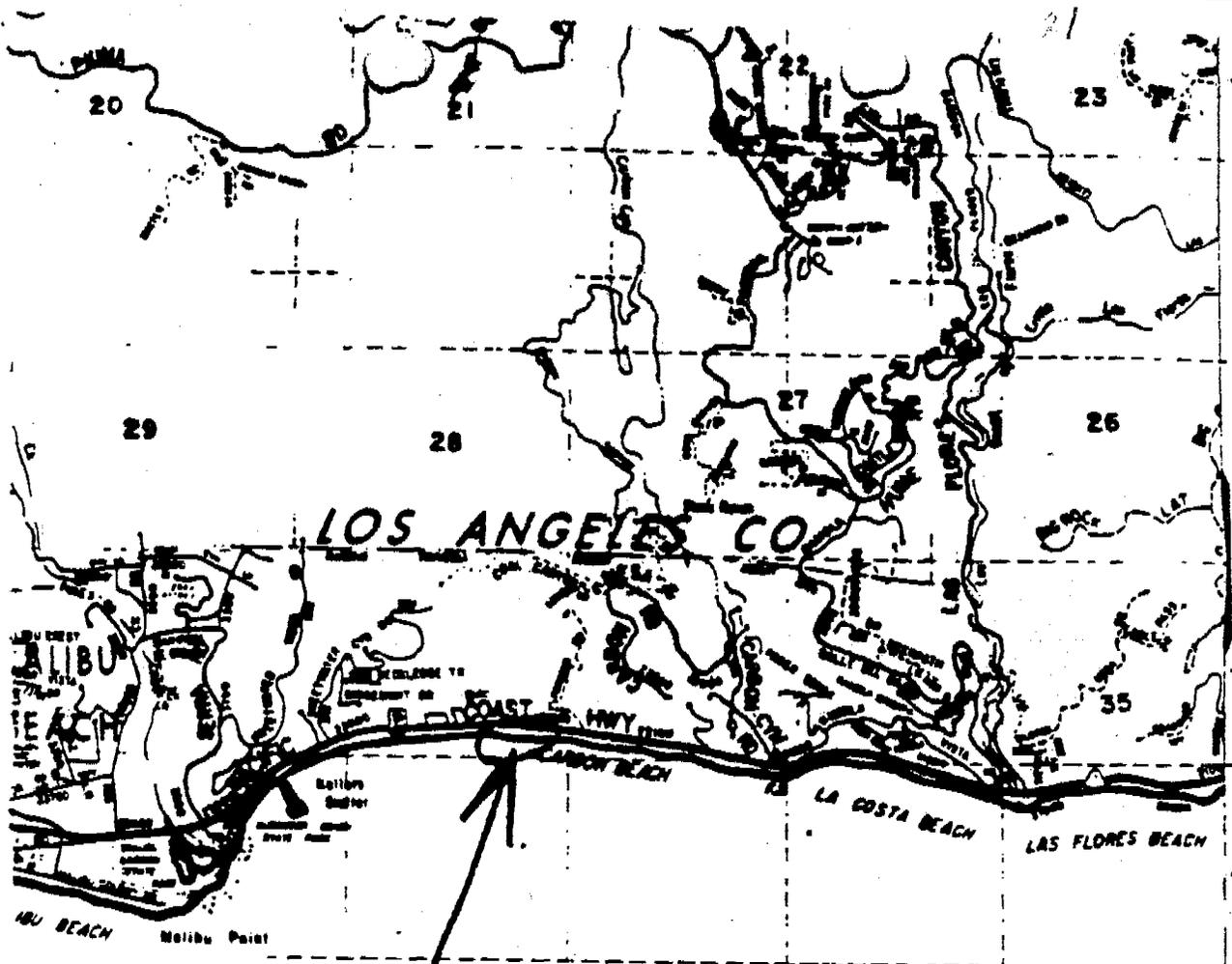
burden on the people of the State for costs arising from the damage to private development, the Commission has regularly required that the applicants agree to waive any claims of liability on the part of the Commission or any other public agency for allowing the development to proceed. As conditioned, the Commission finds that the proposed development will be consistent with Section 30001.5 of the Coastal Act.

D. Local Coastal Program. Section 30604(a) of the Coastal Act states, in part:

Section 30604.

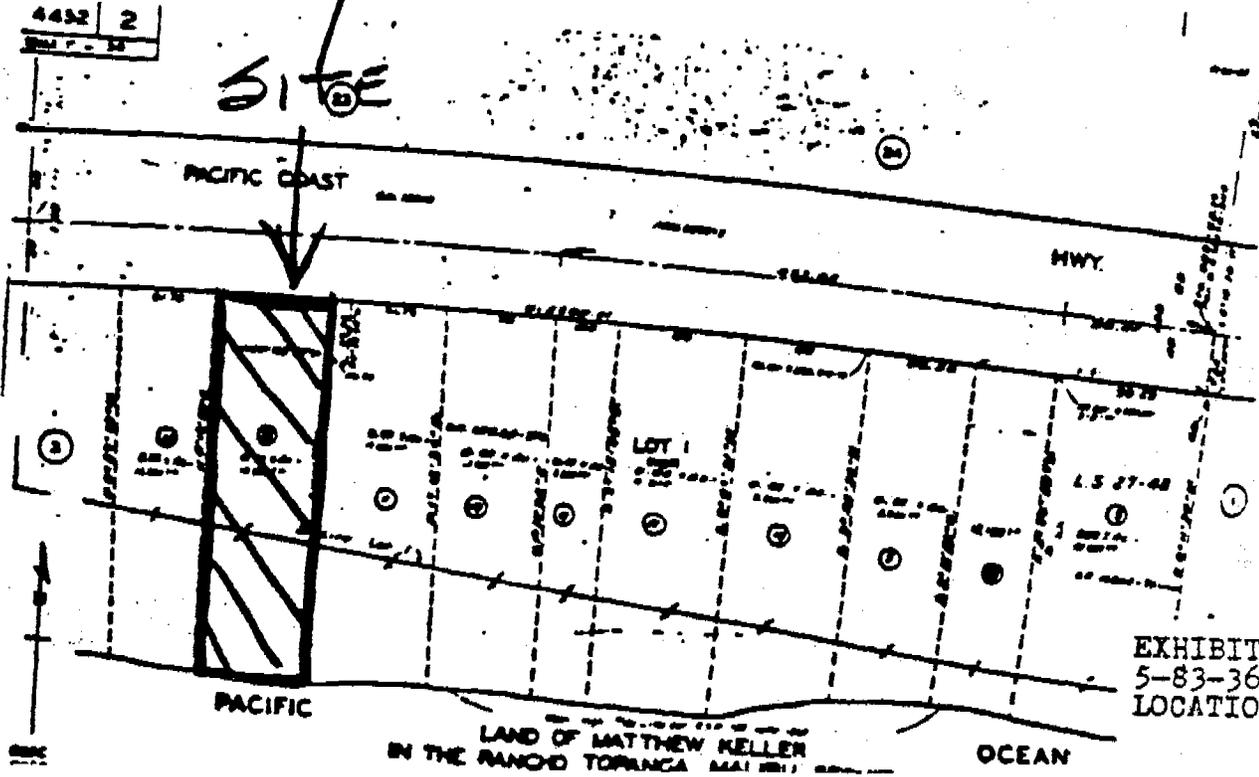
(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The County of Los Angeles Board of Supervisors adopted the Land Use Plan portion of the Malibu/Santa Monica Mountains area Local Coastal Program on December 28, 1982, for submittal to the Coastal Commission for certification. At a public hearing on March 24, 1982, the Commission voted not to certify the Land Use Plan as submitted; further hearings have not been scheduled at this time. Since the proposed development is otherwise consistent with the policies of Chapter 3 of the Coastal Act, as mentioned earlier, the Commission finds that approval of this project as conditioned will not prejudice the ability of the County of Los Angeles to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.



PACIFIC OCEAN

SITE



83 950711

EXHIBIT 1
5-83-360
LOCATION

Exhibit 3
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

NOTE: DOES NOT WITHIN EXISTING SYSTEM.

EXISTING WALL

EXISTING WALL

6'-0"

← ACCESS AREA →

30'-0"

TENNIS COURT.

LEVEL: +157

22400 FCH

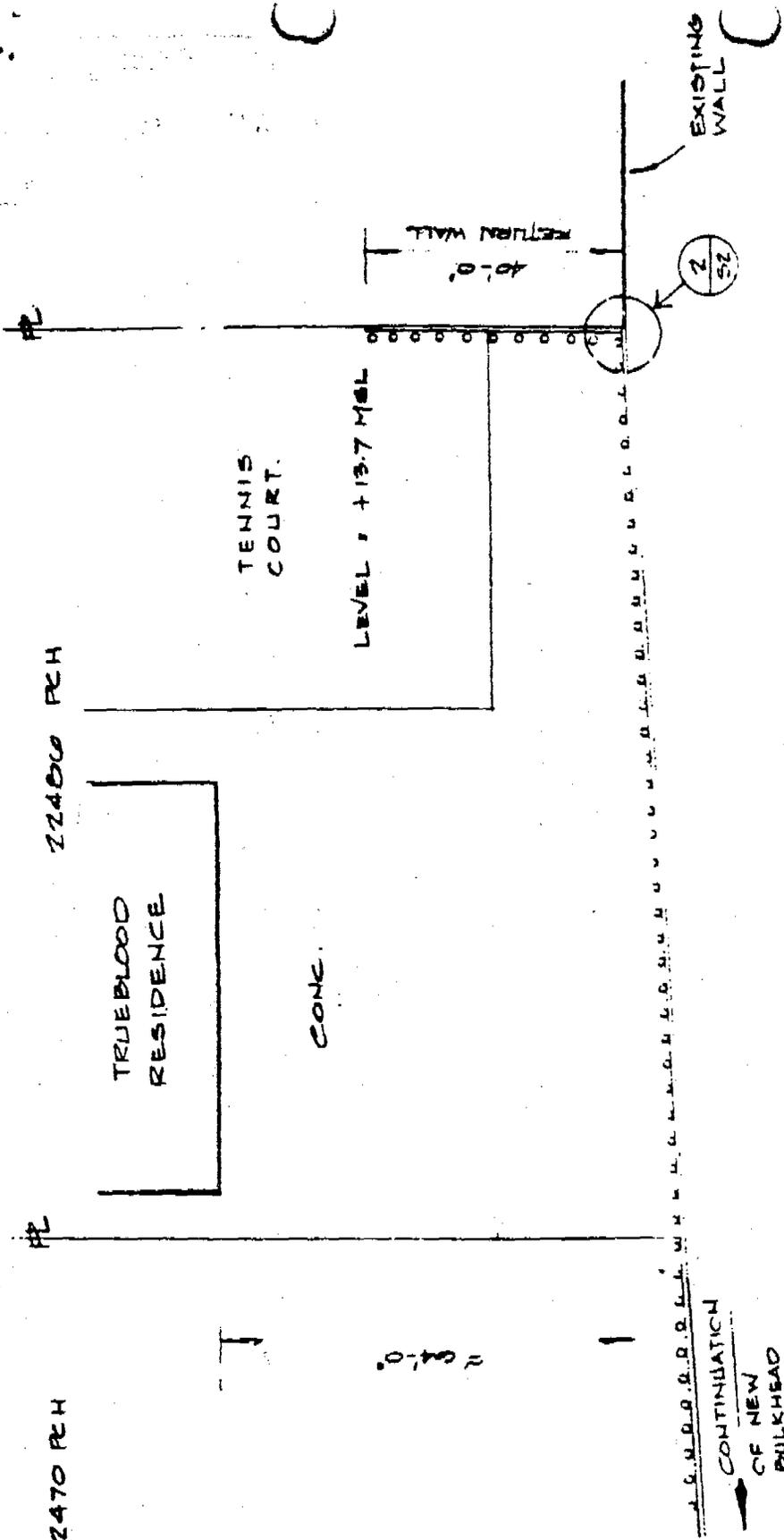
OF BULKHEAD WALL

(Not for 1'-0")

← ACCESS AREA →

THAT THE SITUATION IS

REQUIRED



LAYOUT OF BULKHEAD WALL
 (Scale 1/16" to 1'-0")

EXHIBIT 2
 5-83-360
 BULKHEAD

23
 13

22470 FEH

22400 FEH

83 950711



RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA

AUG 17, 1983 AT 8 A.M.

Recorder's Office

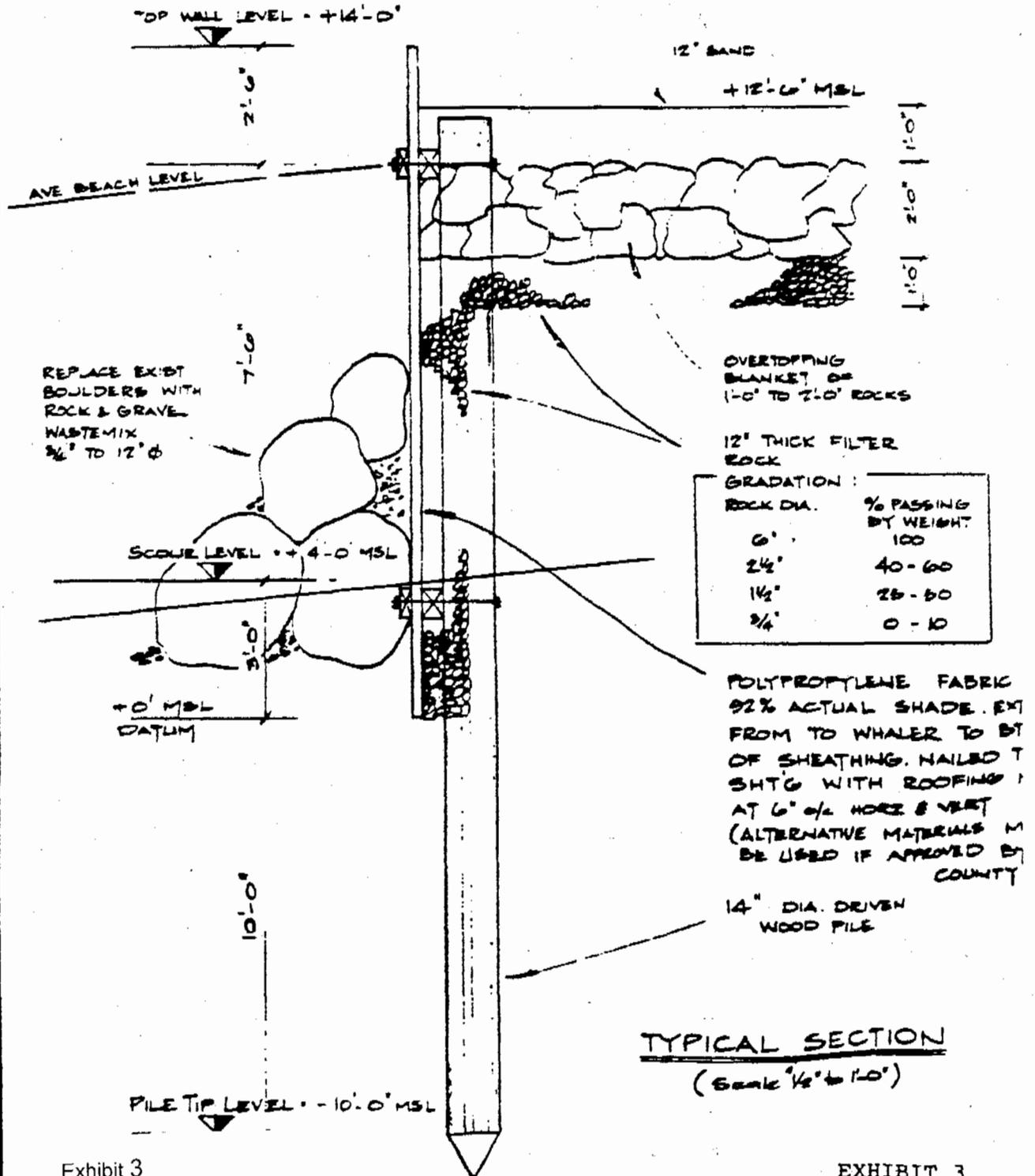


Exhibit 3
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

83 950711

EXHIBIT 3
5-83-360
BULKHEAD



02-0671882

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
4:01 PM MAR 20 2002

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

FREE D

3

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

THIS FORM IS NOT TO BE DUPLICATED

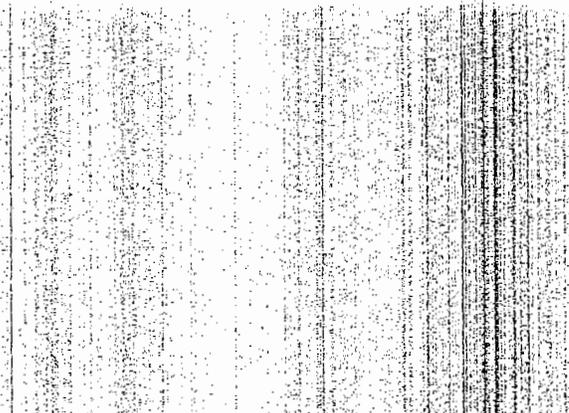


Exhibit 4
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

02-0671882

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Attention: Legal Division

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NO TAX DUE -0-

SLC No. AD 360

CCC Permit No. 5-83-360

A.P.N. 4452-002-013 and 4452-002-011

22466 and 22500 Pacific Coast Hwy

CERTIFICATE OF ACCEPTANCE

Government Code 27281

This is to certify that the State of California, acting by and through the California State Lands Commission, a Public Agency of the State of California, hereby accepts any and all right, title and interest in real property conveyed by the Offer to Dedicate Public Access Easement, dated July 11, 1983, recorded August 17, 1983, as Instrument No. 83-950711, Official Records of Los Angeles County, from Ralph W. Trueblood, Jr. to the State of California.

The interest in real property conveyed by the offer is accepted in trust for the people of the State. Acceptance is made of that interest which can be legally conveyed and is not intended to define boundaries or accept interests or rights in lands which are already the property of the State or people of California.

This Acceptance and consent to recording of the Acceptance is executed by and on behalf of the State of California by the California State Lands Commission, acting pursuant to law, as approved and authorized by its Calendar/Minute Item No. C 79 of its public meeting on December 16, 1998, by its duly authorized undersigned officer.

California State Lands Commission

Dated: FEB 19, 2002

By: Paul D. Thayer

Paul D. Thayer
Executive Officer

ACKNOWLEDGMENT BY CALIFORNIA COASTAL COMMISSION

This is to certify that the California State Lands Commission is a public agency acceptable to the Executive Director of the California Coastal Commission to be Grantee under the Offer to Dedicate referenced above.

Dated: 3.6.02

By: John Bowers

John Bowers, Staff Counsel

Exhibit 4

CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

Page 2 of 4

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of SACRAMENTO } ss.

On Feb 19 2002 before me, Kimberly L. Korhonen Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared PAUL D. THAYER
Name(s) of Signer(s)

- Personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kimberly L. Korhonen
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: CERTIFICATE OF ACCEPTANCE SLC PD: 360
CEL 5-83-360 ARI. 4452-062-013, 4452-002-011
Document Date: Dec 16, 1998 Number of Pages: 1

Signer(s) Other Than Named Above: JOHN BOWERS

Capacity(ies) Claimed by Signer

- Signer's Name: PAUL D. THAYER
- Individual
- Corporate Officer — Title(s):
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: EXECUTIVE OFFICER

Signer Is Representing: CA STATE LANDS COMMISSION



California Coastal Commission
SOUTH COAST DISTRICT
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

FILED: 11/ 7/84
49th DAY: 12/26/84
180th DAY: 5/ 6/85
STAFF: GCleason:do
STAFF REPORT: 1/14/85
HEARING DATE: 1/24/85

REGULAR CALENDAR

A. W. H. C.

STAFF REPORT AND RECOMMENDATION

Application No.: 5-84-754

Applicants: Lisette & Norman Ackerberg Agent: Edwin Reeser
22466 Pacific Coast Highway
Malibu, CA

Description: Demolition of an existing single family dwelling,
guest house, swimming pool, and construction of a
new two-story single family dwelling and swimming
pool. The project also includes the renovation of
an existing tennis court.

Site: 22466 Pacific Coast Highway, Malibu, Los Angeles County

SUMMARY

The staff is recommending approval of the project subject to a vertical access condition and a stringline condition to bring the project into conformance with the policies of Chapter 3 of the Coastal Act.

Substantive File Documents:

1. Malibu/Santa Monica Interpretive Guidelines
2. 5-83-871 (Diamond)
3. 5-83-242 (Singleton)
4. 5-84-592 (Gordon)
5. 5-83-360 (Trueblood)
6. 5-84-629 (Ritchie)
7. 5-83-136 (Geffen)
8. Seventh Edition, Coastal Access Inventory

STAFF RECOMMENDATION

The staff recommends the Commission adopt the following resolution:



I. Approval

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions: See Attachment X.

III. Special Conditions

This permit is subject to the following special conditions:

1. Vertical Access Condition. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following conditions have been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public pedestrian access to the shoreline. Such easement shall be 10 feet wide located along the eastern boundary of the property line and extend from the northerly property line to the mean high tide line. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such periods running from the date of recording.

2. Revised Plans. Prior to transmittal of permit, the applicant shall be required to submit revised plans which conform the structural and deck stringline criteria contained in the adopted Interpretive Guidelines for the Malibu/Santa Monica Mountains.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description. The proposed project consists of the demolition of an existing single family dwelling, guest house and swimming pool and the construction of a new two-story single family dwelling with three-car garage, swimming pool and septic system. The newly proposed project involves construction of a new swimming pool on the seaward side of the residence. The previous swimming pool was located landward of the previously existing residence. In addition as part of the project, the applicant proposes to renovate an existing tennis court. Also, the proposed project will result in the relocation of the tennis court on the project site approximately 14 feet seaward.

B. Background. On June 9, 1983, the California Coastal Commission approved the construction of a 140-foot in length wood pile-supported, wood sheeted bulkhead. In its action to approve the project the Commission imposed a lateral access condition requiring an offer of dedication of an easement for public access from the mean high tide line to toe of the bulkhead. In addition the Commission required the applicants to assume the risks associated with development of the site which might result from flood or wave damage.

C. Public Access. The Coastal Act contains strong policy provisions in Sections 30210 and 30212, requiring public access to and along the shore. However, the requirements for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes . . . and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted shall be provided subject to certain conditions.

1. Lateral Access. The Coastal Act in Section 30210 requires the provision of public access along the shoreline in new development projects. An application for a seawall at this location in 1983 (5-83-360, Trueblood) was conditioned to provide public lateral access across the project site from the toe of the seawall to the mean high tide line. Therefore, the Commission finds that lateral access for the public has been provided for through prior permit action of the Commission and that the currently proposed project is consistent with Sections 30210 and 30212 of the Coastal Act as it relates to the provision of lateral access.

2. Vertical Access. New development projects are required to provide public access in compliance with the public access provisions of Chapter 3 of the Coastal Act.

Section 30210.

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.

Section 30212 of the Coastal Act contains several very explicit policy provisions regarding the location and type of public access to be provided.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where

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

(2) adequate access exists nearby, or

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the regional commission or the commission determines that such the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

In addition to the above provisions of the Coastal Act, Section 30214(a) addresses with a greater degree of specificity the time, place and manner of public access. Section 30214(a) states:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Additionally, the legislature has expressed its intent that the Commission balance the rights of the individual property owner with the public's constitutional right of access to the coast. Section 30214(b) states:

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

All projects requiring a Coastal Development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. New development on sites located between the sea and the first public road may be required to provide vertical access under the policy provisions of Section 30212 of the Coastal Act. In determining where vertical access should be required, the Commission must consider the need to gain access to the shoreline in a given area, taking into account the physical constraints of the site, including, but not limited to, safety hazards, existence of fragile coastal resources, the location of support facilities, such as parking areas and the privacy needs of residents of the project site.

As outlined in the Seventh Edition, September 1983, Coastal Access Inventory within the area identified as the Malibu Coastline (a distance of about 27 miles from Topanga State Beach on the east to Leo Cabrillo State Beach on the west) only 16 vertical accessways have been recorded as a result of Coastal permit requirements. Of these, only 4 vertical accessways have been opened to the public. Accessways obtained through the Coastal permit process cannot be developed and/or actually used by

the public until a public or private agency agrees to accept responsibility for maintenance and liability. The following is a list of vertical accessways that have been obtained via the Coastal permit process in Malibu.

<u>Coastal Permit No.</u>	<u>Street Address/Malibu</u>	<u>Width of Access</u>	<u>Open</u>
73-290	State Park/Point Dume	6'	Yes
73-511	26168 Pacific Coast Highway	6'	Yes
73-1526	22706 " " "	10'	Yes
74-2840	22626 " " "	2'	No
75-6376	22032 " " "	5'	No
76-8877	21554 " " "	6'	No
76-8957	25120 " " "	35'	Yes
77-376	19020 " " "	3'	No
77-574	26834 Malibu Cove Colony	5'	No
77-1466	31736 Broad Beach Road	5 -10'	No
77-2130	27398 Pacific Coast Highway	10'	No
78-3473	27700 " " "	10'	No
78-3591	20802 " " "	5'	No
79-4918	21202 " " "	10'	No
80-2707	27900 " " "	10'	No
5-83-136	22126-22132 Pacific Coast Highway	9'	No

In addition to the vertical accessways listed above, there are several vertical accessways in Malibu which are owned by the County of Los Angeles. One County accessway (at 22550 P. C. H.) is located within 500 feet of the project site; however, the accessway is closed and the County has no plans to open this accessway.

The project site is located in the Carbon Beach area of Malibu; one of the least publicly accessible beaches in the Malibu area. The existence of a solid row of residential structures along this stretch of Pacific Coast Highway effectively creates a private beach enclave. The residential development along Carbon Beach even precludes views of the ocean and shoreline from Pacific Coast Highway.

On the inland side of Pacific Coast Highway in the vicinity of the project are multi-unit apartment buildings, small offices and commercial structures. Although this particular area of Malibu has not experienced great demand for recycling of existing structures or development of the few vacant parcels, it appears inevitable that as the pattern of growth in Malibu continues, a demand for recycling and more intensive development will occur. In turn this will create a greater demand for beach usage.

In order to determine whether the currently proposed project complies with the access provisions of the Coastal Act and more specifically with Section 30212 of the Coastal Act, the Commission must determine whether adequate access exists nearby.

The Commission has already found that the project meets the definition of new development, thus if adequate access does not exist nearby, access for the public from the nearest public roadway (P. C. H.) to the shoreline is required.

In its review of prior similar permit applications where the issue of vertical access has been raised, the Commission has used a 500-foot criteria as a guideline to determine whether adequate access exists nearby. More specifically, the Commission has previously made a determination in similar cases if open vertical access for the public exists within 500 feet of the project site, adequate access exists nearby. With respect to the currently proposed project, the Commission notes that the nearest open public vertical accessways are located 1,300 feet west of the project and 3,099 feet east of the project site. Since open vertical access for the public does not exist nearby, the Commission finds it is necessary to condition the project to provide for vertical access for the public, from Pacific Coast Highway across the project site to the shore. Only if so conditioned would the project be consistent with Section 30212 of the Coastal Act.

The Commission further finds that since the project site consists of two contiguous lots with a total frontage of 140 feet both the applicant and the Commission are afforded great flexibility in siting the vertical accessway. The Statewide Guidelines adopted by the Commission indicate that a vertical accessway when provided should be a minimum of 10 feet in width and should usually be sited along the borders of the project site. The Commission concludes the large size of the project site (40,041 square feet) affords great opportunity in the actual design of the vertical accessway across the project site benefiting both the applicant and the public. In addition, the Commission notes that there is on-street parking available on both sides on Pacific Coast Highway in the vicinity of the project. Therefore, the Commission concludes that adequate support facilities (for parking) exist within the vicinity of the project. Finally the Commission finds that if conditioned, as indicated above with a vertical accessway, the project would be in conformance with the access policies of Chapter 3 of the Coastal Act.

D. Scenic and Visual Resources/Seaward Encroachment. The Coastal Act in Section 30251 states:

Section 30251.

The scenic and visual qualities of coastal areas shall be conserved 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 surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed project consists of the demolition of an existing single family dwelling and swimming pool and the construction of a new

two-story, 32-foot above average finished grade, single family residence with swimming pool. The project also involves renovation of an existing tennis court and the relocation of the tennis court approximately 14 feet seaward of its present location.

New development along the shoreline is of particular concern to the Commission. Section 30251 of the Coastal Act requires that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. As one means of limiting the encroachment of residential development onto sand beach areas, the Commission has adopted a stringline guideline. With respect to this criteria, the Guidelines state:

"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 decks and bulkheads, should be built further onto a beach front than a line drawn between the nearest adjacent corners of the adjacent structures. Enclosed living space in the new unit should not extend farther seaward than a second line drawn between the most seaward portions of the nearest corner of the enclosed living space of the adjacent structure."

One of the purposes of this Guideline is to limit seaward encroachment on sandy beach areas. In the case of the currently proposed project, the applicant proposes to demolish an existing single family home and construct a significantly larger single family home. The proposed construction will occur landward of an existing seawall/bulkhead previously approved by the Commission. As proposed the new residence will conform with the Commission's stringline condition for structural development. However, other portions of the development including a solar trellis for the residence exceed the stringline. Also, the project calls for the seaward encroachment of a tennis court by 14 feet which could have a visual impact since if relocated the tennis court would be at the bulkhead line. Therefore, the Commission finds it necessary to condition the project to require revised plans which clearly indicate the project complies with both structural and deck stringlines. Only if so conditioned would the project be consistent with Section 30251 of the Coastal Act which addresses scenic and visual resources.

E. Hazards. Section 30253 (1) of the Coastal Act specifies that new development minimize risks to life and property in areas of high geologic flood and fire hazard. That an emergency permit was requested by the prior owner of the project site for construction of a 140-foot in length wood seawall attests to the potential flood hazard on the site. In approving the regular permit for construction of a seawall on the site, the Commission required the seawall to meet storm design criteria and for the project applicant to assume the risks associated with development of the site. Therefore, the Commission finds that the

seawall will serve to mitigate the flood hazard which previously existed on the site and that as previously conditioned, the project is consistent with Section 30253 (1) of the Coastal Act.

F. Local Coastal Program. Section 30604(a) of the Coastal Act states in Part:

Section 30604.

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The County of Los Angeles adopted the Land Use Plan portion of the Malibu/Santa Monica Mountains area Local Coastal Program on December 28, 1982, for submittal to the Commission for certification. On March 24, 1983 the Commission voted to find that the Land Use Plan raised a "Substantial Issue" in terms of conformity with the Coastal Act and voted to deny the Land Use Plan as submitted.

At the time of this writing the Commission is scheduled to consider suggested modifications to the Malibu Land Use Plan at the Commission hearing in early January.

Among the suggested modifications which the Commission is scheduled to consider are access policies proposed as modifications to the County's Land Use Plan. With respect to beach access in general and vertical access specifically, the suggested modifications state:

4.1.2 COASTAL ACCESS

1. GENERAL POLICIES

- P49 In accordance with Section 30214(a) of the Coastal Act, the time, place, and manner of public beach access requirements for new development will depend on individual facts and circumstances, including topographic and site characteristics, the capacity of the site to sustain use at the intensity proposed, the proximity to adjacent residential uses, the privacy of adjacent owners, the feasibility to provide for litter collection, and safety of local residents and beach users.
- P50 In accordance with Section 30214(b) of the Coastal Act, the requirement of access shall be reasonable and equitable, balancing the rights of the individual property owner and the public.

Vertical Access

P51 For all land divisions, non-residential new development, and residential new development on lots with 75 or more feet of frontage or with an existing drainage or utility easement connecting a public street with the shoreline or on groups of two or more undeveloped lots with 50 feet or more of frontage per lot, an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line shall be required, unless public access is already available at an existing developed accessway within 500 feet of the project site measured along the shoreline. Such offer of dedication shall be valid for a period of 21 years, and shall be recorded free of prior liens. The access easement shall measure at least 10 feet wide. Where two or more offers of dedication within 500 feet of each other have been made pursuant to this policy, the physical improvement and opening to public use of one offered accessway shall result in the abandonment of other offers located within 500 feet of the improved accessway.

* Exceptions to the above requirement for offers of dedication may be made regarding beaches identified in the Land Use Plan's Area-Specific Marine Resource Policies (P111 through P113) as requiring limitations on access in order to protect sensitive marine resources.

* P51b On the basis of a Beach Management Plan prepared by the County and approved by the Coastal Commission which takes into account beach recreation opportunities, the width of the beach, the presence of immediately adjacent residences or sensitive natural resources, local parking conditions, beach support facilities, the feasibility of emergency vehicle access to the beach, and related factors, accessways at greater intervals than would be required by P51 may be required, up to a maximum standard of separation for new vertical accessways of one accessway per 2000 feet of shoreline. Such a Beach Management Plan, which may be submitted to the Commission for its review at the same time as the implementing ordinances, shall assure that lateral access offers made in connection with coastal permits previously approved (as well as in connection with future permits and vertical access offers sufficient to meet the standard of separation included in the Plan) are accepted for maintenance and liability purposes by the County or other responsible entity acceptable to the Executive Director of the Coastal Commission. Reasonable restrictions on use of the beach to protect sensitive marine resources, minimize risks to public safety due to geologic and wave hazards and reduce potential conflicts with the privacy of nearby residences while promoting reasonable public access may be adopted by the accepting agency as part of the Beach Management Plan.

If the Commission were to approve the currently proposed project without a vertical access condition in advance of the development of a Beach

Management Plan as indicated in proposed suggested modification P51G above, the ability of the County to prepare a Local Coastal Program in conformance with the policies of Chapter 3 of the Coastal Act would be prejudiced.

In addition to the proposed suggested modifications to the County of Los Angeles Land Use Plan access policies listed above, the suggested modifications also call for development of a beach access program to be implemented in conjunction with the proposed policies on public access. With respect to the beach access program the suggested modifications state:

2. BEACH ACCESS PROGRAM

Objectives

(a) ~~The principal~~ One means of maximizing public access is to ~~create and improve major accessways at locations where adequate parking and other necessary public improvements, including parking or public transit facilities where appropriate, can be provided to ensure adequate safety for users, traffic safety, security and privacy for adjacent residents, and clear public identification.~~

(b) Priorities for improved vertical public access in the Malibu Coastal Zone shall be in accordance with the ranking as depicted in Figure 5. Other criteria for determining priority for this new beach access are:

- (1) First priority shall go to expanding safe off-highway parking at existing beaches with lifeguards.
- (2) New accessway priorities shall feature:

Improvement of access to sandy beaches where there is no current public access.

Improvement of access to sandy beaches where the distance between existing accessways exceeds one-half mile.

Improvement of accessways using offers of dedication which were already made pursuant to the conditions of coastal permits issued by the Coastal Commission or the County where to do so would allow the County to avoid requiring future offers of dedication as provided by P51.

Capacity to allow emergency vehicle passage from highway to beach and return, except where steepness or the existence of stairs would not allow vehicle use.

Revenue recovery system so that the costs of new accessways and adjacent beach operations are wholly covered to the extent possible.

New accessways should be obtained in conjunction with off-highway property where it is feasible to develop parking or public transit facilities and safe pedestrian systems.

(3) .Beach access opportunities requiring vertical pedestrian pathways shall not be opened until the improvements are in place and a public agency is willing to accept management and liability for such accessways.

(c) The frequency of public access locations shall vary according to localized beach settings and conditions as set forth for Policy EE P51 below. Vertical access standards and related dedication requirements may range from none in areas of major public beach holdings to one accessway per 1,000 feet of shoreline where accessways would be short and directly link roadways with adequate parking or transit access and the beach.

The Beach Access Program proposed above is directly related to the access policies of the suggested modifications. Thus, if the Commission were to approve the project, as proposed without a vertical access condition, the ability of the County to prepare a LCP in conformance with Chapter 3 of the Coastal Act would be prejudiced.

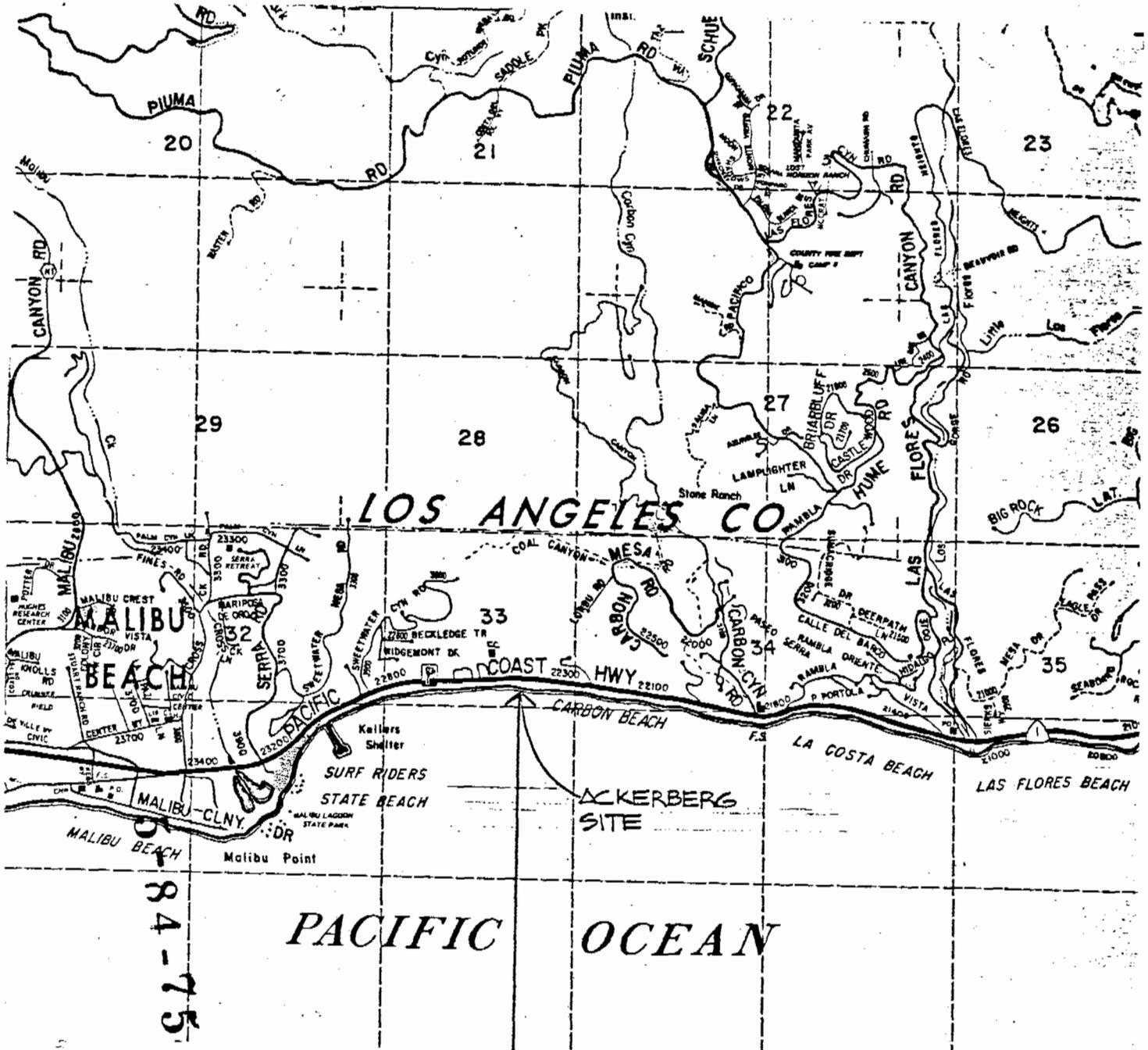
Attachment X

To: Permit Applicants
From: California Coastal Commission, South Coast District
Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. 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 development during construction, 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.



PROJECT
SITE

5-84-754
EXHIBIT 1
LOCATION MA

Exhibit 5
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

5-84-754

PACIFIC COAST HWY.

STREET PROP. LINE

L=86.54'

L=61.76'

EX. RESIDENCE
22470 PCH

EXISTING 2
STORY EXTR.
WALL LINE

ROOF LINE

NEW HOUSE
22466 PCH
(FORMERLY 22486)

EXISTING
TENNIS COURT

EX. RESIDENCE
22446 PCH

COMMISSION
STRINGLINE

EXISTG 2 STORY
EXTR. WALL LINE

EX. 6' HIGH
WINDBREAKER

156' TO ST. PROP. LINE

148' TO ST. PL.

NEW POOL

51' 11" 23" W

21' TO ST. PL.

140' TO ST. PL.

APPLICANT'S
STRINGLINE

EX. COMMON
TIMBER
BULKHEAD

BLDG. STRINGLINE

EX. 6' HIGH
WINDBREAKER

DECK, BULKHEAD
(EXISTG) AND 6'
HIGH FENCE
STRINGLINE

TENNIS COURT
TO BE RELOCATED

BEACH

273' S 0° 13' 30" W

268' S 1° 11' 23" W

STRINGLINE MAP
1"=40'

DRAWN BY
RICHARD SOL, AIA
31 OCT. 1984

ST. LIC. NO. C11884

RANDOM LINE CONNECTING POINTS
ON MEAN HIGH TIDE LINE @ EL L85
AS SURVEYED ON DEC. 14, 1983.

PACIFIC OCEAN

5-84-754
EXHIBIT 2
SITE PLAN



COAST

Norman J. & Lisette Ackerberg
22466 Pacific Coast Highway
(Formerly 22486 PCH)
Malibu, CA 90265

Exhibit 5
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

5-84-754
EXHIBIT 3
AERIAL PHOTO

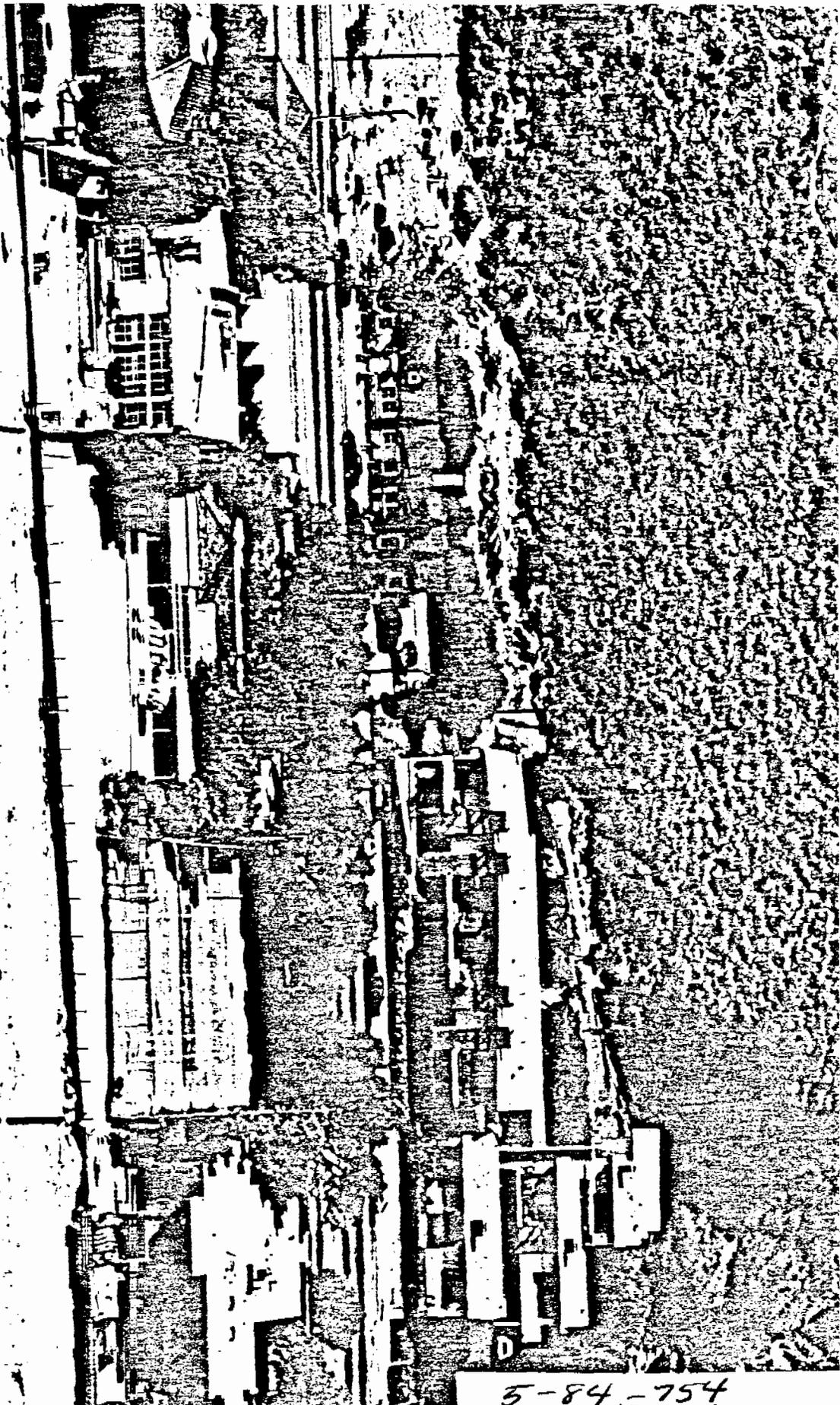
APPLICANT

Norman J. & Lisette Ackerberg
22466 Pacific Coast Highway
(Formerly 22486 PCH)
Malibu, CA 90265

Exhibit 5
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

Page 17 of 19

5-84-754
EXHIBIT 4
AERIAL PHOTO



4-9-85 GG/wr

California Coastal Commission
SOUTH COAST DISTRICT
245 West Broadway, Suite 360
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

RECEIVED
APR 17 1985
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

COASTAL DEVELOPMENT PERMIT

No. 5-84-754

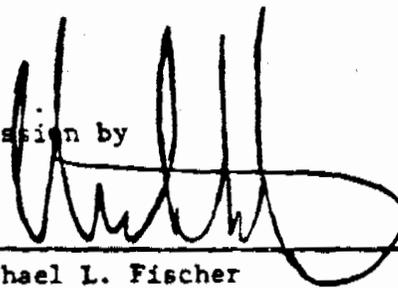
Page 1 of 2

On January 24, 1985, the California Coastal Commission granted to
Lisette & Norman Ackerberg
this permit for the development described below, subject to the attached
Standard and Special conditions.

Demolition of an existing single family dwelling, guest house,
swimming pool, and construction of a new two-story single family
dwelling and swimming pool. The project also includes the re-
novation of an existing tennis court.

Site; 22466 Pacific Coast Highway, Malibu, Los Angeles County.

Issued on behalf of the California Coastal Commission by



Michael L. Fischer
Executive Director
and



Staff Analyst

**IMPORTANT: THIS PERMIT IS NOT VALID UNLESS
AND UNTIL A COPY OF THE PERMIT WITH THE
SIGNED ACKNOWLEDGEMENT HAS BEEN RE-
TURNED TO THE COMMISSION OFFICE.**

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of
this permit and agrees to abide by all terms and
conditions thereof.

April 15, 1985
April 15, 1985
Date

Norman Ackerberg
Lisette Ackerberg
Signature of Permittee

Exhibit 5
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction 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 construction 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 development during construction, 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: This permit is subject to the following special conditions:

1. Vertical Access Condition. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following conditions have been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public pedestrian access to the shoreline. Such of the property line and extend from the northerly property line to the mean high tide line. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such periods running from the date of recording.

2. Revised Plans. Prior to transmittal of permit, the applicant shall be required to submit revised plans which conform the structural and deck stringline criteria contained in the adopted Interpretive Guidelines for the Malibu/Santa Monica Mountains.

Return Original To and
Recording Requested By:
State of California
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105

85 369283

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA

APR 4 1985 AT 8 A.M.

Recorder's Office

FREE 1

IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, (1) Norman J. Ackerberg and Lisette Ackerberg,
husband and wife as Joint Tenants %/are
the record owner(s), hereinafter referred to as "owner(s)", of the real
property located at (2) 22486 Pacific Coast Highway, Malibu,

California, legally described as particularly set forth in attached (3)
Exhibit A hereby incorporated by reference and hereinafter referred to as
the "subject property"; and

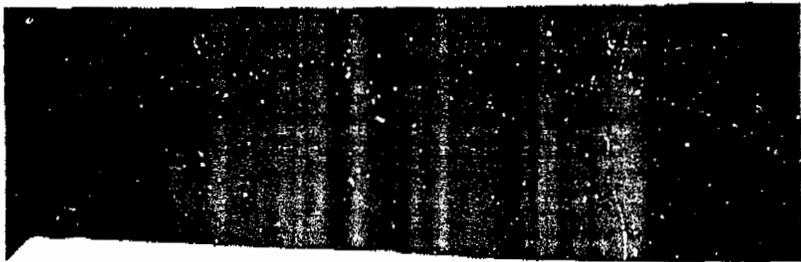
II. WHEREAS, the California Coastal Act of 1976 (hereinafter referred
to as the "Act") creates the California Coastal Commission (hereinafter
referred to as the "Commission") and requires that any coastal development
permit approved by the Commission or local government as defined in Public
Resources Code Section 30109 must be consistent with the policies of the
Act set forth in Chapter 3 of Division 20 of the Public Resources Code; and

III. WHEREAS, the People of the State of California have a legal
interest in the lands seaward of the mean high tide line; and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the
owner(s) applied to the Commission for a coastal development permit for (4)
Demolition of an existing single family dwelling, guest house, swimming pool,
and construction of a new two-story single family dwelling and swimming pool,
and renovation of existing tennis court

on the subject property; and

V. WHEREAS, a coastal development permit no. (5) B-24-754 was



1 granted on (6) January 24 1985 by the Commission in accordance
2 with the provisions of the Staff Recommendation and Findings (7) (Exhibit
3 B) attached hereto and hereby incorporated by reference, subject to the
4 following conditions: (8)

5 1. Vertical Access Condition. Prior to transmittal of the permit, the Executive
6 Director shall certify in writing that the following conditions have been satis-
7 fied. The applicant shall execute and record a document, in a form and content
8 approved by the Executive Director of the Commission, irrevocably offering to
9 dedicate to an agency approved by the Executive Director, an easement for public
pedestrian access to the shoreline. Such easement shall be 10 feet wide located
along the eastern boundary of the property line and extend from the northerly
property line to the mean high tide line. Such easement shall be recorded free
of prior liens except for tax liens and free of prior encumbrances which the
Executive Director determines may affect the interest being conveyed.

10 The offer shall run with the land in favor of the People of the State of
11 California, binding successors and assigns of the applicant or landowner. The
offer of dedication shall be irrevocable for a period of 21 years, such periods
running from the date of recording.

12 2. Revised Plans. Prior to transmittal of permit, the applicant shall be
13 required to submit revised plans which conform the structural and deck string-
14 line criteria contained in the adopted Interpretive Guidelines for the Malibu/
Santa Monica Mountains.

15
16
17
18 VI. WHEREAS, the subject property is a parcel located between the
19 first public road and the shoreline; and

20 VII. WHEREAS, under the policies of Sections 30210 through 30212 of
21 the California Coastal Act of 1976, public access to the shoreline and
22 along the coast is to be maximized, and in all new development projects
23 located between the first public road and the shoreline shall be provided;
24 and

25 VIII. WHEREAS, the Commission found that but for the imposition of the
26 above condition, the proposed development could not be found consistent
27 with the public access policies of Section 30210 through 30212 of the

AT FILER
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SECTION 111

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California Coastal Act of 1976 and that therefore in the absence of such a condition, a permit could not have been granted;

NOW THEREFORE, in consideration of the granting of permit no. (9) 5-84-754 to the owner(s) by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California an easement in perpetuity for the purposes of (10) public pedestrian access to the shoreline

located on the subject property (11) along the eastern boundary of the property line at a width of ten feet, and extending from the northerly property line to the mean high tide line and as specifically set forth by attached Exhibit C (12) hereby incorporated by reference.

This offer of dedication shall be irrevocable for a period of twenty-one (21) years, measured forward from the date of recordation, and shall be binding upon the owner(s), their heirs, assigns, or successors in interest to the subject property described above. The People of the State of California shall accept this offer through the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest.

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INTEREST
RECORDATION

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2 Acceptance of the offer is subject to a covenant which runs with
3 the land, providing that any offeres to accept the easement may not abandon
4 it but must instead offer the easement to other public agencies or private
5 associations acceptable to the Executive Director of the Commission for the
6 duration of the term of the original offer to dedicate. The grant of
7 easement once made shall run with the land and shall be binding on the
8 owners, their heirs, and assigns.

9 Executed on this 5th day of March, 1985, at Palm Beach,
10 Florida.

11 Dated: March 5, 1985
12 Signed Norman J Ackerberg
13 Norman J. Ackerberg

14 Type or Print Name of Above
15 Signed Lisette Ackerberg
16 Lisette Ackerberg
17 Type or Print Name of Above

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REVISION
11/10/85

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Acceptance of the Offer is subject to a covenant which runs with the land, providing that any offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original Offer to Dedicate.

Executed on this _____ day of _____, at _____, California.

Dated: _____ Signed _____
Owner

Type or Print

Signed _____

Type or Print

NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of persons signing on behalf of a corporation, partnership, trust, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Public Law Book.

State of California,)

)SS

County of Los Angeles)

On this 1st day of April, in the year 1985, before me L. Morris Dennis, a Notary Public, personally appeared

Norman Ackerberg and Lisette Ackerberg

personally known to me

I proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to this instrument, and acknowledged that he/she/they executed it

L. Morris Dennis

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE 85 369283

COURT PAPER
STATE OF CALIFORNIA
STD 113 (REV. 9-73)

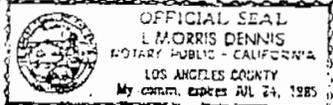


EXHIBIT B

A. Project Description. The proposed project consists of the demolition of an existing single family dwelling, guest house and swimming pool and the construction of a new two-story single family dwelling with three-car garage, swimming pool and septic system. The newly proposed project involves construction of a new swimming pool on the seaward side of the residence. The previous swimming pool was located landward of the previously existing residence. In addition as part of the project, the applicant proposes to renovate an existing tennis court. Also, the proposed project will result in the relocation of the tennis court on the project site approximately 14 feet seaward.

B. Background. On June 9, 1983, the California Coastal Commission approved the construction of a 140-foot in length wood pile-supported, wood sheeted bulkhead. In its action to approve the project the Commission imposed a lateral access condition requiring an offer of dedication of an easement for public access from the mean high tide line to toe of the bulkhead. In addition the Commission required the applicants to assume the risks associated with development of the site which might result from flood or wave damage.

C. Public Access. The Coastal Act contains strong policy provisions in Sections 30210, and 30212, requiring public access to and along the shore. However, the requirements for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes. . . and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted shall be provided, subject to certain conditions.

1. Lateral Access. The Coastal Act in Section 30210 requires the provision of public access along the shoreline in new development projects. An application for a seawall at this location in 1983 (5-83-360, Trueblood) was conditioned to provide public lateral access across the project site from the toe of the seawall to the mean high tide line. Therefore, the Commission finds that lateral access for the public has been provided for through prior permit action of the Commission and that the currently proposed project is consistent with Sections 30210 and 30212 of the Coastal Act as it relates to the provision of lateral access.

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2. Vertical Access. New development projects are required to provide public access in compliance with the public access provisions of Chapter 3 of the Coastal Act.

Section 30210.

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.

Section 30212 of the Coastal Act contains several very explicit policy provisions regarding the location and type of public access to be provided.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where

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

(2) adequate access exists nearby, or

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (e) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the regional commission or the commission determines that such the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

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In addition to the above provisions of the Coastal Act, Section 30214(a) addresses with a greater degree of specificity the time, place and manner of public access. Section 30214(a) states:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

Additionally, the legislature has expressed its intent that the Commission balance the rights of the individual property owner with the public's constitutional right of access to the coast. Section 30214(b) states:

(b) It is the intent of the legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article I of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article I of the California Constitution.

All projects requiring a Coastal Development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. New development on sites located between the sea and the first public road may be required to provide vertical access under the policy provisions of Section 30212 of the Coastal Act. In determining where vertical access should be required, the Commission must consider the need to gain access to the shoreline in a given area, taking into account the physical constraints of the site, including, but not limited to, safety hazards, existence of fragile coastal resources, the location of support facilities, such as parking areas and the privacy needs of residents of the project site.

As outlined in the Seventh Edition, September 1983, Coastal Access Inventory within the area identified as the Malibu Coastline (a distance of about 27 miles from Topanga State Beach on the east to Leo Cabrillo State Beach on the west) only 16 vertical accessways have been recorded as a result of Coastal permit requirements. Of these, only 4 vertical accessways have been opened to the public. Accessways obtained through the Coastal permit process cannot be developed and/or actually used by

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the public until a public or private agency agrees to accept responsibility for maintenance and liability. The following is a list of vertical accessways that have been obtained via the Coastal permit process in Malibu.

<u>Coastal Permit No.</u>	<u>Street Address/Malibu</u>	<u>Width of Access</u>	<u>Open</u>
73-290	State Park/Point Dume	6'	Yes
73-511	26168 Pacific Coast Highway	6'	Yes
73-1526	22706 " " "	10'	Yes
74-2840	22626 " " "	2'	No
75-6376	22032 " " "	5'	No
76-8877	21554 " " "	6'	No
76-8957	25120 " " "	35'	Yes
77-376	19020 " " "	3'	No
77-574	26834 Malibu Cove Colony	5'	No
77-1466	31736 Broad Beach Road	5 -10'	No
77-2130	27398 Pacific Coast Highway	10'	No
78-3473	27700 " " "	10'	No
78-3591	20802 " " "	5'	No
79-4918	21202 " " "	10'	No
80-2707	27900 " " "	10'	No
S-83-136	22126-22132 Pacific Coast Highway	9'	No

In addition to the vertical accessways listed above, there are several vertical accessways in Malibu which are owned by the County of Los Angeles. One County accessway (at 22550 P. C. H.) is located within 500 feet of the project site; however, the accessway is closed and the County has no plans to open this accessway.

The project site is located in the Carbon Beach area of Malibu; one of the least publicly accessible beaches in the Malibu area. The existence of a solid row of residential structures along this stretch of Pacific Coast Highway effectively creates a private beach enclave. The residential development along Carbon Beach even precludes views of the ocean and shoreline from Pacific Coast Highway.

On the inland side of Pacific Coast Highway in the vicinity of the project are multi-unit apartment buildings, small offices and commercial structures. Although this particular area of Malibu has not experienced great demand for recycling of existing structures or development of the few vacant parcels, it appears inevitable that as the pattern of growth in Malibu continues, a demand for recycling and more intensive development will occur. In turn this will create a greater demand for beach usage.

In order to determine whether the currently proposed project complies with the access provisions of the Coastal Act and more specifically with Section 30212 of the Coastal Act, the Commission must determine whether adequate access exists nearby.

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The Commission has already found that the project meets the definition of new development, thus if adequate access does not exist nearby, access for the public from the nearest public roadway (P. C. H.) to the shoreline is required.

In its review of prior similar permit applications where the issue of vertical access has been raised, the Commission has used a 500-foot criteria as a guideline to determine whether adequate access exists nearby. More specifically, the Commission has previously made a determination in similar cases if open vertical access for the public exists within 500 feet of the project site, adequate access exists nearby. With respect to the currently proposed project, the Commission notes that the nearest open public vertical accessways are located 1,300 feet west of the project and 3,099 feet east of the project site. Since open vertical access for the public does not exist nearby, the Commission finds it is necessary to condition the project to provide for vertical access for the public, from Pacific Coast Highway across the project site to the shore. Only if so conditioned would the project be consistent with Section 30212 of the Coastal Act.

The Commission further finds that since the project site consists of two contiguous lots with a total frontage of 140 feet both the applicant and the Commission are afforded great flexibility in siting the vertical accessway. The Statewide Guidelines adopted by the Commission indicate that a vertical accessway when provided should be a minimum of 10 feet in width and should usually be sited along the borders of the project site. The Commission concludes the large size of the project site (40,041 square feet) affords great opportunity in the actual design of the vertical accessway across the project site benefiting both the applicant and the public. In addition, the Commission notes that there is on-street parking available on both sides on Pacific Coast Highway in the vicinity of the project. Therefore, the Commission concludes that adequate support facilities (for parking) exist within the vicinity of the project. Finally the Commission finds that if conditioned, as indicated above with a vertical accessway, the project would be in conformance with the access policies of Chapter 3 of the Coastal Act.

D. Scenic and Visual Resources/Seaward Encroachment. The Coastal Act in Section 30251 states:

Section 30251.

The scenic and visual qualities of coastal areas shall be recognized 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 surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed project consists of the demolition of an existing single family dwelling and swimming pool and the construction of a new

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two-story, 32-foot above average finished grade, single family residence with swimming pool. The project also involves renovation of an existing tennis court and the relocation of the tennis court approximately 14 feet seaward of its present location.

New development along the shoreline is of particular concern to the Commission. Section 30251 of the Coastal Act requires that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas. As one means of limiting the encroachment of residential development onto sand beach areas, the Commission has adopted a stringline guideline. With respect to this criteria, the Guidelines state:

"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 decks and bulkheads, should be built further onto a beach front than a line drawn between the nearest adjacent corners of the adjacent structures. Enclosed living space in the new unit should not extend farther seaward than a second line drawn between the most seaward portions of the nearest corner of the enclosed living space of the adjacent structure."

One of the purposes of this Guideline is to limit seaward encroachment on sandy beach areas. In the case of the currently proposed project, the applicant proposes to demolish an existing single family home and construct a significantly larger single family home. The proposed construction will occur landward of an existing seawall/bulkhead previously approved by the Commission. As proposed the new residence will conform with the Commission's stringline condition for structural development. However, other portions of the development including a solar trellis for the residence exceed the stringline. Also, the project calls for the seaward encroachment of a tennis court by 14 feet which could have a visual impact since if relocated the tennis court would be at the bulkhead line. Therefore, the Commission finds it necessary to condition the project to require revised plans which clearly indicate the project complies with both structural and deck stringlines. Only if so conditioned would the project be consistent with Section 30251 of the Coastal Act which addresses scenic and visual resources.

E. Hazards. Section 30253 (1) of the Coastal Act specifies that new development minimize risks to life and property in areas of high geologic flood and fire hazard. That an emergency permit was requested by the prior owner of the project site for construction of a 140-foot in length wood seawall attests to the potential flood hazard on the site. In approving the regular permit for construction of a seawall on the site, the Commission required the seawall to meet storm design criteria and for the project applicant to assume the risks associated with development of the site. Therefore, the Commission finds that the

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seawall will serve to mitigate the flood hazard which previously existed on the site and that as previously conditioned, the project is consistent with Section 30253 (1) of the Coastal Act.

F. Local Coastal Program. Section 30604(a) of the Coastal Act states in Part:

Section 30604.

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The County of Los Angeles adopted the Land Use Plan portion of the Malibu/Santa Monica Mountains area Local Coastal Program on December 28, 1982, for submittal to the Commission for certification. On March 24, 1983 the Commission voted to find that the Land Use Plan raised a "Substantial Issue" in terms of conformity with the Coastal Act and voted to deny the Land Use Plan as submitted.

At the time of this writing the Commission is scheduled to consider suggested modifications to the Malibu Land Use Plan at the Commission hearing in early January.

Among the suggested modifications which the Commission is scheduled to consider are access policies proposed as modifications to the County's Land Use Plan. With respect to beach access in general and vertical access specifically, the suggested modifications state:

4.1.2 COASTAL ACCESS

1. GENERAL POLICIES

P49 In accordance with Section 30214(a) of the Coastal Act, the time, place, and manner of public beach access requirements for new development will depend on individual facts and circumstances, including topographic and site characteristics, the capacity of the site to sustain use at the intensity proposed, the proximity to adjacent residential uses, the privacy of adjacent owners, the feasibility to provide for litter collection, and safety of local residents and beach users.

P50 In accordance with Section 30214(b) of the Coastal Act, the requirement of access shall be reasonable and equitable, balancing the rights of the individual property owner and the public.

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Vertical Access

P51 For all land divisions, non-residential new development, and residential new development on lots with 75 or more feet of frontage or with an existing drainage or utility easement connecting a public street with the shoreline or on groups of two or more undeveloped lots with 50 feet or more of frontage per lot, an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line shall be required, unless public access is already available at an existing developed accessway within 500 feet of the project site measured along the shoreline. Such offer of dedication shall be valid for a period of 21 years, and shall be recorded free of prior liens. The access easement shall measure at least 10 feet wide. Where two or more offers of dedication within 500 feet of each other have been made pursuant to this policy, the physical improvement and opening to public use of one offered accessway shall result in the abandonment of other offers located within 500 feet of the improved accessway.

• Exceptions to the above requirement for offers of dedication may be made regarding beaches identified in the Land Use Plan's Area-Specific Marine Resource Policies (P111 through P115) as requiring limitations on access in order to protect sensitive marine resources.

• **P51b** On the basis of a Beach Management Plan prepared by the County and approved by the Coastal Commission which takes into account beach recreation opportunities, the width of the beach, the presence of immediately adjacent residences or sensitive natural resources, local parking conditions, beach support facilities, the feasibility of emergency vehicle access to the beach, and related factors, accessways at greater intervals than would be required by P51 may be required, up to a maximum standard of separation for new vertical accessways of one accessway per 2000 feet of shoreline. Such a Beach Management Plan, which may be submitted to the Commission for its review at the same time as the implementing ordinances, shall assure that lateral access offers made in connection with coastal permits previously approved (as well as in connection with future permits and vertical access offers sufficient to meet the standard of separation included in the Plan) are accepted for maintenance and liability purposes by the County or other responsible entity acceptable to the Executive Director of the Coastal Commission. Reasonable restrictions on use of the beach to protect sensitive marine resources, minimize risks to public safety due to geologic and wave hazards and reduce potential conflicts with the privacy of nearby residences while promoting reasonable public access may be adopted by the accepting agency as part of the Beach Management Plan.

If the Commission were to approve the currently proposed project without a vertical access condition in advance of the development of a Beach

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Management Plan as indicated in proposed suggested modification PS1G above, the ability of the County to prepare a Local Coastal Program in conformance with the policies of Chapter 3 of the Coastal Act would be prejudiced.

In addition to the proposed suggested modifications to the County of Los Angeles Land Use Plan access policies listed above, the suggested modifications also call for development of a beach access program to be implemented in conjunction with the proposed policies on public access. With respect to the beach access program the suggested modifications state:

2. BEACH ACCESS PROGRAM

Objectives

(a) ~~The principal~~ One means of maximizing public access is to ~~create and~~ improve major accessways at locations where ~~adequate parking and other~~ necessary public improvements, including parking or public transit facilities where appropriate, can be provided to ensure ~~adequate safety~~ for users, traffic safety, security and privacy for adjacent residents, and clear public identification.

(b) Priorities for improved vertical public access in the Malibu Coastal Zone shall be in accordance with the ranking as depicted in Figure 5. Other criteria for determining priority for this new beach access are:

(1) First priority shall go to expanding safe off-highway parking at existing beaches with lifeguards.

(2) New accessway priorities shall feature:

Improvement of access to sandy beaches where there is no current public access.

Improvement of access to sandy beaches where the distance between existing accessways exceeds one-half mile.

Improvement of accessways using offers of dedication which were already made pursuant to the conditions of Coastal permits issued by the Coastal Commission or the County where to do so would allow the County to avoid requiring future offers of dedication as provided by PS1.
Capacity to allow emergency vehicle passage from highway to beach and return, except where steepness or the existence of stairs would not allow vehicle use.

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Revenue recovery system so that the costs of new accessways and adjacent beach operations are wholly covered to the extent possible.

New accessways should be obtained in conjunction with off-highway property where it is feasible to develop parking or public transit facilities and safe pedestrian systems.

(3) Beach access opportunities requiring vertical pedestrian pathways shall not be opened until the improvements are in place and a public agency is willing to accept management and liability for such accessways.

(c) The frequency of public access locations shall vary according to localized beach settings and conditions as set forth for Policy 55 P51 below. Vertical access standards and related dedication requirements may range from none in areas of major public beach holdings to one accessway per 1,000 feet of shoreline where accessways would be short and directly link roadways with adequate parking or transit access and the beach.

The Beach Access Program proposed above is directly related to the access policies of the suggested modifications. Thus, if the Commission were to approve the project, as proposed without a vertical access condition, the ability of the County to prepare a LCP in conformance with Chapter 3 of the Coastal Act would be prejudiced.

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Add this paragraph to the findings on Ackerberg:

On page 7, after last paragraph just before Section D, insert:

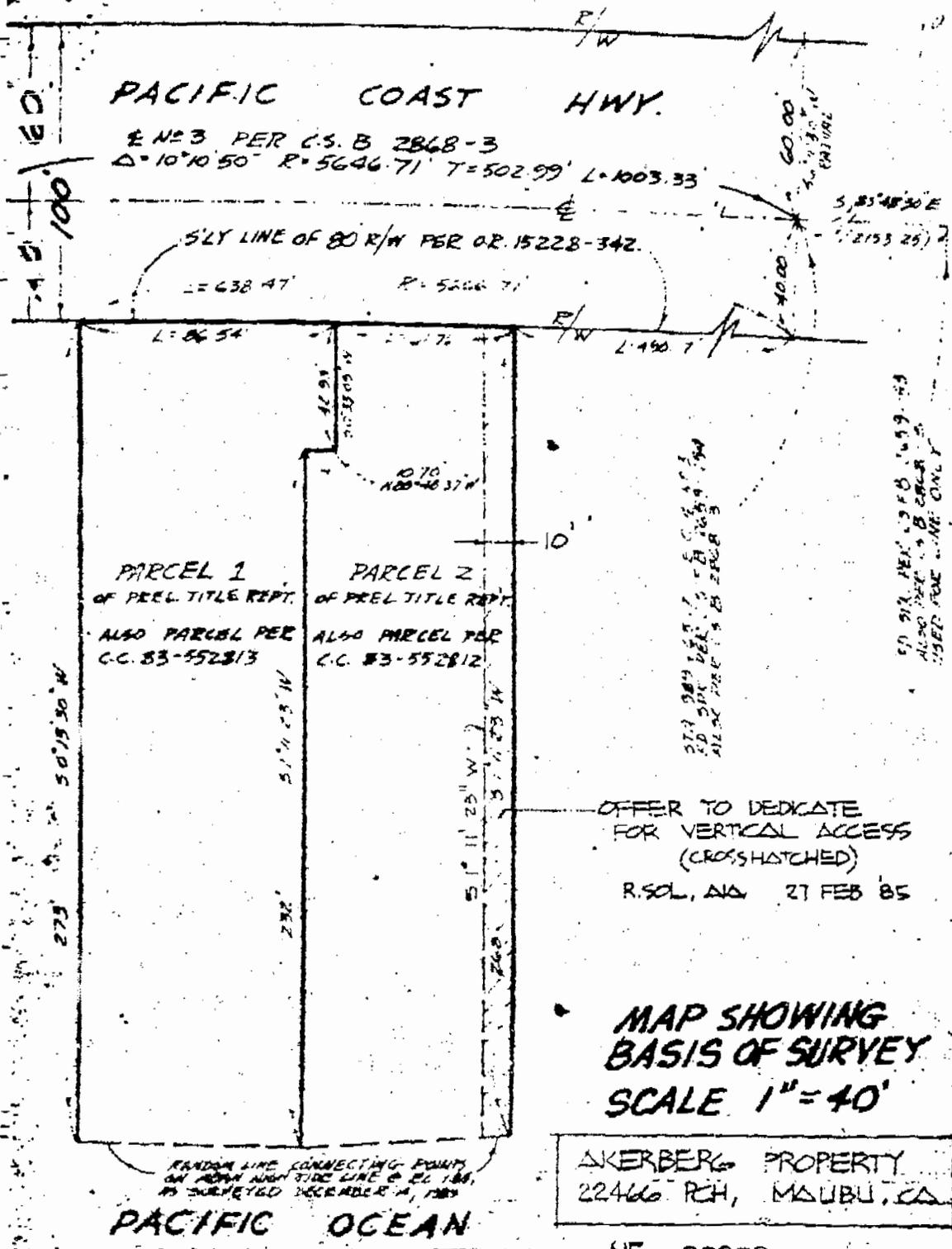
The Commission further finds that notwithstanding the fact the County of Los Angeles owns a vertical accessway within 500 feet of the project, that accessway has not been opened to the public and therefore the Commission cannot make a finding that "adequate access exists nearby." In addition, although the Commission has, in some cases, found that if an accessway is open to the public within 500 feet, new offers of vertical access dedication will not be required, such an approach is not appropriate here. The appropriate vehicle for establishing the policy relative to the precise spacing of vertical accessways and whether previously secured offers to dedicate vertical accessways can be extinguished if another vertical accessway is improved and opened within 500 feet of the subject property in the LUP. The Malibu LUP staff recommendation suggests a policy on this point. The Commission believes that as a matter of policy, publically owned vertical accessways should be improved and opened to public use before additional offers to dedicate vertical access easements are opened. This position assumes that the publically owned accessway is within 500 feet of the subject property, that it is equally suitable for public use based on management and safety concerns, and that improvements to accomplish public use are feasible. Once a public accessway has been improved and opened for public use, and a suitable policy and mechanism has been developed and adopted to ensure that such a vertical accessway remains open and available for public use and assuming the Commission has approved a policy that outstanding offers to dedicate additional

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vertical access easements within 500 feet of an opened vertical accessway can then be extinguished, staff will initiate actions to notify affected property owners that they can take steps to extinguish such offers to dedicate. As part of the Commission's public access program, procedures will be developed to implement this directive.

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CALIFORNIA
10:21AM DEC 17 2003

TITLE(S) :



FEE		D.T.T	
	FREE 11 5		
CODE 20			
CODE 19			
CODE 9			

Assessor's Identification Number (AIN)
To be completed by Examiner OR Title Company In black ink.

Number of Parcels Shown

THIS FORM NOT TO BE DUPLICATED

Exhibit 7
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

Recording Requested by an
When Recorded Return to:
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, California 94105

03 3801416

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383

CDP 5-84-754
(Vertical)

CERTIFICATE OF ACCEPTANCE

AND

**ACKNOWLEDGEMENT BY CALIFORNIA COASTAL COMMISSION
OF ACCEPTANCE OF IRREVOCABLE OFFER TO DEDICATE**

THIS CERTIFICATE OF ACCEPTANCE AND ACKNOWLEDGEMENT acknowledges and certifies the acceptance by Access For All, a private nonprofit corporation, of an Irrevocable Offer to Dedicate dated March 5, 1985, executed by Norman J. Ackerberg and Lisette Ackerberg and recorded on April 4, 1985 as Instrument Number 85 369283 of the Official Records of Los Angeles County (hereinafter the "Offer to Dedicate"), and sets forth conditions of that acceptance with respect to the management and future disposition of the dedicated easement. It is the intention of the California Coastal Commission (hereinafter the "Commission") and Access For All to ensure that the purposes, terms and conditions of the Offer to Dedicate be carried out within a framework established by and among the Commission, Access For All and the State Coastal Conservancy (hereinafter the "Conservancy") in order to implement the Commission's Coastal Access Program pursuant to the

California Coastal Act of 1976, Public Resources Code Sections 30000 et seq. (hereinafter the "Coastal Act").

I. **WHEREAS**, the Commission is an agency of the State of California established pursuant to Public Resources Code Section 30300 and is charged with primary responsibility for implementing and enforcing the Coastal Act; and

II. **WHEREAS**, the Conservancy is an agency of the State of California existing under Division 21 of the California Public Resources Code, which serves as a repository for interests in land whose reservation is required to meet the policies and objectives of the Coastal Act or a certified local coastal plan or program; and

III. **WHEREAS**, Access For All is a private nonprofit corporation existing under Section 501(c)(3) of the United States Internal Revenue Code and having among its principal charitable purposes the preservation of land for public access, recreation, scenic and open space purposes; and

IV. **WHEREAS**, as a condition to its approval of Coastal Development Permit Number 5-84-754, the Commission required recordation of the Offer to Dedicate pursuant to Sections 30210-30212 of the Coastal Act; and

V. **WHEREAS**, terms and conditions of the Offer to Dedicate provide, among other things, that (A) the People of the State of California shall accept this offer through the local government in whose jurisdiction the subject property lies, or through a public agency or a private association acceptable to the Executive Director of the Commission or its successor in interest; (B) acceptance of the offer is subject to a covenant which runs with the land, providing that any offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission; and (C) the grant of easement once made shall run with the land and shall be binding on the owners, their heirs, and assigns; and

VI. WHEREAS, Access For All desires to accept the Offer to Dedicate and accordingly has requested that the Executive Director of the Commission approve it as an acceptable management agency; and

VII. WHEREAS, Access For All is acceptable to the Executive Director of the Commission to be Grantee under the Offer to Dedicate provided that the easement will be transferred to another qualified entity or to the Conservancy in the event that Access For All ceases to exist or is otherwise unable to carry out its responsibilities as Grantee, as set forth in a management plan approved by the Executive Director of the Commission;

NOW, THEREFORE, this is to certify that Access For All is a private nonprofit corporation acceptable to the Executive Director of the Commission to be Grantee under the Offer to Dedicate, on the condition that should Access For All cease to exist or fail to carry out its responsibilities as Grantee to manage the easement for the purpose of allowing public pedestrian access to the shoreline, then all of Access For All's right, title and interest in the easement shall vest in the State of California, acting by and through the Conservancy or its successor, upon acceptance thereof; provided, however, that the State, acting through the Executive Officer of the Conservancy or its successor agency, may designate another public agency or private association acceptable to the Executive Director of the Commission, in which case vesting shall be in that agency or organization rather than the State. The responsibilities of Access For All to manage the easement shall be those set forth in the Management Plan dated July 28, 2003, and maintained in the offices of the Commission and the Conservancy (and as the Management Plan may be amended from time to time with the written concurrence of the Executive Director of the Commission, the Executive Officer of the Conservancy, and Access For All). Notwithstanding the foregoing, the right, title and interest of Access For All in the easement may not vest in the Conservancy or another entity except upon (1) a finding by the Conservancy, made at a noticed public hearing, that Access For All has ceased to exist or failed to carry out its responsibilities as set forth in the

Management Plan; and (2) recordation by the State or another designated agency or entity of a Certificate of Acceptance, substantially in the form set forth in California Government Code §27281. Nothing herein shall prevent Access For All from transferring the easement to a qualified entity pursuant to the Offer to Dedicate, thereby relieving itself of the obligation to manage the easement in accordance with the Management Plan.

This document further certifies that Access For All, a private nonprofit corporation, hereby accepts the Offer to Dedicate pursuant to authority conferred by Resolution No. 2002-3 of the Board of Directors of Access For All adopted on July 12, 2002, and Access For All consents to recordation thereof by its duly authorized officer. In accepting the Offer to Dedicate, Access For All covenants and agrees to the conditions set forth in the Offer to Dedicate and in this Certificate.

IN WITNESS WHEREOF, the Commission and Access For All have executed this CERTIFICATE OF ACCEPTANCE and ACKNOWLEDGEMENT OF ACCEPTANCE OF IRREVOCABLE OFFER TO DEDICATE as of the dates set forth below.

Dated: Dec. 15, 2003

Dated: December 16, 2003

CALIFORNIA COASTAL COMMISSION

ACCESS FOR ALL

By: John Bowers
John Bowers, Staff Counsel

By: Steve Hoyt
Steve Hoyt, Executive Director

STATE OF CALIFORNIA

03 3801416

COUNTY OF SAN FRANCISCO

On 12.15.03, before me, Jeff G. Staben, a Notary Public, personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On DECEMBER 16, 2003, before me, Leigh C. Bloom, a Notary Public, personally appeared STEVE HOYE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



Access for All

PO Box 1704
Topanga, CA 90290

December 19, 2003

Norman and Lissette Ackerberg
22466 Pacific Coast Highway
Malibu, CA 90265

Dear Mr. and Mrs. Ackerberg,

It is with pleasure that I'd like to inform you that Access for All has accepted your generous Offer-to-Dedicate for the vertical easement adjacent to your Malibu residence.

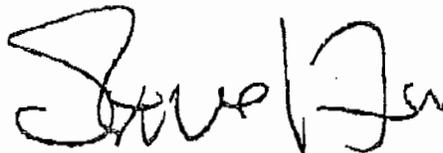
Access for All is a local nonprofit organization formed for the specific purpose of bringing about coastal access, and it has been approved by the California Coastal Commission to do this. Access for All's mission states that "this will be done by assumption of land and easements, through gifts, acquisitions, and transfers, within Southern California, doing all necessary construction to open these into public accessways, and performing all maintenance required, to guarantee the people permanent access to their public lands."

Access for All would like to move forward to survey and open up this new easement as soon as is mutually convenient, and would like to meet with your representatives to assure that this process is carried out with the utmost sensitivity to both your interests and those of the people of California.

Please find attached a Management Plan for the access site, which has been approved by the California Coastal Commission and the State Coastal Conservancy.

Please contact us at the above address so that we may arrange a meeting.

Sincerely,



Steve Hoye
Executive Director

Exhibit 8
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

CALIFORNIA COASTAL COMMISSION
 STATEWIDE COASTAL ACCESS PROGRAM
 1226 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 (831) 427-4875



March 28, 2005

Lisette Ackerberg
 22466 Pacific Coast Highway
 Malibu, California 90265

Re: Vertical Public Access Easement at 22466 Pacific Coast Highway, Malibu

Dear Mrs. Ackerberg:

I am following up on the letter sent to you in December 2003 from the nonprofit organization Access for All. In that letter, Access for All (AFA) informed you that they had accepted the vertical Offer to Dedicate Public Access Easement recorded by you and your husband in 1985. (Certificate of Acceptance recorded on December 17, 2003 as Document No. 03-3801416). The easement is a ten foot wide strip of property along the entire eastern border of your property. The Executive Director of AFA, Steve Hoye, requested a meeting so that AFA could conduct a survey of the easement, in preparation for opening the easement to the general public. Since that time, Mr. Hoye has been in discussion with your representative, Terry Tamminen, and informed him that AFA requests your permission to enter the property to conduct a survey of the easement. Of course, we know that Mr. Tamminen is extremely busy, and we do not know if he has discussed this with you yet. Nevertheless, AFA has not received your permission for conducting the survey.

I am writing to remind you that the Coastal Commission imposed a permit condition requiring the recording of this public access easement in order to mitigate the impacts of constructing your new home (Coastal Development Permit 5-84-754). Both the Coastal Commission and the Coastal Conservancy have approved AFA to open and operate this accessway; the Conservancy has provided AFA with a grant to perform a survey and install a pedestrian gate and public access signage. Therefore AFA is ready to take on the responsibilities to open and operate this easement. In order for this to occur, you must remove any structures that have been placed or built in the easement. A cursory look at your property shows that both a front yard and a backyard perimeter wall block the easement. These must be removed. The edge of the tennis court, lights and a generator might also be in the easement area. I am attaching a letter from your attorney Edwin Reeser, dated January 28, 1985, in which he acknowledges that you could make full use of your entire property, including continued use of the offered strip, until such time as it is developed into an open vertical accessway.

Exhibit 9
 CCC-09-CD-01 and CCC-09-NOV-01
 (Ackerberg)

We have reached the time to open this public accessway. I am requesting that you, or your representative, contact us within the next 30 days to inform us when AFA and their surveyor can enter your property and conduct the survey. Once the survey has been completed, if any additional encroachments in the easement are identified (i.e., tennis court, lights and/or generator), they must be removed expeditiously.

Failure to promptly remove the front and backyard wall in the easement and any other encroachments that are identified constitutes a violation of the Coastal Act of 1976. Under Public Resources Code section 30812 (copy enclosed), if efforts to resolve the matter are not successful, the Coastal Commission has the authority to record a notice of violation against the property that has the unpermitted development on it, to ensure that any potential buyer is aware of the situation.

I hope that we resolve this issue in the near term. Please contact me if you want to discuss this matter in more depth.

Sincerely,



Linda Locklin
Coastal Access Program Manager

Cc: Steve Hoye, Access For All
Steve Hudson, CCC-Ventura
Pat Vessart, CCC-Ventura
Sandy Goldberg, CCC Legal Counsel
Terry Tamminen

Exhibit 9
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

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CALIFORNIA COASTAL COMMISSION

400 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-8200
 FAX (415) 904-8400



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APR 11 2005

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

April 7, 2005

Lisette Ackerberg
 22466 Pacific Coast Highway
 Malibu, California 90265

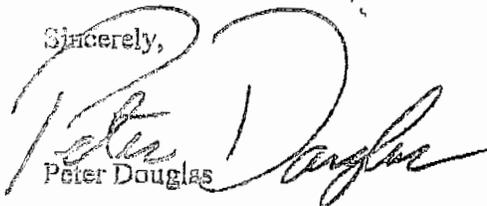
Dear Mrs. Ackerberg:

I write to follow up a March 28 letter from my colleague, Linda Locklin. That letter mistakenly referred to Terry Tamminen as your representative. I apologize for the misimpression on this point. I realize Terry is a longtime family friend and that his involvement merely represents a good faith effort to help find an amicable solution to the issue relating to the opening of the public access easement on your property. Indeed, I welcome his assistance. I am also aware of your recent sad loss, and regret the unfortunate timing of our letter.

As I understand the situation, our staff was concerned that certain improvements on your property that encroach into a public easement area would possibly not be removed prior to your possible disposition of the property. Obviously, what you do with your property is entirely within your discretion. The concern we have is that the issue relating to opening the public access easement be resolved prior to a potential transfer of the property. In deference to your personal situation, I think it appropriate to afford you a reasonable period of additional time to address our request that encroachments into the public access easement area be removed. I do, however, suggest that you or your representative contact Linda Locklin as soon as possible to discuss the timing of actions that need to be taken to resolve this matter.

Please don't hesitate to contact me if you have any questions.

Sincerely,


 Peter Douglas

cc. Terry Tamminen
 Linda Locklin ✓
 Steve Hudson
 Pat Veersart
 Sandy Goldberg
 Steve Hoye, Access for All

Exhibit 10
 CCC-09-CD-01 and CCC-09-NOV-01
 (Ackerberg)

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CALIFORNIA COASTAL COMMISSION
STATEWIDE COASTAL ACCESS PROGRAM
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4875



December 13, 2005

Edwin B. Resser, III
Sonnenschein, Nath & Rosenthal
601 South Figueroa Street
Suite 1500
Los Angeles, California 90017

Re: Vertical Public Access Easement and Survey at 22466 Pacific Coast Highway

Dear Mr. Resser:

As you know, the firm of Quiros Surveying conducted a survey of the Vertical Public Access Easement located on the Ackerberg parcel on September 6, 2005. We understand that the Easement holder, Access for All, has sent a copy of this survey, dated October 12, 2005, to you. The survey shows that the 10 foot wide Vertical Public Access Easement ("Easement") contains the following encroachments:

1. A concrete slab, generator, and a portion of a ficus hedge, near the northern end of the Easement, adjacent to PCH;
2. A 9 ft. high block wall across the 10 foot wide Easement, near the northern end of the Easement, parallel to PCH;
3. Four light posts (noted as "LP" on the survey) within the Easement;
4. A post and raised railing (noted as "curtain post" on the survey) near the southern end of the Easement;
5. A portion of a Myoporum hedge near the southern end of the Easement;
6. A chain link fence over a wood planter near the southern end of the Easement;
7. Rip-rap rocks near the southern end of the Easement.

All of these encroachments prevent or impede Access for All from opening this Easement for public use. These encroachments must be removed in order to allow use of the recorded Public Access Easement. After the block wall across the Easement near PCH is removed, Access For All intends to install a fence with a gate that will allow public access over the Easement during daylight hours.

We also note that 8 feet of pavement is present within the Easement along nearly the entire length of the Easement. The Commission's records indicate that this area was paved prior to approval of CDP No. 5-84-754. Therefore, removal of the pavement is not required; however, the pavement within the Easement cannot be used as part of the private tennis court.

With respect to the rip-rap rocks near the southern end of the Easement, CDP No. 5-83-360 (Trueblood) authorized a new bulkhead with placement of a rock and gravel mix up to 12 inches in diameter extending approximately 5 feet seaward of the bulkhead. The survey indicates that there are currently large, exposed rocks seaward of the bulkhead on the property. These rocks are larger than 12 inches diameter, and therefore are not authorized by CDP No. 5-83-360. A copy of CDP No. 5-83-360 which includes the plan for the approved bulkhead and rocks is enclosed. We have also included a copy of the Lateral Offer to Dedicate Public Access Easement recorded pursuant to that permit, as well as the Certificate of Acceptance recorded by the State Lands Commission. All rocks located in the Vertical Easement that exceed those that were approved by the Trueblood CDP must be removed. We also note that these rocks extend the entire length of the property and are not in conformance with the Trueblood CDP. However, at this time we are only requesting removal of the rocks located in the 10 ft. wide Vertical Easement. We are reserving our rights to address these other rocks at some point in the future.

We request that you submit a plan by January 20, 2006, that describes, in detail, the steps your client has taken and intends to take in order to remove the encroachments. We request that all removal of encroachments from the Easement be completed within 120 days of submitting the plan to Commission staff.

Please do not hesitate to contact me if you want to discuss these issues in more detail.

Sincerely,



Linda Locklin
Coastal Access Program Manager

Cc: Steve Hoyer, Access for All
Pat Veasart, CCC-Ventura

Exhibit 11
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)

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JAN 24 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

January 19, 2006

VIA FACSIMILE & U.S. MAIL

Linda Locklin
Coastal Access Program Manager
California Coastal Commission
725 Front St., Suite 300
Santa Cruz, CA 95060

Re: Vertical Access Easement at 22466 Pacific Coast Highway, Malibu

Dear Ms. Locklin:

We are responding to your letter dated December 13, 2005 concerning the easement at the above-referenced property and your identification of encroachments within the easement that you maintain must be removed.

Mrs. Ackerberg has a number of reasonable questions and concerns about any potential opening of an accessway for public use and the effect such an opening would have on her private property. As you know, California Public Resources Code Section 30210 states that public access is to be "consistent with public safety needs and the need to protect . . . rights of private property owners." Additionally, Section 30212 states that public access is to be provided "except where it is inconsistent with public safety." Furthermore, Section 30214(a) states that public access policies "shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to" the topographic and geologic site considerations, "[t]he capacity of the site to sustain use and at what level of intensity," and "[t]he need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter." Finally, Section 30214(b) states that public access policies are to be "carried out in a reasonable manner that considers the equities" and that "balances the rights of the individual property owner with the public's constitutional right of access."



Exhibit 12
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(Ackerberg)

Sonnenschein

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Linda Locklin
January 19, 2006
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Before removal of any items identified in your letter can proceed, we must receive from Access for All proof of adequate liability insurance coverage for the easement, as well as an agreement by AFA to indemnify the property owner. Furthermore, it is proper to discuss what amount of liability insurance coverage is appropriate for the easement. However, to determine the proper amount of coverage, one would first need to know how the easement is going to be improved and what the easement is going to look like. For example, does AFA intend to install stairs from the top of the seawall to the sand? The physical makeup of the easement will affect the determination of what amount of coverage is appropriate. Moreover, in determining the proper amount of liability coverage, it would be prudent to take into consideration the amounts of coverage provided for other vertical access easements in Malibu, as well as the number of claims made by persons injured using these other accessways. We believe that given these factors, it would be proper to have a third-party consultant determine what would be the appropriate amount of liability coverage for this easement. We are prepared to proceed in that fashion if you can timely provide the insurance information on other public accessways.

Additionally, we request that AFA submit to us a detailed management and operation plan for the easement (we are informed that AFA prepared a plan for the Geffen easement, so this is probably already either performed or contemplated). We would expect that such a plan would address issues relating to the easement such as hours of operation, types and amounts of liability and other insurance, upkeep, trash collection, graffiti removal, parking concerns, and public safety concerns such as sanitation, security for neighboring homes, and closure of the easement during periods of rough or extreme high tide. We would also expect the plan to address whether AFA intends to station beach monitors at the easement similar to the Geffen easement, and details about the gate and fence that AFA plans to install. For instance, it would seem appropriate for AFA to install a gate at the beach end of the easement as well as at the PCH end. Finally, we would also expect the plan to address whether AFA intends to install stairs or a ramp from the top of the seawall down to the sand, and if so, the kind of stairs/ramp AFA intends to install. Unlike the Geffen property, the easement over the Ackerberg property involves a drop. In this regard, we would inquire whether the provision of a ramp, or other improvements, are required to comply with the Americans With Disabilities Act.

Moreover, since it costs substantial amounts of money to open, maintain, and operate public access easements, it is reasonable for AFA to provide adequate assurance of its financial viability and ability to manage and operate the easement going forward. Although Public Resources Code Section 30212(a) provides for the ability of a private association to accept responsibility for the maintenance and operation of an accessway, implicit in this provision is a requirement that the association prove it is capable, financially and otherwise, to manage and operate the easement. See City of Malibu Local Coastal Program, Land Use Plan, Sections 2.70



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(Ackerberg)



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 January 19, 2006
 Page 3

& 2.71 (referring to "appropriate" and "qualified" private associations). Therefore, we would request that AFA provide a copy of its most recent financial statements, and evidence of its sources of funds to long term support its obligations for this and other easements. Additionally, how is AFA qualified to manage and operate the Ackerberg easement? We are informed that AFA consists of three members and has no employees and no office. Also, has AFA prepared a budget estimating the costs to open the easement and the yearly costs of maintenance and operation? In this regard, how does AFA intend to pay for the opening of the easement and its management and operation going forward?

We understand that AFA has accepted OTDs for 5 other vertical access easements and 16 other lateral access easements. Does AFA plan to accept other OTDs and if so, how many? Given the number of easements AFA currently holds and intends to hold, it would be reasonable to inquire whether this would affect AFA's ability to effectively finance, manage, and operate the Ackerberg easement in perpetuity. Mrs. Ackerberg is understandably concerned that private associations such as AFA may not have the necessary resources, financial and otherwise, to manage and operate the accessway in perpetuity which would ultimately result in neglect to the easement and her private property, as well as impact on neighboring property.

We would also like to address certain of the "encroachments" that you identified in your letter and which you maintain must be removed. The generator to which you referred was installed to provide back-up power for the elevator in the house. For the last twenty-odd years of his life, Norman Ackerberg was unable to walk due to his multiple sclerosis, so the elevator was his only means of moving upstairs and downstairs. Now, Mrs. Ackerberg depends on the elevator as well due to her Parkinson's disease. The generator is needed to keep the elevator running through the frequent power outages in the area. Mrs. Ackerberg would be faced with losing the generator altogether if it is removed from its present location, as there are very limited options in the way of relocating the generator on the property. 22446 PCH is her primary residence, not a seasonal home. Without the generator, Mrs. Ackerberg fears she will be forced out of her present home.

As to the four light posts within the easement, there is a question of whether certain of these posts existed prior to the approval of CDP No. 5-84-754. A December 1983 survey of the property (then owned by Mr. Trucblood) performed by Mario Quiros shows the existence of some light posts at the eastern edge of the property line. Of course, those light posts which existed prior to the approval of the Ackerberg CDP would not be required to be removed. In any event, it is not apparent how any of these four light posts would "prevent or impede Access for All from opening the Easement for public use," since they run along the eastern edge of the easement and would not obstruct public passage through the ten-foot-wide easement.



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Additionally, the rip-rap rocks in front of the seawall are necessary to protect the Ackerberg property and adjacent properties from the often severe tidal conditions. Removal of the rip-rap rocks near the southern end of the property would compromise the seawall. Since the Ackerberg seawall is tied together with the seawalls of adjoining properties, removal of rip-rap rocks in front of the Ackerberg seawall could have a detrimental collateral effect on these adjoining properties. Moreover, Mrs. Ackerberg believes that some of these rocks were actually pre-existing underneath the sand, and have only been exposed in recent years due to the lower sand level at the beach.

Currently, the drop from the top of the seawall to the sand is approximately four feet, but it varies depending on the conditions, and the drop has been as much as twenty feet during periods of extreme tidal conditions (for example, during the El Niño storms of early 1995). Mrs. Ackerberg advises that the sand level is generally much lower than it used to be, and that a larger portion of the beach is "wet" compared to twenty years ago. The variation in drop will obviously be a problem if AFA intends to install stairs or a ramp from the top of the seawall to the sand. Moreover, based on the Ackerbergs' prior experience, if AFA intends to install wood "tear down" stairs, it is likely they will be washed away after only a few years. Given the amount of beach/shoreline erosion and the movement of the mean high tide line over the years, it would seem prudent to hire a consultant or engineer to determine the potential variation in distance from the top of the seawall to the sand and also to perform an analysis of the "wave uprush" at the Ackerberg property ("wave uprush" refers to the rush of water up onto the shoreline or a structure following the break of a wave) to determine if opening the easement is safe and feasible.

Finally, we believe that the time frame set forth in your letter for submission of a removal plan and actual removal of identified "encroachments" is unreasonable and unworkable. As you know, at the time David Geffen agreed to open the easement on his property, that easement was already improved, paved, and gated, with a gentle slope leading from the end of the easement to the sand. Thus, it was just a matter of turning over the keys to the gate and the easement was ready for public use. That is not the case with the Ackerberg easement. You have identified a number of significant "encroachments" that you maintain must be removed. Section 2.70 of the Land Use Plan portion of the Local Coastal Program sets a goal of opening an accessway within five years of its acceptance. Here, we are only two years removed from AFA's acceptance of the Ackerberg easement, and you have only just recently identified encroachments in the easement that you maintain must be removed. Moreover, as set forth above, there are a number of significant issues and questions that Mrs. Ackerberg has raised, which need to be satisfactorily addressed and answered before discussion of opening the easement for public use can move forward.



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We look forward to your response to these issues and questions, and would welcome a meeting with you and Access for All to discuss these, and other issues and questions, further. We are ready to get started.

Very truly yours,



Edwin B. Reeser, III

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Exhibit 12
CCC-09-CD-01 and CCC-09-NOV-01
(Ackerberg)