

CALIFORNIA COASTAL COMMISSION

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Staff: Heather Johnston – SF
Staff Report: November 21, 2016
Hearing Date: December 8, 2016

STAFF REPORT: Recommendations and Findings for Consent Agreement and Consent Cease and Desist Order and Consent Administrative Civil Penalty

Consent Cease and Desist Order: CCC-16-CD-04

**Consent Administrative Civil
Penalty:** CCC-16-AP-02

Related Violation File: V-4-09-015

Property Owner: Mani MBI DE, LLC

Location: Three adjacent properties identified by Los Angeles County Assessor's Parcel Numbers 4452-005-029, 4452-005-030, and 4452-005-031, with a street address of 22878 Pacific Coast Highway; and adjacent public property identified by Los Angeles Assessor's Parcel Numbers 4452-005-902 and 4452-005-901.

Violation Description: Failure to construct two public access stairways as required by Special Condition No. 3(g) of Coastal Development Permit ("CDP") No. 5-89-576, and other development inconsistent with that CDP, including beach "grooming" and placement of guest amenities and hosting private events on parts of the beach seaward of the Malibu Beach Inn that are subject to a lateral public access easement or are State tidelands, which has the potential to discourage public use of the public access easement and State

tidelands, which is inconsistent with Special Condition 1 of CDP No. 5-87-576.

Entity Subject to this Order: Mani MBI DE, LLC

Substantive File Documents: 1. Public documents in Consent Agreement files No. CCC-16-CD-04 and CCC-16-AP-02.
2. Appendix 1, and Exhibits 1 through 34 of this staff report.

CEQA Status: Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

SUMMARY OF STAFF RECOMMENDATIONS

A. OVERVIEW

This enforcement action pertains to longstanding public access violations associated with a hotel known as the Malibu Beach Inn. The hotel is on three oceanfront parcels in Malibu, and is now owned by Mani MBI DE, LLC (herein after “Respondents”). The 1.06-acre collection of properties at issue here is identified by Los Angeles County Assessor’s Office as APNs 4452-005-029, 4452-005-030, and 4452-005-031 (collectively, the “Property”), and is developed with the hotel and its appurtenant parking lot (Exhibit 1).

When the Commission approved Coastal Development Permit (“CDP”) 5-87-576 on January 14, 1988, for the demolition of existing structures (a small hotel, restaurant and parking lot) and construction of the Malibu Beach Inn, that authorization was made explicitly contingent upon the fulfillment of a variety of conditions, including that the applicant submit plans for and construct no fewer than two public access stairways from the adjacent State Beach parking area, over the existing revetment, and down to the public beach, below (Exhibit 2). As discussed in greater detail below, the Commission found that this condition was necessary to render the hotel approvable. Although the then-owners, Marlin Miser and Martin Cooper, submitted plans for approval-in-concept of two stairways in the appropriate location, which received the requisite sign off from State of California Department of Parks and Recreation (“State Parks”), detailed final plans were never approved by State Parks, and the public access stairs were never constructed. Commission records indicate only that the very rough concept drawings were submitted for approval to State Parks and that no further plans were ever presented for review, to comply with the permit requirements. During this time the Commission did not yet have a dedicated enforcement program and did not have the ability to monitor sites after permit approval to ensure permit condition compliance, so in many cases, permit violation only came to the Commission’s attention when the property owner applied for a new permit, and the permit application review process revealed the prior violation.

MBIPCH LLC purchased the Property on April 15, 2005, and in 2009 submitted an application to the Commission seeking to amend the underlying CDP to add to the existing hotel; it was at this time that a comprehensive review of the property revealed that the stairs had never been constructed pursuant to CDP 5-87-576. Commission permitting and enforcement staff coordinated and endeavored to work with the then-owner to resolve the Coastal Act violations and bring the property into compliance with the CDP; however, discussions were ultimately unsuccessful. During this time Commission staff met with representatives of the then-owners in an attempt to find a mutually acceptable solution that would result in the construction of the stairs and provide mitigation for the loss of access during the length of time that the public had been deprived of this safe form of access to the coast. Commission enforcement staff wrote a notice of violation letter (Exhibit 20) to the then-owners, and exchanged a variety of emails with the then-owners; ultimately to no avail. The amendment application was not filed by Commission staff as “complete” because certain necessary information was never submitted by the applicant, and therefore the application was returned to the applicant. Unfortunately, the Commission enforcement staffer subsequently required long medical leave and the then-owners declined to resolve the violations.

The property was sold again at the beginning of 2015, this time to Respondents. When Commission enforcement staff became aware of the sale, immediately after it was announced, they contacted Respondents, on April 1, 2015, to apprise them of the ongoing Coastal Act violations on their property, as well as to make them aware of the potential ramifications for not resolving the violations, especially in light of the Commission’s new authority to impose penalties administratively for violations of the public access policies of the Coastal Act. In response to this notification, the Respondents and their counsel immediately contacted enforcement staff to begin the process of working to resolve the Coastal Act issues on the Property.

Staff met with counsel for Respondents on site on May 12, 2015; counsel communicated the Respondents’ desire to work with Commission staff and the relevant agencies to resolve the longstanding violations over which their client had so recently assumed responsibility, as a result of their purchase of the Property.

Over the course of the next several months, district enforcement staff and Respondents continued discussing potential mechanisms that could yield appropriate resolution of the matter. Ultimately, in order to resolve the matter as quickly as possible, it was determined a Cease and Desist Order before the Commission would be the best instrument for resolution, and the case was elevated to the statewide enforcement unit for formal resolution. At that time, staff reviewed the Property comprehensively and found that unpermitted actions related to the lateral access easement recorded on the property, required by CDP 5-87-576, had also been occurring at the site, under the tenure of the prior owner. Statewide enforcement staff notified Respondents of this additional violation and continued to work with them and their counsel to craft a mutually agreeable settlement that addressed the Coastal Act violations on their newly purchased property.

These discussions were complicated due to the involvement of a number of other agencies, including State Parks, Los Angeles County Department of Beaches and Harbors (“Beaches and

Harbors”), and The Mountains Recreation and Conservation Authority (“MRCA”). The discussions have been decidedly productive and culminated in the proposed administrative settlement attached hereto as Appendix A; staff therefore recommends that the Commission **approve** Consent Cease and Desist No. CCC-16-CD-04 and Consent Administrative Civil Penalty CCC-AP-16-02 (collectively referred to herein as “the Consent Agreement”).

Through the Consent Agreement, Respondents have agreed to design and finance the construction of the two public-access stairways as required by CDP 5-87-576. Additionally, as part of the negotiated penalties, Respondents have agreed to pay \$300,000 to MRCA for ongoing operation, maintenance, and any other costs associated with the construction of the public access stairs. Further, under the Consent Agreement, they have agreed that they will comply with the terms of the permit, and not take any actions to physically or indirectly impede the public’s use of the lateral access easement on the seaward portion of the Property or State tidelands seaward of the Property. Respondents have agreed to address administrative civil liabilities by agreeing to undertake a project that will facilitate access to the coast; specifically, Respondents have agreed, through the Consent Agreement, to funding the planning and construction of a signalized crosswalk across the Pacific Coast Highway, which will provide safer access for the public to access the soon-to-be-built access stairs. This public access project is expected to cost approximately \$425,000, and Respondents have agreed to completely fund this project, which will allow for greater use of the two stairs that will be constructed pursuant to the proposed Consent Agreement. Additionally, Respondents have agreed to the recordation of this Consent Agreement against the three parcels associated with CDP 5-87-576 and to the payment of \$200,000 to the Commission’s Violation Remediation Account.

B. DESCRIPTION OF PROPERTY AND PERMIT HISTORY

At slightly over one acre in size, the three parcels upon which the Malibu Beach Inn sits are situated just east of the Malibu Pier and an adjacent public parking lot, at the upcoast end of the densely developed and highly exclusive Carbon Beach area, in the City of Malibu (Exhibit 3). Also known by the sobriquet “Billionaire’s Beach,” Carbon Beach is equally attractive and difficult-to-access. Despite the City of Malibu LCP¹ policy for Carbon Beach specifically calling for the provision of vertical accessways from PCH to the beach every 1000 feet; there are currently only three open public accessways to the beach across the entire 1.5 mile stretch of Carbon Beach (Exhibit 4).

Prior to the construction of the Malibu Beach Inn, the Property was occupied by the 9-unit Tonga-Lei motel, the Don the Beachcomber Restaurant, and a parking lot (Exhibit 5). At this time, less than half of the combined frontage was developed with structures, and the public was able to cross the parcels to access the beach (Exhibit 6). From this access area, beachgoers would move downcoast to enjoy the rest of Carbon Beach, or upcoast to Malibu Beach State Park (Exhibit 7). The property immediately upcoast of the Malibu Beach Inn consists of two properties owned by the State Parks and Beaches and Harbors (Exhibit 8). Combined, these two public properties provide an area used for a parking lot and to provide public access to the

¹ §2.86(o) City of Malibu Local Coastal Plan, Land Use Plan (2002).

historic Malibu Pier as well as the adjacent Malibu Lagoon State Park. Together, Malibu Pier, Malibu Lagoon State Park, and Carbon Beach provide a wide array of coastal recreation opportunities, including: surfing, fishing, paddling, birdwatching, snorkeling/scuba diving, whale watching, and museum-going, but practical concerns about access have remained. Since prior to the effective date of the Coastal Act, there has been riprap protecting the State Parks parking lot (Exhibit 9), and Beaches and Harbors obtained a permit from the Commission in 1983 to replace 500-linear feet of rock in this area. This riprap berm has served to protect the public parking area from erosive forces, but has rendered pedestrian access to the beach beneath the parking lot incredibly difficult.

In 1987, the then-owners of the Property sought approval of a CDP to demolish the motel, restaurant, and parking area, and to construct a 56-room hotel that spanned one hundred percent of the width of the three lots. During the hearing on the project, the Commission expressed concerns that the project, as proposed, was inconsistent with the public access and visual resource protection policies of the Coastal Act and the Santa Monica Mountains Land Use Plan. The Commission instead approved a project with a suite of additional conditions and requirements in order to find it consistent with the Coastal Act. Consequently, staff worked with the applicants to revise the project pursuant to the Commission's action and, in January of 1988 the Commission approved revised findings for CDP 5-87-576 (Exhibit 10).

The approved CDP, as revised, authorized construction of a 47-room hotel that was limited to only cover eighty percent of the width of the three lots, and was conditioned to ensure that public access and visual resource impacts were mitigated. Specifically, because the existing access across the parcels to the beach would be lost by the construction of the hotel in that location, the CDP was conditioned to require the owners of the Property to submit plans for - and construct - no fewer than two staircases on the adjacent State Parks and Beaches and Harbors property, to provide public access from the existing public parking lot, over the riprap to the beach. Further, the CDP was conditioned to require the applicant to record an offer-to-dedicate a lateral public access easement across the width of the privately-owned portion of the sandy beach, seaward of the hotel. The then-owners duly recorded the required offer-to-dedicate on November 17, 1987; the offer was properly accepted on November 1, 2006, thereby establishing a valid lateral access easement. As discussed further below, however, the staircases were never constructed as required.

C. SUMMARY OF VIOLATION AND PROPOSED RESOLUTION

Violations of the Coastal Act on the Property include the failure to construct at least two public access stairways leading to the adjacent public beach pursuant to Special Condition 3(g) of CDP 5-87-576. Further, prior owners of the Malibu Beach Inn have engaged in development on the lateral public access easement seaward of the Malibu Beach Inn and on State tidelands, including beach "grooming" and placement of guest amenities on the beach and hosting of private events (Exhibit 11) on the beach that individually and cumulatively have both adversely affected coastal resources and had the potential to discourage public use of State tidelands and the public access easement created by Special Condition 1 of CDP 5-87-576.

Respondents have only recently purchased the Property, but since their purchase have been working diligently with Commission staff to address these long-standing violations. In light of landowner responsibility for Coastal Act violations and in an effort to enhance visitor serving amenities in the area and move forward in good standing with the Commission, Respondents have worked expeditiously and cooperatively with Commission enforcement staff to craft this mutually acceptable resolution to this matter, and to do so quickly.

Through the proposed Consent Agreement, Respondents agree to finance and cause to be constructed two public-access-stairways pursuant to CDP 5-87-576. The stairway in the middle of the public parcel has been designed to be wide to accommodate the launching of kayaks and paddleboards while the staircase at the upcoast end of the parking lot, proximate to the pier, will be a standard pedestrian accessway. The proposed Consent Agreement would also order Respondents to desist from undertaking unpermitted activity, including wrack removal and grading of the beach, that both affects coastal resources and physically or indirectly discourages or prevents public use of the lateral access easement or State tidelands seaward of the Property. It should be noted that these provisions are designed to ensure protection of coastal resources in the future, but it does not appear that these practices have occurred on the property after Respondents purchased the Malibu Beach Inn from their predecessor, MBIPCH LLC.

Further, to consensually resolve liability pursuant to both Section 30820 and section 30821 of the Coastal Act, Respondents have agreed to take two actions. First, they will undertake the planning and construction of a signalized crosswalk across the Pacific Coast Highway to facilitate public access to the coast, at the cost of approximately \$425,000. In addition, Respondents will pay \$200,000 to the Commission's Violation Remediation Account. They will also pay \$300,000 to MRCA for ongoing operation, maintenance, and any other costs associated with the construction of the public access stairs. Lastly, Respondents have agreed to the recordation of the Consent Agreement against the Property.

Staff recommends that the Commission **approve** this proposed Consent Cease and Desist Order and Consent Administrative Penalty Resolution.

TABLE OF CONTENTS

I.	MOTION AND RESOLUTION.....	8
II.	HEARING PROCEDURES.....	9
	A. ADMINISTRATIVE CIVIL PENALTY AND CEASE AND DESIST ORDER.....	9
III.	FINDINGS AND DECLARATIONS.....	10
	A. DESCRIPTION OF PROPERTY.....	10
	B. HISTORY OF COMMISSION ACTION ON PROPERTY.....	11
	C. DESCRIPTION OF COASTAL ACT VIOLATION.....	12
	D. ENFORCEMENT ACTIVITIES.....	13
	E. BASIS FOR ISSUING ORDER.....	14
	1. STATUTORY PROVISION.....	14
	2. APPLICATION TO FACTS.....	14

F. BASIS FOR ISSUANCE OF ADMINISTRATIVE PENALTIES.....	19
1. STATUTORY PROVISION.....	19
2. APPLICATION TO FACTS.....	19
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	25
IV. SUMMARY OF FINDINGS OF FACT.....	25

APPENDIX

Appendix A.....	Consent Agreement; Consent Cease and Desist Order and Consent Administrative Civil Penalty
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EXHIBITS

Exhibit 1.....	Photograph of Malibu Beach Inn (2013)
Exhibit 2	Labeled Vicinity Overview
Exhibit 3.....	Aerial Photograph of Carbon Beach
Exhibit 4.....	Aerial Overlay of Carbon Beach Accessways
Exhibit 5.....	Historic Aerial Photograph – Tonga Lei and Don the Beachcomber (1985)
Exhibit 6.....	Historic Photograph – Public Utilizing Vertical Access
Exhibit 7.....	Map of Area Adjacent to Malibu Beach Inn
Exhibit 8.....	Beaches and Harbors/State Parks Parcel Map Overlay
Exhibit 9.....	Historic Photograph – Riprap (1972)
Exhibit 10.....	CDP 5-87-576 Revised Findings
Exhibit 11.....	Beach Privatization Examples
Exhibit 12.....	Annotated Parcel Map
Exhibit 13.....	CDP to Replace Riprap (1983)
Exhibit 14.....	Temporary Public Access: Reservoir-Style Ramp (2004)
Exhibit 15.....	Temporary Public Access: Fiberglass Surplus Stairs (2010)
Exhibit 16.....	Photographs of Closed Stairs (10/03/15)
Exhibit 17.....	Photograph of Historic Beach Access on Site (Approx. 1985)
Exhibit 18	City of Malibu Coastal Development Permit 06-011
Exhibit 19.....	City of Malibu Administrative Plan Review 07-011
Exhibit 20.....	Notice of Violation to MBIPCH LLC (4/17/09)
Exhibit 21.....	Miser and Cooper Stairway Plans
Exhibit 22.....	Commission Correspondence with MBIPCH LLC (4/27/09)
Exhibit 23.....	Commission Correspondence with MBIPCH LLC (7/13/09)
Exhibit 24.....	Commission Correspondence with MBIPCH LLC (1/04/10)
Exhibit 25.....	Notice of Violation to Mani MBI DE, LLC (4/01/15)
Exhibit 26.....	Commission Correspondence with Mani MBI DE, LLC (5/26/15)
Exhibit 27.....	Commission Correspondence with Mani MBI DE, LLC (6/05/15)
Exhibit 28.....	Commission Correspondence with Mani MBI DE, LLC (6/15/15)
Exhibit 29.....	Commission Correspondence with Mani MBI DE, LLC (6/25/15)
Exhibit 30.....	Commission Correspondence with Mani MBI DE, LLC (7/10/ 15)
Exhibit 31.....	Commission Notice of Intent to Commence Formal Action (10/09/15)
Exhibit 32.....	Commission Correspondence with Mani MBI DE, LLC (10/16/15)
Exhibit 33.....	Commission Correspondence with Mani MBI DE, LLC (12/07/15)

Exhibit 34.....Confirmatory Letter, Commission to City of Malibu (11/19/15)

I. MOTION AND RESOLUTION

Motion 1:

*I move that the Commission **issue** Consent Agreement and Consent Cease and Desist Order No. CCC-16-CD-04 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the issuance of the Consent Agreement and Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Agreement and Consent Cease and Desist Order:

The Commission hereby issues Consent Agreement and Consent Cease and Desist Order No. CCC-16-CD-04, as set forth below, and adopts the findings set forth below on grounds that activities have occurred on property owned and operated by Mani MBI DE LLC without a coastal development permit, and in violation of CDP No. 5-87-576, the Coastal Act, and the City of Malibu LCP; that other activities that were required by CDP No. 5-87-576 have not occurred, inconsistent with that permit; and that the requirements of the Consent Agreement and Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act.

Motion 2:

*I move that the Commission **issue** Consent Administrative Civil Penalty No. CCC-16-CD-02 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the issuance of the Consent Administrative Civil Penalty. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Administrative Civil Penalty:

The Commission hereby issues Consent Administrative Civil Penalty No. CCC-16-AP-02, as set forth below, and adopts the findings set forth below on grounds that activities and failures to act have occurred on property owned and operated by Mani MBI DE LLC without a coastal development permit, in violation of CDP No. 5-87-576 and the Coastal Act, and/or that limits or precludes public access and violates the public access provisions of the Coastal Act.

II. HEARING PROCEDURES

A. ADMINISTRATIVE CIVIL PENALTY AND CEASE AND DESIST ORDER

The requisite procedure for imposition of administrative penalties pursuant to Section 30821 of the Coastal Act is delineated in Section 30821(b), which specifies that penalties shall be imposed by majority vote of all commissioners present in the context of a public hearing in compliance with the requirements of Section 30810 (cease and desist orders), 30811 (restoration orders), or 30812 (notices of violation).

The procedures for a hearing on a Cease and Desist Order pursuant to Section 30810 are outlined in the Commission's regulation at California Code of Regulations, Title 14 ("14 CCR") Section 13185. For a Cease and Desist order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where actual controversy exists. The Chair may then recognize other interested persons, after which the Commission typically invites staff to respond to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commission may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above.

Finally, the Commission shall determine, by a majority vote of those present and voting whether to impose administrative penalties, in the form recommended below, or as amended by the Commission. Passage of Motion 2, above, per the Staff recommendation, or as amended by the Commission, will result in the imposition of administrative penalties.

The Commission shall also determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of Motion 1, above, per the Staff recommendation or as amended by the Commission, will result in the issuance of the Cease and Desist Order. Issuance of the Order will not have significant adverse effects on the environment, within the meaning of CEQA (Cal. Pub. Res. Code §§ 2100 et seq.). The Order is also exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines, which are also in 14 CCR.

III. FINDINGS FOR CONSENT AGREEMENT AND CONSENT CEASE AND DESIST ORDER NO. CCC-16-CD-04 AND CONSENT ADMINISTRATIVE CIVIL PENALTY ACTION NO. CCC-16-AP-02²

A. DESCRIPTION OF PROPERTY

The Property is located at 22878 Pacific Coast Highway in Malibu, Los Angeles County, and consists of three separate parcels (Exhibit 12), identified by Los Angeles County Assessor's Office as APNs 4452-005-029, 4452-005-030, and 4452-005-031. Totaling an aggregate of 1.06 beachfront acres between the Pacific Coast Highway and the Pacific Ocean, these three parcels are occupied by the Malibu Beach Inn; a 47-room hotel situated on Carbon Beach. Carbon Beach is 1.5 miles long and is generally known as being one of the least publicly accessible beaches, in an area renowned for its exclusivity. Not only are there only three points of public ingress from the PCH to the beach across the entire mile and a half stretch, but much of the development fronting PCH is continuous such that the ocean and beach are effectively blocked from the public's view. In addition to preventing the public from accessing the ocean and tidelands, this relative dearth of public access to and from the beach is problematic from a public safety standpoint as well; many of the homes along Carbon Beach are so close to the water, especially on the upcoast end of Carbon Beach, as to render the beach itself impassable at higher tides. The lack of points of egress means that beachgoers are forced to attempt to time their traverse carefully to avoid being caught—to ensure that they are able to exit the beach safely-- or they will be subjected to water and wave inundation, or simply not able to visit the beaches.

Immediately upcoast of the Malibu Beach Inn is the Malibu Lagoon State Beach and the Malibu Pier. Originally constructed in 1905 to bring agricultural products in to support the adjacent Malibu Rancho, the Malibu Pier was opened to the public for pier fishing and charter fishing in 1934.³ Now owned by California State Parks, the Malibu Pier is a hub for sightseeing on the coast. Malibu Lagoon State Beach, also known as Surfrider Beach, is widely recognized as an exceptional surf spot - in 2010 it was dedicated as the first World Surfing Reserve. On a daily basis, myriad individuals utilize Malibu Lagoon State Beach, Malibu Pier, and Carbon Beach for an array of coastal recreation opportunities including surfing, fishing, paddling, birdwatching, snorkeling/scuba diving, whale watching, and museum-going.

As described above, the adjacent public property is owned by both Beaches and Harbors and State Parks. Identified as Los Angeles County APN 4452-005-901, the Beaches and Harbors owned property encompasses the majority of the sandy beach and seaward portion of the riprap, while the landward portion of the riprap and parking lot is identified as Los Angeles County APN 4452-005-902 and is owned by State Parks and currently operated by a concessionaire (Exhibit 8). In 1983, Beaches and Harbors obtained a CDP from the Commission to replace 500-

² These findings also hereby incorporate by reference the Summary in the section at the beginning of the November 21, 2016 staff report ("STAFF REPORT: Recommendations and Findings for Consent Agreement and Consent Cease and Desist Order and Consent Administrative Civil Penalty") in which these findings appear, which section is entitled "Summary of Staff Recommendations."

³ California Department of Parks and Recreation; Malibu Pier History. https://www.parks.ca.gov/?page_id=24411 (accessed 7/29/2016).

linear feet of rip-rap along the seaward side of the Malibu Pier State Park Parking lot (Exhibit 13).

After the installation of the additional riprap in 1983, despite the requirements embodied in the conditions of the Malibu Beach Inn CDP discussed both above and below, no formal access across the riprap existed, and for many years the County used a tractor to build up a sand ramp next to the pier to provide temporary public access down to the beach. This was a very ephemeral solution, due to high tides and surf washing away sand, and at some point prior to 2002, State Parks installed an approximately 20' long aluminum "reservoir-style" ramp to the edge of a small concrete slab on the sand (Exhibit 14). Eventually, saltwater and sun degraded the metal of the ramp and the high foot traffic on the ramp wore the surface smooth, making access dangerous and at times impassible. Because of the dangers associated with the degraded ramp, around 2010 State Parks replaced that structure with a set of pre-fabricated fiberglass stairs that were surplus from another project (Exhibit 15). Unfortunately, since these stairs were not specifically designed for the coastal environment, when staff visited the site in October of 2015, these stairs were closed for safety reasons, and had already been closed for approximately a month prior (Exhibit 16). These stairs were closed because tides and surf had damaged them to a point of becoming unusable and are apparently to remain closed indefinitely. Since this time, the only access available in this area is for beachgoers (those that can nimbly do so) to clamber down the steep riprap to access the beach.

B. HISTORY OF COMMISSION ACTION ON PROPERTY

The Property upon which the Malibu Beach Inn now sits was originally occupied by a small 9-unit motel named the Tonga Lei, a restaurant named Don the Beachcomber, and a parking lot that serviced the two facilities. On October 15, 1987, the Commission held a hearing on a coastal development permit application submitted by the then-owners⁴ of the three parcels, seeking to demolish the Tonga Lei and Don the Beachcomber and construct a much larger, 56-room hotel. During the hearing, Commissioners raised concerns regarding the consistency of the project with the Coastal Act and the 1986 Malibu/Santa Monica Mountains Land Use Plan - specifically with regards to visual impacts of the development from the Pacific Coast Highway and impacts the development would have on the public's access to the sandy beach. The Tonga Lei and Don the Beachcomber were both low profile structures – less than 20 feet high - flanked on the upcoast by a large, visually unobtrusive parking lot. The Commission found that this parking lot occupied about 45% of the frontage of the three lots and that the then-owners had provided a cement staircase leading over the revetment from the parking lot onto the beach. The Commission also found that the public had been utilizing the parking lot for access to the beach (Exhibit 17).

As originally proposed and presented to the Commission, the new proposed 56-room hotel was to cover the entirety of the three lots, with a parking lot underneath the hotel. However, given the already then-prolific nature of nearly wall-to-wall development in the Carbon Beach area that blocked views of and access to the ocean from the Pacific Coast Highway, Commissioners expressed concerns regarding the visual impacts associated with the proposed plans, and required

⁴ Marlin Miser and Martin Cooper.

that they be revised to mitigate those impacts; the hotel was scaled back to 47-rooms. Special Conditions 3(c) and 3(d) were also added⁵:

(c) Height of the wall along the property line at the Pacific Coast Highway shall be limited for all opaque portions of the property-line wall, with the exceptions of pilasters. Other structures located at ground level including signs, shall be limited to those shown in the revised plot plan so that portions of the view from automobiles on Pacific Coast Highway to the ocean will be preserved.

(d) No more than eighty 80%) (220 feet, two hundred and twenty feet) of the frontage of the lots (282.55 feet) shall be occupied by permanent structures visible from the Pacific Coast Highway with the exception of the aforementioned low wall.

The Commission noted that, even as revised, the new structure would increase the wall of development across the three lots from 150 feet to 220 feet and the height from 20 feet to 35 feet (pages 22 Revised Findings for CDP 5-87-576). The Commission made it clear that the “unrelenting wall of development” along the PCH was degrading views to and of the ocean and specifically conditioned this CDP to “preserve a view corridor” by limiting the horizontal extension of the development over the lot.

Furthermore, since the construction of the new hotel would result in the loss of the public beach access across the parking lot, the Commission conditioned CDP 5-87-576 to require that the property owners submit plans for, and construct, no fewer than two beach-access staircases on the adjacent Malibu Lagoon State Beach to mitigate for the loss. Special Condition 3(g) required that the owners were to submit and construct no fewer than two stairways:

(g) Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of Beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal.

Additionally, the Commission issued the CDP subject to the condition that the owner record an irrevocable Offer to Dedicate (“OTD”) a lateral public access easement seaward of the hotel across the full width of all three parcels – subject to a 10 foot ‘privacy buffer’ immediately seaward of the hotel. The then-owners recorded the OTD on November 17, 1987 (Instrument No. 87 1830624), and the OTD was accepted on November 1, 2006 (Instrument No. 06 2430430), thereby establishing a valid lateral access easement as envisioned by the permit.

C. DESCRIPTION OF COASTAL ACT VIOLATION

The violations at issue in this hearing include the failure to construct two public access stairways on public land adjacent to the hotel, as required by Special Condition No. 3(g) of CDP No 5-89-

⁵ Revised Conditions and Findings, 5-87-576 (January 14, 1988).

576, and unpermitted development on a lateral public access easement seaward of the Malibu Beach Inn and on State tidelands that is also inconsistent with the CDP, including beach “grooming” and placement of guest amenities and hosting private events on the beach, all of which has the potential to affect coastal resources and discourage public use of the public access easement and State tidelands, inconsistent with Special Condition 1 of CDP No. 5-87-576.

D. ENFORCEMENT ACTIVITIES

The failure to construct the minimum of two public access stairways pursuant to CDP 5-87-576 first came to the attention of Commission enforcement staff in 2009 when the then-owners, MBIPCH LLC, submitted an application for an amendment to the underlying CDP (Exhibit 23). Though the application for the amendment was ultimately returned to the applicant(s) because the applicant did not furnish information necessary to “complete” the application, Commission permit staff’s review of the Property and underlying permit revealed an outstanding Coastal Act violation on the Property, as the property owner had not complied with certain conditions of the original CDP for the property. On April 17, 2009, Commission enforcement staff sent a Notice of Violation (Exhibit 20) to MBIPCH LLC indicating that while an approval-in-concept for two sets of stairs had been granted by the California Department of Parks and Recreation (Exhibit 21), final plans had never been submitted, nor had the stairs ever been constructed. Staff attempted to work with MBIPCH LLC and their representatives to try to resolve the violations (Exhibit 22); however, efforts ultimately fell through (Exhibit 24). The amendment application was returned for incompleteness and the violation remained unresolved.

Respondents purchased all three properties associated with the Malibu Beach Inn at the beginning of 2015. When the sale was subsequently publicized, Commission enforcement staff sent a Notice of Violation in April of 2015 apprising the new owners of the existence of ongoing Coastal Act violations on their recently purchased property (Exhibit 25). Representatives for Respondents promptly contacted enforcement staff to discuss the scope of the issue at hand; an on-site meeting was arranged for May 12, 2015, to facilitate understanding in subsequent discussions (Exhibit 26). A number of communications spanning many months between Commission district enforcement staff and representatives of the Respondents followed this initial meeting, fleshing out the nature of the Respondents’ compliance obligation and potential mechanisms for compliance (Exhibits 27-29).

When it became apparent that due to the complexity of this matter, resolution would need to be finalized before the Commission as a formal action, district enforcement staff elevated the matter to the Commission’s Statewide Enforcement Division, at which point a comprehensive review of the property and permit was undertaken (Exhibit 30). It was then determined that additional unpermitted actions had occurred on site: the previous owner had been grading (sometimes referred to as “grooming”) the beach, and had also been placing guest amenities and hosting private events on the beach; activities that affect coastal resources and have the effect of displacing and dissuading public use of the public access easement seaward of the hotel, established by CDP 5-87-576. To initiate proceedings to reach the ultimate, shared goal of resolving this matter via a consent order, on October 9, 2015, the Executive Director sent Respondents a “Notice of Intent to Record Notices of Violation and to Commence Cease and

Desist Order and Administrative Civil Penalties Proceedings” (“NOI”) (Exhibit 31), as a precursor to going before the Commission with a proposed order and administrative penalties proceeding. Counsel for Respondents continued to work with Commission enforcement staff over the course of the next several months, refining the measures to be undertaken to resolve the violations and establish the parameters of Respondents’ legal obligations (Exhibits 32&33). Because of the split ownership of the property upon which the staircases are to be built, enforcement staff and Respondents also coordinated extensively with Beaches and Harbors, State Parks, and MRCA to ensure that the prospective settlement best reflects the interests of all involved.

E. BASIS FOR ISSUING CEASE AND DESIST ORDER

1. STATUTORY PROVISION

The statutory authority for issuance of this Consent Agreement and Consent Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

(a) if the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist....

...

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

2. APPLICATION TO FACTS

a. Development has Occurred Without a Permit/ Inconsistent with CDP 5-87-576

Unpermitted development, as described in Section V.C, above, has occurred on the Property, in violation of a previously issued CDP and without Coastal Act authorization. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. “Development” is defined broadly by Section 30106 of the Coastal Act as follows, in relevant part:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; . . . ; grading, removing, dredging, mining, or extraction of any materials; . . . ; change in the intensity of use of water, or of access thereto;. . .

The Commission has enforcement jurisdiction over the violations at issue herein. The violations addressed in this action pertain directly to CDP No. 5-87-576, which was issued by the Commission prior to certification of the City of Malibu LCP; the Commission has jurisdiction to enforce its own permits. The Commission's enforcement authority within a locality with a certified Local Coastal Program is set forth, in part, in Section 30810(a) of the Coastal Act, which states the following⁶:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist....

The Commission therefore has jurisdiction to issue a cease and desist order to address these violations pursuant to Sections 30810(a)(1) and 30810(a)(2) of the Coastal Act. The City of Malibu Land Use Plan and Local Implementation Plan (which together form the LCP) were adopted by the Commission on September 13, 2002; the City now issues permits for development and ensures compliance with the Coastal Act within its geographic limit. As a matter of comity, Commission staff has coordinated with the City of Malibu regarding enforcement of the Commission's 1987 permit. For example, in a letter dated November 19, 2015, Commission staff memorialized a phone conversation with City of Malibu enforcement staff in which the pending Commission action was discussed (Exhibit 34). Commission staff communicated with City of Malibu enforcement and planning staff to keep the City apprised of the potential parameters of the pending resolution. Further, City of Malibu planning and engineering staff reviewed draft plans for the access stairways and provided feedback to ensure that the final plans were mutually acceptable.

In the matter at hand, previous owners of the Malibu Beach Inn engaged in grading/grooming the beach and placement of guest amenities and hosting of private events on the beach, the totality of which both affect coastal resources and have the effect of dissuading public usage of the easement and beach in contravention of the public access easement established by CDP 5-87-576. These activities and failures to comply with conditions of a previously issued permit condition clearly meet the definition of development under Section 30106, and no exemptions to the Coastal Act's permit requirement apply. Therefore, the unpermitted development required a CDP and no CDP was issued. In addition, such activities are directly inconsistent with Special Condition 1 of CDP 5-87-576 (see Exhibit 10).

Moreover, the property owners have not complied with specific access requirements of the permit for the property, and are therefore in violation of that permit. As noted above, Special Condition 3(g) of CDP 5-87-57 (see Section III.b. above) specifically required the construction

⁶ Section 13.10.2 of the Malibu City Local Coastal Plan's Local Implementation Plan mirrors the 30810(a) language and provides that the Commission retains authority over condition compliance for Commission issued CDPs and for any development that would lessen or negate the purpose of any specific permit condition or any recorded offer to dedicate or grant of an easement of a Commission-issued CDP.

of no fewer than two public access staircases from the California Department of Parks and Recreation-owned parking lot above to the Los Angeles County Department of Beaches and Harbor-owned public beach, below. Though the CDP was exercised and the hotel was constructed, complete plans were never fully approved, the stairs were not constructed, and the owners of the hotel never complied with the conditions of the CDP.

It is “well established that the burdens of permits run with the land once the benefits have been accepted.” (*Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, 526; *Rosco Holdings Inc. v. State of California* (1989) 212 Cal. App. 3d 642, 654-655.) It is also the case that the responsibility for violations that are extant attaches to the land and apply to landowners regardless of whether they actually performed the original work or not. (*Leslie Salt Co. v. San Francisco Bay Cons. and Dev. Com.* (1984) 153 Cal.App.3d 605, 617-622.) In *Leslie Salt Co.*, the California Court of Appeal considered language very similar to that in the Coastal Act, from the statute governing the Bay Conservation and Development Commission, a sister agency to the Commission with similar authority to issue an order to any person that “has undertaken, or is threatening to undertake, any activity” without the necessary permit or in violation of a permit. (*Leslie Salt Co.* at 612; see also, Section 66638 of the McAteer-Petris Act; Section 30810 of the Coastal Act.)

The court in *Leslie Salt Co.* found that the subsequent property owners were subject to strict liability for the violations even if they did not perform the actual development. *Leslie Salt Co.* recognized that an inability to pursue enforcement actions against landowners, who were not proved to have placed the development, would frustrate the purposes of the act and would diminish the incentive for landowners to keep their properties in compliance with the act. (*Leslie Salt Co.* at 617.) Therefore, the court of appeal found that act of undertaking development under the statute included those “who even passively countenances the continued presence” of a violation. (*Id.* at 618.) Therefore, as Respondents now own property upon which unpermitted development and development inconsistent with a previously issued CDP has been undertaken and continues to persist, and upon which conditions of the underlying CDP have not been complied with to this day, the criteria for issuance of a Cease and Desist Order pursuant to Section 30810 of the Coastal Act have been met.

As it is only necessary to find that development has been undertaken without a required permit or in violation of a previously issued permit in order for the Commission to issue a Cease and Desist Order, the following Sections b-d are for background purposes only.

b. The Unpermitted Development at Issue is not Consistent with the Coastal Act’s Access Provisions and Principles of Environmental Justice

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities

shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

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

That all of the public should enjoy access for recreation at coastal areas is an important concept for environmental justice precepts in California. Public access and coastal recreation continue to be threatened by private development, illegal encroachments, and other restrictions on beach or coastal access. These burdens of restricted access are disproportionately borne by low-income and minority communities, while coastal property owners benefit from the privatization of the public spaces of beaches, coastal areas, and public easements. Securing open public access for all citizens provides low-cost, outdoor recreation that can improve the overall quality of life of all the public, including minority communities. The certified Malibu LCP also recognizes the importance of the fair implementation and enforcement of environmental laws in order “to promote the fair treatment of people of all races, cultures, and incomes” (Malibu LCP, Chapter 1.D). Although no set of stairs will solve all environmental justice problems, making it easier for the public to access the coast, especially by making available those accessways already acquired by the State for public recreation, will cumulatively improve public access and reduce environmental injustice concerns.

Public recreation and the ability for the public to access the beach are a major cornerstone of the Coastal Act and are critical in this still highly inaccessible segment of Malibu. Grading or “grooming” the beach, holding private events, and placing guest amenities on the beach seaward of the hotel, directly within a lateral public access easement and/or State tidelands collectively have the effect of dissuading the public from using the lateral access easement and State Tidelands. The unpermitted actions taken in the location of the lateral access easement have the potential to not only have a chilling effect on the public from utilizing the lateral public access easement and State-owned tidelands seaward of the hotel for recreation purposes, but can also have the effect of dissuading the public from even traversing the Property to access other portions of Carbon Beach. As discussed above, even after years of Commission effort here, there are still critically limited points of public access to Carbon Beach; the ability to traverse unimpeded between the existing points of vertical access using lateral accessways is crucial both to the ongoing effort to enhance the public’s ability to reach the coast in this area, but also to make it safe for people to do so.

Further, failure to provide the required public access stairs from the State Parks parking lot to the Beaches and Harbors beach below has, for nearly three decades, deprived the public of reasonably safe and convenient access to the beach. As discussed above, when the Commission approved CDP 5-87-576, it found that allowing the construction of the hotel would remove a previously used point of public access to the beach. The Commission therefore conditioned the

CDP to require the owner of the Property to construct “not less than two” stairways on the adjacent public property. Although the hotel was built, the permit exercised and the historic public access to the beach in this location removed, the public stairways were never built by the owners of the hotel. The public have, in fact, suffered doubly by this long-term noncompliance; not only has the beach remained difficult or impossible to access at times, public funds have also been spent attempting to provide some types of access solutions through the years in an area that should have already had well-engineered stairs.

The public has thus been deprived of both the access that was to be afforded by the two stairways and by the public resources associated with the various attempts at access solutions provided through the years. Finally, the existing stairs, the last attempt at providing some type of short-term access solution to the difficulties with access the beach in this location, are damaged and closed; the public therefore does not have safe access to this portion of the coast (Exhibit 19). Not complying with permit requirements regarding access and performing additional unpermitted activities that negatively impact access, both constitute violations of the public access provisions of the permits and of the public access provisions of the Coastal Act.

In addition to the negative effects that beach grooming and the placement of private amenities have on the ability of the public to use the lateral access easement, beach grooming and wrack removal can also have profound deleterious impacts on beach ecology. When wrack is removed from the beach so too is the food source upon which a variety of crabs, crustaceans, and shorebirds depend on as a food source. Removal of wrack has been shown to result in a concomitant loss in both biomass and biodiversity in the beach ecosystem.⁷

c. The Consent Order is Consistent with Chapter 3 of the Coastal Act

This Consent Order, attached to this staff report as Appendix A, is consistent with the resource protection policies found in Chapter 3 of the Coastal Act. This Consent Order requires and authorizes Respondents to, and Respondents have agreed to, among other things, finance and cause to be constructed two public-access-stairways pursuant to CDP 5-87-576. Further, the Consent Order requires Respondents to, and Respondents have agreed to, create additional public access improvements in the immediate area of the hotel. Construction of the public access stairways and implementation of the public access improvements undertaken in compliance with all requirements of this Consent Order will be compliant with Chapter 3 of the Coastal Act. Failure to provide the required public access would result in the continued loss of public access, inconsistent with the resource protection policies of the Coastal Act.

Therefore, the Consent Orders are consistent with the Chapter 3 policies of the Coastal Act, and their issuance is consistent with Coastal Act Section 30810(b).

F. BASIS FOR ISSUANCE OF ADMINISTRATIVE PENALTIES

⁷ *Ecological Impacts of Beach Grooming on Exposed Sandy Beaches*. J.E. Dugan, H.M Page, and A.M. Wenner. University of California, Santa Barbara. 2008.

1. STATUTORY PROVISIONS

The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act, which states, in relevant part:

(a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of the public access provisions of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation. The administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.

In addition, sections 30820 and 30822 create potential civil liability for violations of the Coastal Act more generally. Section 30820(b) also provides for daily penalties, as follows:

Any person who performs or undertakes development that is in violation of [the Coastal Act] or that is inconsistent with any coastal development permit previously issued by the commission . . . , when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable . . . in an amount which shall not be less than one thousand dollars (\$1,000), nor more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.

Through the proposed settlement, Respondents have agreed to resolve their financial liabilities under all of these sections of the Coastal Act and to resolve liabilities that accrued prior to their ownership of the property but for which they became equally responsible upon assuming ownership of the Property.

2. APPLICATION TO FACTS

Respondents' property is covered by a permit containing conditions and provisions regarding access that have not been fulfilled, in violation of the access provisions of the CDP and the access provisions of the Coastal Act. As discussed in Section IV(B) above, the Commission found previously in issuing the relevant permit for this hotel, that in order to comply with Coastal Act policies on public access, special conditions were required to provide for construction of no fewer than two public access stairs on the adjacent public property and for the provision of a lateral access easement seaward of the hotel. The access violation at issue in this action consists of failure to construct the aforementioned required public access stairs and de facto privatization of a lateral public access easement on the beach in front of the Malibu Beach Inn and on State tidelands, by a prior owner, in contravention of the public access easement and of Special Condition 1 of CDP No. 5-87-576, through grading the beach flat and placement of

guest amenities and hosting private events on the beach with the effective result of dissuading public usage of said areas.

The Commission found, in issuing CDP 5-87-576 that the public had had a long-standing ability to access the ocean across the parking lot adjacent to the Tonga Lei Inn and Don the Beachcomber Restaurant (Exhibit 20). The Commission further found that the proposed construction of the new hotel would eliminate this historic public access by covering 80% of the combined lot frontage with the hotel structure and the remaining 20% a walled parking area. In light of the lost public access that would otherwise result from the project, the Commission imposed Special Condition 3(g) on CDP 5-87-576 to ensure consistency with the Coastal Act. As discussed above, Special Condition 3(g) required;

Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of Beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal.

While a very rough plan received approval-in-concept in 1988 (Exhibit 24), no plans were finalized and the stairways were not constructed pursuant to Special Condition 3(g), despite the historic public access being eliminated by the construction of the hotel. As enumerated above, the area to which the required stairs were to provide access is heavily utilized for a diverse array of coastal recreational activities. Instead, in order for the public to access the coast and ocean, the state has had to provide means for the public to access the area when the state has been financially able to do so, the public has had to climb down steep sections of riprap and sand, or has had to walk a great distance to access the area – none of which was envisioned by or is compliant with the conditions, including those regarding access, of the 1987 permit.

Further, the Commission issued the CDP subject to Special Condition 1, which required the owner to record an irrevocable Offer to Dedicate a lateral public access easement across the full width of all three parcels. This OTD was duly recorded on November 17, 1987, and accepted on November 1, 2006, thereby establishing a valid lateral access easement as envisioned by the permit. Evidence indicates that, in violation of the public access easement and of Special Condition 1 of CDP No. 5-87-576, previous owners of the Malibu Beach Inn had engaged in the effective privatization of the beach through grading the beach flat and placement of guest amenities and hosting private events on the beach in the area covered by the public access easement with the effective result of dissuading public usage of said areas.

Section 30210 of the Coastal Act provides that “*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.*” The ongoing failure to have constructed the beach access stairs has resulted in an inability of the public to safely and easily access the beach in an area where there had been access prior to the construction of the Malibu Beach Inn; the owners of the Malibu Beach Inn have long benefited from the terms of the permit without having to comply

with the corresponding burdens to provide access in kind. Further, the cumulative effects of the beach grooming, guest amenities and private events on the beach in the lateral access easement means that even if a member of the public were to be able to clamber down to the beach, they would feel dissuaded from traversing in front of the hotel despite their right to do so, thus further limiting public access. The unpermitted development at issue in this action is therefore an ongoing violation of public access provisions of the Sections 30210 and 30211 of the Coastal Act; Section 30821 of the Coastal Act is therefore applicable.

a) Section 30821(h) Notice

Under 30821(h) of the Coastal Act, under certain circumstances, imposition of administrative penalties may be avoided when a violation is corrected within 30 days of written notification from the Commission regarding the violation. Section 30821(h) is inapplicable to the matter at hand. There are three requirements for 30821(h) to apply that are not met here: 1) the violation must be remedied within 30 days of notice, 2) the violation must not be a violation of permit conditions, and 3) the violation must be able to be resolved without requiring additional development that would require Coastal Act authorization. None of these are applicable here. Respondents were notified of the persistence of the violation(s) on their newly acquired property on April 1, 2015, and notice of the potential applicability of Section 30821 was provided on October 9, 2015 – any 30-day period since that date has long since run, though it is clear the Respondents have made every effort to work with staff over the last several months to fully resolve this matter and have done so cooperatively and amicably. Further, this action is to enforce the terms and conditions of CDP 5-87-576, with which have been heretofore uncomplied; 30821(h) cure is not available for permit violations. Finally, since the violation at issue is the failure to construct two public access stairways, resolving this matter would necessarily involve additional development that would require Coastal Act authorization; 30821(h) does not apply to this matter.

Additionally, Section 30821(f) of the Coastal Act states:

(f) In enacting this section, it is the intent of the Legislature to ensure that unintentional, minor violations of this division that only cause de minimis harm will not lead to the imposition of administrative penalties if the violator has acted expeditiously to correct the violation.

Section 30821(f) is inapplicable in this case. As discussed above and more fully below, the failure to provide the required stairs is significant both because it was an essential access requirement of the permit, and because loss of access is very significant under the Coastal Act. Therefore, the violation cannot be considered to have resulted in “de minimis” harm to the public.

b) Penalty Amount

Pursuant to Section 30821(a) of the Coastal Act, the Commission may impose penalties in “an amount not to exceed 75 percent of the amount of the maximum penalty authorized pursuant to subdivision (b) of Section 30820 for each violation.” 30820 (b) authorizes civil penalties that “shall not be less than one thousand dollars (\$1,000), not more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists.”⁸ Therefore, the Commission may authorize penalties in a range up to \$11,250 per day for each violation.

Section 30821(a) sets forth the time for which the penalty may be collected by specifying that the “*administrative civil penalty may be assessed for each day the violation persists, but for no more than five years.*” In this case, the violation has persisted since 1987, decades longer than the five years for which the statute provides penalties. Commission staff is recommending that the time period in this case be calculated from July 1, 2014 – the effective date of Section 30821--to the date of this Commission hearing (December 8, 2016). The recommended period is therefore currently 891 days. The Commission could thus impose penalties at a rate of \$11,250 per day for 891 days for a total penalty of \$10,035,000.⁹

As discussed immediately below, Commission staff has considered the various factors as required under the Coastal Act in negotiating a settlement proposal for the Commission’s approval. Given the context of this as a settlement, the penalty amount in the proposed settlement is a total of \$925,000, which is comprised of a suite of payments to the VRA, MRCA, and a public access project.

For background, we also provide an analysis of the factors in Section 30821(c) as they would apply to an access violation here. Under Section 30821(c), in determining the amount of administrative penalty to impose, “the commission shall take into account the factors set forth in subdivision (c) of Section 30820.”

30820(c), the Coastal Act states:

In determining the amount of civil liability, the following factors shall be considered:

- (1) *The nature, circumstance, extent, and gravity of the violation.*
- (2) *Whether the violation is susceptible to restoration or other remedial measures.*
- (3) *The sensitivity of the resource affected by the violation.*
- (4) *The cost to the state of bringing the action.*
- (5) *With respect to the violator, any voluntary restoration or remedial measures undertaken, any prior history of violations, the degree of culpability, economic profits, if any, resulting from, or expected to result*

⁸ There are multiple Coastal Act violations on this property, some of which are potentially applicable violations of the public access provisions of the Coastal Act. For the purposes of this administrative penalty hearing, however, Commission staff is recommending only one violation be used for the determination of this penalty amount – the failure to construct the public stairways pursuant to Special Condition 3(g).

as a consequence of, the violation, and such other matters as justice may require.

Applying the factors of Section 30820(c)(1) and (3), the violation at hand should warrant the imposition of substantial civil liability; the property has been in violation of its underlying CDP for over 30 years, and the violation has meant that the public has been at times completely unable to safely access a public beach. Further, the State has had to expend its limited resources in order to provide access where it should have already existed had the CDP been complied with.

Moreover, the resource affected by the violation—access—is a scarce and important resource across the State, and in this coastal region in particular. Public access is extremely limited in Los Angeles County in general, and in the Malibu area in particular. A Commission staff report on Commission recorded vertical accessways for the Commission in 2012¹⁰, found that at the end of 2011 there had been 34 accessways recorded in Los Angeles County under Commission required actions such as CDPs, yet only 13 had been opened and constructed for public use. In the city of Malibu, the Commission permit actions have resulted in the recordation of 29 vertical public access easements, but only nine¹¹ are open at this time and 21 remain closed. At the same time, almost all of the Malibu coastline, which covers approximately twenty-one miles of coastline, has been developed for private residences, limiting any visual coastal access and preventing any coastal public access unless through recorded easements or, in some limited cases, state ownership. This access violation is particularly impactful in light of the fact that the Commission allowed the applicant to eliminate a longstanding swath of public access to construct the Malibu Beach Inn in exchange for the construction of the public stairways. The access was eliminated immediately but the stairs were never made available to the public.

The costs to the state have not been significant relative to other enforcement resolutions; much of the time and effort that has been expended has been spent coordinating with the relevant State and local entities to ensure that the stairs could be constructed on the public property as required. Commission staff was made aware of this violation when the then-owners (MBIPCH LLC) submitted a CDP application in 2009 seeking to amend the underlying permit; this resulted in a comprehensive review of the property and permit. Once the violation was discovered, permit and enforcement staff coordinated and attempted to work with MBIPCH LLC to resolve the matter. When this endeavor proved fruitless, the matter was transferred to enforcement, however due to staffing constraints and the demonstrated intractability of MBIPCH LLC, further work was not then undertaken.

Once Respondents purchased the property at the beginning of 2015, and were contacted by staff in April of the same year, Respondents immediately agreed to work to resolve the matter. The intervening time has been spent defining the parameters of the compliance obligations, negotiating settlement documents, working with relevant agencies to ensure that work could be performed on the public property to construct the stairs, and working with engineers to begin the design process. While this has in fact required significant staff time, it has been time dedicated to

¹⁰ <http://documents.coastal.ca.gov/reports/2012/1/Th5-1-2012.pdf>

¹¹ At the time the report was given eight had been open; since that time the Ackerberg accesway has been made available to the public.

ascertaining the method and manner of compliance given the fact that construction of the public stairways is to be done on public property and the construction needs to be coordinated with a variety of entities and should not be construed against Respondents. In calculating the penalty amount the immediacy with which Respondents agreed to comply with the Coastal Act and engage in the resolution process weighs heavily towards the diminution of the penalty.

An additional mitigating factor considered in the calculation of the penalty is Respondents' lack of culpability; Respondents have asserted that they purchased the property based upon a good faith belief that the condition of CDP 5-87-576 requiring construction of the stairs was deemed satisfied or waived, and had been led to believe by the prior owner that the condition would not be enforced. Respondents' purchase of the property was finalized February 2015; in April 2015 Commission enforcement staff contacted Respondents to provide notice of the newly acquired violations. Although current property owners are responsible for complying with the Coastal Act and all permit conditions on their property, here Respondents only maintained the property in a state of violation for short of a month prior to being contacted by staff; at which point they agreed to enter into the process with staff to begin resolution of the matter. They were willing to resolve all of the attendant responsibilities of the permit and for violations thereof.

Also factored into the consideration of the penalty calculation is Section 30820(c)(2), which cuts both ways here; the violation is susceptible to restoration and moving forward two new stairs can and will be built. On the other hand, there are many years of public access losses that can never be recovered. We note, however, that Respondents have agreed, through the Consent Agreement, to design and finance the stairs and have been working to ensure that the stairs can be built as soon as possible.

In sum, while the violation is significant, Respondents are very recent purchasers of the property and have worked with staff to very quickly rectify the violation after having the violation brought to their attention. Therefore, staff has recommended a penalty amount of \$925,000, which will be split into three components: \$300,000 to MRCA for operation, maintenance, and costs associated with the public accessways, \$425,000 for the signalized crosswalk project, and \$200,000 penalty to the Violation Remediation Account.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Commission finds that issuance of this Consent Order and Consent Administrative Penalty Action, to compel the removal of the Unpermitted Development and implementation of these Consent Orders are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of "classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA]." The CEQA Guidelines (which, like the Commission's regulations, are codified in 14 CCR) provide the list of such projects, which are known as "categorical exemptions," in Article 19 (14 CCR §§ 15300 *et seq.*). Because this is an enforcement action designed to protect and restore public access to the coast: the exemption applies here covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” This Consent Order is designed to protect the environment, and it contains provisions to ensure, and to allow the Executive Director to ensure, that it is implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action to protect and restore public access, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

H. SUMMARY OF FINDINGS OF FACT

1. Mani MBI DE, LLC, purchased the Malibu Beach Inn February 2015 from MBIPCH LLC. MBIPCH LLC was the owner of the Malibu Beach Inn at the time Commission enforcement staff commenced investigation of the Coastal Act violations at issue in this hearing.
2. Mani MBI DE, LLC, as current owner of the Malibu Beach Inn, is an appropriate party to this proposed Consent Agreement by virtue of joint and several liability for both landowners and those who undertake Unpermitted Development under the Coastal Act.
3. The Malibu Beach Inn is located at 22878 Pacific Coast Highway, Los Angeles County, CA, and is identified by Los Angeles County Assessor’s Office as APNs 4452-005-029, 4452-005-030, and 4452-005-031, all of which are entirely situated in the Coastal Zone.
4. The Commission found, in its approval of Coastal Development Permit (CDP) 5-87-576, which authorized the construction of the Malibu Beach Inn, that construction of the hotel would result in the loss of a historically used access point to the coast.
5. In its approval of CDP 5-87-576, the Commission found the project consistent with the Coastal Act and approved the CDP because it contained a number of permit conditions designed to protect public access and viewsheds; including the requirement that not less

than two public stairways be constructed on the adjacent public property, that 20% of the Property would be open for public views, and that the applicant would record an OTD for lateral public access, among other things.

6. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order when the Commission determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the Commission without securing a permit or (2) is inconsistent with any permit previously issued by the Commission.
7. Unpermitted development and development inconsistent with the CDP has occurred on the Property. Therefore, the jurisdictional requirements for the issuance of a cease and desist order have been met.
8. The work to be performed under this Consent Order, if completed in compliance with the Consent Order and the plan(s) required therein, will be consistent with Chapter 3 of the Coastal Act.
9. The statutory authority for imposition of administrative penalties is provided in Section 30821 of the Coastal Act. Sections 30820 and 30822 of the Coastal create potential civil liability for violations of the Coastal Act more generally.
10. As stated in #7, above, unpermitted development and development inconsistent with a CDP has occurred on the Property, which is owned by Respondents. These actions are also inconsistent with the public access provisions of the Coastal Act and therefore subject Respondents to penalties under 30821 of the Coastal Act, in addition to other civil liabilities that occurred prior to their ownership. Through the Consent Agreement, Respondents have agreed to resolve their financial liabilities under all of these sections of the Coastal Act and to resolve liabilities that also accrued prior to their ownership of the property.

CONSENT AGREEMENT
NO. CCC-16-CD-04 & CCC-16-AP-02
(Malibu Beach Inn)

Respondents, as those persons or entities are defined below, attest that they acquired the Subject Property, as also defined below, on February 28, 2015, based on a good faith belief that the condition of the 1987 Coastal Development Permit ("CDP") (No. 5-87-576) requiring construction of two stairways from the adjacent State public parking area to the beach was deemed satisfied or waived and had been led to believe by the prior owner that the condition would not be enforced. The Commission and Respondents have differing views regarding the factual and legal basis for the Commission's allegations related to the Subject Property's compliance with the Coastal Act and CDP, but through this Consent Agreement both parties desire to settle all claims and controversies, and Respondents have agreed to provide for the construction of the two stairways required by the 1987 permit and resolve civil liabilities associated with this matter, among other things.

1. **CONSENT CEASE AND DESIST ORDER CCC-16-CD-04 AND CONSENT ADMINISTRATIVE CIVIL PENALTY CCC-16-AP-02**

Pursuant to its authority under Public Resources Code ("PRC") Section 30810, the California Coastal Commission ("the Commission"), hereby orders and authorizes Mani MBI DE LLC, its successors, assigns, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter "Respondents") to take all actions required and authorized by Consent Cease and Desist Order No. CCC 16-CD-04 and Consent Administrative Civil Penalty CCC-16-AP-02 (collectively hereinafter "Consent Agreement") including, but not limited to, those listed in sections 2, 3, and 4 below, and the following:

- 1.1. Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, that requires a coastal development permit ("CDP") on the property identified in Section 9 ("Subject Property") of this Consent Agreement below, unless authorized pursuant to the Coastal Act (PRC Sections 30000 to 30900), which includes pursuant to this Consent Agreement, or the City of Malibu's Local Coastal Program, as appropriate.
- 1.2. Fully and completely comply with the terms and conditions of CDP No. 5-87-576, including by (i) providing for construction of two public access stairways from the State-owned parking lot to the beach on APNs 4452-005-902 and 4452-005-901 as provided below and (ii) complying with the terms and conditions of the lateral public access easement, on the beach seaward of the Malibu Beach Inn, established by the Offer to Dedicate recorded November 17, 1987 as Instrument No. 87-1830624 and the Acceptance recorded November 1, 2006 as Instrument No. 06-2430430.
- 1.3. Refrain from any attempts to limit or interfere with public use of state tidelands or the above-described public access easement.

2. VIEW CORRIDOR

- 2.1. Through this Consent Agreement, Respondents agree to maintain the existing vegetation across the View Corridor at a height of not more than six-feet tall.
 - 2.1.1. "View corridor" is defined herein to refer to the 20% of the 282.55 feet of lot frontage mandated by Special Condition 3(d) to be free of permanent opaque structures, with the exception of a wall of not more than 30" in height.
- 2.2. Subject to the six-foot height limit, Respondents may replace the existing vegetation in kind, as necessary due to disease, damage or casualty. Should Respondents elect to replace the existing vegetative screen with something different, or should Respondents elect to replace 50% or more of the existing vegetative screen in kind, such vegetation or structure shall have a maximum height of opaque material of not greater than 30", in compliance with Special Conditions (c) and (d) of CDP No. 5-87-576.
 - 2.2.1. Nothing in this Consent Agreement precludes future development if consistent with this Consent Agreement and authorized by the City of Malibu or the Commission, as appropriate. Any future, proposed development on the Subject Property shall comply with all relevant Coastal Act policies and applicable permit conditions.

3. ADDITIONAL COMPLIANCE WITH CDP No. 5-87-576

- 3.1. Within 30 days of issuance of this Consent Agreement, Respondents shall submit, for the review and approval of Commission staff ("Staff"), a proposed Public Access Compliance Plan ("Compliance Plan") that takes the form of an engineered plan, prepared by a licensed engineer, containing all elements enumerated in Section 3, and provides for the construction of two sets of public access stairways that provide ingress and egress to and from the sandy beach on APN 4452-005-902 and 4452-005-901 in compliance with CDP No. 5-87-576. The Compliance Plan shall be in the form and of a level of detail that a 3rd party can follow it as an accurate and adequate plan for construction.
 - 3.1.1. The Compliance Plan shall include any development required to effectuate safe and reliable public access through or across the rip rap from the State-owned (through the California Department of Parks and Recreation) parking lot to the Los Angeles County Beaches and Harbors-owned sandy beach below. One of the two stairways will be entirely new, and the second may be a major repair of the existing beach stairway immediately adjacent to the Malibu Pier or an entirely new stairway in the same or similar location.
 - 3.1.1.1. The Compliance Plan shall identify the: specific areas in which the stairways will be constructed; materials to be used on each stairway; and dimensions of each stairway.

- 3.1.1.2. The Compliance Plan must demonstrate that the public stairways: 1) comply with all applicable building codes, 2) are designed to withstand wave action of a "100-year storm event" and 3) extend to the minimum extent possible beyond the extant footprint of the authorized rip rap.
 - 3.1.2. The Compliance Plan shall be prepared by a qualified, licensed engineer. Prior to the preparation of the Compliance Plan, Respondents shall submit for Staff's review and approval the qualification of the proposed engineer, including a description of the engineer's background, training, and experience. Both parties agree that as of the effective date of this Consent Agreement David Weiss is a qualified licensed engineer.
 - 3.2. The Compliance Plan shall include a detailed description of all equipment that might be used to effectuate construction of the two public stairways. For all mechanized equipment proposed for use, the Compliance Plan shall include limitations on the hours of operation for equipment and a contingency plan that addresses: 1) impacts from equipment use; 2) potential spills of fuel or other hazardous releases from the use of mechanized equipment and responses thereto; and 3) water quality concerns. Should the Compliance Plan propose the use of mechanized equipment on the beach, the Plan shall enumerate the proposed locations of ingress and egress from the staging area, the duration of use on the beach, and the location of use on the beach. No equipment or materials, other than rock removed from the revetment to allow the stairs to be flush with the existing revetment, shall be stored or stockpiled overnight on the sand beach.
 - 3.2.1. The Compliance Plan shall designate areas for staging of construction equipment and materials, including receptacles and temporary stockpiles of materials, which shall be covered on a daily basis.
 - 3.2.2. The Compliance Plan shall note that any debris for disposal from construction shall be taken to a licensed facility, but if debris cannot be disposed of in a licensed facility and the disposal location is in the Coastal Zone, the disposal will require a coastal development permit.
 - 3.2.3. The Compliance Plan shall include recommended construction notes covering the detailed steps to guide the contractor in the safe and effective construction of the two beach access stairways.
 - 3.2.4. The Compliance Plan shall include instructions on use of concrete that will avoid or minimize potential releases on the beach or into the marine environment.
 - 3.2.5. The Compliance Plan shall clearly indicate that the licensed engineer who prepares the plans shall remain the Engineer of Record for the proposed construction.
 - 3.2.6. The Compliance Plan shall provide detailed information on measures to be taken to protect existing public access and parking on the properties.

- 3.3. Within 30 days of the issuance of this Consent Agreement, Respondents shall send a check, in the amount of \$494,637, made out to the account established by The Mountains Conservation and Recreation Authority ("MRCA") for the explicit and sole purpose of constructing the stairways described in the Compliance Plan. Except as provided below in Sections 4.1 and 4.3, such payment shall satisfy all of Respondents financial obligations under and shall be deemed full satisfaction of Special Condition 1 of CDP 5-87-576, related to construction of the stairways. By approval of this Consent Agreement the Commission acknowledges the Compliance Plan as consistent with Chapter 3 of the Coastal Act. Respondents shall have no obligation to implement the Compliance Plan, and MRCA or the entity that assumes the primary responsibility for the construction for the stairways, shall take full responsibility for the approval, bidding, inspection, liability, maintenance, and operation.
- 3.3.1. If MRCA is unable or unwilling to undertake the construction of the stairways pursuant to this Consent Agreement, Respondents shall cooperate with MRCA and Staff to transfer the funds paid by Respondents under 3.3 above to the account specified by that entity that assumes the primary role for construction of the stairways.
- 3.4. If prior to granting its approval, Staff determines that any modifications or additions to the submitted Compliance Plan are necessary, Staff will notify Respondents and Subject to Section 3.5 below, Respondents shall incorporate into the Compliance Plan all requested modifications and resubmit a revised Compliance Plan for review and approval within the reasonable timeframe specified by staff from the date of the notification.
- 3.5. As of the effective date of this Consent Agreement, Respondents have submitted a Proposed Compliance Plan ("Proposed Plan"). This Proposed Plan, prepared by David Weiss and attached as Exhibit A to this Consent Agreement, has been reviewed by and refined with input from staff of Los Angeles County Beaches and Harbors, California Department of Parks and Recreation, City of Malibu, MRCA, and the California Coastal Commission. While the Proposed Plan is a working document and has not received final approval from Commission Staff, the Proposed Plan is mostly complete and shall be deemed to fully satisfy Respondents' obligations with Sections 3.1 and 3.2 once modifications from Exhibit B to this Consent Agreement are incorporated consistent with Sections 3.1 and 3.2 into the Proposed Plan. As such, Respondents' obligations with respect to any required modifications pursuant to Section 3.4 to the Proposed Plan after issuance of this Consent Agreement, shall be limited to paying up to \$10,000, in addition to the amount conveyed to MRCA for the construction of the stairways, for David Weiss' services in connection with further modifications and refinements of the draft Compliance Plan should such modifications be necessary.

3.6. All work to be performed under this Consent Agreement shall be done in compliance with all applicable laws.

3.7. All plans, reports, photographs and any other materials that the Consent Agreement requires Respondents to submit shall be submitted to:

California Coastal Commission
Attn: Heather Johnston
89 S. California St., Suite 200
Ventura, CA 93001
(805) 585-1800 Facsimile (805) 641-1732

With a copy to: California Coastal Commission
Attn: Andrew Willis
200 Oceangate, 10th Floor
Long Beach, CA 90802
(562) 590-5071 Facsimile (562) 590-5084

4. SETTLEMENT OF LIABILITY FOR FINES, PENALTIES, AND EXEMPLARY DAMAGES

4.1. Pursuant to (1) the Commission's authority under, inter alia, PRC Section 30821; and (2) the agreement between the parties to resolve these matters in settlement; Respondents have agreed to pay, and the Commission hereby orders Respondents to pay, a monetary penalty in the amount of \$925,000. Respondents shall pay \$200,000 of that penalty to the Violation Remediation Account (as described in Section 4.2, below) of which \$100,000 shall be paid within 90 days of the issuance of this Consent Agreement, and \$100,000 shall be paid within 180 days of the issuance of this Consent Agreement. Respondents shall pay \$300,000 of the penalty to MRCA to the account designated in Section 3.3 to provide funds to support ongoing operation, maintenance, and other costs associated with the public access stairway project beyond the funds provided for in Section 3.3, above. Payments to MRCA shall be made in two installments; the first installment shall be paid in the amount of \$100,000 and remitted within 30 days of the issuance of this Consent Agreement, and the second payment shall be made in the amount of \$200,000 within 180 days of the issuance of this Consent Agreement. The remaining \$425,000 of the penalty shall be paid to finance the public access project discussed in Section 4.3, below, unless the requirement to pay pursuant to Sections 4.3.1 or 4.3.2 is triggered. The parties to this Consent Agreement stipulate that the penalty takes into consideration, among other things, the following periods: (i) the period prior to Respondents' acquisition of the Subject Property on February 26, 2015 ("Acquisition Date"); and (ii) the period commencing on the Acquisition Date and ending on April 10, 2015, which is the date Respondents' and Staff reached agreement, in principle, to provide for construction of the stairs in settlement of the Commission's claims and voluntarily entered into negotiations with Staff concerning the terms of this Consent Agreement, which they have thereafter continued to pursue with reasonable diligence. The

Commission agrees not to seek or impose any further penalty or liability related to the Unpermitted Development defined in Section 10 below, except as provided in 4.4 below. Nothing in this Consent Agreement shall limit any right or ability of Respondents to seek contribution, indemnity or other recovery from prior owners of the Malibu Beach Inn for some or all of the payments required by Respondents under this Consent Agreement and related costs, attorneys' fees and expenses.

4.2. Except as otherwise provided in this Consent Agreement, the settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see PRC§ 30823), or into such other public account as authorized by applicable California law at the time of the payment, and as designated by Staff, for the purpose of public access improvements in the Malibu/Los Angeles County area. The settlement monies shall be submitted to the Commission's Ventura Office, at the address provided in Section 3.5 to the attention of Heather Johnston of the Commission, payable to the account designated under the Coastal Act, and shall include a reference to this Consent Agreement by number.

4.3. As part of the settlement of this matter, Respondents have agreed to finance, the construction of a signalized crosswalk across the Pacific Coast Highway near (within 200 feet of) the Malibu Beach Inn (hereinafter "Crosswalk Project"). The crosswalk will improve coastal access and enhance public safety by providing a safe pedestrian crossing in the area near the Malibu Pier where there is nearly one half mile (2500') between the nearest crosswalk to the west and the crosswalk to the east. The new crosswalk traffic signal at the new crosswalk would be linked and coordinated by fiber cable and smart controller to the existing crosswalk signals to the east and west to improve traffic flow and safety. All facets of the crosswalk planning, development, and construction shall be completed within 36 months of the effective date of this Consent Agreement, and Commission staff shall be apprised of such completion in writing, pursuant to Section 3.5, above, within 10 days of said completion. No less than 30 days prior to the expiration of the 36-month deadline, if Respondents find that the Crosswalk Project will not be completed by the 36-month deadline, they may request a one-year extension to complete the Crosswalk Project. If Staff determines that Respondents have demonstrated reasonable diligence in pursuing the completion of the Crosswalk Project, the one-year extension shall be granted. Respondents may request additional one-year extensions from Staff, but in no case shall extensions be granted beyond 5 years from the date of issuance of this Consent Agreement. The foregoing 36-month timeframe shall be extended by Staff for up to two additional years pursuant to Section 5 below, provided that Respondents demonstrate reasonable diligence in pursuing completion of the Crosswalk Project. Prior to remitting final crosswalk plans to the City of Malibu, Respondents shall submit the plans to Staff for review for consistency with this Consent Agreement and the City of Malibu LCP. If Respondents are unable to obtain all necessary government approvals and implement the crosswalk project described in this paragraph, within the 36-month timeframe, or the 5-year period if an extension is granted, then in lieu of the crosswalk project, Respondents shall pay \$425,000 to the account listed in Section 4.2, above.

4.3.1. If Respondents elect to not pursue the Crosswalk Project at any time within the 36-month period, or the 5-year period if the extension is granted, Respondents may immediately remit the remaining \$425,000 of the penalty to the account listed in Section 4.2.

4.3.2. So long as Respondents are actively working to complete the Crosswalk Project during the 36-month time period, or the 5-year period if an extension is granted, they shall not be subject to stipulated penalties under Section 4.4.

4.4. Strict compliance with this Consent Agreement by all parties subject thereto is required. Respondents' failure to comply with any term or condition of this Consent Agreement, including any deadline contained in the Consent Agreement, unless Staff grants an extension under Section 5.0, below, will constitute a violation of this Consent Agreement and may result in Respondent being liable for stipulated penalties in the amount of \$500 per day per violation for as long as the violation persists. Respondents shall pay stipulated penalties within 10 days of receipt of written demand by the Commission penalties. If Respondents violate this Consent Agreement, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822, 30820, and 30821 as a result of the lack of compliance with this Consent Agreement.

5. MODIFICATION OF DEADLINES

Prior to the expiration of any of the deadlines established by the Consent Agreement, Respondents may request from Staff, and Staff shall consider, an extension of any such deadlines. Such a request shall be made in writing 10 days in advance of the deadline and directed to Staff in the San Francisco office of the Commission.

6. SITE ACCESS

6.1. Respondents shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under the Consent Agreement with access to the areas of the property described below. Nothing in this Consent Agreement is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the subject property on which the violations are located and (2) any areas where work is to be performed pursuant to the Consent Agreement or pursuant to any plans adopted pursuant to the Consent Agreement or pursuant to any development approved through a CDP, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the property and overseeing, inspecting, documenting (including by photograph and the like), and reviewing the progress of Respondents in carrying out the terms of the Consent Agreement.

7. REVISIONS OF DELIVERABLES

Staff may require revisions to deliverables required under the Consent Agreement, and Respondents shall revise any such deliverables consistent with Staff's specifications, and resubmit them for further review and approval by Staff, within the time frame specified by Staff. Staff may extend the time for submittals upon a written request and a showing of good cause, pursuant to Section 5.0 of this Consent Agreement.

8. PERSONS SUBJECT TO THE CONSENT AGREEMENT

Mani MBI DE LLC, its successors, heirs, assigns, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of this Consent Agreement, and shall undertake work required herein according to the terms of this Consent Agreement. Respondents shall provide notice to all successors, assigns, and potential purchasers of the Subject Property of any remaining obligations or restrictions under this Consent Agreement.

9. IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is subject to this Consent Agreement ("Subject Property") is described as follows:

Approximately 1.06 acres of oceanfront property, located along Carbon Beach at 22878 Pacific Coast Highway in Malibu, Los Angeles County, and identified by the Los Angeles County Assessor's Office as APNs 4452-005-029, 4452-005-030, and 4452-005-031.

10. UNPERMITTED DEVELOPMENT

The term "Unpermitted Development" as used in this Agreement shall mean those violations of the Coastal Act and/or CDP No. 5-87-576 identified in the Commission's Notices of Violation dated April 1, 2015 and October 9, 2015 delivered to Respondents, including but not limited to failure to construct two public access stairways on the adjacent State Parks property as required by CDP No. 5-87-576, and de facto privatization of a lateral public access easement on the beach in front of the Malibu Beach Inn and on State tidelands, in contravention of the public access easement and of Special Condition 1 of CDP No. 5-87-576.

11. COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these Coastal Act violations under Public Resources Code Sections 30810 and 30821. In light of the fact that these issues are being resolved in settlement, Respondents have agreed not to and shall not contest the Commission's jurisdiction to issue or enforce this Consent Agreement at a public hearing

or any other proceeding by or before the Commission, any other governmental agency, any administrative tribunal, or court of law having jurisdiction.

12. IMPLEMENTATION REVIEW

In order to facilitate coordination regarding implementation, including compliance, and in order to ensure that Respondents remain in compliance with all aspects of this Consent Agreement, Respondents agree that they may submit, at their discretion, no more than monthly status reports describing Respondents' implementation of or compliance with the Consent Agreement, and in turn Staff agrees to discuss said status reports and any concerns it may have regarding implementation and/or compliance at the request of Respondents dependent upon the schedules of both parties. If Staff raises an issue of implementation in this context, Respondents agree to address the issue within 10 days of Staff raising that issue. In the event that Staff becomes aware of a circumstance that Staff believe constitutes a violation of the terms of the Consent Agreement, Staff will make every possible effort to notify Respondents of said circumstance within two weeks of discovery so as to avoid the profuse accrual of penalties.

13. CIRCUMSTANCES OF RESOLUTION

Respondents acquired the Subject Property on February 28, 2015 and assert that they did so based upon what they allege was a justifiable belief that conditions of the 1987 Coastal Development Permit (CDP 5-87-576) had been satisfied or waived;

Respondents allege and have stated in prior communications with Commission staff that they have good faith belief, which they assert is substantiated by facts and circumstances, that they are not responsible for the construction of the staircases, however, to resolve this matter via settlement, Respondents have agreed to do so as a good "coastal neighbor."

Commission staff disputes these claims and asserts that Respondents obligations to build the staircases are supported by facts and law; however through this Consent Agreement, the parties desire to settle all claims and controversies relating to the Unpermitted Development. Respondents reserve all rights to seek contribution, indemnity, and other remedies against prior owners of the Subject Property.

14. SETTLEMENT OF MATTER PRIOR TO HEARING

In light of the intent of the parties to resolve these matters in settlement, Respondents have not submitted a "Statement of Defense" form as provided for in Section 13181 of Title 14 of the California Code of Regulations and have agreed not to contest the legal and factual bases for, or the terms or issuance of, the Consent Agreement, including the allegations of Coastal Act violations contained in the Notice of Intent letter, dated October 9, 2015.

15. EFFECTIVE DATE AND TERMS OF THE CONSENT AGREEMENT

The effective date of this Consent Agreement is the date this Consent Agreement is issued by the Commission. This Consent Agreement shall remain in effect permanently unless and until rescinded by the Commission.

16. FINDINGS

This Consent Agreement is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Findings for Consent Agreement and Consent Cease and Desist Order and Consent Administrative Civil Penalty."

Respondents have executed this Consent Agreement without having reviewed such findings and may or may not agree with the content of the Findings, however in light of Respondents' desire to settle this matter amicably, Respondents are willing to execute and be bound by this Consent Agreement. The activities authorized and required under the Consent Agreement are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in the Consent Agreement as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

17. GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to the Consent Agreement, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to the Consent Agreement.

18. RECORDATION OF CONSENT AGREEMENT

Respondents agree to record the Consent Agreement against the Subject Property. The recorded Consent Agreement shall be in final form, approved by the Commission, and fully executed by both parties. Respondents shall remit evidence to Staff, pursuant to Section 3.7, above, that the Consent Agreement has been recorded within 30 days of the effective date of the Consent Agreement.

19. SETTLEMENT OF CLAIMS

The Commission and Respondents agree that this Consent Agreement settles the Commission's monetary claims for relief for those violations of the Coastal Act alleged in Section 10.0 of the Consent Agreement (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, 30821, and 30822), with the exception that, if Respondents fail to comply with any term or condition of the Consent Agreement, the Commission may seek monetary or other claims for violation of the Consent Agreement. In addition, the Consent Agreement does not limit the Commission from taking enforcement action

due to Coastal Act violations at the Subject Property or elsewhere, other than those specified herein.

20. CONTRACTUAL OBLIGATION

This Consent Agreement shall run with the land, binding Respondents and all successors in interest, heirs and assigns of Respondents, and future owners of the Subject Property. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Consent Agreement.

21. MODIFICATIONS AND AMENDMENTS

Except as provided in Section 5.0, and for minor, immaterial matters upon mutual written agreement of Staff and Respondents, the Consent Agreement may be amended or modified only in accordance with the standards and procedures set forth in section 13188(b) of Title 14 of the California Code of Regulations.

22. NATURE OF ORDERS AND OF CONSENT

22.1. Through the execution of this Consent Agreement, Respondents agree to comply with the terms and conditions of this Consent Agreement. This Consent Agreement authorizes and requires removal and construction activities, among other things, outlined in this Consent Agreement. Nothing in this Consent Agreement conveys any right to development on the Subject Property or the neighboring State of California and Los Angeles County owned properties (APNs 4452-005-901 and 4452-005-902) other than the work expressly authorized by this Consent Agreement. Any development subject to Coastal Act permitting requirements that is not specifically authorized under this Consent Agreement requires a coastal development permit. Nothing in this Consent Agreement will restrict the submittal of any future application(s) by Respondents for coastal development permits for proposed development on the Property consistent with applicable law. Nothing herein provides any assurance of the City of Malibu's or the Commission's approval of any future application(s) by Respondent for coastal development permits. Through the execution of this Consent Agreement, Respondents agree to comply with this Consent Agreement, including the following terms and conditions.

22.2. Respondents further agree to condition any contracts for work related to this Consent Agreement upon an agreement that any and all employees, agents, and contractors, and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein. Any violation(s) of this Consent Agreement by employees, agents, contractors, successors or assigns (but not violations by subsequent owners or their employees, agents, contractors, successors or assigns, so long as the subsequent owners are not controlled in any way by the interests of Mani MBI DE, LLC), shall be ascribed to Respondents.

23. GOVERNMENTAL JURISDICTION

This Consent Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

24. NO LIMITATION OF AUTHORITY

24.1. Except as expressly provided herein, nothing in the Consent Agreement shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act (PRC Sections 30800 to 30824), including the authority to require and enforce compliance with the Consent Agreement.

24.2. Correspondingly, Respondents have entered into the Consent Agreement and agreed not to contest the factual and legal bases for issuance of the Consent Agreement, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce the Consent Agreement.

25. INTEGRATION

The Consent Agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in the Consent Agreement.

26. STIPULATION

Respondents attest that they have reviewed the terms of the Consent Agreement and understand that its consent is final and stipulate to issuance of the Consent Agreement by the Commission.

27. CERTIFICATION OF AUTHORITY

The person who signs this document on behalf of Mani MBI DE, LLC attests that he or she has the legal authority to bind Mani MBI DE, LLC and the Malibu Beach Inn, and represents that the aforementioned party owns the Subject Property.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:

Mani MBI DE, LLC

By: _____

Title: _____


SIMON MANI
MANAGER

NOV 18, 2016

Date

Consent Agreement (Malibu Beach Inn)
CCC-16-CD-04& CCC-16-ACP-02
Page 13 of 13

Executed in _____, California on behalf of the California Coastal
Commission and thereby issued;

John Ainsworth, Acting Executive Director
California Coastal Commission

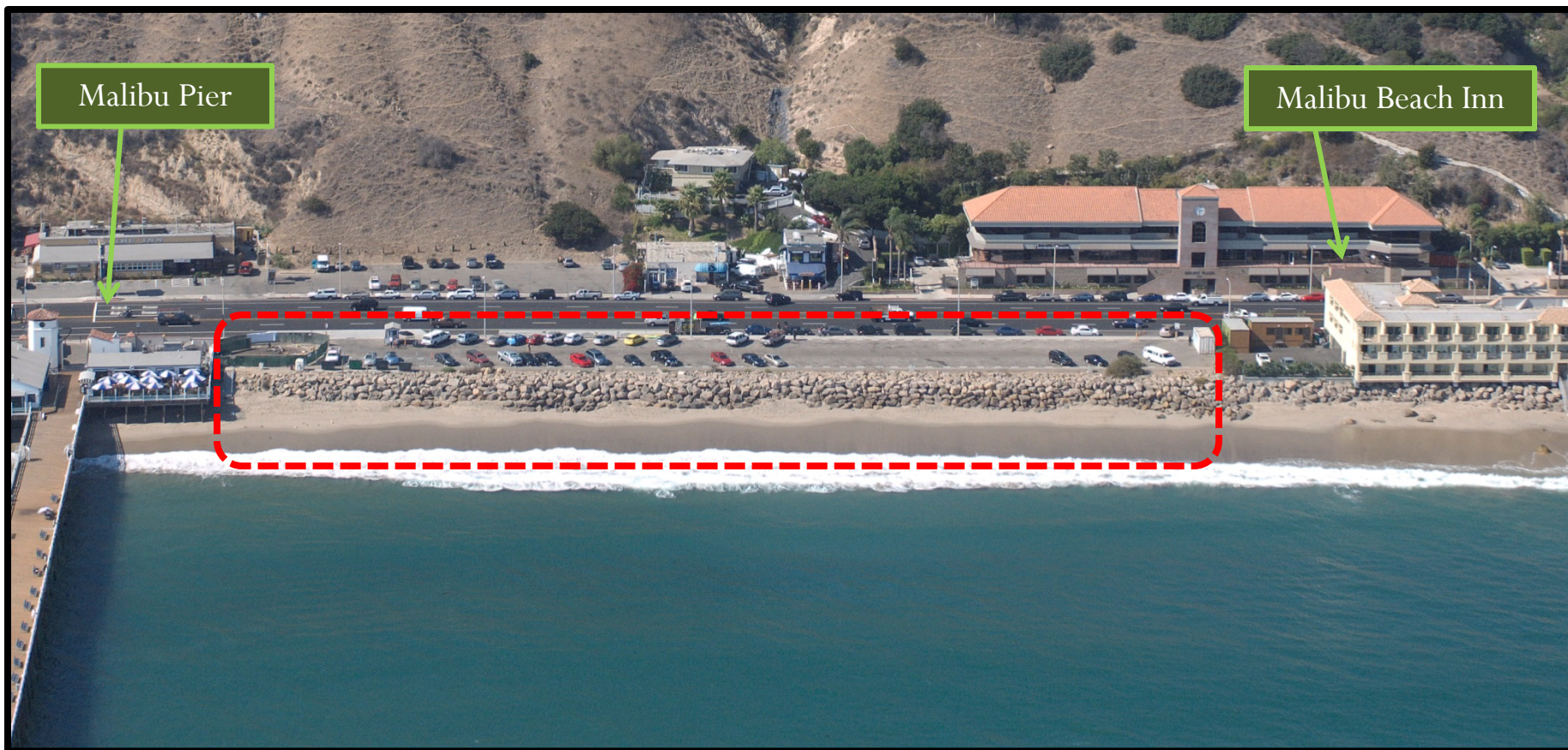
Date

MALIBU BEACH INN (2013)



CCC-16-CD-04 & CCC-16-AP-02
Exhibit 1

LOCATION OF REQUIRED PUBLIC ACCESS STAIRWAYS



<http://www.californiacoastline.org/>

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 2

VICINITY OVERVIEW



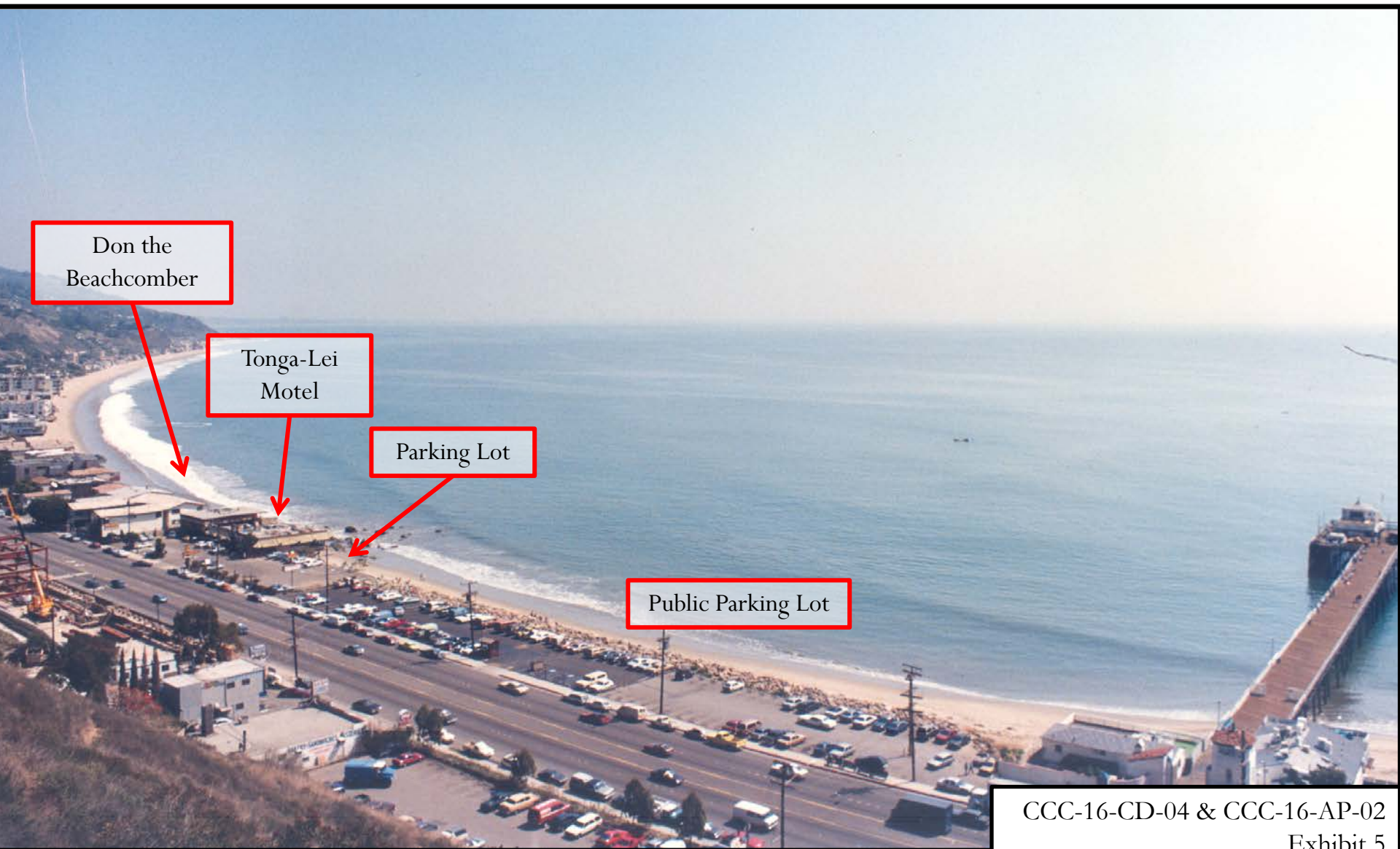
APPROXIMATE LOCATION OF PUBLIC ACCESS POINTS ON CARBON BEACH



- Existing open access
- Existing access – closed for repairs
- Access to be constructed through this action

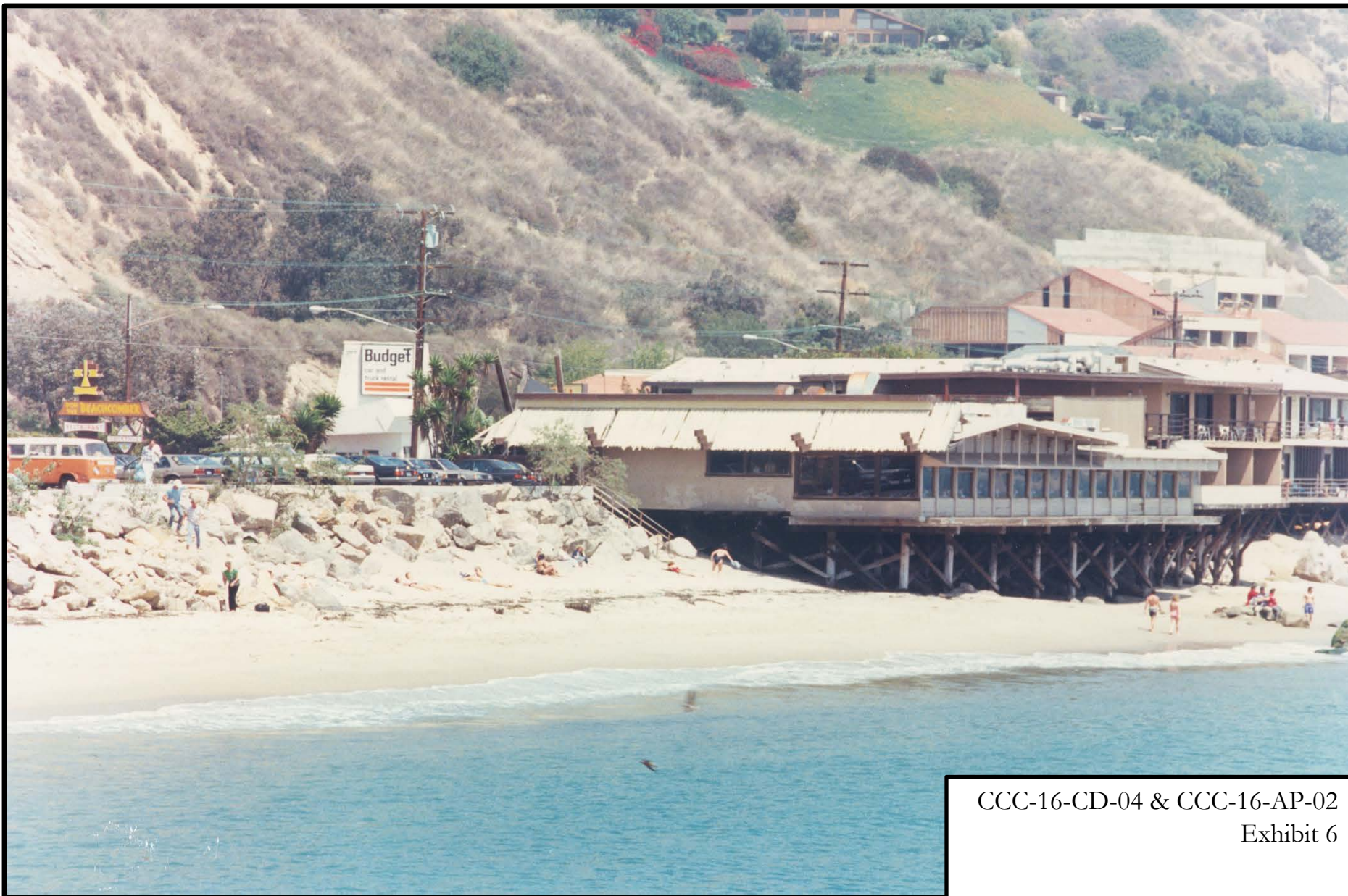
CCC-16-CD-04 & CCC-16-AP-02
Exhibit 4

PRE-CDP 5-87-576 DEVELOPMENT (APPROX. 1985)



CCC-16-CD-04 & CCC-16-AP-02
Exhibit 5

PRIOR TO RE-DEVELOPMENT ACCESS TO BEACH ACROSS SUBJECT PROPERTY (APPROX. 1985)



CCC-16-CD-04 & CCC-16-AP-02
Exhibit 6

MAP OF AREA ADJACENT TO MALIBU BEACH INN



Malibu Beach Inn

Carbon Beach

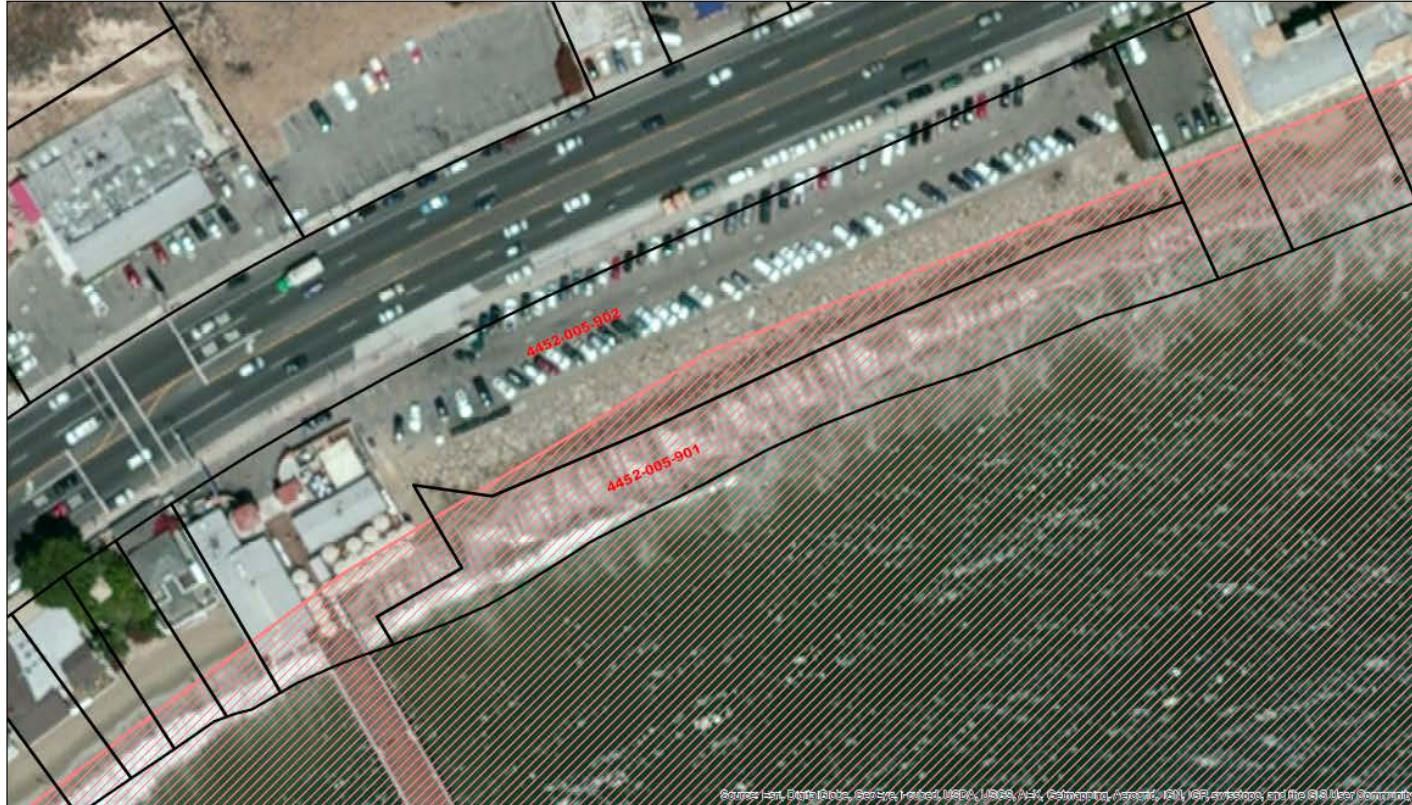
Malibu Pier

Malibu Beach State Park

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 7

PUBLIC PROPERTY UPFOAST OF MALIBU BEACH INN

Los Angeles County APNs 4452-005-901 & 902



Coastal Commission Permit Jurisdiction

Locations approximate. For illustrative purposes only.

Grant Deed 95-1527006 includes legal description of property boundaries.

DAR 06/28/2016

APN 4452-005-902

State of California Department of Parks and Recreation

APN 4452-005-901

Los Angeles County Beaches and Harbors

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 8

ROCK REVETMENT AS OF 1972



CCC-16-CD-04 & CCC-16-AP-02
Exhibit 9

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

TH. 10.2.

FILED: 8/11/87
49th DAY: 9/8/11
180th DAY: 2/7/88
STAFF: Emerson PC
STAFF REPORT: 8/28/87
DECISION DATE: 10/15/87
REV. FINDINGS 1/12-15/87 88

REVISED CONDITIONS AND FINDINGS

Application: 5-87-576 (Miser and Cooper)

Applicant: Marlin Miser and Martin Cooper
22878 Pacific Coast Highway
Malibu, California

Description: Demolish existing hotel and restaurant and construct three level 47 room hotel with 52 parking spaces, 33 feet above existing grade, stairways from state beach parking lot to state beach, and rock revetment

Site: 22878 Pacific Coast Highway, Malibu, Los Angeles County
APN 4452-05-029,030,031

Local Approval Received: Los Angeles County Conditional Use Permit
Case Number 86459--(-4)

LUP Designation 13--General Commercial

COMMISSIONERS VOTING:

Yes: Cervantes, Franco, Glickfeld, Howard, MacElvaine, Gotch,
McInnis, McMurray, Nathanson, McCabe, Wright, Chairman Wornum

Substantive File Documents:

1. Malibu/Santa Monica Mountains Land Use Plan, County of Los Angeles Local Coastal Program, December 30, 1986.

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

Page 1 of 60

2. 5-84-754 (Ackerberg); 5-83-136 (Geffen); 5-83-242 (Singleton); 5-83-871 (Diamond); 5-85-309 (Harris); 5-85-789 (Miller); 5-85-299 (Young and Golling); 5-84-592 (Gordon); 5-85-178 (Lieber); 5-84-607 (Mayer); 5-85-330 (Specht); 5-85-555 (Newhart), 5-85-299, 5-85-299A, 5-85-546 (Young and Golling);
3. Appeal Number 182-81 (Malibu Deville); 196-81 (Malibu Pacifica); 5-24-77 (Schiff); 5-82-596 (Malibu Vista); 5-85-503A (Darbonne); 5-86-592 (Central Diagnostic Labs).
4. 5-83-996 (Roland), 5-83-288 (Ehringer), Appeal 158-81 --162-81 (Mussel Shoals), 5-82-579 (Surfside Colony), 5-84-298 (Polos), 4-84-01 (Griswold), 5-83-395 (Chevron), P-79-5386 (Edison); 5-81-474 (Freshman), Appeal numbers A 27-78 (Benton), 288-78 (Smith), 160-78 (Gershwin), 4-82-90 (Nollan), 5-85-607 (Casden), 5-83-690-701 (Gannon), 6-87-371 (Van Buskirk), 6-87-391 (Childs)
5. 5-85-506 (General Motors), 5-84-239 (Reco), 5-85-418 (Adamson), 5-82-163 (Western Capital), 5-82-381 (Cooper and Miser), P-77-428 (McGonigle), 5-81-121 (Monkarsh), 5-82-540A (Monkarsh), 5-84-94 (Malibu Coast Properties), 5-85-603 (Roussos), 5-83-276 (Nantucket Light), 5-84-696 (Barrera), Appeal Numbers 49-79 (Interstate Marina) and 207-79 (Marina Plaza).
6. Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981).
7. "Economic Profiling of Beach Fills" Coastal Sediments '77, Richard Silvester.
8. Shore and Sea Boundaries, U.S. Department of Commerce, Aaron Sholowitz.
9. Shore Protection in California (1976) California Department of Boating and Waterways.
10. Georgia-Pacific Corporation v. California Coastal Commission (1982) 132 Cal. App 3d 678.
11. Assessment and Atlas of Shoreline Erosion Along the California Coast, California Department of Navigation and Ocean Development, July 1977.
12. Variable Sediment Flux and Beach Management, Ventura County, California; Orme and Brown, UCLA, Coastal Zone 83, Volume III.
13. Greenlaw-Grupe Junior, et al vs. CCC, Santa Cruz Superior Court 73098, March 1985; Mussel Shoals vs Calif. Coastal Commission; Nollan Vs. California Coastal Commission; Whaler's Village Club v. Cal. Coastal Com'n (1986) 173 Cal.App.3d 240

14. Draft EIR, Wastewater Management Facilities, Malibu Area, County of Los Angeles Department of Public Works
15. Lockwood -Singh Associates, Project 3722-72, "Report of Geotechnical Investigation of Proposed Malibu Motel, 22878 Pacific Coast Highway, Malibu California"

RESOLUTION

The Commission adopts 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. STANDARD CONDITIONS: See Attachment X.

III. SPECIAL CONDITIONS

1. Lateral Access

Prior to the transmittal of the 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 provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property.

The easement shall extend the entire width of the property from the mean high tide line to the seaward edge of the approved hotel structure.

- a) Privacy Buffer. The area ten feet seaward of the seaward edge of the approved hotel shall be identified as a privacy buffer. The privacy buffer shall be restricted to pass and repass only, and shall be

available only when no other dry beach areas are available for lateral public access.

- b) The remaining area between the interface of the revetment and the sand and the mean high tide line shall be available for passive recreation. It is understood by both parties that the mean high water line and the interface of the sand and the revetment will be ambulatory from day to day.

All fences, no trespassing signs, and other obstructions that may limit public lateral access on the sandy beach, shall be removed as a condition of development approval, and the applicant shall agree to place no such signs or obstructions on the beach within the area subject to this offer.

The 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. Assumption of Risk.

Prior to transmittal of the permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from shoreline erosion, flood hazard, and liquefaction, and the applicant assumes the liability from such hazards; (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

3. Revised Plans Conforming to the Land Use Plan.

Prior to transmittal of the permit the applicants shall submit revised building and landscape plans conforming to Section 138 of the certified Malibu/Santa Monica Mountains Land Use Plan. The plans shall show:

- a) Maintenance of appropriate parking ratios for motel use, as shown in Attachment 11 of the Malibu/Santa Monica Mountains Land Use plan.

b) Height of the structure shall not exceed 35 feet above the level of the existing parking lot, with the exception of cupolas that do not increase the floor area, in conformance to policy 138(b) of the LUP. Furthermore, the entire development shall not include more than three levels, including the parking level.

c) Height of the wall along the property line at Pacific Coast Highway shall be limited to 30 inches for all opaque portions of the property-line wall, with the exceptions of pilasters. Other structures located at ground level including signs, shall be limited to those shown in the revised plot plan so that portions of the view from automobiles on Pacific Coast Highway to the ocean will be preserved.

d) No more than eighty percent (80 %) (220 feet, two hundred twenty feet) of the frontage of the lots (282.55 feet) shall be occupied by permanent structures visible from Pacific Coast Highway with the exception of the aforementioned low wall.

e) Wall treatments, signs, decorative features and planting shall be compatible with those approved for the Malibu Esplanade, Reco, and Cross Creek. Pavement in pedestrian areas shall be compatible with those selected for the Malibu Esplanade and Cross Creek Road.

f) Appropriate pedestrian seating areas shall be provided adjacent to Pacific Coast Highway consistent with that projected as a part of the Esplanade. And the applicants shall not interfere with pedestrian traffic from Pacific Coast Highway to the beach.

g) Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of Beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal:

h) The plans for the foundation, seawall, parking structure and viewing deck shall be revised and engineered to the satisfaction of the Executive Director. The plans shall show the following limits on the seaward extension of the revetment and the viewing deck.

(1) Prior to design the applicants shall provide records of excavations that show the seaward extent of the existing revetment at the westerly, State Parks, property line.

(2) The seaward extent of the present revetment at the westerly, State Parks, property line shall be the seaward limit of the toe of the new revetment and of any additions to the present revetment.

(3) To conform to this condition some of the present fill over the beach may need to be removed, and a portion of the parking deck may need to be constructed as a deck rather than supported by fill.

(4) The viewing deck shall extend no farther than 25 feet landward of the most landward mean high tide, as determined by the State Lands Commission. The stairs and viewing deck shall be supported by concrete piling and shall not obstruct wave action.

i) In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access on the sandy beach, shall be removed as a condition of development approval, and the applicant shall agree to place no such signs or obstructions on the beach.

4. Compliance with County Health Code and Regional Water Quality Control Board.

Prior to transmittal of the permit the applicants shall present approved final plans for the septic system. The revised plans shall have been reviewed and approved by the Los Angeles County Engineer Facilities Division and the Department of Health Services. They shall be in compliance with all requirements of the Los Angeles County Health code and Plumbing Code and any other applicable septic system standards. The plans shall show that these standards and code requirements have not been waived for the proposed project, and that the proposed septic system can be expected to function for the life of the structure proposed in this project.

In addition, the plans shall be reviewed and approved by the Regional Water Quality Control Board and shall be found to have no impact on the use of the beach waters for body contact sports. If the RWQCB finds that the slope, depth to groundwater percolation rate or replacement area is deficient such that there will be a reduction in public safety and use and enjoyment of ocean waters, the number of proposed rooms shall be reduced until the RWQCB is able to approve the sewage disposal system.

5) State Lands

Prior to the transmittal of a permit the applicants shall obtain a written determination from the State Lands Commission that:

(a) No State lands and/or lands subject to the public trust are involved in the development, or

(b) State lands and/or lands subject to the public trust are involved in the development and all permits that are required by ~~the~~ State Lands Commission have been obtained, or

(c) State lands and/or lands subject to the public trust may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

6) Public Rights.

The applicants shall, by accepting the terms and conditions of the permit, agree that issuance of the permit and completion of the authorized development shall not prejudice any subsequent assertion of public rights, e.g., prescriptive rights, public trust, etc.

7) Storm Design and Debris Removal.

Prior to the transmittal of the Coastal Development Permit, the applicants shall submit certification by a registered civil engineer that the proposed shoreline protective device is designed to withstand storms comparable to the winter storms of 1982-83. The applicants shall be responsible for the removal of debris that is deposited on the beach or in the water during construction of the shoreline protective device or as a result of the failure of the shoreline protective device.

8) Construction Materials.

Disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be re-deposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or construction material.

9) Maintenance/Seaward Extension Requires Permit.

Any change in the design of the wall or future additions or reinforcement seaward of the wall, including placement of rock, boulders or footings will require a Coastal Development Permit. A new Coastal Development Permit shall also be required if the existing wall is not left in place. If the existing wall is removed, then a realignment of the wall so that all portions (including the footing) are no farther seaward than the existing wall shall be required.

10) Maintenance.

Maintenance of the protective works shall be the responsibility of the applicants. If after inspection, it is apparent that repair or maintenance is necessary, the applicants should contact the Commission office to determine whether permits are necessary.

11) Construction Scheduling.

Prior to the transmittal of a Coastal Development Permit for this project, the applicants shall submit, for review and approval in writing by the Executive Director, a plan for the seawall construction which will indicate the proposed access to the project site and the methods employed to minimize disruption or public use of the adjacent beach area during construction. The plan shall provide, to the maximum extent practicable, for the construction of the seawall from the applicants' property, while minimizing the use of heavy equipment on the beach area.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description

The applicants propose to demolish a fourteen unit motel, a restaurant and a parking lot on three adjacent beach lots and replace the structures with a three level 47 room motel, 52 parking spaces and a rock revetment. The revetment will extend along the edge of the existing parking lot the entire width of the property, and will extend seaward at a one and a half to one (1-1/2:1) slope, 30-40 feet seaward of the present parking lot.

For purposes of determining the State Lands line, the applicant submitted plans for a revetment that extended 30 feet seaward of the seaward edge of the parking lot. It may, however, extend up to 40 feet seaward. One hundred twenty-four linear feet of the revetment exists on the western half of the property and ties in to an existing revetment on Surfrider State Beach. This existing armor rock on the westerly 124 feet of the property extends an indeterminant distance out under the sand, at a 1.5:1 slope. It was installed as an emergency action as an extension of the rock revetment which was placed in 1983 to protect State Park property to the west. The new revetment will line up with this rock wall, and will tie in to an existing flood control outlet at the eastern property line. It will extend as far seaward as the existing parking lot revetment. The project is in Malibu directly adjacent to the Malibu Pier parking lot, east of Surfrider State Beach and west of Carbon Beach.

The 47-unit hotel, will be no more than three levels in height including parking. Present plans show that it will extend 32 feet above existing grade, which is an existing landfill parking lot. It extends laterally over 80 percent of the width of the lot.

It includes 52 parking spaces, 14 of which, seven behind, and seven in front, are tandem. The applicants have received conceptual approval from State Parks for beach stairs from the state park parking lot to the beach, and propose to retain an access corridor across their own parking lot from Pacific Coast Highway to the beach that will be open to the public as well.

The lots lie between the highway and the beach. Over the years, landowners on the Ocean side of Pacific Coast Highway have filled their lots to bring them up level with Pacific Coast Highway. On this fill they have constructed apartments, strip commercial development, parking lots and leach fields. Generally this fill has been protected from wave action by bulkheads. In the case of this applicant, a seven foot high bulkhead lies between the filled area and the sandy beach.

The motel and the restaurant that are scheduled for demolition are less than 20 feet high and do not extend the entire width of the property. Instead, part of the property, about 45% of the frontage is developed only with the parking lot. The applicant now provides a cement staircase leading over a revetment from the parking lot to the beach.

The current restaurant structure is on pilings and extends out over the wet sand 48 feet, in fact encroaches past the most landward recorded mean high tide line by about sixteen feet. The applicant proposes to pull the new motel structure back to the line of the seaward edge of the parking lot.

The toe of the bulkhead, located at most 40 feet seaward of the edge of the parking lot approaches mean high tide. According to the State Lands Commission, the toe of a 30 foot wide revetment will be located 23 feet landward of the 1961 mean high tide at the west property line and 36 feet landward of the mean high tide at the east property line. The toe of the maximum 40 foot rock wedge revetment will be 13 feet from mean high tide on the west and 26 feet on the east, because the 40 foot wide revetment will be ten feet closer to the water's edge than the 30 foot wide revetment. The viewing deck, as revised, will be about 25 feet inland of the 1961 mean high tide line. State Lands Commission staff confirmed the applicant's assertion that the State Lands Commission reviewed the revetment in generating the State Lands letter. (telephone, Aug 31, 1987).

The apparent extent of the development on the sandy beach will be less as a result of this permit. While the applicant proposes a revetment on the sandy beach, the applicant proposes to remove the restaurant that extends 48 feet on pilings above the beach, well into the surf zone, and limit the seaward encroachment of the hotel to the decks, which will extend six feet seaward of the edge of the present parking lot, and to construct only a viewing platform and deck seaward of the building lobby. This viewing deck will extend 27 feet seaward of the edge of the parking lot, about 25 feet landward of the 1961 mean high tide line. The applicant has revised plans for the deck so that it will be supported on concrete piling. The stairs that lead from the deck to the beach will provide pedestrian access to the beach from the parking lot. The applicant has stated his intent to leave these stairs open so that the public can get to the beach without passing through the lobby or being subject to interference from the hotel.

The lot includes three adjacent shoreline lots totalling 282.55 feet of beach frontage. Presently the structures extend only over 150 feet of the 282 foot wide lot, and the largest structure, the restaurant, is only one story high. As conditioned and as proposed by the applicant, only 80 percent of this frontage will be occupied by buildings, although the parking lot and the landscaping will extend over 100 percent of the frontage. The applicant has also proposed a 36 inch wall along the Pacific Coast Highway property line, a fountain and pilasters, and a lobby area.

The project is located directly downcoast of the eastern parking lot at Surfrider state beach in Malibu. Surfrider State Beach is a heavily attended State Beach and the site of an annual surfing contest because of a unique wave break.

Currently stairs lead from the applicant's parking lot over the rip rap to the beach. In addition to providing informal vertical access on his own lot, the applicant has offered to provide steps over the rip rap at the state beach parking lot directly to the west of the development. The applicant expects to provide lateral access as part of the hotel development.

Carbon Beach the area to the south of this development represents one of the longest stretches of developed beach in Malibu with the most limited public access opportunities. The north end of Carbon Beach is zoned commercial and built to a portion of its zoning capacity with typical highway strip development, including smaller apartments, motels, restaurants. To the south of the commercial development there is an unrelieved wall of single family houses designed in such a way to exclude both visual and physical access. The Commission has managed to obtain one vertical access on Carbon Beach at Nantucket Light Restaurant, Zonker Harris Accessway, and two additional accessways are offered but not developed, to the east of this project in the single family area. Zonker Harris accessway is within 2,000 feet of this development.

B. Issues Associated with the Tidal Boundary.

The applicant and the State Lands Commission have provided the Commission with somewhat different figures describing the distance of the proposed development from public tidelands. This difference reflects the dynamic nature of the tidal boundary, and the difficulty of evaluating development located on the beach as if the property lines were fixed.

Along the California coast, the line between land and ocean is complex and constantly moving. This dynamic environment has introduced uncertainty into questions about the location of public and private ownerships as well as rights of public use. It is generally accepted that the dividing line between public tidelands and private uplands, or the tidal boundary, in California is the mean high tide line (MHTL) (essentially the same as the ordinary high water mark or line). What is not well settled as a legal matter is how that line translates into an on-the-ground location.

As an engineering matter, establishing that line involves two engineering aspects: a vertical one, predicated on the height reached by the tide during its vertical rise and fall, and constituting a tidal plane or datum, such as mean high water, mean low water, etc.; and, a horizontal one, related to the line where the tidal plane intersects the shore to form the tidal boundary desired, such as a mean high-water mark or line, mean low-water mark or line. The first is derived from long-term tidal observations and, once derived, is for all practical purposes a reliable datum, although it does rise slightly over time with the gradual rise of sea level. The second is dependent on the first, but is also affected by the natural processes of erosion and accretion, and the artificial changes made by man. From an engineering point of view, therefore, water boundary determined by tidal definition is thus not a fixed, visible mark on the ground, such as a roadway or fence. Rather it represents a condition at the water's edge during a particular instant of the tidal cycle.

The courts have not fully resolved the question of the extent to which the location of the tidal boundary in California changes as the profile of the shoreline changes. Where there has not been a judicial declaration of a reasonable definite boundary based upon evidence in a specific case, or where the upland owner has not entered into an agreement with the state fixing the boundary, uncertainty remains.

Nevertheless, despite this legal uncertainty, as a practical matter the actual dividing line between sea and land moves constantly, and this gives rise to issues involving protection of public rights based on use, rather than ownership. These use rights arise as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn, moves across the face of a beach as the beach changes in width on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

On this beach the line of public and private has been historically influenced by the presence of bulkheads, revetments and shoreline protective devices. The applicant has at this time a lot that partially consists of fill over beach sand, protected by a bulkhead, which was placed to allow development of parking and a leach field on the sand. This bulkhead is in some locations protected by additional rocks.

C. Shoreline Protection Devices Hazards and Safety of Development.

Because beaches fluctuate in width, construction on beaches is subject to serious hazards from wave erosion. The shoreline protective devices that are constructed to protect this development can increase the process of erosion. This development proposes to reconstruct an existing timber bulkhead in its present location and to protect it with a rock revetment that is proposed to extend fifteen feet seaward. In a recent action, 6-87-391 (Childs), the Commission reviewed current information about seawalls. In this case the Commission is being asked to a) permit new construction protected by a new bulkhead, b) allow seaward extension of the bulkhead line c) permit fill over sand and the bulkhead line to extend along the beach when the development does not require it to protect an existing structure.

The Commission finds that it is appropriate to allow the revetment, but that the seaward extent of the revetment must be limited to protect the sandy beach. In addition, the Commission finds that the result of its decision to allow any revetment will be that there will be erosion of the beach, especially on this eroding shoreline, where the cumulative effect of past permitted seawalls on this and adjacent properties has been to increase the scouring action of the waves.

Shoreline Protection Devices.

The Coastal Act policies related to construction of shoreline protective devices are as follows:

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. (Emphasis added)

The proposed project involves a vertical bulkhead, protected by a proposed rock revetment, and a viewing deck constructed on pilings that extends considerably seaward of the rest of the development and is subject to wave action. These shoreline structures will affect the configuration of the shoreline and the beach profile and in all probability have some degree of adverse impact on the shoreline. The precise impact of shoreline structures on the beach is a persistent subject of controversy within the discipline of coastal engineering, and particularly between coastal engineers and marine geologists. However, virtually all of the literature acknowledges that seawalls will come to define the shoreline on an eroding coastline, an important point. Most of the literature acknowledges some effect, at least on the supply of sand. A succinct statement of the adverse effects of seawalls is contained in Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981) which was signed by 94 experts in the field of coastal geology:

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

It is widely recognized that large structures such as groins and breakwaters will have significant and obvious impacts on sand supply and beach profiles, but even a relatively small structure such as the one proposed will have an impact on the site and the adjoining area. As stated in a publication by the State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976),

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shore-front property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.

This impact is reiterated in the paper, "Economic Profiling of Beach Fills" by Herman Christiansen which is contained in the proceedings of Coastal Sediments '77 (November 1977). It states:

Observations at some of the investigated beaches have shown that an optimal profile becomes instable, if structures, such as rocks, groins, revetments, piles, stairs etc., are placed within the wave action zone of a beach. Steady erosions, caused by complex high turbulent surf currents, lead to heavy sand losses.

How close a seawall is to the shoreline, and the overall erosion pattern of a beach, are the two key factors that determine the impact of seawalls. It is generally agreed that where a beach is eroding, a seawall will come to define the boundary between the sea and the upland. H.V. McDonald and D.C. Patterson state, in "Beach Response to Coastal Works Gold Coast, Australia" in Coastal Engineering 1984:

On the persistently eroding beaches at North Kirra and Palm Beach, the receding beach line has effectively placed the seawall progressively further and further seaward on the beach profile until no beach exists at all in front of the wall. Clearly, the establishment of fixed seawall

alignments on persistently eroding sections of beach will lead eventually to loss of the beach as a useful recreational amenity.

Whether or not the seawall or erosion leads to the loss of the beach continues to be debated in the literature, but the distinction does not alter the result: the beach in front of the structure disappears over time and the natural shoreward migration of the beach is blocked by the structure. The renowned expert in beach processes, R. G. Dean, attributes the loss to erosion rather than structures, in this discussion from "Coastal Sediment Processes: Toward Engineering Solutions" in Coastal Sediments '87:

Placed along a shoreline with an erosional trend, armoring can perform the intended function of upland stabilization while the adjacent shoreline segments continue to erode. The resulting offset between stabilized and unstabilized segments may be interpreted incorrectly that the armoring has caused the adjacent erosion.

Dean's article goes on to acknowledge potential adverse effects and the responsibility for mitigation of those effects:

...Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.

If armoring is deemed warranted to protect a threatened structure and if rational assessment concludes that installation of the armoring would adversely affect the shoreline, mitigation in the form of periodic additions of beach quality sediment should be considered.

Research on the effects of seawalls continues, and many of the results are not yet available. Much of the research is anecdotal, with results clear enough but the major causes not clearly identified. The potential role of seawalls remains disturbing, as noted in the conclusion to "Coastal Erosion on the Barrier Islands of Pinellas County, West-central Florida", by William O. Sayre, also in Coastal Sediments '87:

In two years of surveying, beach erosion and recovery on the barrier islands of Pinellas County has been measured. An undeveloped island's beach recovered quickly after winter time and hurricane-caused erosion. A highly developed beach without a seawall and near a jetty fared almost as well, recovering more slowly, but showing no net erosion over the two year period. The two other sites, on highly developed barriers and backed by seawalls, have

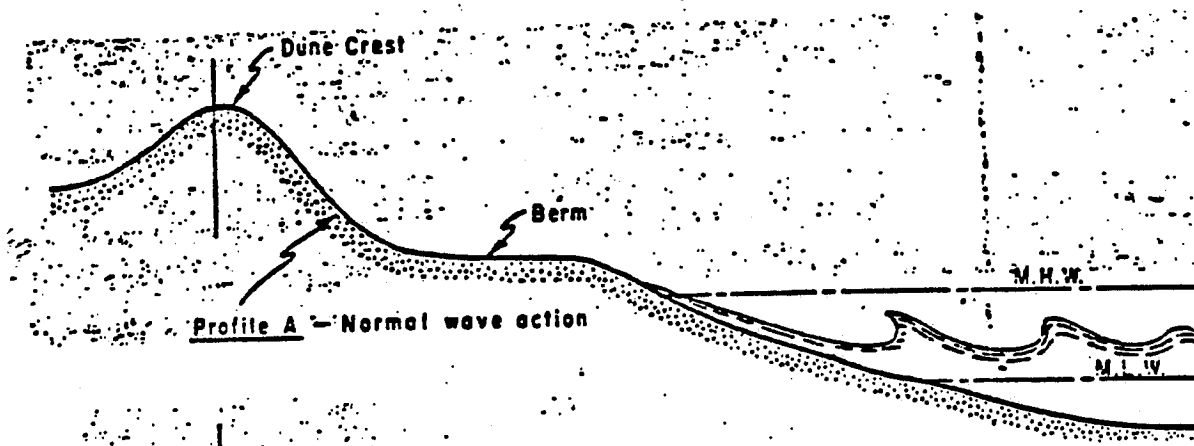
suffered greatly. One narrow beach was completely destroyed by a hurricane and only partially recovered. The other was reduced by at least a quarter and was artificially nourished.

While the experts continue to discuss the exact manner in which seawalls affect shoreline processes, the Commission must make decisions about specific projects. The 1981 statement signed by 94 respected coastal geologists indicates that important public interests in shoreline resources can be harmed through the introduction of shoreline defense structures. Thus, in evaluating an individual project, the Commission must assume - subject to proof to the contrary - that the principles reflected in that statement are applicable. To do otherwise would be inconsistent with the Commission's responsibilities under the Coastal Act to protect the public's interest in shoreline resources.

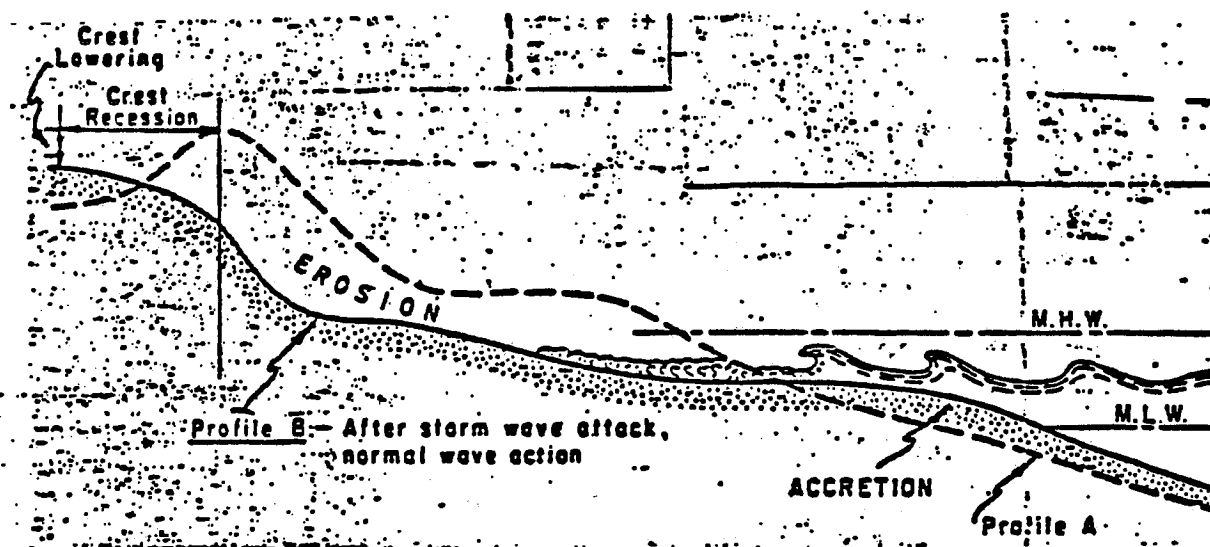
Concerns about adverse impacts on sand supply and vulnerability of structures particularly apply to rigid vertical structures such as the stairs and viewing deck proposed by the applicants. Vertical structures reflect most wave energy. This is a well-known impact of vertical seawalls. For example, the generally accepted "standard" for designing shoreline structures, the U.S. Army Corps of Engineers' Shore Protection Manual (1983) has several references to the proficiency of vertical seawalls to reflect wave energy and as a result scour the beach it fronts (see pages 1-16, 2-113, 5-4, 6-15). This impact can be lessened somewhat by the placement of rock (or rubble) at the base of the wall, but nevertheless, the wall will still cause scour and steepening of the beach profile.

A structure such as the viewing deck as originally proposed can act as a groin. It can cause erosion on either side of it in the event it does not immediately wash away. Because of this vulnerability, the Commission has required that the structure be pulled back towards the seawall, and be constructed in such a way that it does not impede wave energy. This may mean that the deck will need to be replaced following storms such as occurred in 1982-83. Given the other impacts of a groin on the public beach and on adjacent private development, the Commission cannot permit a solid structure within the area subject to constant wave action.

The remainder of the applicant's proposed revetment does not extend beyond other existing development. However, although vertical structures reflect the most energy, even rock structures constructed where only the big storms will reach them, designed to absorb energy, still reflect some energy and increase erosion when the tremendous energy of the big storms reaches them. A discussion of the physical processes of wave run-up on a natural shore will help establish the effects of seawalls on shoreline processes. Sandy beaches are dynamic systems, the individual grains of sand adjust quickly to reflect both the overall supply of sediment and the ongoing forces of waves. A typical non-storm profile of the beach looks like this: (from "Shore Protection in California, DNOD, 1976)



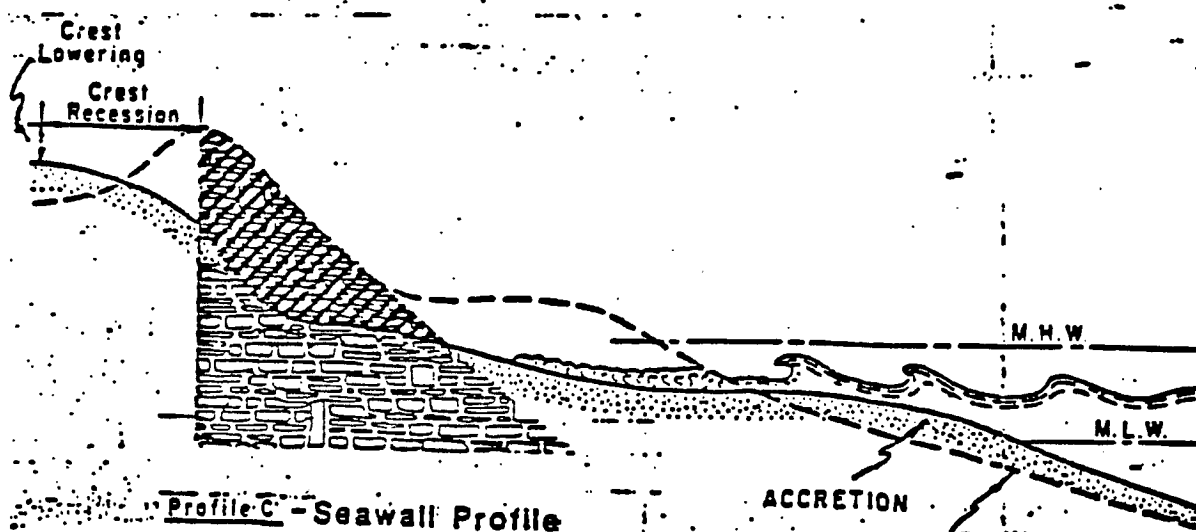
At this profile, the shore has adjusted to a low-energy wave environment, reflecting the short period, low energy waves that strike the beach. The next diagram shows how a beach adjusts to longer period, higher energy waves:



This cross section illustrates several important things about the beaches' adjustment to the higher energy of striking waves. First, the wave energy has eroded material from the foreshore and deposited the material off-shore in a bar. Second, the shoreline profile flattens to absorb the greater amount of wave energy, even with waves breaking on the bar. These adjustments are fundamental to the shore's adjustment to high wave energy. The migration of the material to an off-shore bar causes waves to break in deeper water, and begins the process of energy dissipation far from the inland extent of the beach. The dynamic process of eroding material from the foreshore enables the shoreline to absorb wave energy. This process goes on continuously, if a given

shore profile is not sufficient to absorb wave energy without further erosion, additional material is moved from the shore to the bar to increase the distance between the bar and the inland extent of the wave uprush. The value of the bar cannot be over-emphasized, it is on the bar that winter waves break, and the dynamic processes of the actual shoreline are affected by wave uprush, not actual breaking waves.

The next diagram was made by superimposing a revetment on the shoreline profiles that we saw in the last diagram:



This diagram illustrates dramatically the effect of a seawall on the shoreline. The material shown in cross-hatching is the material formerly available to nourish the bar. This material is now unavailable because it is either behind the seawall, or has been replaced by the seawall. As a result, the bar receives less nourishment. This makes the bar less effective in causing waves to break offshore, and results in greater wave energy being felt on the actual shoreline. That energy is then dissipated by uprush and reflection against the face of the revetment. However, since more energy comes on-shore, more energy is reflected and sand is scoured from the base of the revetment. The Commission concludes from the opinion of experts and from an analysis of the process of shoreline dynamics that placement of a seawall within the areas of a shore affected by those processes adversely affects shoreline processes in front of the seawall as well as property on either side of the seawall. Obviously the impact of a seawall is greater the more often it is exposed to wave attack, and seawalls located far up the beach have less impact than seawalls lower on the beach. For this reason, since there is no present structure on the beach to protect, the Commission is requiring that the proposed toe of the proposed seawall be limited in its seaward extent to the limits of the adjacent, existing bulkhead. In this way there will be no damaging effect such as caused by a groin, but all property will be affected equally by the permitted revetments.

Since most of the coast of California, including this area, is subject to overall erosional processes, even a well-designed seawall adversely affects shoreline processes.

The Commission finds that the probable negative impacts of this seawall must be weighed against the property owner's need to protect the development proposed behind it. Since adjacent structures, including the beach parking lot and the apartments to the east are protected by seawalls, and since the existing seawalls will direct wave energy to this lot if it is not protected, some protection will be necessary to allow development of this lot at all. The Commission recognizes that the seawall will probably change the beach profile by steepening it and increasing beach erosion around it. However, the seawall has been designed and conditioned to minimize encroachment onto the beach and its impact on adjacent properties and to minimize adverse impacts upon local shoreline sand supply.

As well as the general impacts that have been identified above, this proposed wall will result in specific direct physical impacts on the sandy beach as the wall extends farther seaward. The Commission finds that any additional encroachment onto sandy beach area, no matter how small, results in a reduction of sandy beach area available for public use. The proposed condition will limit the amount of encroachment to the line of existing beach fill, but this line may be slightly seaward of the present bulkhead, in order to permit the toe of all the revetments on this beach to form a continuous line.

Section 30235 allows for the use of such a device to protect an existing structure provided that the project is designed to eliminate or mitigate adverse effects on local shoreline sand supply. This is not an existing structure.

Policy 177 of the Coastal Plan limits seawalls to those needed for protection of existing structures, or structures, like this one that are in-fill structures. As noted above, this seawall will protect a new structure, which is not permitted under 30235, but as interpreted in 177 it would be permitted. This is because the existence of seawalls to either side require that this development have some protection, because otherwise those seawalls would divert water onto this development, causing extraordinary erosion. The erosion would cause a hole in the line of revetments, and water would first erode this property and then come around the the adjacent properties from behind their seawalls. Because it would initially be a narrow gap, water and wave energy would be concentrated. Because of these facts the Commission has allowed fill-in revetments to protect new development in a line of existing revetments. By siting the development as landward as possible, and in line with adjacent walls, the revetment will be landward of the waves ~~except~~ during the worst storms, it will not encroach on the beach any more than the shoreline structure that is presently located on the lot to the west, it will minimize impacts maintain a 13 foot setback from the highest known mean high tide line for public access, even on an eroded, winter beach.

Conditions 3,7,8,9 and 10 require relocation of the seawall, proper design of the seawall to withstand the worst of the most recent storms and require the applicants to accept maintenance responsibility for the permitted seawall in the event that improper construction or normal weathering causes debris to become dislodged onto the beach and thus impede public access. Additionally, because of the inherent risks to development situated adjacent to an eroding shoreline, the Commission cannot absolutely acknowledge that the proposed seawall will protect the proposed hotel during all future storms or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the beach-going public. Therefore, the applicant is required to assume the risk of the development of the seawall, and of other hazards.

Other Hazards

This development is subject to hazards because it is adjacent to a storm drain and old stream course, because it is constructed on fill and because it has a high water table and is located 600 feet from an earthquake fault (the Malibu Coast fault). It is therefore subject to hazards from liquefaction, erosion, wave action and flooding. Because of these hazards, the applicant's geologist has recommended that the applicant construct the structure on piling, not on the old fill. However, only because of these special engineered solutions can this structure be constructed at all.

Section 30253 requires that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and 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.

The applicant's geology report has identified risks of construction in waterlogged fill 600 feet from an earthquake fault and risks of construction adjacent to a watercourse, which is now a storm drain conduit. Therefore, Condition 2 requires the applicants to acknowledge these factors and assume the risks inherent construction including the shoreline work. This assumption of risk is recorded in a deed restriction which also serves to assure notice to any future assignees or purchasers. The alternative to permitting the development and allowing the applicant to assume the risk is denial. In striking a balance between these factors, the Commission finds the project consistent with Sections 30235 and 30253.

Pursuant to Section 13166(a)(1) of the Commission's administrative regulations, an application may be filed to remove the attached condition from this permit if new information is discovered which (1) tends to refute one or more findings of the Commission regarding the existence of any hazardous condition affecting the property and (2) could not, with reasonable diligence, have been discovered and produced at or before the original hearing on the permit.

D. Public Shoreline Access

The Commission finds that this development may be approved if it maintains present vertical access to the shoreline and if it provides lateral shoreline access. This access is required because this development physically blocks and reduces existing access along the beach and from the highway to the beach, the expansion of the seawall will reduce the sand area available for recreation and the cumulative impact of intensification of this property will add to the traffic and parking problems along Pacific Coast Highway and it will increase competition for the use of existing public tidelands and state owned recreation facilities. Its construction will add to the number of people using nearby public facilities, including Surfrider State Beach, Malibu Pier and other recreational facilities in the Malibu Santa Monica Mountains.

As a result of this development, less of the beach will be covered by buildings, but more of the beach will be occupied by rock. The applicant believes that only 15 feet of this rock will appear above the sand, because that is what appears above the sand now. The applicant contends that because of the rocks existing on the property to the east and west, protection for the structure will be necessary and the one-and-a-half-to-one blanket is the solution least likely to cause turbulence and erosion.

The Coastal Act contains strong policy provisions in Sections 30210 30211 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).

This development is constructed on land that was subdivided in such a way that there was no access between the first public road and the shoreline. Because developments in areas such as Malibu Beach did prevent access to the shoreline, the legislature provided, in the coastal Act, that development controls be imposed on such land to ensure future access.

New development projects are required to provide public access in compliance with the public access provisions of Chapter 3 of the Coastal Act. The Coastal Act in Section 30210 requires the provision of maximum access in new development projects. Section 30211 prevents development from interfering with existing public rights of access and 30212 defines the situations in which the legislature has determined that additions to single family houses

and the construction of seawalls seaward of existing seawalls requires access, and Section 30213 provides that access be available to all economic groups.

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.

In this instance maximum access would include visual access to the shoreline, access from the first public road to the shoreline and access along the sandy beach to the current bulkhead line. Within the Malibu planning area, access also includes the protection of the infrastructure of beach access, retaining highway capacity for recreational use, reserving of private lands for access related, public serving development.

Section 30211 of the Coastal Act requires that development shall not interfere with access;

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.

In order to approve development, the Commission must find that the development does not block an accessway where there is the potential for prescriptive rights and does not extend into areas where there are other public rights of access, including public trust.

The present structure extends across 150 feet of a 282 foot lot. The applicant contends that presently the parking lot is operated for the motel and the restaurant only and is operated by valets. Only customers of the motel and restaurant may park there, so there is no unrestricted vehicle access to the parking lot. However, the owners do not monitor pedestrian traffic across the parking lot or down the existing steps to the beach, nor do they discourage the general public or guests from sitting on the beach and sunbathing. The sunbathers in the picture attached as an exhibit could be motel guests, restaurant customers or members of the public who parked in the state beach parking lot and used the applicant's stairs.

To respond to the Commission's concerns with regard to 30211, the applicant has situated his beach stairs directly opposite his fire lane and has agreed to continue the policy of non-interference with pedestrian access across his property to the beach, and has agreed to dedicate the sand areas for pass and repass and passive recreation as provided in condition 1. In addition, the

applicant has agreed to construct stairs for the Department of Parks and Recreation so that visitors to the Surfrider State Beach have an alternative method of getting from the parking lot to the beach over the revetment at the State Park parking lot.

Across the open area on the lot there is pedestrian access, and visual access. Presently members of the public use the full extent of the sandy beach for sunbathing, swimming and walking. The present restaurant, on the other hand, does prevent lateral access along the public tidelands.

The proposed structure increases the wall of structures along these three lots both laterally--increasing from 150 feet to 220 feet and increasing in height from about 20 feet to 35 feet.

As proposed, the development will permit pedestrians to get to the water across the property from Pacific Coast Highway and to walk along the beach to tidelands. However, because the beach is an unstable structure, that fluctuates, any structures constructed directly on the sandy beach will directly interfere with lateral access down the coast. Placement of armor rock, which is fill, on the beach 30-40 feet seaward of the present extend of the present parking lot line, over half the property will block access on state lands when the beach is low, and its existence will contribute to the reduction of sand available to rebuild the beach after storms. Armor rock even carefully located at the present bulkhead line will have adverse effects on sand supplies and on public tidelands.

The Commission has reviewed the adverse impacts of seawalls on shoreline processes. In spite of these impacts, the Commission has found that the alternative to replacing this seawall is denial. However the rebuilt seawall will have an adverse impact on access as the effects of the seawall continue. As noted above, the public has ownership and use rights in the lands of the State seaward of mean high water. Seawalls affect the public's ownership and use rights by tending to eventually fix the mean high water line at or near the seawall. This interference with a dynamic system then has a number of effects on the public's ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material which is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effects of this on the public are again a loss of area between the mean high water line and the actual water. Third, seawalls cumulatively affect public access by causing greater erosion on adjacent public beaches. This effect may not become clear until seawalls are constructed individually along a shoreline until they reach a public beach. Finally, seawalls interfere directly with public access by their occupation of beach area.

The applicant has used the present line of encroachment onto sandy beach as the structural set back line. In condition three, the Commission has agreed that this is a reasonable line. However this line in some seasons of the year limits public access, and limits the amount of sand available on the beach. During these seasons, waves reach the present bulkhead, preventing lateral access on the beach, and encroaching on land that is subject to public rights. Only as mitigated below is this seasonal exclusion justified.

Section 30211 requires the protection of rights which the public may have obtained through use. On this section of beach, where the exact location of mean high tide is in such doubt and fluctuation, members of the public commonly walk along the beach, using the narrower private portions of the beach to walk to areas that are clearly public. Surfers carried in this direction by currents come to shore and return along the beach before reentering the water. Photographs in the file document the public's continuing use both in walking across the property and sitting on the sandy beach at the toe of the parking lot bulkhead, adjacent to the present restaurant. The exact extent of public rights have never been determined for the portion of the applicants property that lies above mean high tide line.

While the Commission cannot conclusively determine if prescriptive rights exist, it must protect those potential public rights by requiring an easement dedication formalizing and preserving the existing lateral access. Without this condition protecting these rights and mitigating the direct impact of the wall and of the seaward encroachment of the balconies along 145 feet of sandy beach area, the permit must be denied. Given the potential public interest in the area, Special Condition 3 require a setback from the present sandy beach and conditions 5 and 6 require the applicant to receive any necessary permits from the State Lands Commission and acknowledge any subsequent assertion of public rights. With these conditions, the Commission finds the proposed project consistent with the public access and recreation policies of the Coastal Act.

The Commission imposes a condition of lateral access and passive recreational use to protect public rights and to mitigate the unavoidable loss of sand area represented by this project, an loss that is a result of the present fill and of the construction of the revetment, as outlined below.

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

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

Page 23 of 60

(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 Commission determines that 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.

The legislature's intent in this section was clearly to indicate which developments were so minor that no access from the nearest public road to the shoreline would be required. This development does not fall into the list of exceptions because it includes a new seawall, and a new structure containing 42 additional motel rooms and exceeding the former structure in height by three stories. In the Malibu Land Use Plan the Commission and Los Angeles County developed a standard for the frequency of vertical accessways. In all cases they determined that lateral access was required to serve the interest both of nearby residents and of the public. Vertical accessways were limited in frequency. The Commission accepted a plan to require lateral access on all developments, limit the number of vertical accessways. In this instance, in Carbon Beach the Land Use Plan requires access every 1,000 feet, and this development is immediately adjacent to a publicly maintained accessway at Malibu Pier. By Land Use Plan standards, no access is required if there is

adequate access to the State beach. By improving access at the state beach the applicant has conformed to the Land Use Plan requirement.

Section 30213 requires the Commission to provide access for all segments of the community:

Section 30213 specifically draws the Commission's attention to the economic limitations on access of certain kinds of facilities:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Neither the commission nor any regional commission shall either: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate-income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

The legislature requires low and moderate income facilities but forbids cost control on motel rooms or a means test. To address this problem, the LUP requires recreational shoreline access as a part of other development projects, linking up publicly owned parcels. In addition the LUP provides for the consideration of providing hostels along with hotel facilities, policy 18b.

P18b Protect, expand, and, where feasible, provide new lower cost recreation and visitor-serving facilities, especially public recreational facilities. In particular, consider the feasibility of providing lower-cost hostels in conjunction with development of new hotels. Encourage any new or expanded facilities to utilize sensitive design that is well integrated with the surrounding environment and public access.

The Commission finds that this requirement was not imposed on 5-85-418 (Adamson), a 300 room hotel in the area. The Commission further finds while a larger hotel might conceivably contribute to such a system, a hotel of less than 50 rooms cannot feasibly contribute enough to provide an independent hostel or camping facility, and it is more appropriate to require another kind of low cost access, public shoreline access. The access facilities provided by the applicant including the stairway on his property, the stairways on the State Park property and the seating areas along Pacific Coast Highway provide free access and access support to the beach, as lower cost recreation, and conform to this policy. Without provision of access dedications and facilities, this project would not provide lower cost recreation facilities.

In terms of the provision of public access the Commission notes the impact of this facility on the adjacent public facility. Surfrider state beach is at or near capacity now. The most desirable swimming beach is to the west of this development.

Section 30214 requires the Commission to consider the impacts of the accessway when requiring access.

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.

(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.

(c) In carrying out the public access policies of this article, the commission, regional commissions, and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

In this case sensitive resources nearby are located in the adjacent state beach, in Malibu Lagoon. Reduction of access at this beach would increase the use of the other sandy swimming beach in Malibu Lagoon State Park, which is located at the mouth of the Lagoon. In this way, the hotel is more likely to have an impact on the adjacent public beach the habitat of the Lagoon and on other support facilities that public access to have an impact on a hotel.

The project as conditioned, conforms to the Land Use Plan access policies. In certifying the LUP, the Commission and Los Angeles County developed a series of policies to implement these access provisions.

In the Certified Land Use Plan, Los Angeles County requires public shoreline access, both lateral, and we will see below, vertical access, as a condition of development of shoreline properties. The lateral access policy of the Land Use Plan provides:

LATERAL ACCESS

- P52 For all new development as defined in Public Resource Code Sec. 30106 and 30212(b) between the first public road and the ocean, an irrevocable offer of dedication of an easement to allow public lateral access along the shoreline shall be required unless findings are made, consistent with Section 30212 of the Coastal Act, that access is inconsistent with public safety. Such offers of dedication shall run with the land in favor of a public agency or private association approved by the Executive Director of the Coastal Commission. Such offers shall be in effect for a period of 21 years, and shall be recorded free of prior liens, except tax liens.

The area subject to an access easement shall extend from the mean high tide line landward to (a) the dripline of an existing or proposed structure, or (b) to the top outer face of an approved seawall or revetment, or (c) to the base of the bluff where the bluff exceeds 5 feet in height, whichever is further seaward. Where the easement area adjoins a residential structure, as in (a) above, a strip 10 feet wide measured seaward from the structure shall be available only for public pass and repass when the remainder of the easement area is not passable....

On shoreline developed with residential uses, the required lateral access easement shall be limited to passive recreational use.

In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access within the dedicated easement or deed-restricted area shall be removed as a condition of development approval. The County shall accept offers of dedication of lateral access or shall support acceptance by appropriate groups or governmental agencies.

- P52b For each beach (as defined by Figure 5) which is bordered by residential development, a Beach Agreement may be reached by the County and the beachfront property owners with the approval of the Coastal Commission. ... Additional areas of beach acquired by public agencies through purchase or other means in conformance with P56 may be governed by a Beach Agreement which addresses the beach in question.

Prior to the issuance of a permit by the County for development on property adjacent to the mean high tide line, the applicant shall obtain a written determination from the State Lands Commission that:

- (a) No State lands and/or lands subject to the public trust are involved in the development, or
- (b) State lands and/or lands subject to the public trust are involved in the development and all permits that are required by the State Lands Commission have been obtained, or
- (c) State lands and/or lands subject to the public trust may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

This development is located on Carbon Beach. The specific requirements for Carbon Beach state:

- P56-15 Malibu Lagoon/Surfrider State Beach
No dedications required - public beach.
- P56-16 Carbon Beach
 - o Vertical Access
 - Dedication of one accessway per 1,000 feet of beach frontage.
 - o Lateral Access (See P52)
 - o Public beach acquisition is an objective in this area, ideally linked to accessway locations.

This plan was devised by Los Angeles County to direct the build-out and recycling of Malibu in such a way as to preserve existing customary access along the beach and to preserve both for visitors and residents an opportunity to stroll along the beach and to continue the use and enjoyment of the the public tidelands.

In a recent court decision, *Nollan v California Coastal Commission*, the court required that the Commission impose conditions directly related to the adverse impacts of development. Access could only be required if the development had impact on shoreline access.

In this case the development has direct burdens on access that trigger conditions to 1) set back development, 2) reduce lot coverage along PCH and the beach to preserve views, 3) replace a vertical access opportunity with stairs on a public beach, with continuing a policy of non-interference with public pedestrian access across this property and with public use of the beach on this property, 4) continue existing lateral access by recordation of an offer to dedicate an easement for lateral access and passive recreational use along the beach.

1) setting back development

While the development is landward of the most seaward point of the present restaurant, this development includes beach level structures that will block lateral access and potentially increase erosion. The revetment extends fifteen feet seaward of the present bulkhead line, and the beach platform extends 27 feet seaward of the bulkhead line. The revetment around the platform extends an additional 15 feet, onto state lands, blocking lateral access. In addition, as has been seen above, the closer the revetment is to the area of wave run-up, the greater the impact on the sand levels. Conditions 1, 3, 5 reduce, but do not eliminate some of the direct impacts on public rights.

2) reduction of lot coverage along PCH.

This development extends a wall of building three levels up and an additional 90 feet along the coast, resulting in blocking visual access to the coast. This extension also eliminates pedestrian access from PCH to the coastline. The applicant contends that the development will be less visually obtrusive if it maintains the setback from PCH, and the view on the adjacent public property is adequate.

State Parks is letting contracts for redevelopment of the restaurant and pier. One of the issues is a possible intensification of uses while preserving beach parking. While at this time, double-decking the parking lot is not proposed, the Commission cannot find that the existence of an adjacent public open lot removes the application of the policy for view protection. There is now a view, after development, even with the applicant's efforts to maintain a view under the building, the present view will be reduced. Condition 3 protects the views under the building as much as possible, but it still permits the applicant to increase coverage from 55% to 80%.

3) maintaining an access opportunity.

The applicant proposes to relocate vertical accessway across his property and replace it on adjacent state property. There exists use on the sandy beach on this property. Some of the usability of the beach will be lost because of the shade of the balconies, which will cantilever six feet seaward of the parking lot. This will reduce an area currently used by the public for passage along the beach and for sunbathing. Replacement of the stairway and maintenance of the use of the beach is consistent with the LCP policies. Even with these efforts there will be lessened access to state tidelands because of the revetment. Condition 3 requires these promises to be carried out, by construction of replacement stairways and by the construction of sidewalk improvements that are functionally and aesthetically compatible with the adjacent state park. However, the loss of a vertical access and a sunning area at the toe of the revetment is not something that the Commission can accept without increased sand area access. This access can be the dedication of access along the beach, consistent with the methods outlined in the LUP. This access will be set back from the seawall to afford privacy and security for the hotel, but must extend the entire width of the the property.

4) dedication of lateral access,

The proposed project has the following additional burdens on current public use and enjoyment of the public tidelands.

Currently there are public tidelands seaward of the development, and a publicly owned beach to the west of this development. Based on the 1961 mean high tide line, a narrow beach, this development provides 150 square feet of beach area per room. State parks uses a rule of thumb of 100 sq. feet of beach area per person. (State Parks and Recreation, Los Angeles County Beach study) Assuming double occupancy, this ratio can only be obtained by spilling out onto the public beach to the south and west of this development.

The publicly owned beach to the west of the development is 590,000 square feet, with an optimum capacity of 4,000 persons. This capacity has been reached. Over the past five years, use of Surfrider state beach has remained at half a million visitor days a year, and has not significantly increased. the reason it has not increased while other beaches have increased is that it is at capacity both in terms of parking, in terms of the transportation system and in terms of the available area on the beach. (IUP background report) The majority of this beach is not suitable for swimming because of a rocky bottom (State Parks General Plan from Malibu Lagoon). The portion of the public beach adjacent to this property is the portion that is suitable for swimmers, and identified as heavily used by state parks. This is about 300 feet of the entire beach, most of which is used primarily by surfers.

The project intensifies private use of the public tidelands and state park lands. A 14 unit motel and a restaurant will be replaced with a 47 unit destination hotel. This can potentially increase the number of individuals who might use the state tidelands by over 300%. The hotel is located only 57 feet from state lands, but the wider summer time beach will appear private, both to the operators of the hotel and to the public. As a result, more individuals from the hotel will be using the state owned lands seaward of the proposed development. The hotel is designed to direct its guests out onto the beach. In addition the adjacent publicly owned facilities are part of the attraction of the hotel, and guests from the hotel will compete with beach goers for use of the Surfrider State Beach. The balconies will cantilever 6 feet seaward of the bulkhead along the entire length of the property, reducing the sandy beach area over almost half of the property.

In addition the burden imposed by the seawall requires public access. As shown above on the section on the adverse effects of seawalls on shoreline processes, seawalls affect the public's ownership and use rights, change the shoreline and alter the usable area under public ownership. The second effect on access is through a progressive loss of sand, and cumulatively affect public access by causing greater erosion on adjacent public beaches.

The present bulkhead, already reduces available public sand area, and as permitted to be reconstructed will continue to reduce public rights during the winter months. As seen above this bulkhead will continue the process of

shoreline erosion. The continued loss of sand which could otherwise result in permanent loss of usable state lands may only be permitted if the applicant provides access to all of the sand during the months when the ordinary high tide line is farther seaward.

As documented in the LUP background research, Malibu beaches in general accommodate ten million visitors a year. Surfrider State Beach accommodates 500,000--750,000 visitors. The Malibu beachfront is extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to significantly increase over the coming years.

Many of these visitors gain access to the beach and then walk along the beach even where there are currently dwellings. Current residents use the beach for walking during all seasons of the year. While the Commission cannot determine if prescriptive rights exist, it must protect those potential public rights assuring that the siting of any proposed shoreline development is in a manner which does not interfere or will minimally interfere with those rights. Here, there will be a permanent loss of sandy beach, historically and extensively used by the public. This decision which will provide substantial benefits to the applicant is in direct conflict with the public access and recreation policies of the Coastal Act. The Commission can not allow this seawall and loss of beach, unless it is mitigated and modified pursuant to the attached special conditions substantiated in the following findings.

The southern property line of the project site is located approximately 23 to 36 feet to the south of the toe of the revetment. The area to the west of the applicant's parcel is in public ownership. All of the area to the south of the seawall is sandy beach. Presently, this shoreline remains open and used by the public for lateral access and general recreational activities. Special Condition No. 1 requires the applicant to execute an offer to dedicate a lateral access easement over the land that is in private ownership south of the seawall. The provision of this easement will assure the public's continued use of this stretch of beach in perpetuity consistent with Section 30211 of the Coastal Act.

The Commission finds, as further substantiated above, that the intensification of development adjacent to beaches has the potential of creating use conflicts between private guests and the beach-going public. The results of new private use encroachment into the sandy beach can create situations in which landowners intimidate the public and seek to prevent them from using public areas because of disputes over where the exact boundary between private and public ownership is located. The placement of such structures on public land directly precludes the public physically and may diminish the visual attractiveness of the coastline. This is most notable where an area where an open parking lot is supplanted by a structure that rises 43 feet above the beach.

In this case, there are direct impacts on access by closing off a vertical access way, by limiting views across the lot and by increased competition from hotel guests for the use of the adjacent public beach facilities. The potential of conflict is highlighted by the differing version so the location of the mean high tide line--given a high demand from guests, the hotel operators might well be tempted to attempt to exclude the public from lands that the State Lands Commission believes are public but which their own information indicates is private. Finally as seen above, the construction of the shoreline structure will have direct impacts on the sand supply and beach width in the long term, reducing the beach area available for public recreation.

As conditioned to relocate the development, improve the site Plan and offer access along areas of the sandy beach the development is consistent with sections 30210, 30211, 30213 and 30214 of the Coastal Act and the certified Land Use Plan.

E. Recreation

Section 30221 states

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The land use plan encourages development of commercial recreation facilities. The land use plan specifically designated this site for general commercial, instead of a more specialized category, commercial recreation. However the general commercial category does not exclude this intensity of use. It permits, in addition to other uses, three story office structures. With respect to visitor serving development, the land use plan states:

P18 Encourage commercial recreational development which supplies recreational uses not publicly available.

P18b Protect, expand, and, where feasible, provide new lower cost recreation and visitor-serving facilities, especially public recreational facilities. In particular, consider the feasibility of providing lower-cost hostels in conjunction with development of new hotels. Encourage any new or expanded facilities to utilize sensitive design that is well integrated with the surrounding environment and public access.

P18c On land suitable for visitor-serving commercial recreational facilities, provide priority for visitor-serving facilities over private residential, general industrial, or general commercial development.

- P19 Ensure that the types and intensities of commercial recreational uses are environmentally compatible with the area and the site.

This development does provide visitor accommodations, which increases access to Malibu. A hotel, however can limit recreational use as well facilitate access if it physically extends over beach area, reducing the area available for recreation, or, if as part of the development is includes physical devices or enforcement procedures that prevent the use of the sandy beach by the public.

The conditions imposed for access and for beach set backs will limit this conflict with the public use of public tidelands. In addition to physical barriers, the Coastal Act requires the Commission to look at the distribution of approved recreation facilities among all members of the public, Section 30213. The conditions applied by the Commission require that the design of the hotel be integrated into the proposed access facilities on the adjacent beach.

The Commission notes that this use is a priority use under the Coastal Act. As conditioned, this development conforms to the recreation policies of the LUP and the Coastal Act.

F. Visual Impact.

This project is located on Pacific Coast Highway, where development forms an uninterrupted wall between the first public road and the sea. In order to address the cumulative impact of development along this road, Los Angeles County adopted in the LUP standards to preserve views to and along the beach. The standards are based on Sections 30251 and 30253 of the Coastal Act which state:

Section 30251

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

Section 30253;

New development shall:

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Malibu is a community that is a visitor destination, and this development is directly adjacent to a state park.

The standards in the land use plan that apply to this development include general policies with respect to preserving the view of the ocean from scenic highways, and one specific policy with respect to scale and design, policy 138. This policy states:

P138 Design considerations for commercial development should include:

unifying architectural themes
visually aesthetic screening of service areas
height and bulk standards.

P138b Buildings located outside of the Malibu Civic Center shall not exceed three (3) stories in height, or 35 feet above the existing grade, whichever is less.

P138c Buildings located on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site. In the case of Planned Developments which occupy more than one parcel, a structure may occupy 100% of the lineal frontage of any parcel, provided that the 20% open area of the overall project is incorporated elsewhere on the highway frontage of the development project.

Los Angeles County examined this project with respect to conformance with this project. As a result the County removed a 15 foot bell tower from the center of the building. The County decided not to count the seven and a half foot parking level as a story. Finally the County decided that the 80% rule did not apply to this development since there was public land adjacent to it.

The County found that the presence of the park and the parking lot was sufficient ground to exempt the developer, from the rule forbidding lot-line to lot-line development because the purpose of the policy was to prevent a "wall effect".

The Commission finds that the preservation of the view to and along the shoreline is required in Section 30251, which states that "permitted development protect views to and along the ocean ... be visually compatible with the character surrounding areas, and, ... restore and enhance visual quality in visually degraded areas. [emphasis added]

The Commission notes that the visual degradation of the view from the coast highway to the ocean has been identified in many documents, including the work of the predecessor Commission, and this degradation has been identified as the unrelenting wall of development. The Commission also notes that only three structures on the seaward side of Pacific Coast Highway on Carbon Beach exceed three levels, and only one of them was approved by the Commission. Most structures are one story and flat roofed two story structures.

The Commission finally notes that the adopted LUP clearly states that development shall be confined to three stories, and that the LUP policy is quite clear on the intention of requiring interruptions in the line of buildings. The LUP does not provide for elevated buildings.

As conditioned by the Commission and as revised by the applicant to conform to the three story rule, including the parking level as a story, and to limit horizontal extension over the lot, the development conforms to section 30251 as it has been carried out in the Land Use Plan. The clear intent of both policies is to preserve and restore views to the shoreline from the road, and to prevent buildout lot line to lot line between the first public road and the sea. As conditioned and as amended by the applicant, the project will preserve a view corridor and will not limit the ability of local government to adopt an implementable local coastal program to carry out sections 30251 and 30253 of the Coastal Act.

G. Sewage disposal.

The Commission notes that the hazard posed by the reduction of access opportunities caused by failing septic tanks has a direct effect on public shoreline access, and is different from the effect of merely rebuilding a structure in a line of other structures.

The recently released draft Environmental Impact Report for wastewater management facilities in Malibu prepared by the Los Angeles County Department of public works, indicates a high rate of septic system failures along structures of Malibu Beach. The County's Health Services Department has subsequently stated that the failed septic systems on the beach represent a potential public health hazard.

The draft EIR states that after storm events, raw sewage from many of these systems drains onto the beach and into surf waters and that some homes have had their septic systems destroyed or damaged as many as five times. Ocean water quality tests conducted in 1984 suggest that seepage of raw sewage from septic systems serving beachfront development may be degrading the quality of recreational waters. In 1983, over 12 miles of Malibu beaches were closed from several months due to sewage contamination.

A review of septic system repair records in the Draft EIR indicates an average system failure rate of 45.5 percent for beachfront properties as opposed to 23.2 percent for non-beachfront properties. In March 1985, the county

conducted a survey of wastewater disposal methods along the beachfront and found that 40 percent of the properties were illegally discharging wastewater to the ground surface. A field study conducted in the spring of 1986, indicated that 49 of 168 homes, (30 Percent) showed signs of septic system failure and were illegally discharging wastewater indirectly to the surface and a sample of the discharge flow onto the beach indicted the the discharge exceeds effluent discharge standards for coliform bacteria by a factor of approximately 3.5 million and exceeds standards for swimming in marine waters by a factor of 7900.

Despite the high number of system failures and resultant health effects, the County's Department of Building and Safety has routinely been issuing permits for construction of new beachfront buildings with septic systems that violate County plumbing codes under an exception known as the Malibu Beach Policy. the "Beach policy" allows septic tanks in the sand under houses on the beaches where the high water table leaves very little room for wastewater discharge into the soil. Theoretically, the discharged effluent should slowly filter through the soil which cleans and purifies the liquid waste before it reaches the water table. The County Health Services Department has estimated, however, that 80 to 90 percent of all septic systems located under beachfront structures approved under the "beach policy" are in direct violation of the County's plumbing code.

The beach policy or waiver of Plumbing code compliance conflicts with Section 30231 of the Coastal Act which states:

Section 30231:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition, the policy raises an issue with Section 30250(a) which requires that new development be located within or near areas able to accommodate it and where it will not have significant adverse effects, wither individually or cumulatively, on coastal resources.

Further, the beach policy is inconsistent with the following policies of the Malibu Santa Monica Mountains Land Use Plan

P217 Wastewater management operations within Malibu Coastal Zone shall not degrade streams or adjacent coastal waters or cause or aggravate public health problems.

P218 The construction of individual septic tank systems shall be permitted only in full compliance with building and plumbing codes. Building and plumbing codes shall be revised to permit innovative and alternative methods of wastewater treatment and disposal, provided that installation, operation, and maintenance are acceptable to the Departments of Health Services and County Engineer-Facilities and to the Regional Water Quality Control Board. Such code revisions shall constitute an LCP amendment.

P225 The Departments of Health Services and County Engineer-Facilities shall continue to strictly enforce all Health, Building, and Plumbing Code requirements concerning private wastewater disposal systems. This shall apply to beachfront lots, as well as to other areas. Such requirements shall be considered to be part of the LCP.

P226 The County shall not issue a coastal permit for a development unless it can be determined that sewage disposal adequate to function without creating hazards to public health or coastal resources will be available for the life of the project beginning when occupancy commences.

This development of a high density beach front project, to be served by septic tanks has received initial review by the Regional Water Quality Control Board, and the County Facilities department. A private sewage engineer has pointed out that the proposed development will need significantly less leachfield capacity than the present restaurant. Nevertheless, this project has not yet received unreserved approval by any of these agencies. In the geology report it was noted that the soils under the present parking lot are saturated because of the difficulties of operation the leachfield.

The applicant has presented two sets of plans stamped by the County Health Department that states that no waivers of the plumbing code are necessary to approve the project. The only other LUP standard is that the sewage disposal system is to be functional for the life of the project, which is 40 years. Accordingly, the Commission imposes condition 4, above, requiring that the leach fields must be expected to last the life of the structure. In order to preserve the water quality of the ocean and the State Beach the Commission has imposed a condition of further review of the sewage facilities before the permit can be transmitted.

Therefore, based on section 30231 and 30250(a), and in order not to prejudice the ability of local government to prepare implementing actions for the Land Use Plan that are consistent with the adopted policies of the land use plan, the Commission must require revised plans for this development that meet all plumbing code requirements and include no waiver of septic system standards.

Attachment X

To: Permit Applicants;
From: California Coastal Commission
Subject: Standard Conditions

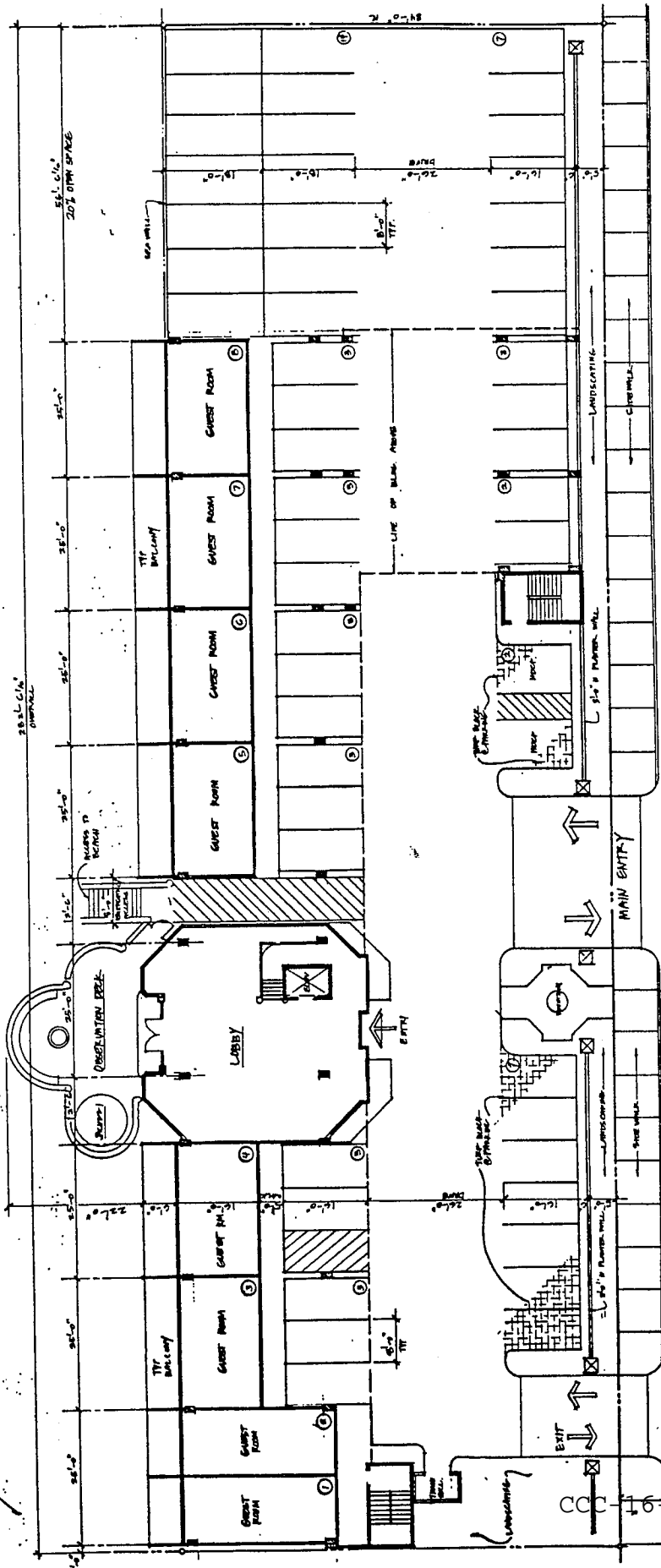
The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. 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.

SANDY BEACH AREA

SANDY BEACH AREA



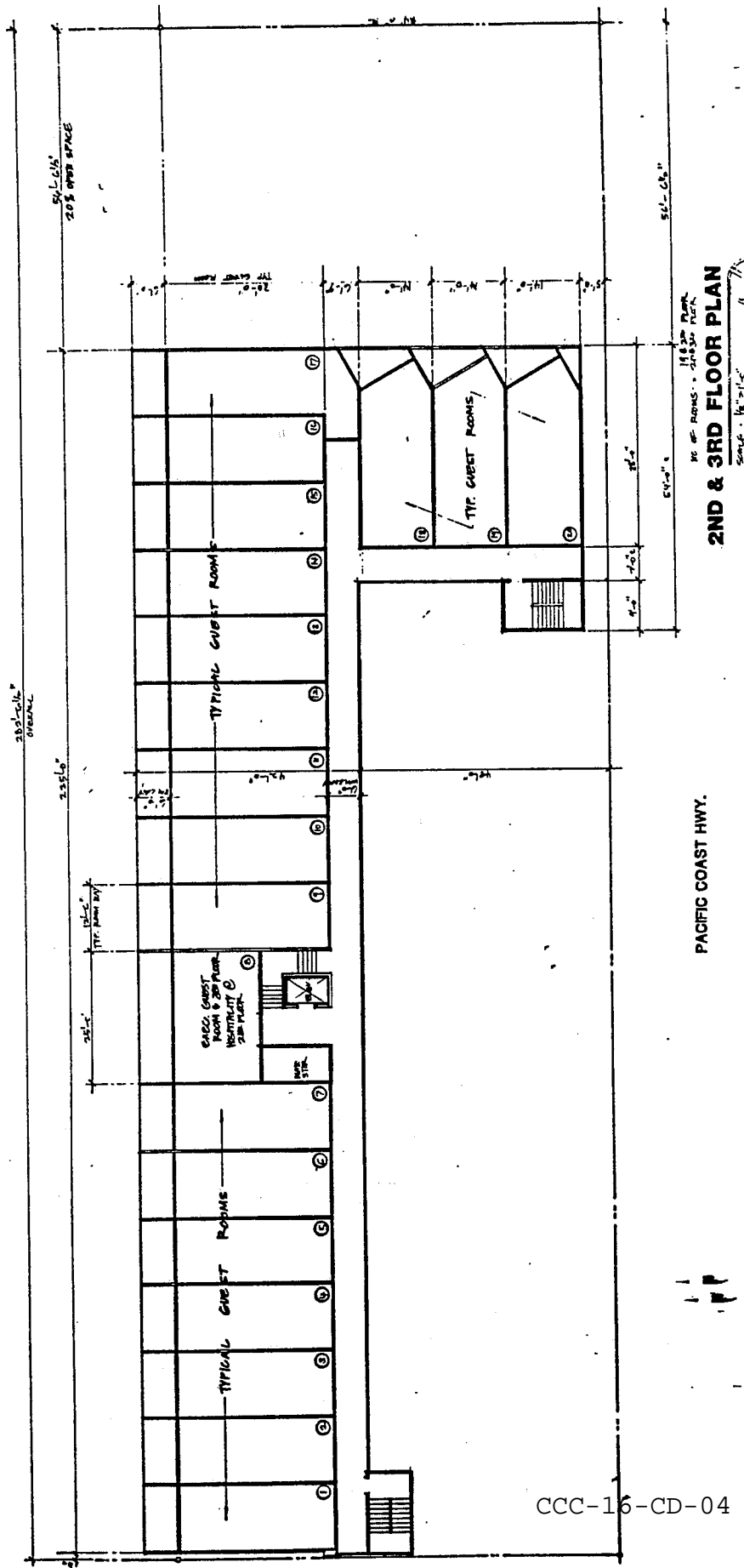
SITE PLAN
SCALE 1/8" = 1'-0"

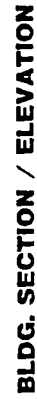
PACIFIC COAST HWY.

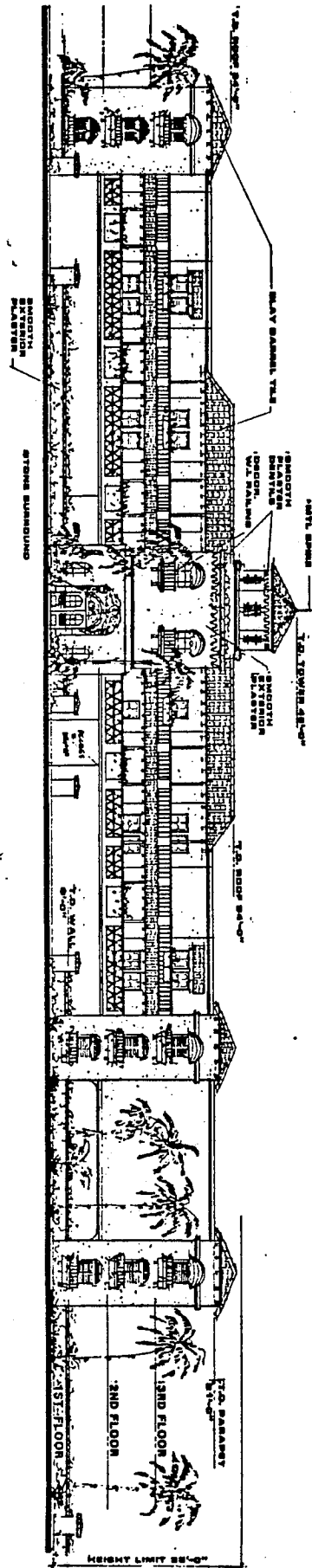
GUEST ROOMS
18 ROOMS - 8 BATHS
200 ROOMS - 10 BATHS
200 ROOMS - 10 BATHS
TOTAL 37 ROOMS

PARKING
TOTAL 17 SPACES
15 SPACES - 15 CARS (87%)
2 SPACES - 2 CARS
TOTAL 17 CARS

5-87-576
#1 Addendum







STREET ELEVATION
SCALE 1/8"=1'-0"

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

Page 42 of 60

MALIBU BEACH INN
2875 PACIFIC COAST HWY.,
MALIBU, CALIF. 90263

ARTHUR VALLIN & CO. INC.

PROPOSED 47 ROOM MOTEL
22878 PACIFIC COAST HWY., MALIBU
SCALE 1" = 30'

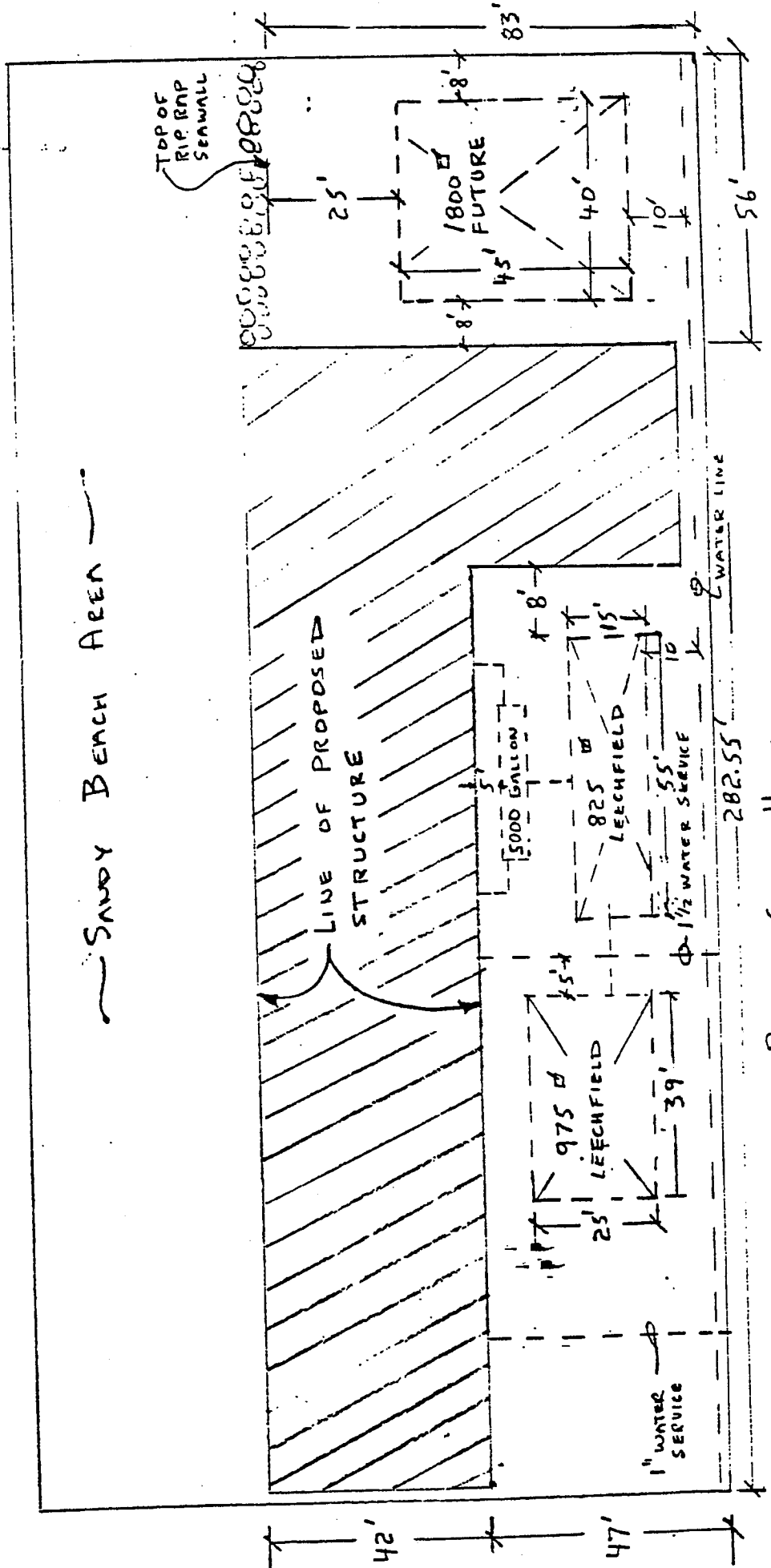
ADDRESS: 22878 PACIFIC COAST HWY.
☒ NEW ☐ REMODEL ☐ OVERFLOW
BEDROOM/F.U.: 47 ROOM MOTEL - 2 BED SPACES/UNIT
SEPTIC TANK: 5000 GALLONS
PRESENT: 1800 ϕ
FUTURE: 100 %
OVERFLOW: _____
PERC. RATE: SAND CATEGORY

THIS DEVELOPMENT MEETS
ALL CODE REQUIREMENTS
AND INCLUDES NO WAIVER
OF SEPTIC SYSTEM STANDARDS.
LY

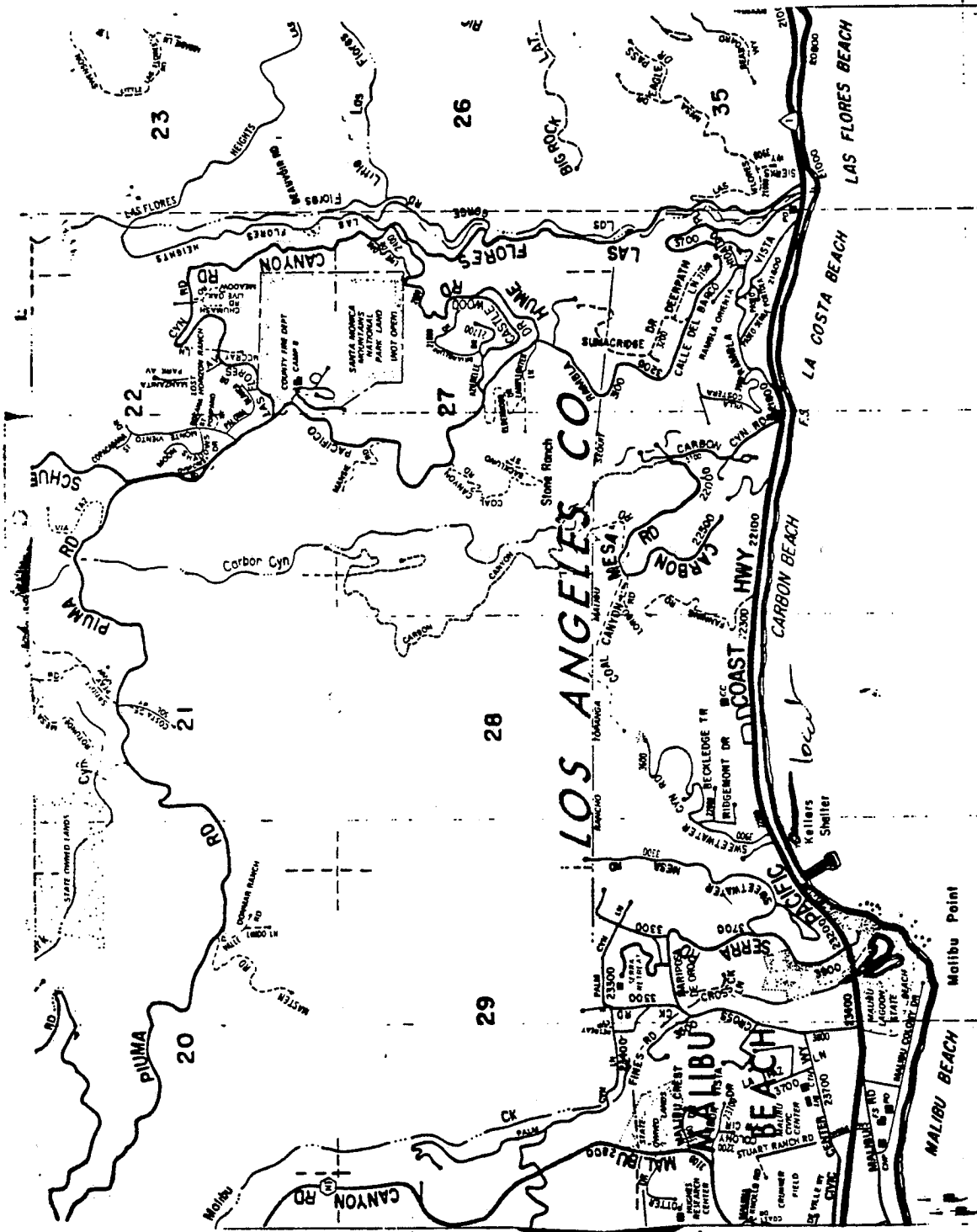
Sewage Disposal System
Approved For DESIGN
PURPOSES ONLY, As
Required For California
Costal Commission Review.
Final Approval Required
Prior To Start Of
Construction Or Issuance
Of Permits.

DATE 9-17-87
HEALTH OFFICER [Signature]
COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH SERVICES

SANDY BEACH AREA

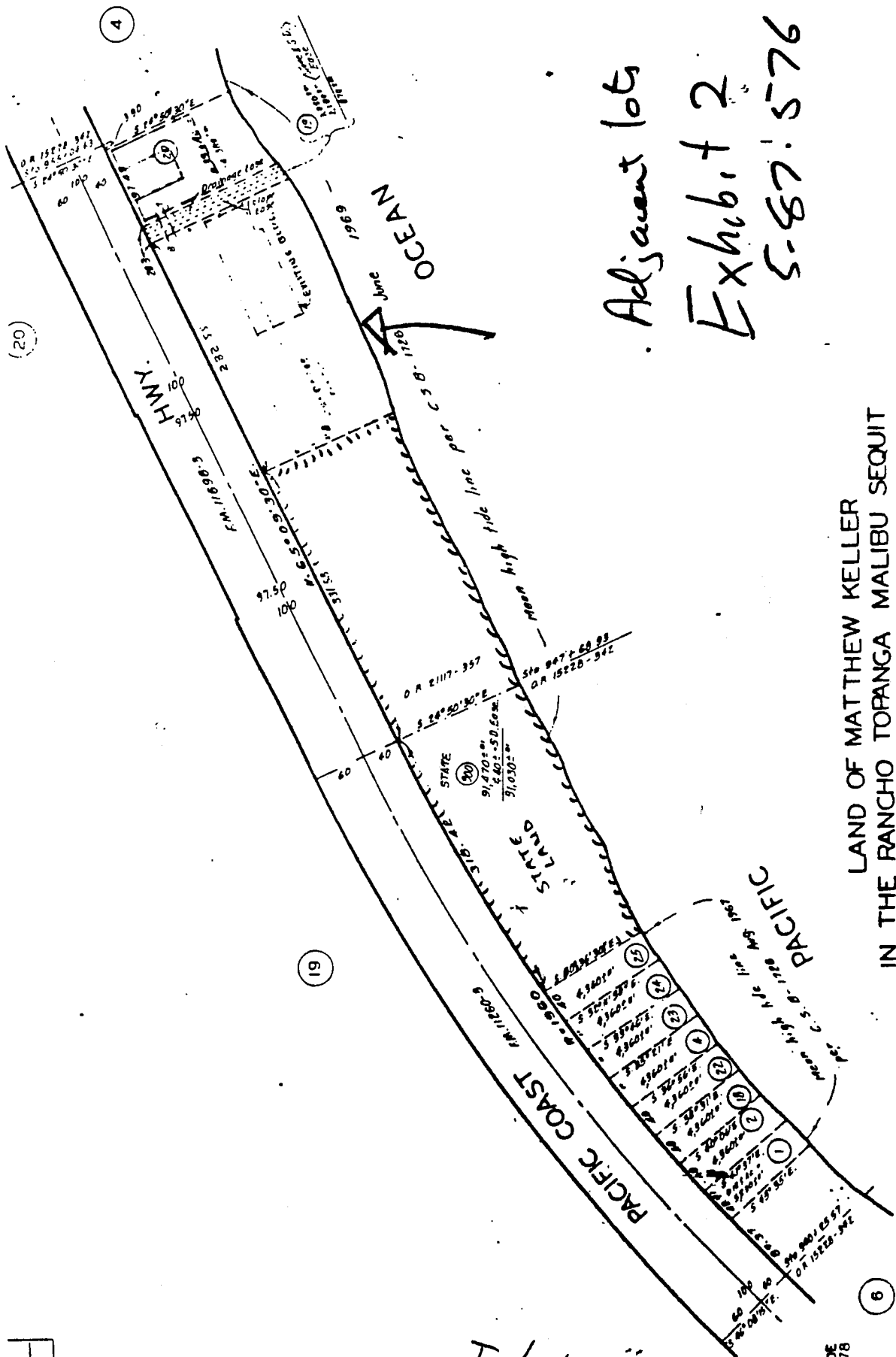


Pacific Coast Hwy. #2 ADDENDUM 5-87-576 (Miser & Co.)



PACIFIC OCEAN Exhibit 1 Location

5.87 876 Miser & Cooper



Adjacent lots
Exhibit 2
5-87-576

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT

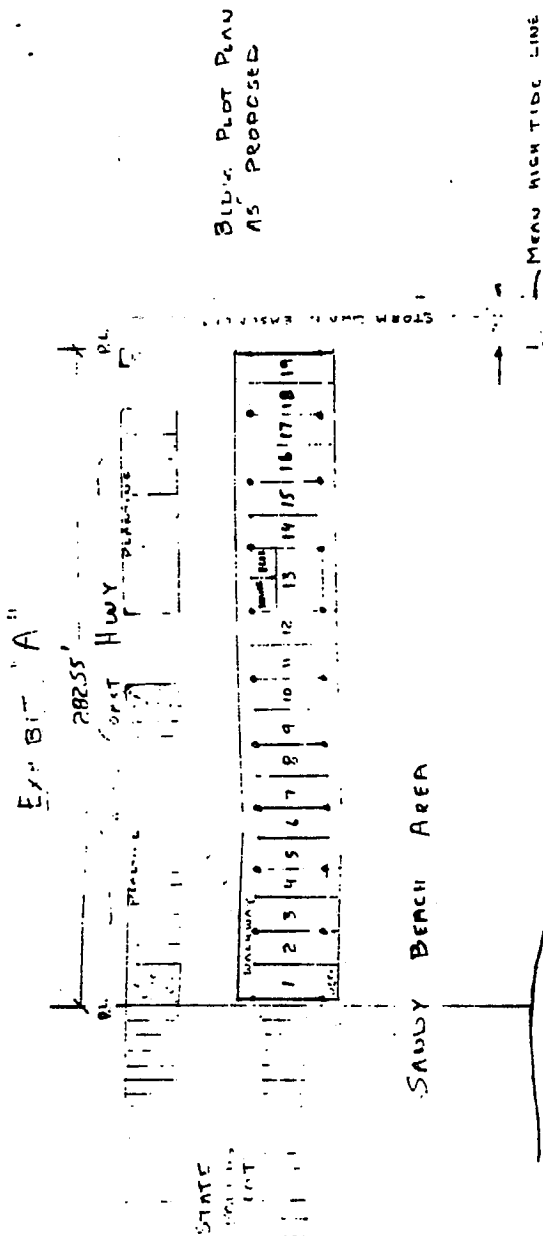
R. F. 534

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

Exhibit 2
5-87-156

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10



Scale 1" = 50'

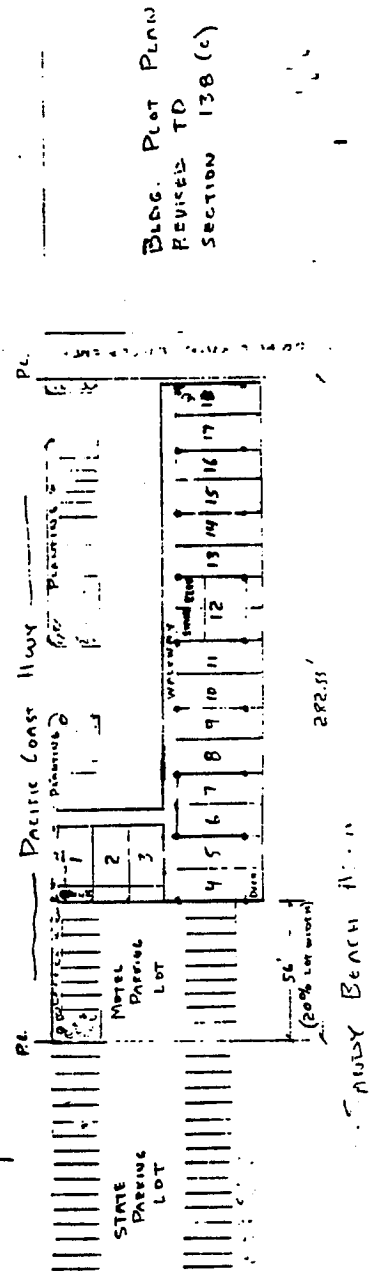
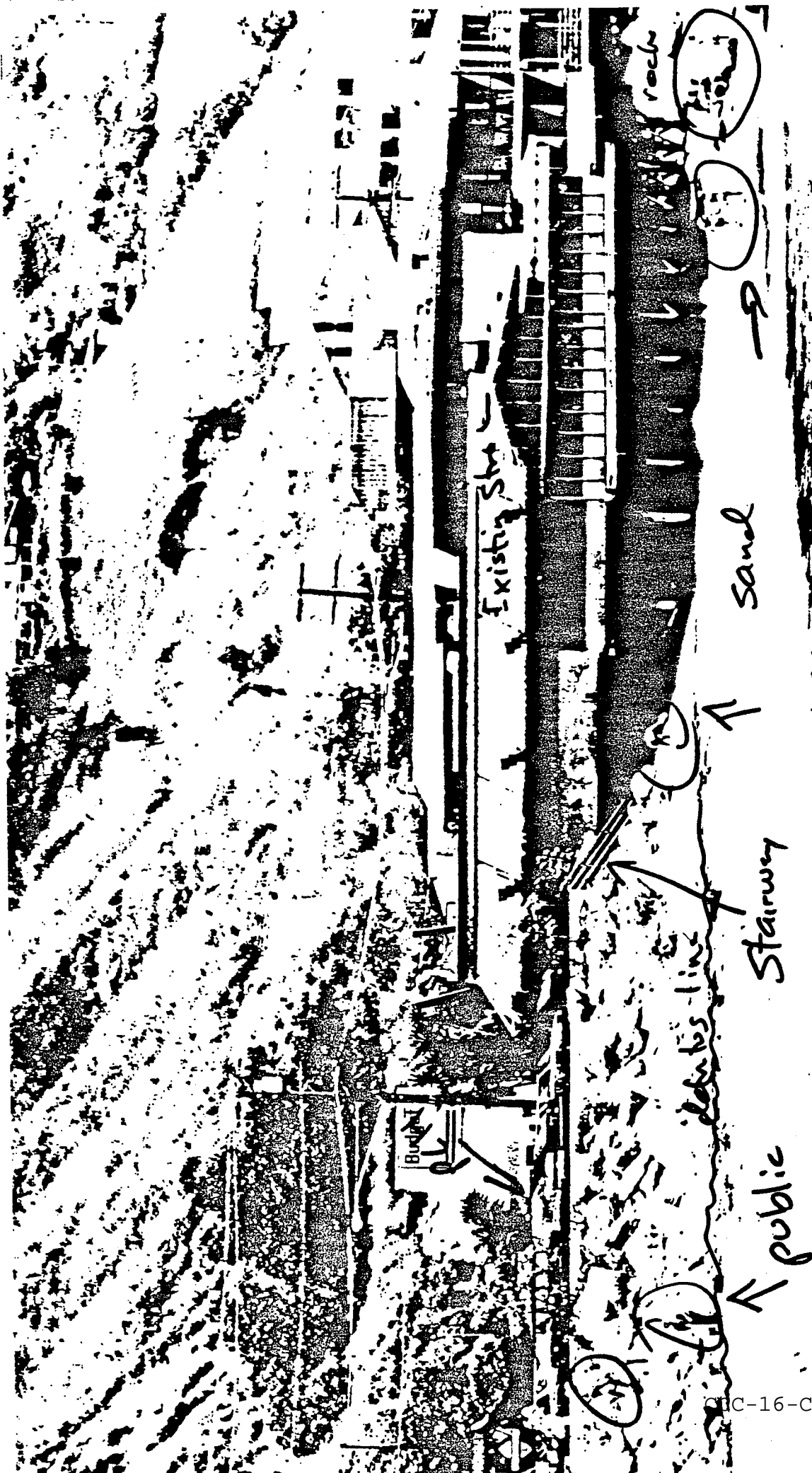


Exhibit 3

5.87-1

Exhibit 3
5.87-576



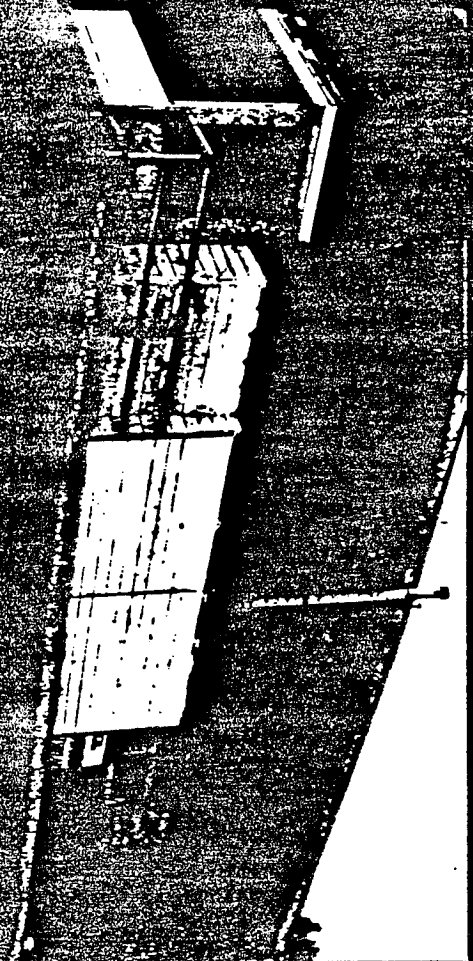
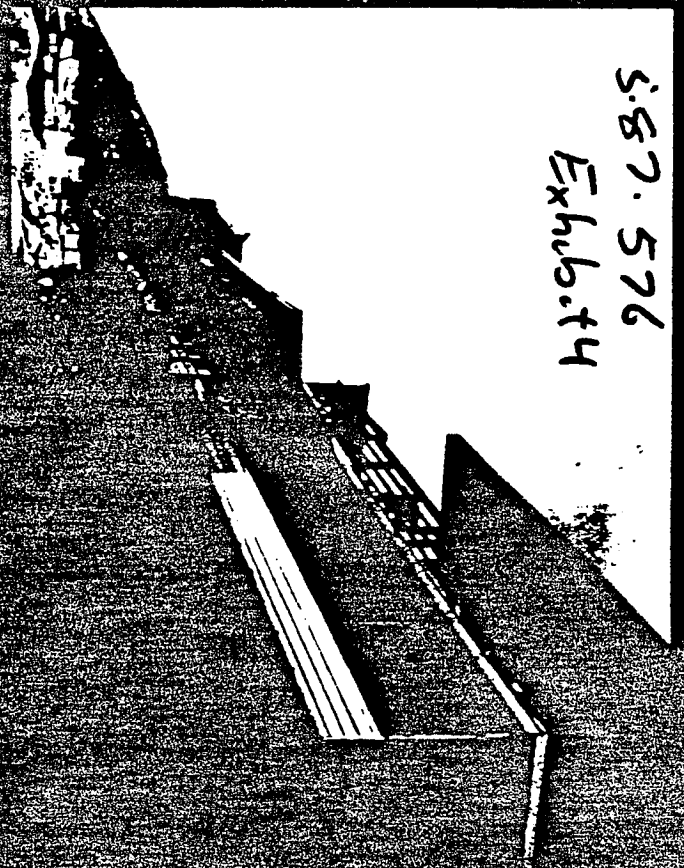
5-87-576

Existing

Exhibit 3a



S.87. 576
Exhib. 44



STATE LANDS COMMISSION
1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814

RECEIVED
JUL 21 1987

June 30, 1987

File Ref: SD 87-06-16

Malibu Beach Inn
22878 Pacific Coast Highway
Malibu, California 90265

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

5-87-576

Attn: Marlin E. Miser

Dear Mr. Miser:

Subject: Proposed Hotel at 22878 Pacific Coast Highway, Malibu, California

The State Lands Commission's staff has reviewed the site plans dated May 28, 1987, attached to your June 9, 1987 letter, relative to the above project.


Based on the plans and in-house information, the most seaward limit of the proposed structure, being the seawall, will be 23 feet on the west property line and 36 feet on the east property line landward of the 1961 mean high tide line, being the most landward mean high tide line located by this office. Therefore, we will not require a lease or permit at this time.

You should be aware, however, that this office has not made a final determination of the State's boundary at this location. Therefore, we reserve the right to require a lease or permit at some time in the future should it be determined State land is involved.

This letter is not intended, nor should it be construed as, a waiver of any right, title, or interest of the State of California in any lands under its jurisdiction.

If you have any questions, please call Georgia Lipphardt at (916) 322-7803.

Sincerely,


LESLIE H. GRIMES, Deputy Chief
Division of Land Management
and Conservation

cc: G. Lipphardt
DRP
Fred Sledd

37151

LIVED

RNIA

REGIONAL WATER QUALITY CONTROL BOARD—
REGION

ADWAY, SUITE 4027
CALIFORNIA 90012-4596

GEORGE DEUKMEJIAN, Governor



April 29, 1987

Glenn Stober
State Clearinghouse
1400 Tenth St., Room 121
Sacramento, CA 95814

RECEIVED
JUL 28 1987

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

NEGATIVE DECLARATION FOR INITIAL STUDY 86459 LOCATED IN MALIBU
BEACH (SCH#87040817)

We have reviewed the subject document concerning the development of a four-story, 56-room motel approximately 77 feet from the mean high tide line.

The document indicates that the use of private sewage disposal systems will be required, and that the project is located in an area known to have septic tank limitations. These limitations (slope, depth to groundwater, percolation rate and a mandatory 100% replacement area for the leaching system) should be considered when demonstrating that a private sewage disposal system can be installed and operated properly on the lot, in conformance with all applicable rules and regulations of the local health department.

A report of septic tank plans which addresses these concerns must be submitted to this Board prior to any construction activities.

Thank you for this opportunity to comment. If you have any questions please contact Shirley Birosik at (213) 620-5625.

Michael L. Sowby
Environmental Specialist IV



5-2576
EX-6.19

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

Page 50 of 60

DAVID L. RIGGLE CONSULTING SANITARIAN
28832 GRAYFOX ST., MALIBU, CA 90265
213-457-2054

May 21, 1987

Mr. Skip Mieser
22878 Pacific Coast Highway
Malibu, CA 90265

Subject: 22878 Pacific Coast Highway, Malibu

Dear Mr. Mieser:

At your request, I have reviewed the sewage disposal system requirements for the existing buildings and the proposed motel addition at the subject property. There is existing a 9 unit motel and a restaurant. The proposed plan is to increase the motel units to 56 rooms and remove the restaurant.

The Uniform Plumbing Code estimates the daily flow rate for a motel room at 50 gallons per bed space, 2 persons per room or 100 gallons per room per day. The restaurant daily flow rate is 50 gallons per seat. The 9 unit motel would have a flow rate of 900 gpd ($9 \times 100 = 900$ gal.). The restaurant with 175 seats would have a flow rate of 8750 gpd ($50 \times 175 = 8750$ gal.). The combined flow rate is 9650 gpd.

The proposed 56 room motel will have a flow rate of 5600 gpd ($56 \times 100 = 5600$ gal.). The septic tank capacity is sized on the flow rate.

Drainfields serve the present system and will serve the proposed building. As noted by the test hole log, the soil receiving the sewage effluent is sand. The attached approved plan shows the required area of 2100 sq. ft. with 100% future area based on the sand category in the Uniform Plumbing Code.

It is evident from this comparison, that the motel usage will have approximately 42% less flow rate per day than the existing motel-restaurant. In addition, the sewage will have less grease and food particles than are typical of a restaurant discharge and damaging to a drainfield operation. The reduction of grease and

Exhibit 8

TONGALEI MOTEL

ON THE BEACH AT MALIBU PIER

22878 Pacific Coast Hwy.
Malibu, Calif. 90265
(213) 456-6444

January 19, 1987

Caltrans
120 South Spring Street
Los Angeles, Calif. 90012

Re: Environmental Documentation Project # 86459

Attention: Mr. Miguel Camacho

Dear Mr. Camacho,

The purpose of this letter is to address the cumulative traffic impact that this project would have along Pacific Coast Hwy.

At present, there is a restaurant and small motel on the property. The restaurant seats 175 people and the motel has 9 rooms. On the average Saturday or Sunday, the restaurant serves 500 meals and the motel is full. If two people are riding in each car, there are 250 trips in and out of the restaurant parking lot. Assuming the motel guests make two trips in and out, that adds another 18 trips. There are at least 50 bar patrons that do not eat a meal arriving by themselves that account for an additional 50 trips. In total, this amounts to 318 vehicle trips per day on the average weekend. This does not take into account all of the food and beverage vendors arriving at the restaurant for deliveries.

In the proposed new use of the property, a 56 room motel without a restaurant, the amount of traffic will be greatly reduced. Assuming that all of the rooms are occupied and each party makes two trips in and out, there would be only 112 vehicle trips per day instead of 318. Even assuming that some of the motel guests have friends that would stop in and visit, the traffic going on and off Pacific Coast Hwy. would be reduced at least in half from its present use.

In view of the above facts, we would hope for a negative declaration for this project from Caltrans. If you have any questions, please do not hesitate to call. My work number is (213) 456-6444 and (805) 985-2019 at home.

Yours truly,



Marlin G. Miser

Exhibit 7
84

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

Page 52 of 60

TONGALEI MOTEL

ON THE BEACH AT MALIBU PIER

22878 Pacific Coast Hwy.
Malibu, Calif. 90265
(213) 456-6444

PLEASE REFER TO EXHIBIT "B"

The only other alternative is to build out over the ocean on the footprint of the existing building. This alternative is not being considered at this time because it negates possibly the most important benefit of this project: the recovery of approximately 140' of dry sandy beach area for public use that is now covered by the existing structure. Re-establishing this sandy beach area without pilings on it is of highest priority to all public agencies as well as ourselves as owners who are proud of their property and its use.

The design of the motel as submitted (Please see attached rendering), shows the building being supported on cement pilings 28' apart. From Pacific Coast Highway, this will permit light and ocean views underneath approximately 75% of the structure which, while not to the wording, certainly provides the effect and intent of Section 138(c).

The design also includes a great deal of multi-colored landscaping, textured walls and trees. It is our intent to make the grounds a showplace of Malibu from Pacific Coast Highway and keep the beach area raked and pristine for the enjoyment of our guests and passers-by.

People who stay in our few rooms that now face the ocean really have a chance to relax and unwind. We are told on a daily basis how much our guests have enjoyed their stay with us and we are looking forward to hearing that much more in the future.

Thank you for your consideration in this matter.

Yours truly,



Marlin G. Miser

(3)

Exhibit 7p3

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

Page 53 of 60

TONGALEI MOTEL

ON THE BEACH AT MALIBU PIER

22878 Pacific Coast Hwy.
Malibu, Calif. 90265
(213) 456-6444

PLEASE REFER TO EXHIBIT "A"

At the top of the sheet is the plot plan as submitted for approval with the building in a straight line approximately in the center of the property. In this case, every room has an ocean view. Because each room is elevated well above the beach and faces only the ocean, guests can enjoy the room and view of the ocean with the drapes open in complete privacy. In our existing motel, a few of the rooms are this way right now and are always booked far in advance and rarely vacant. When the drapes are open and the sliding door ajar, you can hear, see and smell the ocean in a way most people never realize. The popularity of these rooms with their privacy, view and ambience cannot be overstated, whereas the rooms facing back towards the highway are just regarded as another place to spend the night. Also, in this plan, the building is set back 46' from the sidewalk and therefore will give the feeling of "elbow room" when driving down Pacific Coast Highway.

On the bottom of the sheet is a plot plan showing the building in a "L" configuration which would conform with all County requirements and Section 138(c) of the Local Coastal Plan. There are three major problems with this plan.

(1) Rooms in the "L" configuration numbering 1-2-3 will be facing the State owned beach parking lot and Pacific Coast Highway. They will have no privacy from public view unless their drapes are closed.

(2) These rooms will be quite noisy because of the sound reverberating from Pacific Coast Highway on the 8' wide sliding glass door to the deck.

(3) The building has to be built within 5' of the sidewalk, creating a corridor view and shadow line along Pacific Coast Highway that will not exist in the proposed plan.

(2)

Exhibit 7p.2

TONGALEI MOTEL

ON THE BEACH AT MALIBU PIER

22878 Pacific Coast Hwy.
Malibu, Calif. 90265
(213) 456-6444

May 11, 1987

Los Angeles County Regional Planning Division
320 West Temple Street
Room 150
Los Angeles, Calif. 90012

REQUEST FOR VARIANCE REGARDING SECTION 138(c) OF LOCAL
COASTAL PLAN ADAPTED BY THE COUNTY OF LOS ANGELES FOR
PROJECT #86459 KNOWN AS THE "MALIBU BEACH INN" LOCATED
AT 22878 PACIFIC COAST HWY., MALIBU, CALIFORNIA

Attention: Mr. Richard Frazier

The Cooper and Miser families have been the owner/operators of the above mentioned property since September of 1977. During this ten years of operation we have learned a great deal about the operation of a motel along the beach. We enjoy the business and all of the different people we come into contact with. After A lot of thought and deliberation, we have decided to commit ourselves to owning and operating a motel that both we and the community can be proud of.

Because the existing building is run down and tired and defies any attempt at remodeling, we have decided to demolish the existing structure and build a brand new building. We have decided upon a style of architecture that patterns itself on the "old" Malibu look of the Ringe family estate that is now known as the Malibu Lagoon-Museum.

When we started working on the plans for the new building, we learned of Section 138(c) and were advised that we should talk to a Mr. Woody Teshar because he was involved with the County of Los Angeles and the Coastal Commission in the writing of this section. Mr. Cooper and I made an appointment with Mr. Teshar and he told us the purpose of Section 138(c) was to discourage wall to wall building along Pacific Coast Hwy. and to keep view corridors open between structures. After reviewing our plans, he noted that since we had a 21' storm drain easement adjacent to the East property line and the 650' State owned parking lot and pier on our West property line, we would not be building wall to wall with anyone. Therefore, he observed that although Section 138(c) is written into the Local Coastal Plan, it should not be much of a consideration in the development of this property.

(1) Exhibit 7

58-7-571

SCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

STATE OF CALIFORNIA
STATE LANDS COMMISSION
1807 13TH STREET
SACRAMENTO, CALIFORNIA 95814

GEORGE DEUKMEJIAN, Governor

RECEIVED
JUL 21 1987

June 30, 1987

File Ref: SD 87-06-16

Malibu Beach Inn
22878 Pacific Coast Highway
Malibu, California 90265

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Attn: Marlin E. Miser

5-87-576

Dear Mr. Miser:

Subject: Proposed Hotel at 22878 Pacific Coast Highway, Malibu, California

The State Lands Commission's staff has reviewed the site plans dated May 28, 1987, attached to your June 9, 1987 letter, relative to the above project.

Based on the plans and in-house information, the most seaward limit of the proposed structure, being the seawall, will be 23 feet on the west property line and 36 feet on the east property line landward of the 1961 mean high tide line, being the most landward mean high tide line located by this office. Therefore, we will not require a lease or permit at this time.

You should be aware, however, that this office has not made a final determination of the State's boundary at this location. Therefore, we reserve the right to require a lease or permit at some time in the future should it be determined State land is involved.

This letter is not intended, nor should it be construed as, a waiver of any right, title, or interest of the State of California in any lands under its jurisdiction.

If you have any questions, please call Georgia Lipphardt at (916) 322-7803.

Sincerely,

Leslie H. Grimes
LESLIE H. GRIMES, Deputy Chief
Division of Land Management
and Conservation

cc: G. Lipphardt
DRP
Fred Sledd

37151

Exhibit
5-87-576
State Land

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 10

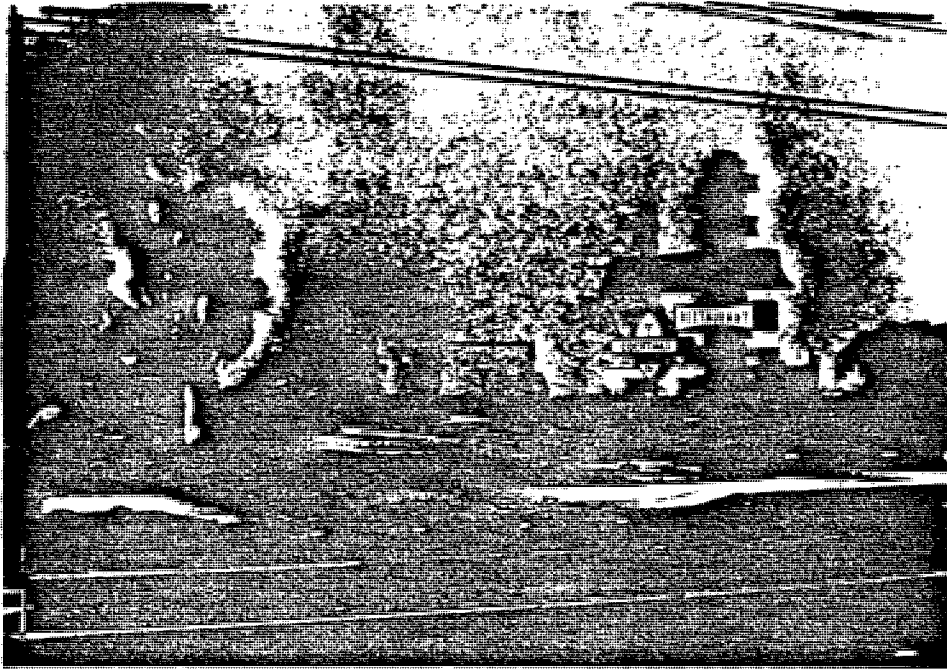
Page 56 of 60

TONGALEI MOTEL

ON THE BEACH AT MALIBU PIER

22878 Pacific Coast Hwy.
Malibu, Calif. 90265
(213) 456-6444

7 5-87-576



RECEIVED
JUL 21 1987

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

THIS IS A "NOT SO GOOD" PICTURE OF
MY WIFE LEE AND MOTEL MAID IRMA.

I TOOK THIS PICTURE FROM ACROSS THE
STREET AT APPROXIMATELY THE SAME ANGLE AS THE
RENDERING DEPICTS. THE BOTTOM OF THE CROSSBAR
IS 7'-6". EVEN IF THE CROSSBAR WAS DROPPED
TO 7'-0", THERE IS STILL NO DOUBT THAT THE
OCEAN AND HORIZON WOULD STILL BE VISIBLE
UNDERNEATH THE BUILDING.

View ^{under} building

Exhibit 5
5-87-576

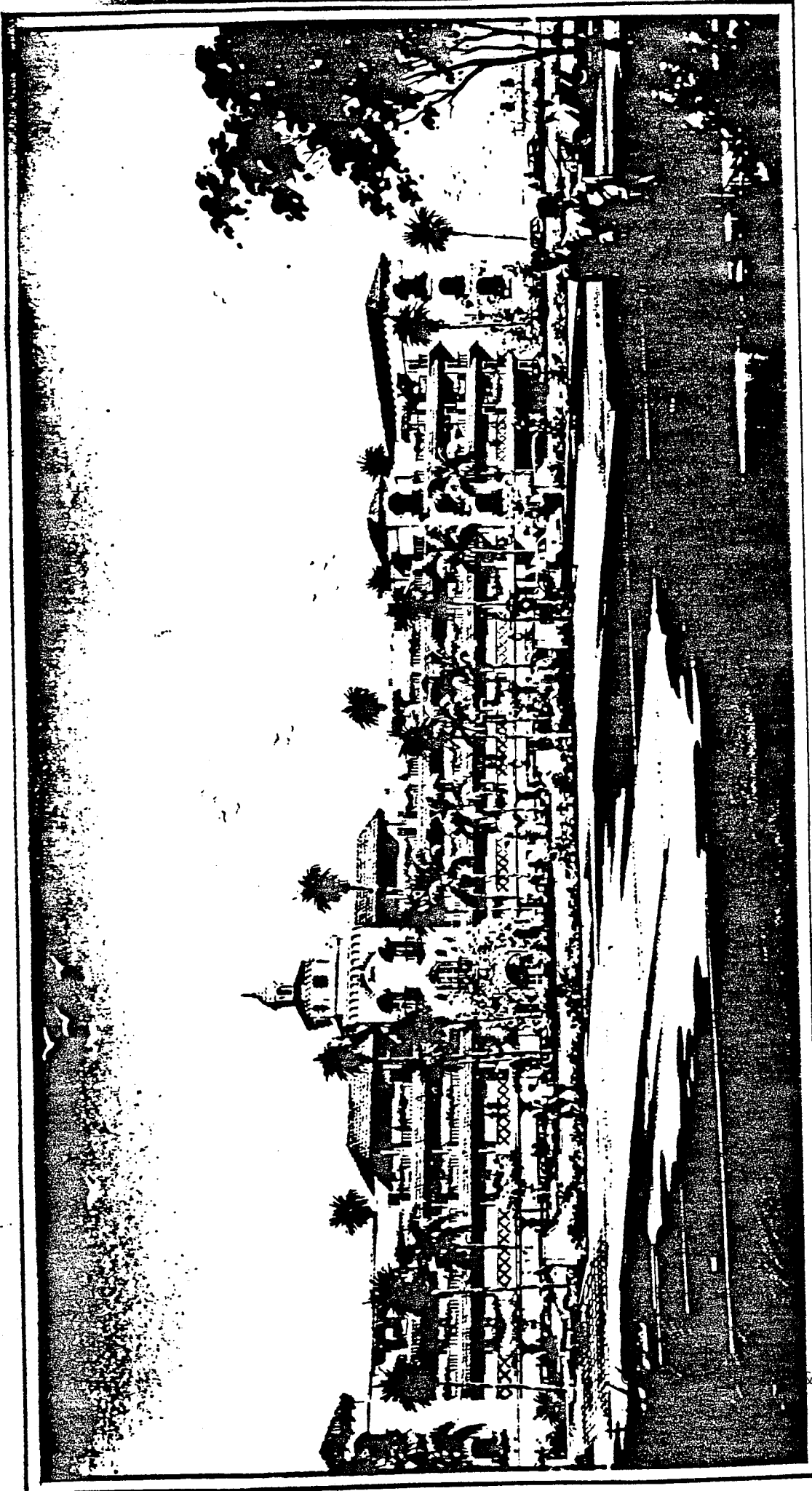


Exhibit 56a
Proposed

Malibu Beach Inn

LINE OF EXISTING STRUCTURE

SANDY BEACH AREA

PARKING LOT

LINE OF BUILDING

26'

16'

26'

24'

SIDE WALK

5.8.7 576

S: 87.576
Exhib. 44b

**BEACH GROOMING/GRADING AND
PLACEMENT OF GUEST AMENITIES ON LATERAL
BEACH EASEMENT AND STATE TIDELANDS**



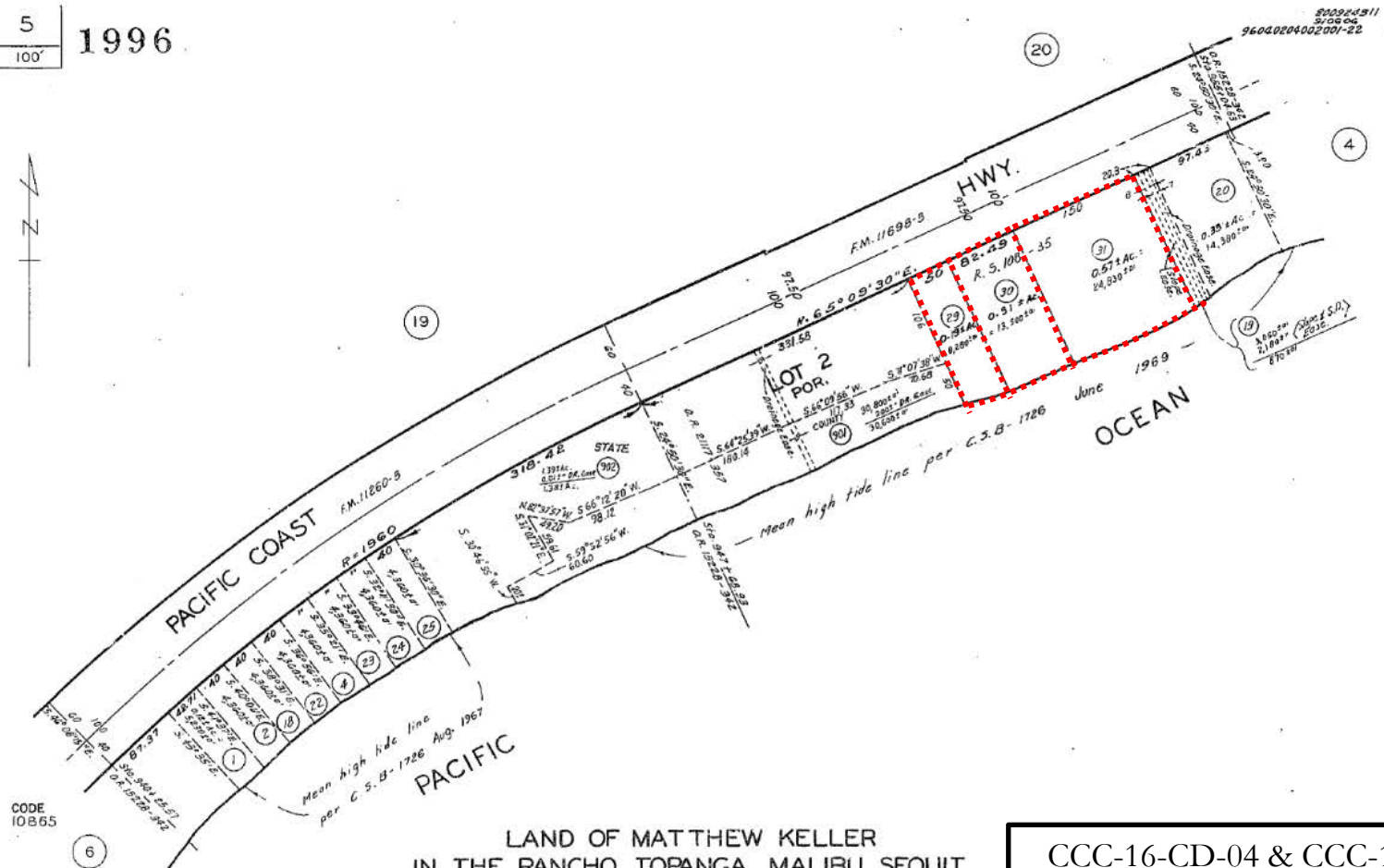
CCC-16-CD-04 & CCC-16-AP-02
Exhibit 11

PARCEL MAP

Malibu Beach Inn Parcels

4452 5
SCALE 1" = 100'

1996



CODE
10865

FOR PREV. ASSMT SEE:
4452-5

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT
R. F. 534

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 12

California Coastal Commission
South Coast District
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

COASTAL DEVELOPMENT PERMIT NO. 5-83-305

Page 1 of 2

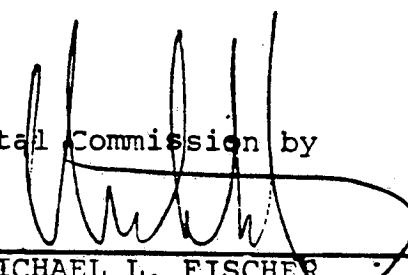
On May 24, 1983, The California Coastal Commission granted to
13837 Fiji Way
Department of Beaches and Harbors, Los Angeles Co., Marina Del Rey, CA 9029
this permit for the development described below, subject to the attached
Standard and Special conditions.

Replacement of 500 linear feet of rip-rap along seaward side
of existing Malibu Pier State Park parking lot.


SITE: 22900 Pacific Coast Highway, Malibu

This administrative permit is being transmitted at
applicant's request in advance of being reported
to the Commission. Any construction undertaken
in reliance upon this permit prior to report to
the Commission is done at applicant's own risk.

Issued on behalf of the California Coastal Commission by


MICHAEL L. FISCHER
Executive Director
and

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


Karl P. Hinch

KH/mm

ACKNOWLEDGEMENT

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

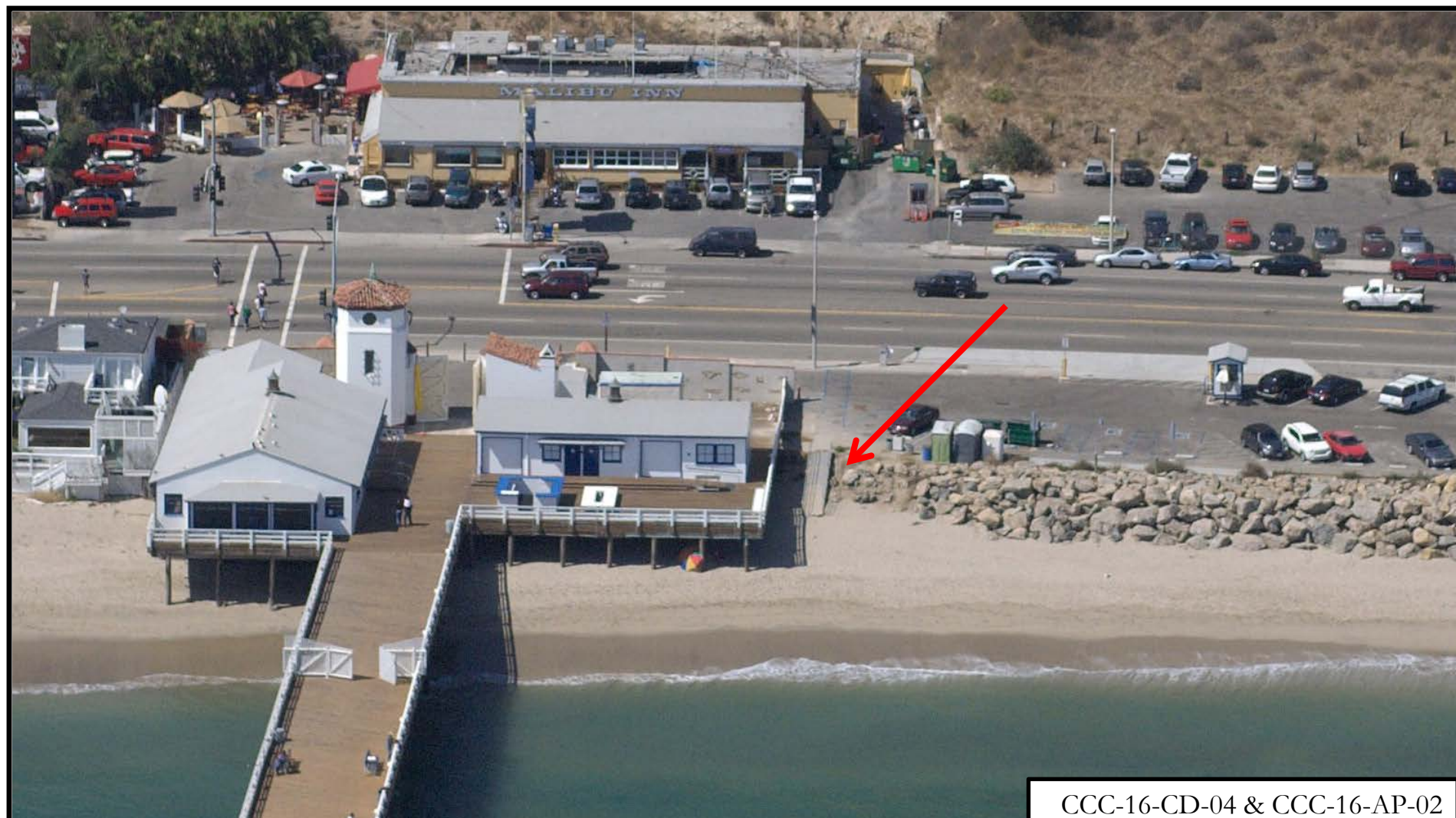
Date

Signature of

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 13



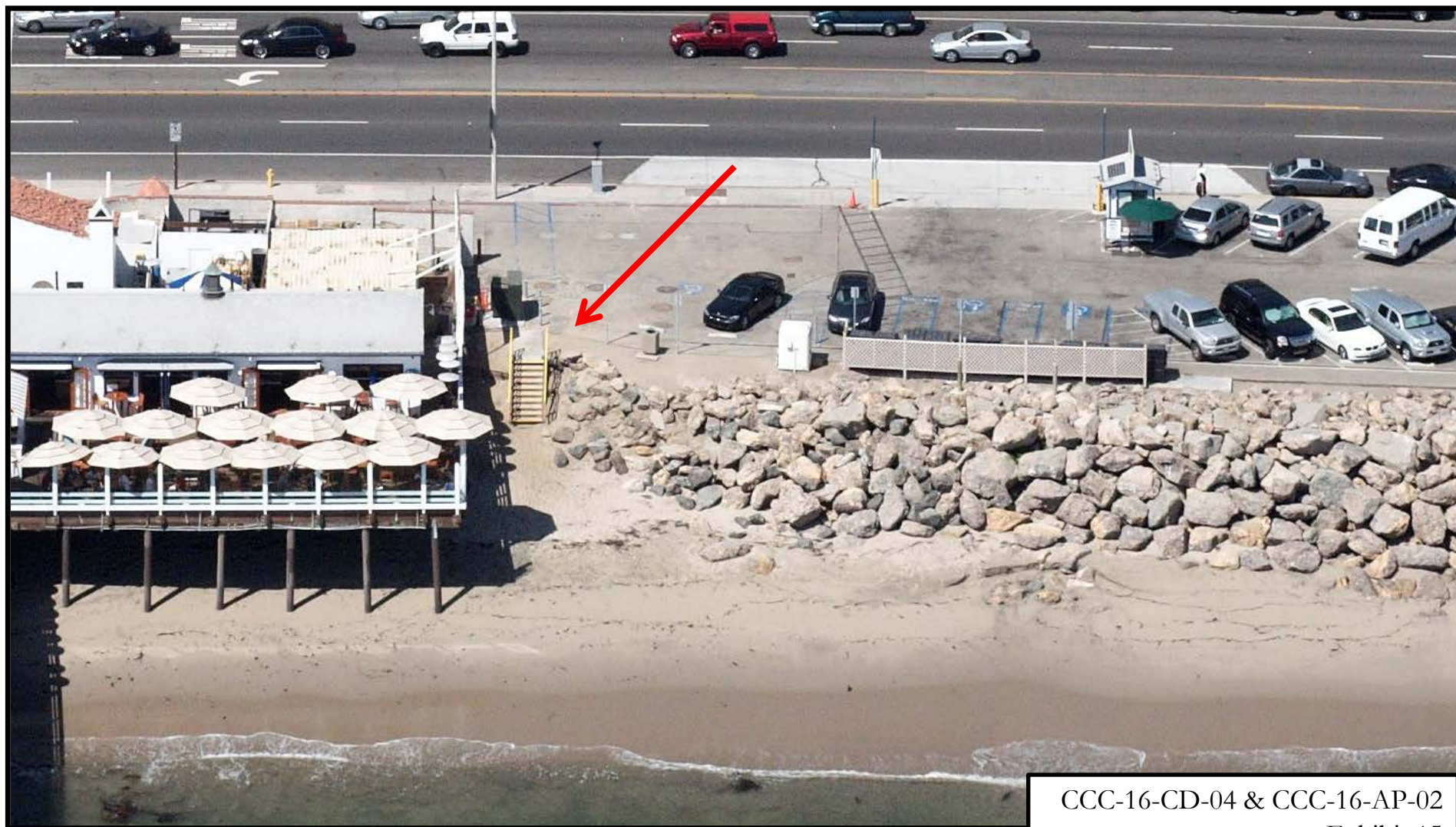
TEMPORARY PUBLIC ACCESS: "RESERVOIR-STYLE RAMP" (2004)



CCC-16-CD-04 & CCC-16-AP-02

Exhibit 14

TEMPORARY PUBLIC ACCESS: FIBERGLASS SURPLUS STAIRS (2010)



CCC-16-CD-04 & CCC-16-AP-02

Exhibit 15

CLOSED ACCESS STAIRS (OCTOBER 2015)

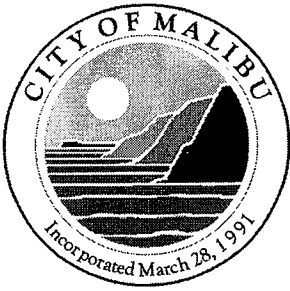


CCC-16-CD-04 & CCC-16-AP-02
Exhibit 16

PUBLIC ACCESSING THE BEACH ACROSS TONGA LEI/DON THE BEACHCOMBER PARKING LOT (~1985)



CCC-16-CD-04 & CCC-16-AP-02
Exhibit 17



Commission Agenda Report

To: Chair Randall and Members of the Planning Commission

Prepared by: Noah Greer, Contract Planner *NS*

Reviewed by: CJ Amstrup, AICP, Planning Manager *[Signature]*

Approved by: Victor Peterson, Environmental and Community Development Director *[Signature]*

Date prepared: May 25, 2006 Meeting date: June 19, 2006

Subject: Coastal Development Permit 06-011 and Conditional Use Permit No. 06-001 – An application for the construction of a new, alternative onsite wastewater treatment system, the construction of a porte-cochere addition and an interior remodel to create a new dining area within an existing hotel.

Application Number: Coastal Development Permit No. 06-011
Conditional Use Permit No. 06-001

Application Filing Date: February 9, 2006

Applicant: Lynn Heacox, The Land & Water Company

Owner: MBI PCH, LLC

Location: 22878 Pacific Coast Highway

APN: 4452-005-029, 4452-005-030, 4452-005-031

Zoning: Commercial Visitor Serving - 2 (CV-2)

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 06-46 (Attachment 1) approving Conditional Use Permit (CUP) No. 06-001 and Coastal Development Permit (CDP) 06-011 to construct a new porte-cochere at the entrance to an existing hotel and a remodel to create a new dining area within the existing Malibu Beach Inn lobby. Additionally, the application includes a new alternative onsite wastewater treatment system (AOWTS) and is located at 22878 Pacific Coast Highway within the Commercial Visitor Serving (CV-2) zoning district.

DISCUSSION: The issue before the Planning Commission is whether to adopt Planning Commission Resolution No. 06-46 approving CUP No. 06-001 and CDP No. 06-011. Pursuant to Malibu Municipal Code (M.M.C.) Chapter 17.66, the applicant is requesting that the City grant a CUP to allow a restaurant use within the existing Malibu Beach Inn hotel. No change in the existing footprint is proposed. Additionally, the applicant is

requesting approval of a CDP to permit the construction of a new porte-cochere at the hotel entrance and a new alternative onsite wastewater treatment system (AOWTS).

The proposed construction is part of a multi-stage renovation intended to upgrade the appearance and rating of the existing hotel. Numerous other interior and cosmetic exterior improvements are being processed under separate permits. Furthermore, onsite landscaping is being improved.

Chronology of Project

On October 15, 1987, the California Coastal Commission approved CDP No. 5-87-576 for the construction of the existing 47-room hotel with 52 parking spaces (including valet spaces). This existing structure is considered legal non-conforming as to setbacks, parking and development area.

On August 25, 2005, a Pre-Application (PA 05-054) was filed with the Planning Division for review and comment. This pre-application addressed a potential lobby remodel, exterior refinishing, and various structural additions. In response, staff provided general development standard information to the applicant.

On March 16, 2006, Emergency Coastal Development Permit (ECDP) No. 05-055 was approved to permit the installation of a new alternative onsite wastewater treatment system to replace a failed onsite wastewater treatment system.

On February 9, 2006, an application for a Conditional Use Permit and Coastal Development Permit was submitted to permit the construction of the porte-cochere, kitchen and dining area.

On May 3, 2006, this application was revised to include the required follow-up permitting for the AOWTS approved under ECDP No. 05-055.

On May 7, 2006, the application was deemed complete.

On May 25, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on May 24, 2006 a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property. Attachment 7 (Public Hearing / Mailing Notice)

Surrounding Land Use and Setting

The 46,610 square foot property is located on a beachfront parcel immediately east of the Malibu Pier parking area (the property boundaries extend into the beach and ocean; the area of improved property is approximately 26,230 square feet). Consistent with the Coastal Commission's 1987 approval, the lot is developed with a hotel of approximately 22,165 square feet with 52 on-site parking spaces, including valet spaces. Portions of the

structure are cantilevered or extend toward the sea on piers. The structure is protected from wave action and erosion by a rock revetment that is contiguous with adjacent properties. A concrete staircase provides hotel patrons with access to the beach, while public access is available at the public parking lot immediately west of the building.

Properties in the immediate area are developed with a combination of recreational, residential and commercial uses. The project site is located at the western edge of a dense commercial and residential corridor along the southern side of Pacific Coast Highway (PCH). The property is bounded on the north by Pacific Coast Highway, on the west by a public parking lot next to Malibu Pier, on the south by Carbon Beach and on the east by a two-story condominium complex. The hotel is accessible via a driveway directly off of PCH. The subject parcel is approximately 283 feet in width and is developed with a building approximately 206 feet wide.

Project Description

Below is a detailed description of the proposed new dining area, porte-cochere and septic system.

The proposed remodeling of the lobby will accommodate the construction of a 196 square foot kitchen and a dining area with approximately 42 seats. A total of 563 square feet of indoor and outdoor seating is proposed. Outdoor seating would be located on the existing patio at the beach-facing side of the building. The restaurant is intended to serve guests of the hotel and their invitees only (conditions 2 and 15) restricts use of the restaurant accordingly). The proposed hours of operation are from 6 a.m. to 11 p.m. daily (condition 16). When the dining area is closed a limited menu of prepared items will be available to serve hotel guests. There is no live music proposed. Recorded music will be played in the service area. Alcohol (beer, wine and distilled spirits) will be served in accordance with the existing liquor license (Type 70 – General On-Sale Restrictive Service). There will be no separate bar area. The restaurant use will not require any change in the existing footprint. Six additional valet parking spaces will be provided within the existing parking lot (condition 17). The requested CUP applies only to the proposed restaurant use and is not necessary to permit the new porte-cochere or septic system.

The proposed porte-cochere would be located at the hotel's main entrance and would project out from the existing structure, straddling the existing driveway. The structure would not be located any nearer the street than the existing west wing of the building and would not exceed 26-feet in width and 21-feet, six-inches in height. Consistent with the Fire Department's approval, 13-feet, six-inches of clearance would be provided underneath the structure. Three-dimensional renderings of the porte-cochere are included as attachment 3 to this report.

The proposed septic system is a closed-top alternative onsite wastewater treatment system, including a 5,000 gallon grease trap, a 6,000 gallon septic tank, a 5,000 gallon

treatment tank, a 6,000 gallon dosing tank and a final treatment tank of 15,000 gallons. The system has been reviewed and preliminarily approved by Andrew Sheldon, the City's Environmental Health Specialist (this AOWTS was previously approved under ECDP No. 05-055 on March 16, 2006.)

Local Coastal Program

The Malibu LCP consists of a Land Use Plan (LUP) and a Local Implementation Plan (LIP). The LUP contains programs and policies to implement the California Coastal Act in Malibu. The LIP, which carries out the policies of the LUP, contains specific regulations to which projects requiring a CDP must adhere.

Staff reviewed the project for conformance with the following twelve sections of the LIP: (1) Zoning; (2) Grading; (3) Archaeological/Cultural Resources; (4) General Coastal Development Permit (CDP); (5) Environmentally Sensitive Habitat (ESHA); (6) Native Tree Protection; (7) Scenic, Visual and Hillside Protection; (8) Transfer of Development Credits; (9) Hazards; (10) Shoreline and Bluff Development; (11) Public Access; and (12) Land Division.

ANALYSIS

Section 17.28.030(A) of the M.M.C. conditionally permits restaurants in the Visitor-Serving Commercial (CV-2) zone district. There will be no amplified music or live entertainment.

The existing structure was legally permitted without the number of parking spaces that would be required today for a new hotel. Pursuant to Section 17.48.030 of the M.M.C., however, "For additions to existing development, the increased parking requirement shall be based only on the addition." For a restaurant use within a hotel, one parking space must be provided for each 100 square feet of dining area. The proposed dining area of approximately 563 square feet requires six additional parking spaces. These six spaces can be provided on site via the previously-approved valet parking arrangement, which includes tandem, or stacked, parking spaces.

The western portion of the existing hotel was legally permitted within the required front yard setback. The proposed porte-cochere would not extend past the existing structure and would be consistent with the established legal nonconforming setbacks. Due to the location and design of the three-story hotel, there is no potential for any public views across the developed portion of the site.

Existing utilities serve the site. With approval and installation of the proposed new septic system, all required services are available to service the hotel and restaurant.

As shown in Table 2, with approval of the Conditional Use Permit request, the proposed project complies with the LCP development standards. Staff visited the site and reviewed

three-dimensional renderings of the proposed porte-cochere to analyze the appearance of the proposed addition. As previously mentioned, there is no potential for the porte-cochere to block public views across the site. The maximum height of 21-feet, six-inches conforms to the allowed height for beachfront commercial properties. The proposed porte-cochere does not impact the allowed Floor Area Ratio of the site. Pursuant to Chapter 2 of the LIP, floor area is calculated from the interior face of exterior walls and specifically excludes vehicular loading space and maneuvering areas. The project is consistent with all applicable LCP codes, standards, goals, and policies. (Please see Attachment 7, Department Review Sheets, for agency review/conditions.)

Table 2 – LCP Zoning Conformance			
Development Requirement	Allowed	Proposed	Comments
SETBACKS			
Front Yard	Avg. of neighbors, 20'0" max	5'0"	Legal Non-Conforming
Rear Yard	Stringline Rule	No Change	Legal Non-Conforming
Side Yard 10% (west)	5'0"	56'1"	Complies
Side Yard 10% (east)	5'0"	0'0" (0'0" Existing)	Legal Non-Conforming
PARKING – Hotel (2 spaces per room and one space per employee)	Approx. 100 spaces	52 spaces	Legal Non-Conforming
PARKING – Restaurant (One space per 100 sq.ft. of dining area)	6 spaces	6 additional spaces	Complies
Floor Area Ratio (15%)	Approx. 3,935 sq.ft.	No Change (22,165 sq.ft.)	Legal Non-Conforming

Table 2 provides a summary of development standards (pursuant to LIP Sections 3.5 and 3.6) and indicates the project's compliance with these standards. The project complies with the applicable development standards.

Findings

The proposed project has been reviewed for conformance with the LCP by the Planning Division staff, the City Biologist, City Environmental Health Specialist, City Geologist, City Public Works Department and the Los Angeles County Fire Department (LACFD). Staff has determined that, subject to the proposed conditions of approval, the project conforms to the LCP. Based upon the foregoing evidence contained within the record and pursuant to LIP Section 13.9, the five required findings are discussed below.

A. Conditional Use Permit (M.M.C. Section 17.66)

The applicant is requesting a CUP to allow a restaurant within an existing hotel on a parcel zoned CV-2. Pursuant to M.M.C. Section 17.66.080, the Planning Commission may approve, deny and/or modify an application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. The CUP can be supported based on the findings below:

Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

The proposed restaurant is a conditionally permitted use in the CV-2 zoning district. The project has been conditioned to comply with all applicable provisions of the M.M.C.

Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The proposed restaurant is a commercial use that would serve visiting hotel patrons and their invitees. This use is consistent with the integrity and character of the Visitor-Serving Commercial zone district.

Finding 3. The subject site is physically suitable for the type of land use being proposed.

The proposed restaurant would be located entirely within the existing hotel building and requires only interior renovations. As the restaurant would serve only hotel guests and their invitees, the increased intensity of use is considered minor. The additional required parking spaces can be provided onsite and the proposed new septic system is designed to accommodate the increased load from a restaurant kitchen. The site is suitable for the type of land use proposed.

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The subject property is presently developed with a hotel and is surrounded by both commercial and residential uses. The restaurant use would service patrons of the hotel and is compatible with the surrounding neighborhood.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

The proposed use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses comprise residential, commercial and visitor-serving uses.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

Existing utilities will serve the proposed project. Since the proposed restaurant is restricted for the use of hotel guests and invitees only, no significant impacts on City services are anticipated. The proposed conditional use permit has been conditioned to limit the hours of operation from 6am-11pm daily.

The proposed restaurant will not create any shade or shadow impacts that would impede solar access. The existing structure would not change under this application. The proposed use will not impact public or private views.

Finding 7. There would be adequate provisions for public access to serve the subject proposal.

As proposed and conditioned, the proposed restaurant will not serve the general public. Only hotel guests and their invitees would be able to use the facilities. Adequate valet parking would be provided on the property. It is not anticipated that the change in use would negatively impact public pedestrian or vehicular circulation.

Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

The use is a conditionally permitted commercial use in the CV-2 District and, as conditioned, is consistent with the goals, objectives and policies of the General Plan.

Finding 9. The proposed project complies with all applicable requirements of state and local law.

The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the Department of Alcohol Beverage Control (ABC).

Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

The proposed restaurant will not be detrimental to the public interest, health, safety, convenience or welfare.

Finding 11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

The project will not be at risk from earth movement and flood hazards since the application only involves a change in use and interior renovations at an existing, developed property. The building footprint and envelope will not change; therefore, there is no new impact related to earth movement or liquefaction.

B. General Coastal Development Permit (LCP - Chapter 13)

Pursuant to LIP Section 13.9, the following four findings need to be made on all coastal development permits.

Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The project, as conditioned, conforms to the certified City of Malibu Local Coastal Program (LCP) and the required development standards (see Table 2).

Finding 2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is located between the first public road and the sea. The proposed change in use and interior renovations would not hinder public recreation or coastal access. Pursuant to the Coastal Commission's 1987 approval of the project, public beach access was provided at the public beach immediately west of the subject property.

Additional public access is located further west at Surfrider Beach. A vertical access easement has been recorded approximately 330 feet east of the Malibu Beach Inn and an existing vertical access way is located approximately 1,000 east of the subject property. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

Finding 3. The project is the least environmentally damaging alternative.

The proposed project will not result in any adverse impacts to environmental resources. As discussed later in this report, the project has been found to be exempt from the requirements of the California Environmental Quality Act (CEQA). Pursuant to the preliminary approval of City Environmental Health, the proposed septic system is capable of treating the proposed increased sewage load. There are no further feasible alternatives that would further reduce any impacts on

the environment. The project complies with the size, height and parking requirements of the LCP and the MMC.

There are four alternatives that were considered to determine the least environmentally damaging.

1. No Project – The “no project” alternative would avoid any change in the project site, and hence, any potential impacts to the environment. However, the proposed project would not generate any impacts to the environment and includes the replacement of a failing septic system. This component of the project is environmentally superior to the “no project” alternative.

2. No porte-cochere – Due to the location of the existing three-story hotel behind the proposed location of the porte-cochere, there are no potential impacts to visual resources that would be reduced or eliminated by removing the porte-cochere from the proposal. For this reason, the “no porte-cochere” alternative is not an environmentally superior alternative.

3. Larger project – Any additions to the habitable square footage of the existing hotel or to the existing foundation and rock revetment would potentially generate significant adverse environmental impacts. For this reason, a larger project would have been more environmentally damaging, and structural additions were limited to the proposed porte-cochere.

4. Proposed Project - The subject parcel is in an existing residential and commercial neighborhood where buildings are of similar size and bulk. Due to the location of the proposed porte-cochere in front of the existing three-story hotel, there are no potential impacts to visual resources. The proposed septic system replacement will be an improvement over the existing failed system and has been designed to treat the additional septic load generated by the proposed restaurant. This alternative involves no change in the existing foundation or rock revetment and has been designed to avoid any potential impacts to the physical environment.

For the reasons stated above, the project is the least environmentally damaging alternative.

Finding 4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

The project is not located in or adjacent to any environmentally sensitive habitat areas.

C. Environmentally Sensitive Habitat Area (ESHA) Overlay (LIP - Chapter 4)

The project is not located in or adjacent to any environmentally sensitive habitat areas. Therefore, these findings have not been made.

D. Native Tree Protection Ordinance (LIP - Chapter 5)

There are no native trees located on the project site. No adjacent trees will be removed in order to accommodate development or fuel modification. Therefore, according to Section 5.7, the native tree findings are not applicable.

E. Scenic Visual and Hillside Resource Protection Ordinance (LIP - Chapter 6)

The Scenic, Visual and Hillside Resource Protection Ordinance governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The project site is located between Pacific Coast Highway and the ocean and the proposed new porte-cochere would be highly visible from Pacific Coast Highway.

The proposed porte-cochere would not extend past the existing structure and would be consistent with the established legal nonconforming setbacks. While the majority of the site is developed with a three-story hotel, the westernmost 56.1 feet of the property comprise a parking lot. Public blue-water ocean views extend from Pacific Coast highway across this portion of the site. Due to the location and design of the three-story hotel immediately behind the proposed porte-cochere, there is no potential for any impacts to the existing view corridor. The maximum structure height of 21-feet, six-inches conforms to the maximum allowable height on beachfront commercially-zoned parcels. Three-dimensional renderings were provided by the applicant to demonstrate the project's size, bulk, scale and potential for visual impacts (attachment 3).

The project complies with LIP height requirements and no impacts on scenic and/or visual resources are anticipated. The Scenic, Visual and Hillside Resource Protection Ordinance Findings, as set forth in LIP Section 6.4, support the proposed project, as follows:

Finding 1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

LIP Section 6.5(E) requires a contiguous view corridor (20 percent of the lineal frontage of the lot) for new development located on the ocean side of public roads, where necessary to provide public ocean views across the site. Consistent with the Coastal Commission's 1987 permit, the westernmost 56.1 feet of the property provide a contiguous view corridor. This corridor comprises approximately 19.85 percent of the lineal frontage of the lot. Though slightly under the standard view corridor requirement, this situation is considered legal non-conforming.

The proposed restaurant use will not adversely affect scenic resources. As mentioned above, the proposed porte-cochere will have no adverse scenic or visual impacts and will not require construction within the existing view corridor. Therefore, no potentially significant impacts on scenic or visual resources are anticipated.

Finding 2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

The proposed location of the porte-cochere is consistent with existing legal non-conforming setbacks and will not result in any adverse visual impacts. Anticipated future landscape enhancements will not adversely impact visual resources and the project has been conditioned to ensure views across the westernmost portion of the site are maintained (see condition 19). The project will be compatible with the architectural character of the surrounding neighborhood. Therefore, the project will not have any significant adverse scenic or visual impacts due to project modifications, new landscaping or other conditions.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Section B. General Coastal Development Permit, Finding C of this report, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As discussed in Section E. Scenic Visual and Hillside Protection, Findings A and B, above, the proposed project will not result in any significant adverse impacts to scenic and visual resources.

Finding 5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Section C. Environmentally Sensitive Habitat Area, above, the project is not located in or adjacent to any sensitive environmental resources. As discussed in Section E. Scenic Visual and Hillside Protection, Findings A and B, above, the proposed project will not result in any significant adverse impacts to scenic and visual resources.

F. Transfer of Development Credits (LIP - Chapter 7)

Pursuant to Malibu LIP Section 7.2, transfers of development credits only apply to land division and/or new multi-family development in specified zoning districts. The proposed CUP and CDP do not involve land division or multi-family development. Therefore, LIP Chapter 7 does not apply.

G. Hazards (LIP - Chapter 9)

The project was analyzed by staff for the hazards listed in the LIP Section 9.2.A.1-7. The proposed restaurant use, new porte-cochere and septic system have been deemed consistent with all relevant policies and regulations by the City Geologist, the City Environmental Health Specialist, the City Public Works Department and the Los Angeles County Fire Department. Pursuant to this review, the project will not result in potentially significant adverse impacts to on-site stability or structural integrity. Therefore, according to LIP Section 9.3, LCP hazard findings need not be made.

H. Shoreline and Bluff Development (LIP – Chapter 10)

The proposed project is located on a beachfront parcel. Therefore, in accordance with Section 10.2 of the Local Implementation Plan, the requirements of Chapter 10 of the LIP are applicable to the project and the required findings made below.

Finding 1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

The proposed project involves no change to the southern, beach-fronting side of the existing building. The existing shoreline protective device, a rock revetment, was permitted by the Coastal Commission in 1987. The revetment is roughly contiguous with the rock seawall in place at the public parking lot immediately west of the subject property. The existing revetments appear consistent with the 1987 Coastal Commission approval. Due to its minor scope and design, the project is not anticipated to result in significant adverse impacts on public access, shoreline sand supply or other resources.

Finding 2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

The proposed project involves no change to the southern, beach-fronting side of the existing building. Due to its minor scope and design, the project is not anticipated to result in significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed previously, the project will not result in potentially significant impacts to the environment. The project is the least environmentally damaging alternative.

Finding 4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed previously, the project will not result in potentially significant impacts. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

Finding 5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and is the least environmentally damaging alternative.

As stated in Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources. The project does not include any changes to the existing foundation or shoreline protective device.

As discussed previously, the project will not result in potentially significant impacts because 1) feasible best management practices and/or alternatives have been incorporated to substantially lessen any potentially significant adverse effects of the development on the environment, or 2) there are no further feasible best management practices or alternatives that would substantially lessen any potentially significant adverse impacts of the development on the environment. The project is the least environmentally damaging alternative.

I. Public Access (LIP - Chapter 12)

The project is located between the first public road and the sea. The proposed change in use, new porte-cochere and interior renovations would not hinder public recreation or coastal access. Short-term construction would not hinder public recreation or coastal access. The project will not increase the demand for coastal access or recreation areas. Pursuant to the Coastal Commission's 1987 approval of the project, recordation of a lateral beach access agreement was required and coastal access was provided at the public beach immediately west of the subject property.

Additional public access is located further west at Surfrider Beach. A vertical access easement has been recorded approximately 330 feet east of the Malibu Beach Inn and an existing vertical access way is located approximately 1,000 east of the subject property. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; however, LIP Section 12.6 states that public access is not required when adequate access exists nearby and the findings addressing LIP Section 12.8.3 can be made. The following findings satisfy this requirement. Analyses required by LIP Section 12.8.2 are provided herein. Bluff top and trail access are not applicable. No issue of public prescriptive rights has been raised.

Lateral Access

The project is on the shoreline. According to LIP Section 12.5, access is required for new development between the nearest public roadway and the sea. Standards for lateral public access are identified in LIP Section 12.7.1.

The Coastal Commission's 1987 approval of the existing hotel required recordation of a lateral access agreement. The recordation of the lateral access document is mapped on Local Coastal Program Public Access Map 3 and listed in the Coastal Commission's Coastal Access Inventory. To date, the existing Offer to Dedicate has not been accepted and has an expiration date of November 17, 2008. As there is an existing recorded lateral access document, the proposed project is consistent with the LIP standards for lateral public beach access.

Due to the relatively minor scope of the project, no potential project-related or cumulative impacts on existing lateral public access are anticipated.

Vertical Access

As discussed previously, the project is located between the shore and the first public road. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Furthermore, due to nearby public beach access points, vertical access across the site is not deemed appropriate.

Consistent with the Coastal Commission's 1987 approval of the project, vertical beach access is available onsite only for patrons of the hotel. Vertical beach access is available immediately west of the subject property at the public beach and parking lot adjacent to Malibu Pier. The proposed project will not adversely affect existing public beach access.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Nevertheless, the following findings and

analysis were conducted in accordance with LIP Section 12.8.3 regarding vertical access. Due to these findings, LIP Section 12.8.1 is not applicable.

Finding A. The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Vertical access would not impact fragile coastal resources or have any impact on a military facility. The basis for the exception to the requirement for vertical access is associated with the availability of access nearby as described above. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated.

Finding B. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

As discussed previously, no measures are available to manage the type, character, intensity, hours, season or location of a vertical access to public safety. No impacts to military security or to fragile coastal resource have been identified. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated.

Finding C. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. The ability of the public to access nearby public coastal tidelands is available from the beaches located both east and west of the project site.

Conditioning the project to provide a vertical public access would not provide additional access to coastal resources because adequate public access is provided in the vicinity. Since existing access to coastal resources is adequate, no legitimate governmental or public interest would be furthered by requiring access at the project site.

Bluff Top Access

The beachfront project is not located on a bluff top. Therefore, no conditions or findings for bluff top access are required.

Trail Access

The project site does not include any existing or planned trails as indicated in the LCP, the General Plan, or the Trails master Plan. Therefore, no conditions or findings for trail access are required.

Recreational Access

As discussed previously, the project is located between the shore and the first public road. Insofar as Carbon Beach is used for public recreation, the site is immediately adjacent to a public recreation area. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated. Furthermore, due to nearby public beach access points, access across the site is not deemed appropriate.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Nevertheless, the following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding recreational access. Due to these findings, LIP Section 12.8.1 is not applicable.

Finding A. The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Access across the site would not impact fragile coastal resources or have any impact on a military facility. The basis for the exception to the requirement for recreational access is associated with the availability of access nearby as described above. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated.

Finding B. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

As discussed previously, no measures are available to manage the type, character, intensity, hours, season or location of an access way to public safety. No impacts to military security or to fragile coastal resource have been identified. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated.

Finding C. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated. The ability of the public to access Carbon Beach is available from the beaches located both east and west of the project site.

Conditioning the project to provide public access would not provide additional access to recreation areas because adequate public access is provided in the vicinity. Since existing access to coastal recreation areas is adequate, no legitimate governmental or public interest would be furthered by requiring access at the project site.

J. Land Division (LIP - Chapter 15)

This project does not involve a division of land as defined in LIP Section 15.1; therefore, Chapter 15 of the LCP does not apply.

K. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses Alternative Onsite Wastewater Treatment Systems (AOWTS). LIP Section 18.7 includes specific siting, design, and performance requirements. The project includes approval of an AOWTS, which was previously reviewed by the City Environmental Health Specialist and found to meet the minimum requirements of the Malibu Plumbing Code, the City of Malibu Municipal Code and the LCP. The system meets all applicable requirements and operating permits will be required. An operation and maintenance contract and recorded covenant will be required pursuant to conditions 27 and 28. Also, the lot will receive municipal water from Los Angeles County Water District 29.

Environmental Review Board

As the project is not in or adjacent to environmentally sensitive habitat, the ERB did not review this project.

ENVIRONMENTAL REVIEW: Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the Planning Division has analyzed the proposal as described above. The Planning Division has found that this project is listed among the classes of projects that have been determined to have a less than significant adverse effect on the environment and therefore, exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared pursuant to CEQA Guidelines Section 15303 class 3(c) –New Construction or Conversion of Small Structures. The Planning Division has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

PUBLIC NOTICE: Pursuant to Malibu Municipal Code Section 17.66.050, staff published the required 21-day public hearing notice in the Malibu Surfside News on May 25, 2006. In addition, a Notice of Public Hearing was mailed to property owners and

occupants within a 500-foot radius of the subject property on May 24, 2006. Attachment 9 (Public Hearing / Mailing Notice)

CORRESPONDENCE: Staff has received no comments at this time.

SUMMARY: The required CUP findings can be made. The required CDP findings and all other required findings can be made. Further, the Planning Division's findings of fact are supported by substantial evidence in the record. Based on the analysis contained in this report, staff is recommending approval of this project subject to the conditions of approval contained in Section 4 (Conditions of Approval) of Planning Commission Resolution No. 06-46.

ATTACHMENTS:

1. Planning Commission Resolution No. 06-46
2. Reduced Project Plans
3. Three-dimensional rendering of proposed porte-cochere
4. Aerial Photograph of site and surrounding properties
5. ECDP 05-055
6. Market Analysis
7. Department Review Sheets
8. LCP Public Access Map
9. Public Hearing / Mailing Notice

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 06-46**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING CONDITIONAL USE PERMIT 06-001 AND COASTAL DEVELOPMENT PERMIT NO. 06-011 - AN APPLICATION TO CONSTRUCT A NEW, PORTE-COCHERE AT THE HOTEL ENTRANCE AND A NEW DINING AREA WITHIN THE EXISTING MALIBU BEACH INN LOBBY. ADDITIONALLY, THE PROJECT INCLUDES A NEW ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM. THE DEVELOPMENT IS PROPOSED IN A COMMERCIAL VISITOR-SERVING ZONING DISTRICT LOCATED AT 22878 PACIFIC COAST HIGHWAY. (MBI PCH, LLC)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

- A. On October 15, 1987, the California Coastal Commission approved CDP No. 5-87-576 for the construction of the existing 47-room hotel with 52 parking spaces (including valet spaces). This existing structure is considered legal non-conforming as to setbacks, parking and development area.
- B. On August 25, 2005, a Pre-Application (PA 05-054) was filed with the Planning Division for review and comment. This pre-application addressed a potential lobby remodel, exterior refinishing, and various structural additions. In response, staff provided general development standard information to the applicant.
- C. On March 16, 2006, Emergency Coastal Development Permit (ECDP) No. 05-055 was approved to permit the installation of a new alternative onsite wastewater treatment system to replace a failed onsite wastewater treatment system.
- D. On February 9, 2006, an application for a Conditional Use Permit and Coastal Development Permit was submitted to permit the construction of the porte-cochere, kitchen and dining area.
- E. On May 3, 2006, this application was revised to include the required follow-up permitting for the AOWTS approved under ECDP No. 05-055.
- F. On May 7, 2006, the application was deemed complete.
- G. On May 25, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on May 24, 2006 a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property. Attachment 7 (Public Hearing / Mailing Notice)
- H. On June 19, 2006, the Planning Commission held a duly noticed public hearing on the subject

application, reviewed and considered the staff report, reviewed and considered written reports, public testimony and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the Planning Division has analyzed the proposed project. The Planning Division has found that the project is among the classes of projects listed that have been determined to have less than significant adverse effects on the environment and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Section 15303 (c) – New Construction or Conversion of Small Structures.

Section 3. Conditional Use Permit Approval and Findings

Based on substantial evidence contained within the record and pursuant to Section 17.66 of the Malibu Municipal Code, the Planning Commission adopts the findings in the staff report, the findings of fact below, and approves CUP No. 06-001 for an interior remodel to create a new kitchen and a new dining area within the existing Malibu Beach Inn lobby.

The proposed project has been reviewed by the City Geologist, City Environmental Health Specialist, City Biologist, and City Public Works Department, as well as the Los Angeles County Fire Department.

The project is consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made below.

A. Conditional Use Permit (M.M.C. Section 17.66)

The applicant is requesting a CUP to allow a restaurant within an existing hotel on a parcel zoned CV-2. Pursuant to M.M.C. Section 17.66.080, the Planning Commission may approve, deny and/or modify an application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. The CUP can be supported based on the findings below:

Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

The proposed restaurant is a conditionally permitted use in the CV-2 zoning district. The project has been conditioned to comply with all applicable provisions of the M.M.C.

Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The proposed restaurant is a commercial use that would serve visiting hotel patrons and their invitees. This use is consistent with the integrity and character of the Visitor-Serving Commercial zone district.

Finding 3. The subject site is physically suitable for the type of land use being proposed.

The proposed restaurant would be located entirely within the existing hotel building and requires only interior renovations. As the restaurant would serve only hotel guests and their invitees, the increased intensity of use is considered minor. The additional required parking spaces can be provided onsite and the proposed new septic system is designed to accommodate the increased load from a restaurant kitchen. The site is suitable for the type of land use proposed.

Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The subject property is presently developed with a hotel and is surrounded by both commercial and residential uses. The restaurant use would service patrons of the hotel and is compatible with the surrounding neighborhood.

Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

The proposed use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses comprise residential, commercial and visitor-serving uses.

Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

Existing utilities will serve the proposed project. Since the proposed restaurant is restricted for the use of hotel guests and invitees only, no significant impacts on City services are anticipated. The proposed conditional use permit has been conditioned to limit the hours of operation from 6:00 am-11:00 pm daily.

The proposed restaurant will not create any shade or shadow impacts that would impede solar access. The existing structure would not change under this application. The proposed use will not impact public or private views.

Finding 7. There would be adequate provisions for public access to serve the subject proposal.

As proposed and conditioned, the proposed restaurant will not serve the general public. Only hotel guests and their invitees would be able to use the facilities. Adequate valet parking would be provided on the property. It is not anticipated that the change in use would negatively impact public pedestrian or vehicular circulation.

Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

The use is a conditionally permitted commercial use in the CV-2 District and, as conditioned, is consistent with the goals, objectives and policies of the General Plan.

Finding 9. The proposed project complies with all applicable requirements of state and local law.

The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the Department of Alcohol Beverage Control (ABC).

Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

The proposed restaurant will not be detrimental to the public interest, health, safety, convenience or welfare.

Finding 11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

The project will not be at risk from earth movement and flood hazards since the application only involves a change in use and interior renovations at an existing, developed property. The building footprint and envelope will not change; therefore, there is no new impact related to earth movement or liquefaction.

Section 4. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B and 13.9 of the City Malibu LCP Local Implementation Plan (LIP), the Planning Commission adopts the findings in the staff report, the findings of fact below, and approves CDP No. 06-011 for the construction of a new porte-cochere at the entrance to an existing hotel and the construction of a new alternative onsite wastewater treatment system.

The proposed project has been reviewed by the City Geologist, City Environmental Health Specialist, City Biologist, and City Public Works Department, as well as the Los Angeles County Fire Department.

The project is consistent with the LCP's zoning, grading, water quality, and onsite wastewater treatment system (OWTS) requirements. The project is consistent with all applicable LCP codes, standards, goals, and policies. The required findings are made below.

B. General Coastal Development Permit (LCP - Chapter 13)

Pursuant to LIP Section 13.9, the following four findings need to be made on all coastal development permits.

Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The project, as conditioned, conforms to the certified City of Malibu Local Coastal Program (LCP) and the required development standards.

Finding 2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is located between the first public road and the sea. The proposed change in use and interior renovations would not hinder public recreation or coastal access. Pursuant to the Coastal Commission's 1987 approval of the project, public beach access was provided at the public beach immediately west of the subject property.

Additional public access is located further west at Surfrider Beach. A vertical access easement has been recorded approximately 330 feet east of the Malibu Beach Inn and an existing vertical access way is located approximately 1,000 east of the subject property. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

Finding 3. The project is the least environmentally damaging alternative.

The proposed project will not result in any adverse impacts to environmental resources. As discussed later in this report, the project has been found to be exempt from the requirements of the California Environmental Quality Act (CEQA). Pursuant to the preliminary approval of City Environmental Health, the proposed septic system is capable of treating the proposed increased sewage load. There are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size, height and parking requirements of the LCP and the MMC.

There are three alternatives that were considered to determine the least environmentally damaging.

1. No Project – The “no project” alternative would avoid any change in the project site, and hence, any potential impacts to the environment. However, the proposed project would not generate any impacts to the environment and includes the replacement of a failing septic system. This component of the project is environmentally superior to the “no project” alternative.
2. No porte-cochere – Due to the location of the existing three-story hotel behind the proposed location of the porte-cochere, there are no potential impacts to visual resources that would be reduced or eliminated by removing the porte-cochere from the proposal. For this reason, the “no porte-cochere” alternative is not an environmentally superior alternative.
3. Larger project – Any additions to the habitable square footage of the existing hotel or to the existing foundation and rock revetment would potentially generate significant adverse environmental impacts. For this reason, a larger project would have been more environmentally damaging, and structural additions were limited to the proposed porte-cochere.
4. Proposed Project - The subject parcel is in an existing residential and commercial neighborhood where buildings are of similar size and bulk. Due to the location of the proposed porte-cochere in front of the existing three-story hotel, there are no potential impacts to visual resources. The proposed septic system replacement will be an improvement over the existing failed system and has been designed to treat the

additional septic load generated by the proposed restaurant. This alternative involves no change in the existing foundation or rock revetment and has been designed to avoid any potential impacts to the physical environment.

For the reasons stated above, the project is the least environmentally damaging alternative.

Finding 4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

The project is not located in or adjacent to any environmentally sensitive habitat areas.

C. Environmentally Sensitive Habitat Area (ESHA) Overlay (LIP - Chapter 4)

The project is not located in or adjacent to any environmentally sensitive habitat areas. Therefore, these findings have not been made.

D. Native Tree Protection Ordinance (LIP - Chapter 5)

There are no native trees located on the project site. No adjacent trees will be removed in order to accommodate development or fuel modification. Therefore, according to Section 5.7, the native tree findings are not applicable.

E. Scenic Visual and Hillside Resource Protection Ordinance (LIP - Chapter 6)

The Scenic, Visual and Hillside Resource Protection Ordinance governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The project site is located between Pacific Coast Highway and the ocean and the proposed new porte-cochere would be highly visible from Pacific Coast Highway.

The proposed porte-cochere would not extend past the existing structure and would be consistent with the established legal nonconforming setbacks. While the majority of the site is developed with a three-story hotel, the westernmost 56.1 feet of the property comprise a parking lot. Public blue-water ocean views extend from Pacific Coast highway across this portion of the site. Due to the location and design of the three-story hotel immediately behind the proposed porte-cochere, there is no potential for any impacts to the existing view corridor. The maximum structure height of 21-feet, six-inches conforms to the maximum allowable height on beachfront commercially-zoned parcels. Three-dimensional renderings were provided by the applicant to demonstrate the project's size, bulk, scale and potential for visual impacts.

The project complies with LIP height requirements and no impacts on scenic and/or visual resources are anticipated. The Scenic, Visual and Hillside Resource Protection Ordinance Findings, as set forth in LIP Section 6.4, support the proposed project, as follows:

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 18
Page 24 of 71

Finding 1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

LIP Section 6.5(E) requires a contiguous view corridor (20 percent of the lineal frontage of the lot) for new development located on the ocean side of public roads, where necessary to provide public ocean views across the site. Consistent with the Coastal Commission's 1987 permit, the westernmost 56.1 feet of the property provide a contiguous view corridor. This corridor comprises approximately 19.85 percent of the lineal frontage of the lot. Though apparently slightly under the standard view corridor requirement, this situation is considered legal non-conforming.

The proposed restaurant use will not adversely affect scenic resources. As mentioned above, the proposed porte-cochere will have no adverse scenic or visual impacts and will not require construction within the existing view corridor. Therefore, no potentially significant impacts on scenic or visual resources are anticipated.

Finding 2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

The proposed location of the porte-cochere is consistent with existing legal non-conforming setbacks and will not result in any adverse visual impacts. Anticipated landscape enhancements will not adversely impact visual resources and the project has been conditioned to ensure views across the westernmost portion of the site are maintained (condition 19). The project will be compatible with the architectural character of the surrounding neighborhood. Therefore, the project will not have any significant adverse scenic or visual impacts due to project modifications, new landscaping or other conditions.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Section B. General Coastal Development Permit, Finding C of this report, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As discussed in Section E. Scenic Visual and Hillside Protection, Findings A and B, above, the proposed project will not result in any significant adverse impacts to scenic and visual resources.

Finding 5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in Section C. Environmentally Sensitive Habitat Area, above, the project is not located in or adjacent to any sensitive environmental resources. As discussed in Section E. Scenic Visual and Hillside Protection, Findings A and B, above, the proposed project will not result in any significant adverse impacts to scenic and visual resources.

F. Transfer of Development Credits (LIP - Chapter 7)

Pursuant to Malibu LIP Section 7.2, transfers of development credits only apply to land division and/or new multi-family development in specified zoning districts. The proposed CUP and CDP do not involve land division or multi-family development. Therefore, LIP Chapter 7 does not apply.

G. Hazards (LIP - Chapter 9)

The project was analyzed by staff for the hazards listed in the LIP Section 9.2.A.1-7. The proposed restaurant use, new porte-cochere and septic system have been deemed consistent with all relevant policies and regulations by the City Geologist, the City Environmental Health Specialist, the City Public Works Department and the Los Angeles County Fire Department. Pursuant to this review, the project will not result in potentially significant adverse impacts to on-site stability or structural integrity. Therefore, according to LIP Section 9.3, LCP hazard findings need not be made.

H. Shoreline and Bluff Development (LIP - Chapter 10)

The proposed project is located on a beachfront parcel. Therefore, in accordance with Section 10.2 of the Local Implementation Plan, the requirements of Chapter 10 of the LIP are applicable to the project and the required findings made below.

Finding 1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

The proposed project involves no change to the southern, beach-fronting side of the existing building. The existing shoreline protective device, a rock revetment, was permitted by the Coastal Commission in 1987. The revetment is roughly contiguous with the rock seawall in place at the public parking lot immediately west of the subject property. The existing revetments appear consistent with the 1987 Coastal Commission approval. Due to its minor scope and design, the project is not anticipated to result in significant adverse impacts on public access, shoreline sand supply or other resources.

Finding 2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

The proposed project involves no change to the southern, beach-fronting side of the existing building. Due to its minor scope and design, the project is not anticipated to result in significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed previously, the project will not result in potentially significant impacts to the environment. The project is the least environmentally damaging alternative.

Finding 4. There are no alternatives to the proposed development that would avoid or substantially

lessen impacts on public access, shoreline sand supply or other resources.

As discussed previously, the project will not result in potentially significant impacts. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

Finding 5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and is the least environmentally damaging alternative.

As stated in Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources. The project does not include any changes to the existing foundation or shoreline protective device.

As discussed previously, the project will not result in potentially significant impacts because 1) feasible best management practices and/or alternatives have been incorporated to substantially lessen any potentially significant adverse effects of the development on the environment, or 2) there are no further feasible best management practices or alternatives that would substantially lessen any potentially significant adverse impacts of the development on the environment. The project is the least environmentally damaging alternative.

I. Public Access (LIP - Chapter 12)

The project is located between the first public road and the sea. The proposed change in use, new porte-cochere and interior renovations would not hinder public recreation or coastal access. Short-term construction would not hinder public recreation or coastal access. The project will not increase the demand for coastal access or recreation areas. Pursuant to the Coastal Commission's 1987 approval of the project, a lateral beach access agreement was required and coastal access was provided at the public beach immediately west of the subject property.

Additional public access is located further west at Surfrider Beach. A vertical access easement has been recorded approximately 330 feet east of the Malibu Beach Inn and an existing vertical access way is located approximately 1,000 east of the subject property. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; however, LIP Section 12.6 states that public access is not required when adequate access exists nearby and the findings addressing LIP Section 12.8.3 can be made. The following findings satisfy this requirement. Analyses required by LIP Section 12.8.2 are provided herein. Bluff top and trail access are not applicable. No issue of public prescriptive rights has been raised.

Lateral Access

The project is on the shoreline. According to LIP Section 12.5, access is required for new development between the nearest public roadway and the sea. Standards for lateral public access are identified in LIP Section 12.7.1.

The Coastal Commission's 1987 approval of the existing hotel required recordation of a lateral access agreement. The recordation of the lateral access document is mapped on Local Coastal Program Public Access Map 3 and listed in the Coastal Commission's Coastal Access Inventory. To date, the existing Offer to Dedicate has not been accepted and has an expiration date of November 17, 2008. As there is an existing recorded lateral access document, the proposed project is consistent with the LIP standards for lateral public beach access.

Due to the relatively minor scope of the project, no potential project-related or cumulative impacts on existing lateral public access are anticipated.

Vertical Access

As discussed previously, the project is located between the shore and the first public road. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Furthermore, due to nearby public beach access points, vertical access across the site is not deemed appropriate.

Consistent with the Coastal Commission's 1987 approval of the project, vertical beach access is available onsite only for patrons of the hotel. Vertical beach access is available immediately west of the subject property at the public beach and parking lot adjacent to Malibu Pier. The proposed project will not adversely affect existing public beach access.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Nevertheless, the following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding vertical access. Due to these findings, LIP Section 12.8.1 is not applicable.

Finding A. The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Vertical access would not impact fragile coastal resources or have any impact on a military facility. The basis for the exception to the requirement for vertical access is associated with the availability of access nearby as described above. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated.

Finding B. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

As discussed previously, no measures are available to manage the type, character, intensity, hours, season or location of a vertical access to public safety. No impacts to military security or to fragile coastal resource have been identified. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated.

Finding C. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. The ability of the public to access nearby public coastal tidelands is available from the beaches located both east and west of the project site.

Conditioning the project to provide a vertical public access would not provide additional access to coastal resources because adequate public access is provided in the vicinity. Since existing access to coastal resources is adequate, no legitimate governmental or public interest would be furthered by requiring access at the project site.

Bluff Top Access

The beachfront project is not located on a bluff top. Therefore, no conditions or findings for bluff top access are required.

Trail Access

The project site does not include any existing or planned trails as indicated in the LCP, the General Plan, or the Trails master Plan. Therefore, no conditions or findings for trail access are required.

Recreational Access

As discussed previously, the project is located between the shore and the first public road. Insofar as Carbon Beach is used for public recreation, the site is immediately adjacent to a public recreation area. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated. Furthermore, due to nearby public beach access points, access across the site is not deemed appropriate.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on vertical public access is anticipated. Nevertheless, the following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding recreational access. Due to these findings, LIP Section 12.8.1 is not applicable.

Finding A. The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Access across the site would not impact fragile coastal resources or have any impact on a military facility. The basis for the exception to the requirement for recreational access is associated with the availability of

access nearby as described above. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated.

Finding B. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

As discussed previously, no measures are available to manage the type, character, intensity, hours, season or location of an access way to public safety. No impacts to military security or to fragile coastal resource have been identified. Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated.

Finding C. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on recreational access is anticipated. The ability of the public to access Carbon Beach is available from the beaches located both east and west of the project site.

Conditioning the project to provide public access would not provide additional access to recreation areas because adequate public access is provided in the vicinity. Since existing access to coastal recreation areas is adequate, no legitimate governmental or public interest would be furthered by requiring access at the project site.

J. Land Division (LIP - Chapter 15)

This project does not involve a division of land as defined in LIP Section 15.1; therefore, Chapter 15 of the LCP does not apply.

Section 5. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CUP No. 06-001 and CDP No. 06-011, subject to the conditions listed below:

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application is to allow for construction the following:

- Interior remodeling to accommodate a 196 square foot kitchen and approximately 42 seats within a total of approximately 563 square feet of dining area (including indoor seating and outdoor seating on the existing patio). The dining area is intended for the use of hotel guests and their invitees only.
- A new porte-cochere of approximately 26-feet in width and 21-feet, six-inches in height.
- An alternative onsite wastewater treatment system.

Subsequent submittals for this project shall be in substantial compliance with the plans date-stamped received by the Planning Division on February 9, 2006. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

3. Pursuant to LIP Section 13.18.2 (page 237), this permit and rights conferred in this approval shall not be effective until the permittee or authorized agent(s) signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 working days of this decision.
4. This resolution and the department review sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
5. The CUP shall be null and void if the restaurant use has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
6. The CDP shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
7. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Division Manager upon written request of such interpretation.
8. All structures shall conform to the requirements of the City of Malibu Environmental and Building Safety Division, and to all City Geologist, City Coastal Engineer, City Environmental Health Specialist, City Biologist, Los Angeles County Water District No. 29, and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits shall be secured.

9. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
10. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this CUP and CDP approval. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Division Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
11. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Division Manager, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the LCP. An application with all required materials and fees shall be required.
12. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.
13. This permit runs with the land and binds all future owners of the property.
14. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The coastal development permit is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the CDP approved by the City is void.

Special Conditions

Restaurant / Conditional Use Permit Conditions

15. The use of the restaurant/ dining area shall be restricted to guests of the hotel and their invitees only.
16. The operating hours of the restaurant/ dining area shall be limited from 6 a.m. to 11 p.m. daily.
17. Six additional valet parking spaces shall be provided within the existing parking lot.

Site Conditions

18. The proposed porte-cochere may not extend any closer to the northern property line than the western portion of the existing hotel building.

Landscaping

19. Landscape enhancements shall not obscure existing public views through the parking lot at the westernmost side (approximately 56.1-feet) of the property.
20. Any landscaping with a potential to exceed six feet in height will require Planning Division review and approval of a landscape plan prepared by a licensed landscape architect.

Lighting

21. Exterior and interior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
 - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent.
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent.
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent.
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent.
 - e. Site perimeter lighting and lighting that may spill into adjacent ESHA shall be prohibited.
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
 - g. Night lighting for sports courts or other private recreational facilities shall be prohibited.
22. No permanently installed lighting shall blink, flash, or be of unusually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one footcandle.

Geology

23. The project shall comply with all conditions of approval required by the City Geologist, as shown on the referral sheet, dated February 14, 2006, attached to the agenda report for this project.
24. All recommendations of the consulting certified engineering geologist (CEG) or geotechnical engineer (GE) and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
25. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require an amendment of the CDP or a new CDP.

Public Works

26. The project shall comply with all conditions of approval required by the City Public Works Department, including drainage and waste management conditions, as shown on the referral sheet dated February 14, 2006, attached to the agenda report for this project.

Onsite Wastewater Treatment System

27. The project shall comply with all conditions of approval required by the City Environmental Health Specialist, as shown on the referral sheet dated February 14, 2006, attached to the agenda report for this project.
28. Prior issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of LIP Chapter 18.9 related to continued operation, maintenance, and monitoring onsite facilities.
29. In addition to meeting the design and maintenance requirements of the City of Malibu, the applicant must apply for and obtain Waste Discharge Requirements from the Los Angeles Regional Water Quality Control Board or obtain a waiver from that agency. A building permit shall not be issued until such time as a RWQCB Waste Discharge Requirements or waiver is presented to, and approved by, the City's Environmental Health Specialist.

Section 6. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of June 2006.

CAROL RANDALL, Planning Commission Chair

ATTEST:

ADRIENNE FURST, Recording Secretary

Local Appeal - Pursuant to LIP Section 13.20.1 (Local Appeals) and Malibu Municipal Code Chapter 17.04, a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee of \$623.00, as specified by the City Council. Appeal forms may be found online at www.ci.malibu.ca.us or in person at City Hall, or by calling (310) 456-2489, ext. 245 or ext. 256.

California Coastal Commission Appeal – An aggrieved person may appeal the Planning Commission's

decision to the California Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coastal District office located at 89 South California Street in Ventura, or by calling 805-585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

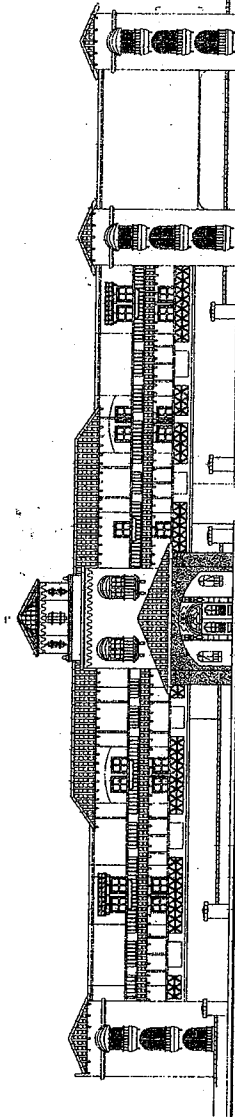
I CERTIFY THAT THE FOREGOING RESOLUTION NO. 06-46 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of June 2006, by the following vote:

AYES: 0
NOES: 0
ABSTAIN: 0
ABSENT: 0

ADRIENNE FURST, Recording Secretary

Malibu Beach Inn

CARBON BEACH



OWNER

MBPCH, LLC
100 SAN VICENTE BLVD, SITE 806
LOS ANGELES, CA 90048
(818) 581-8800

ARCHITECT

STEVIE PROBYL
3840 WILSON BLVD
9945 CLIVER BLVD
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(818) 559-4441 FAX (818) 559-759

PROJECT MANAGER

ANTHONY HARRIS ASSOCIATES
1000 WILSON BLVD
LOS ANGELES, CA 90028
(818) 312-8803 FAX (818) 312-3362
CONTACT: JENNIFER NIELSEN

RECEIVED BY PLANNING ON

02/09/06

RECEIVED

CDP 06-011
CUP 06-001

RECEIVED

FEB 09 2006

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 36 of 71

doa

1843 Ocean Blvd., Suite 200, Torrance, CA 90501
(310) 533-1111

PROJECT TITLE

MALIBU BEACH INN
PORTE COCHERE / LOBBY

23478 Pacific Coast
Highway, Malibu, CA
90265

REVISION

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SHEET TITLE

COVER SHEET, PROJECT
DATA, SHEET INDEX & SITE
PLAN

SHEET NUMBER
DATE
JOB #
CITY

G-1.01

PLOTTED 2/2/06



VICINITY MAP

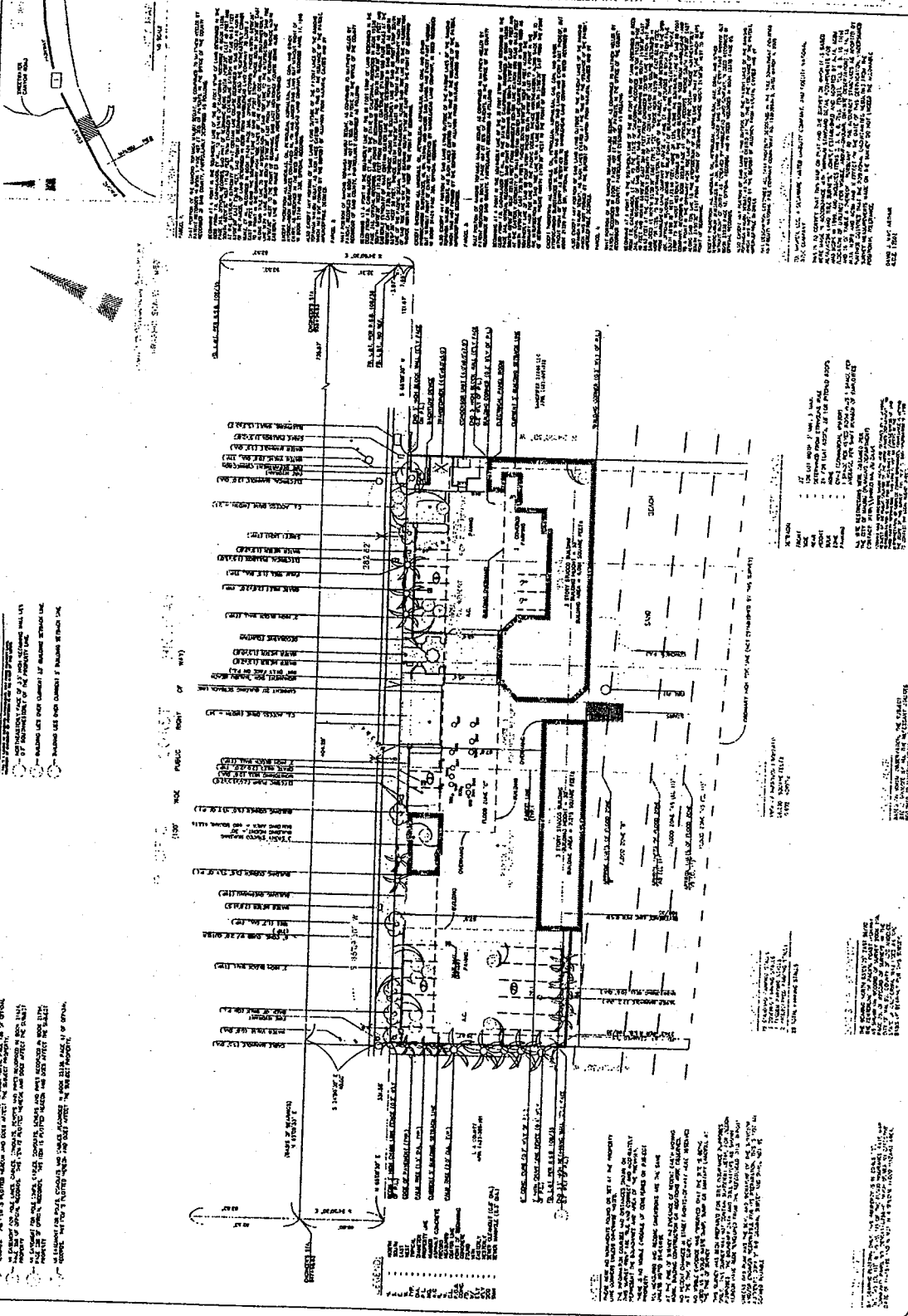
SHEET INDEX

SHEET	DESCRIPTION
G-01	COVER SHEET, PROJECT DATA, SHEET INDEX & SITE PLAN
G-102	ADJACENT LAND TITLE SURVEY
A-101	ASSEMBLY AND NOTES
A-102	SITE PLAN/STREET FLOOR PLAN EXISTING
A-103	SITE PLAN/STREET FLOOR PLAN PROPOSED
A-104	2ND & 3RD FLOOR PLANS EXISTING
A-105	2ND & 3RD FLOOR PLANS PROPOSED
A-106	ROOF PLAN
A-107	BUILDING ELEVATIONS
A-108	ENLARGED LOBBY PLANS

PROJECT INFORMATION

PROJECT DESCRIPTION
CUG
ZONING: CUG
APN: 4463-008-028, 030 & 031
NEW PORTE COCHERE
REMODEL OF EXISTING LOBBY AREA TO INCLUDE DINING
KITCHEN AND NEW TOILET ROOMS
SEPARATE PERMIT REQUIRED FOR MECHANICAL WORK
SEPARATE PERMIT REQUIRED FOR ELECTRICAL WORK
SEPARATE PERMIT REQUIRED FOR PLUMBING WORK

EXISTING HAZARDOUS SPILLS (TOTAL): 50
PROPOSED HAZARDOUS SPILLS (TOTAL): NO CHANGE
EXISTING HAZARDOUS SPILLS (INCLUDED IN TOTAL): 2
PROPOSED HAZARDOUS SPILLS (INCLUDED IN TOTAL): NO CHANGE



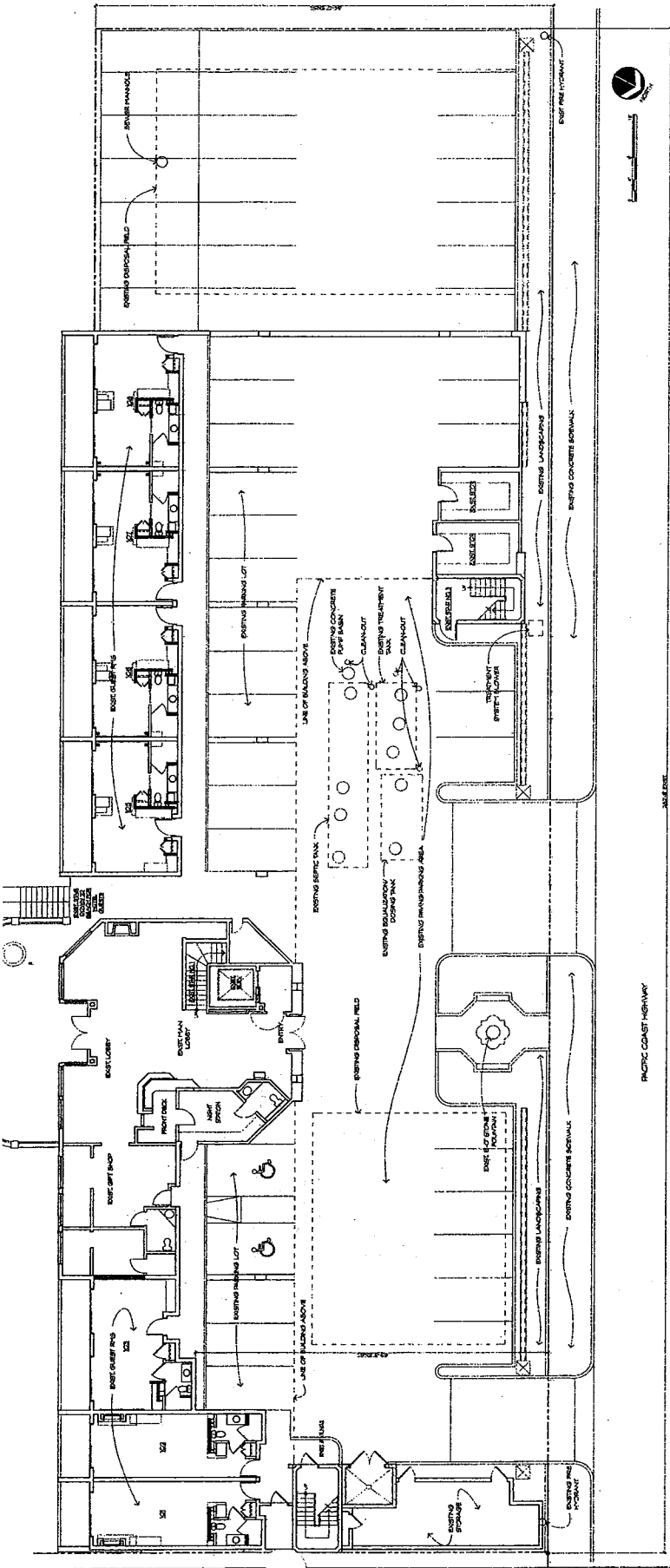
PROJECT TITLE
MALIBU BEACH INN
PORTE COCHERE / LOBBY
22878 Pacific Coast
Highway, Malibu, CA
90265

DATE: 12/05
JOB #:
SHEET #:

SHEET TITLE
SITE PLANIST FLOOR
PLAN EXISTING

DATE: 12/05
JOB #:
SHEET #:

PLOTTED: 2/2/06



1 1ST FLOOR SITE/EXISTING

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 38 of 71

Project Title
MALIBU BEACH INN
PORTE COCHERE / LOBBY

22878 Pacific Coast
Highway, Malibu, CA
90265

Revision

Small Scale: 1/8" = 1'-0"

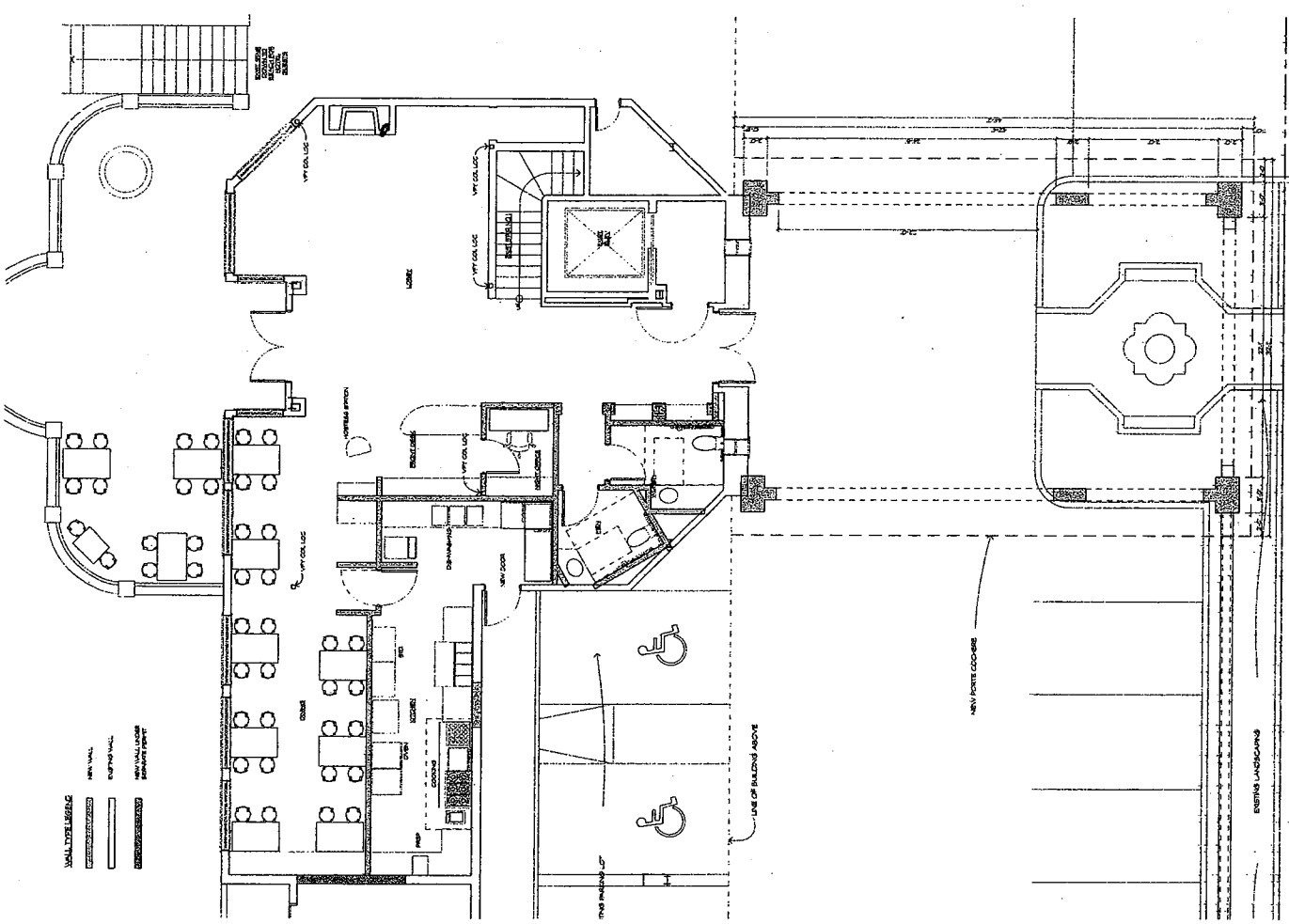
Sheet Title

ENLARGED LOBBY PLAN

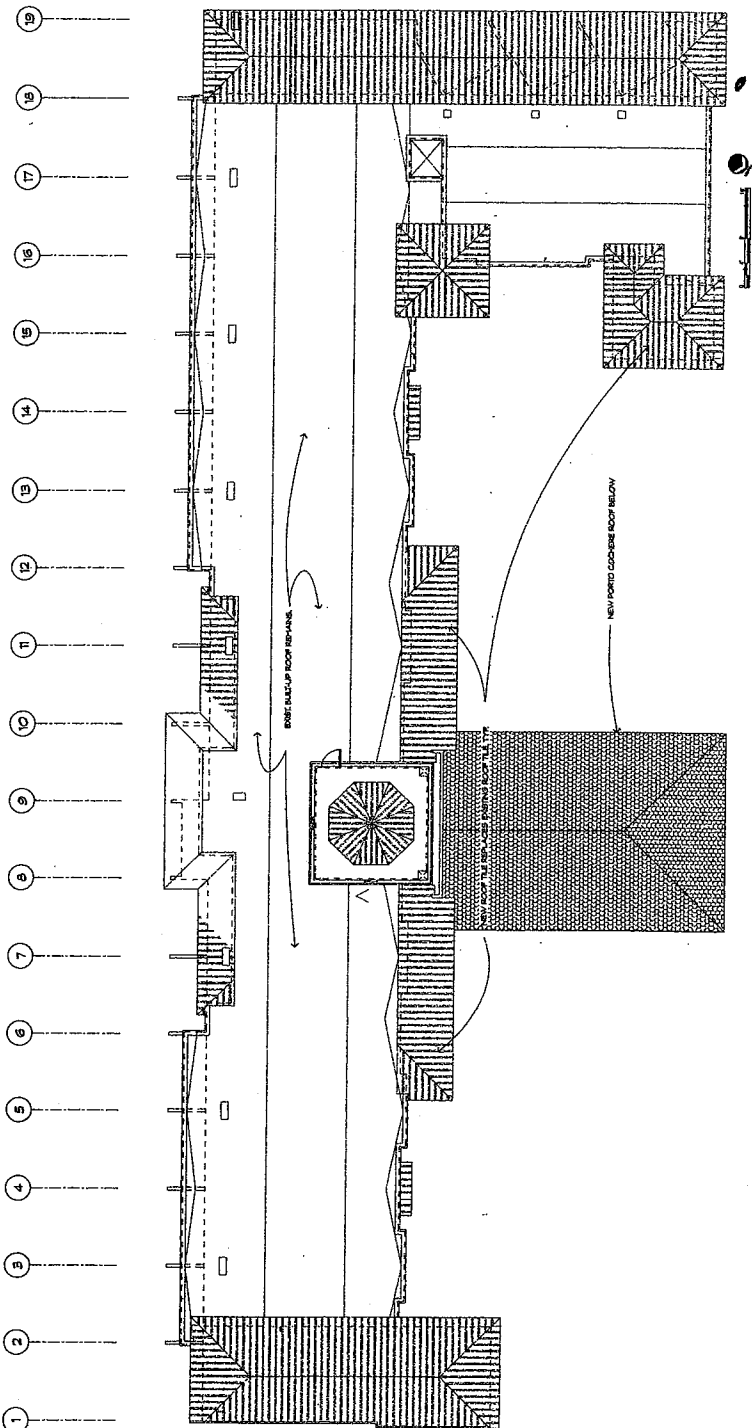
DATE: 11/20/05
DRAWN BY: JMF
CHECKED BY: JMF

Sheet Number
A-2.05

PLOTTED: 2/2/06



1ST FLOOR CONSTELEG PLAN ENLARGED
NET 10'



1 ROOF PLAN
12' x 12'



4455 Ocean Blvd., Suite 200, CA 90265
Tel: 310.318.1100 Fax: 310.318.1101

Project Title

MALIBU BEACH INN
PORTE COCHERE / LOBBY
22878 Pacific Coast
Highway, Malibu, CA
90265

Revisions

- 1
- 2
- 3
- 4

These drawings and specifications, when approved by the City of Malibu, shall be used for the construction of the project. Any changes or modifications to these drawings and specifications shall be made in writing and approved by the City of Malibu. The architect shall be responsible for the accuracy of the information provided in these drawings and specifications. The architect shall not be responsible for the accuracy of the information provided by others.

Sheet Title

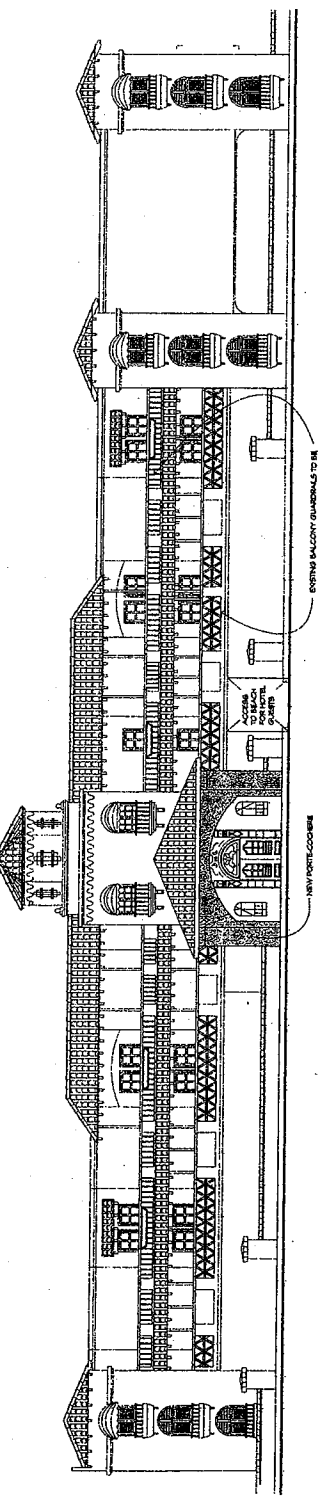
BUILDING ELEVATIONS

DATE: 12/05/05
DRAWN BY: JAC
CHECKED BY: JAC

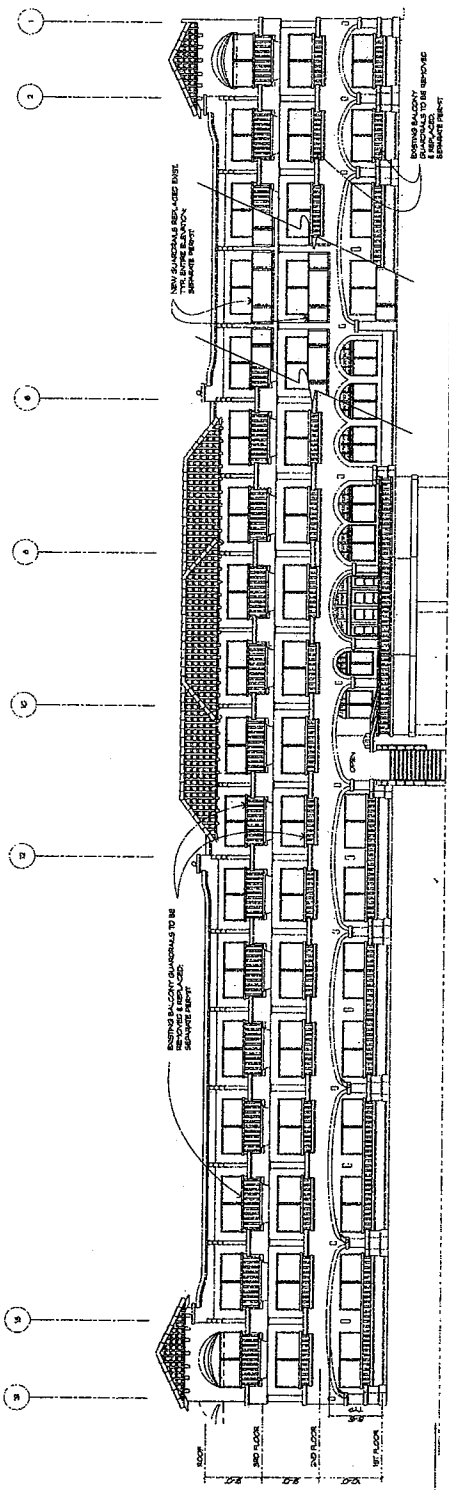
Sheet Number

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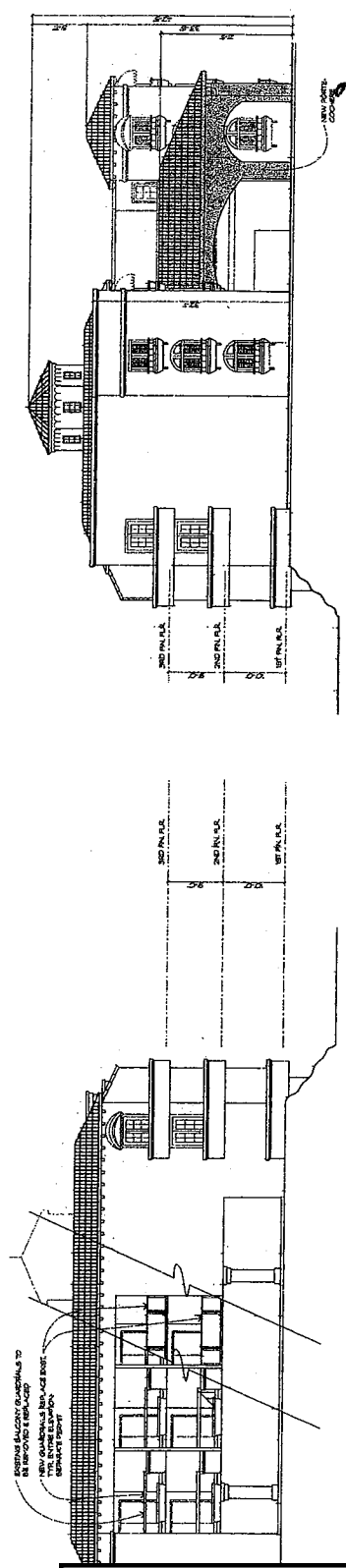
PLOTTER: 22206



1 PCF ELEVATION EXISTING/NEW
1/8" = 1'-0"

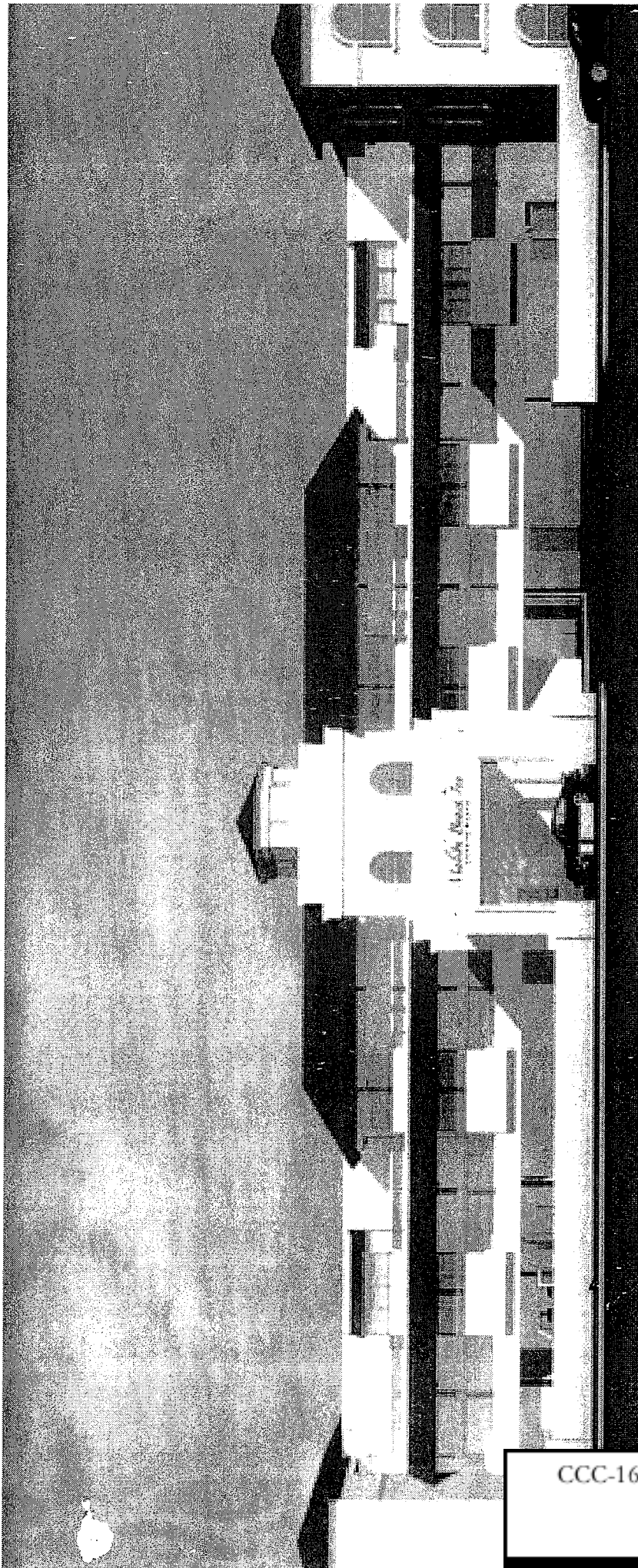


2 OCEAN ELEVATION EXISTING/NEW
1/8" = 1'-0"



3 WEST ELEVATION EXISTING/NEW
1/8" = 1'-0"

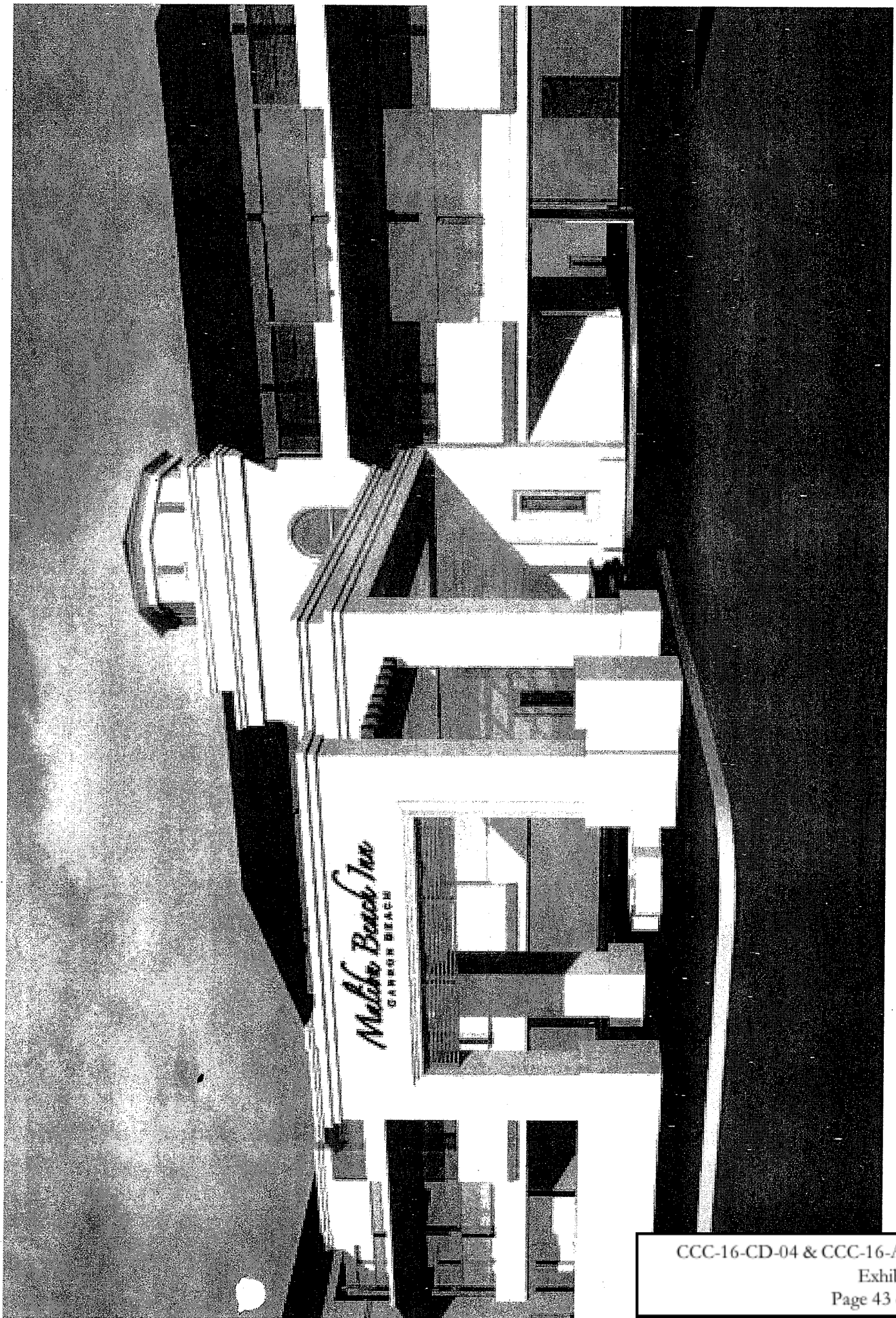
4 EAST ELEVATION/NEW
1/8" = 1'-0"



CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

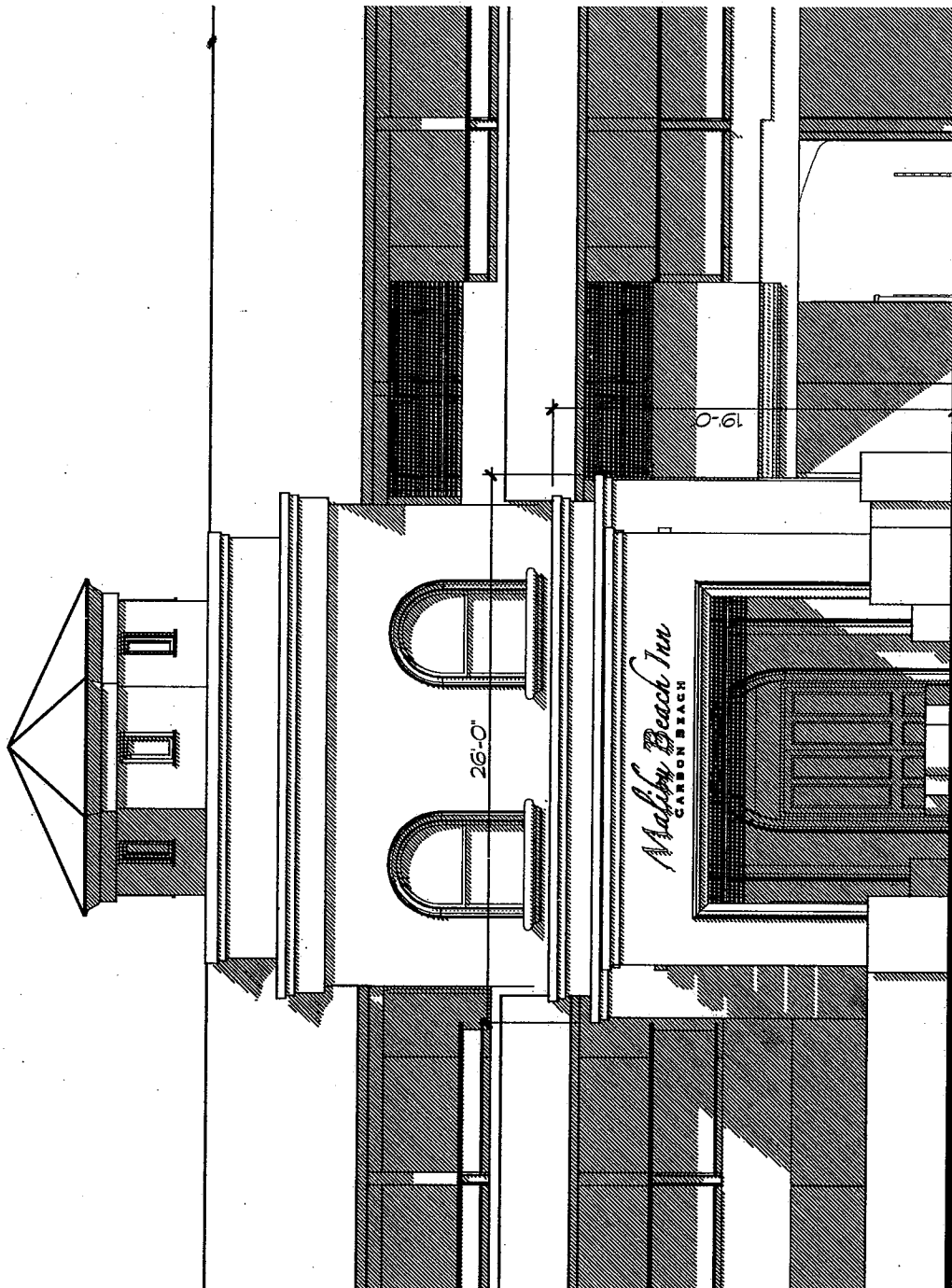
Page 42 of 71



CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 43 of 71



P: 5/4/06 3:26 PM; MALIBU BEACH INN PCH ELEVATION

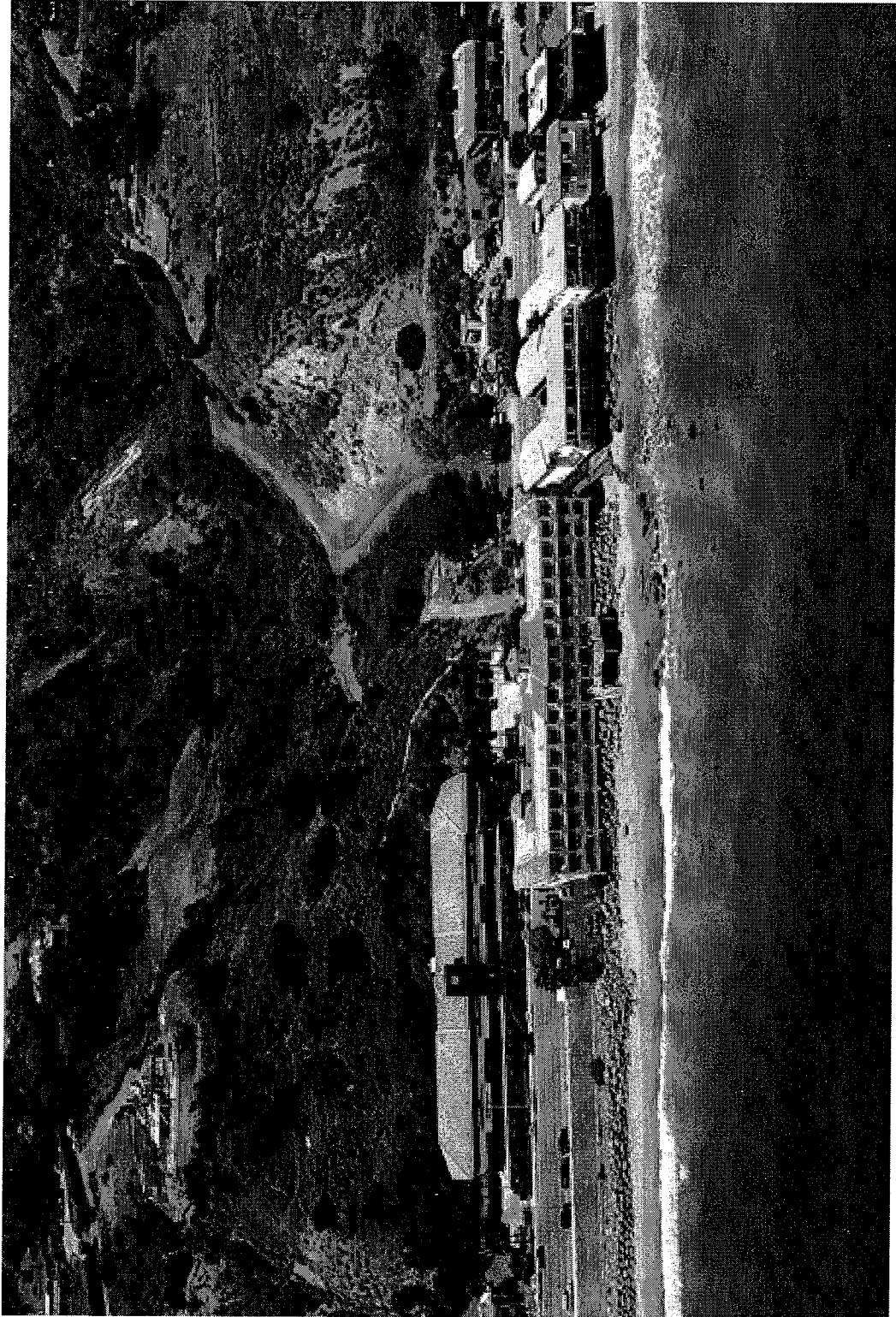
CCC-16-CD-04 & CCC-16-AP-02

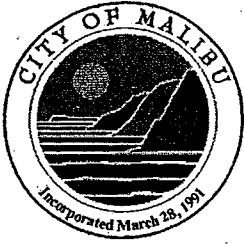
Exhibit 18

Page 44 of 71

22878 Pacific Coast Highway

Aerial View





City of Malibu

PLANNING DIVISION

23815 Stuart Ranch Rd. Malibu, California 90265-4816
(310) 456-2489 fax (310) 456-7650

EMERGENCY COASTAL DEVELOPMENT PERMIT

Permit Number: 05-055

Location: 22878 Pacific Coast Highway

APN Nos.: 4452-005-029

4452-005-030

4452-005-031

Application Filed: November 8, 2005

Date of Issuance: March 16, 2006

Expiration Date: June 13, 2006

Applicant: Lynn Heacox

Owner: Malibu Beach Inn, Inc.

Scope of Work Approved: This emergency permit approves the installation of a new alternative onsite wastewater treatment system to replace a failed onsite wastewater treatment system currently serving a commercial property located at 22878 Pacific Coast Highway.

Conditions Attached: No Yes (see below)

I have reviewed this permit application and verified the facts, including the existence and nature of the emergency, insofar as time allows. Having reviewed this application and the facts, I hereby make the following findings:

1. *An emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for regular permits administered pursuant to the provisions of the Malibu Local Implementation Plan and Public Resources Code Section 30600.5, and the development can and will be completed within 30 days unless otherwise specified by the terms of this permit.*

The failed onsite wastewater treatment system on the subject property has caused the potential for sewage overflow. The nature of the emergency is such that immediate action is required in order to minimize health risks and damage to the environment.

2. *Public comment on the proposed emergency action has been reviewed as time permitted.*

It was mutually agreed upon between the City of Malibu Environmental Health Specialist and the applicant's consultant that a solution had to be determined immediately to prevent further damage. Therefore, the subject property has been posted with a notice of application with a name and contact number to address questions and comments. If a full coastal development permit is required, the project will be open to public comment and/or a public hearing.

3. *The work proposed is temporary and consistent with the requirements of the certified Local Coastal Program.*

The proposed scope of the work covered by this permit is the most temporary solution feasible in order to relieve the emergency situation. At the time a permanent solution is proposed, the required permits will be obtained. Section 13.14 of the Local Implementation Plan provides that the Planning Manager may issue an emergency coastal development permit when immediate action is required to prevent or mitigate loss or damage to life, health, property or essential public services. The scope of work is consistent with the certified Local Coastal Program in that it will prevent further damage to the property and mitigate potential safety risks associated with the failed onsite wastewater treatment system.

4. *The work proposed is the minimum action necessary to address the emergency and, to the maximum extent feasible, is the least environmentally damaging temporary alternative for addressing the emergency.*

The California Environmental Quality Act (CEQA) prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Section 15269(c) of the CEQA guidelines specifically exempts projects which are required to prevent or mitigate an emergency. The proposed repair work is the least environmentally damaging option to the maximum extent feasible because the nature of the emergency is urgent with no reasonable alternative solutions that would be more temporary. A new alternative onsite wastewater treatment system constitutes the minimum amount of work necessary to correct the damage.

5. *The permit is not within an area that falls within the provisions of Public Resources Code Section 30519(b).*

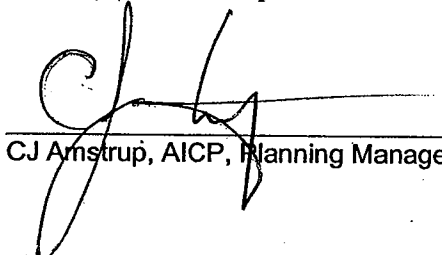
This permit does not fall within the provisions of the California Public Resources Code Section 30519(b). The proposed work will not take place in or on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, and lying within the coastal zone. The work will not take place on any State or college lands or ports.

CONDITIONS:

1. The permit and rights conferred in this approval shall not be effective until the property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth below. The applicant shall file this form with the Planning Division within 30 days of this decision or **prior to issuance of building permits.**
2. All development or structures constructed pursuant to this permit shall be considered temporary until authorized by a follow-up regular coastal development permit and that issuance of this emergency permit shall not constitute an entitlement to the erection of permanent development or structures.
3. The applicant has 90 days from the date of issuance of this emergency permit to file a complete coastal development permit application or file for an exemption if the project meets the requirements for exemptions from coastal development permits. If the applicant fails to satisfy this requirement all temporary work must be removed pursuant to the Local Coastal Program's Local Implementation Plan Section 13.14(F)(7).

4. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

Having made the above findings per Chapter 13 of the Local Implementation Plan, I hereby determine that an emergency condition exists and immediate action is required to prevent or mitigate loss or damage to life, health, property or essential public services. Therefore, I hereby, approve this emergency coastal development permit.


CJ Amstrup, AICP, Planning Manager

3/16/06
Date

Malibu Beach Inn

CARBON BEACH

Market Analysis

Dining Room Addition

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 49 of 71

Malibu Beach Inn is faced with being able to accommodate our guests dining needs or lose them to competitors in nearby beach communities (i.e. Santa Monica, Laguna Beach).

The Malibu Beach Inn for over 12 years has been the leader in providing lodging services to locals and tourists alike. Over the years the Inn has upgraded amenities and furnishings that customers expect and demand. We are seeing many return and potential guests book elsewhere as we don't offer on-site dining options.

Segment Strategy

Malibu Beach Inn wants to provide dining to guests that are staying at the property. Our strategy is dual purposed; to be able to have our guests dine on property and to extend their average length of stay. By providing an option for on-site dining, guests will be inclined to stay additional nights.

Market Needs

Currently, only one lodging property within Malibu offers on-site dining. Malibu Country Inn offers full service dining to their guest and outside customers. The average daily room rate of the Malibu Country Inn is \$100 less than that of the Malibu Beach Inn. This shows that our guests would utilize the service and expect some sort of on property dining venue. The closest lodging facilities with on-property dining are in Santa Monica, which are our main competitors. With the proposed upgrade to the Malibu beach Inn, will come an increase in the average daily room rate and, in return, more tax revenues to the City of Malibu.

Service Business

Full Service hotels, as defined by the Automobile Association of America (AAA), are lodging properties that offer dining facilities on-property. This fact alone has kept the hotel from being awarded the coveted "four-diamond" status. The Malibu Beach Inn would be the only four diamond hotel in Malibu.

Traffic Impact

Traffic generation will be reduced from current levels, as the number of times a guest enters and exits the hotel will be reduced, as they will have the option on dining on-property.

Job creation

The addition of a dining room will create local jobs for many trades. Cooks, wait staff, bus staff, and management will be sought after from the community.

Conclusion

Allowing the Malibu Beach Inn to offer on-property dining to our guests will be mutually beneficial to the guests it serves, the community, and to the City of Malibu.



City of Malibu

23815 Stuart Ranch Rd., Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 456-7650

FIRE DEPARTMENT REVIEW REFERRAL SHEET

TO: Los Angeles County Fire Department

DATE: 2/9/2006

FROM: City of Malibu Planning Department

PROJECT NUMBER: CUP 06-001, CDP 06-011

JOB ADDRESS: 22878 PACIFIC COAST HWY

APPLICANT / CONTACT: Lynn Heacox, Land and Water Co.

APPLICANT ADDRESS: 18822 Beach Blvd. #209
Huntington Beach, CA 92646

APPLICANT PHONE #: (714)965-1622

APPLICANT FAX #: (714) 965-1692

PROJECT DESCRIPTION: new portico; add kitchen and dining

TO: Malibu Planning Department and/or Applicant

FROM: Ashgan Shahbodaghloo, Fire Prevention Engineering Assistant

☒ The project **DOES** require Fire Department Plan Check and Developer Fee

Req. 13'-6" min. Clear Below New Portico

☐ The project **DOES NOT** require Fire Department Plan Check.

☐ The project shall provide a 20 foot wide Access Driveway and Safety Vehicle Turn-around.

☐ The project requires Interior Fire Sprinklers.

☐ The project requires 1,250 gallons per minute Fire Flow at 20 pounds per square inch for a 2 hour duration.

☐ Fire Department approval of a Final Fuel Modification Plan is required prior to City building permit issuance.

SIGNATURE

DATE

2/16/06

Additional requirements/conditions may be imposed upon review of plan revisions.
The Fire Prevention Engineering Assistant may be contacted by phone at 818-880-0341 or at the Fire Department Counter: Monday - Thursday between 8:00 AM and 12:00 noon
26600 Agoura Road, Suite 110, Calabasas, CA 91302

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 52 of 71



City of Malibu

23555 Civic Center Way, Malibu, California CA 90265-4861
(310) 456-2489 FAX (310) 456-3356

000085

ENVIRONMENTAL HEALTH REVIEW REFERRAL SHEET

TO: City of Malibu Environmental Health Specialist DATE: 2/9/2006
FROM: City of Malibu Planning Department

PROJECT NUMBER: CUP 06-001, CDP 06-011
JOB ADDRESS: 22878 PACIFIC COAST HWY
APPLICANT / CONTACT: Lynn Heacox, Land and Water Co.
APPLICANT ADDRESS: 18822 Beach Blvd. #209
Huntington Beach, CA 92646
APPLICANT PHONE #: (714)965-1622
APPLICANT FAX #: (714) 965-1692
PROJECT DESCRIPTION: new portico; add kitchen and dining
☒ New Construction ☒ Remodel ☒ Fire Damage

TO: Malibu Planning Department and/or Applicant
FROM: Andrew Sheldon, City Environmental Health Specialist

☐ An Onsite Wastewater Treatment System (OWTS) Plot Plan approval IS NOT REQUIRED for the project.

☒ An OWTS Plot Plan approval IS REQUIRED for the project. DO NOT grant your approval until an approved Plot Plan is received.

A Sheldon
SIGNATURE

2-9-2006
DATE

The applicant must submit to the City of Malibu Environmental Health Specialist to determine whether or not a Private Sewage Disposal System Plot Plan approval is required.

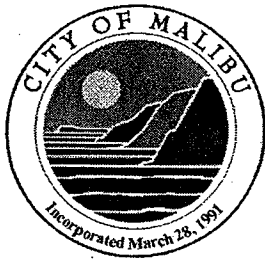
Mr. Larry Young, Environmental Health Specialist, may be contacted at the Building and Safety Counter on Thursdays from 8:00 AM - 12:30 PM, or by calling (310) 392-2011 or (818) 883-8585

Originated: 11/24/04 (gs)

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 53 of 71



City of Malibu

Environmental Health · Environmental and Building Safety Division
23815 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.ci.malibu.ca.us

May 9, 2006

Lynn Heacox
Land and Water Company
18822 Beach Blvd. #209
Huntington Beach, California 92646

Subject: 22878 Pacific Coast Highway, Malibu, California 90265; Conformance Review for Addition of Kitchen and Dining, Malibu Beach Inn (CDP 06-011 and ECDP 05-055)

On May 9, 2006, a **Conformance Review** was completed for the addition of a kitchen and dining, and a new portico, under CDP 06-011, in conjunction the alternative onsite wastewater treatment system (AOWTS) renovation previously submitted under ECDP 05-055. The proposed scope of work for CDP 06-011 now includes revised plans for the AOWTS renovation per an April 26, 2006 revised design report from Ensitu Engineering, Inc. Conformance review for the previous AOWTS design under ECDP 05-055, which was completed by Environmental Health on December 31, 2006, is hereby rescinded.

The proposed scope of work for CDP 06-011 meets the minimum requirements of the City of Malibu Plumbing Code, i.e. Title 28 of the Los Angeles County Code, incorporating the California Plumbing Code, 2001 Edition, and the City of Malibu Ordinance No. 242 Amendments (MPC), and the City of Malibu Local Coastal Plan/Local Implementation Plan (LCP/LIP). The following items shall be submitted prior to final approval of both CDP 06-011 and ECDP 05-055:

- 1) **Plot Plan:** A final plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the MPC, and the LCP/LIP, including necessary construction details, the proposed drainage plan for the developed property, and the proposed landscape plan for the developed property. If inclusion of the above items renders the plot plan difficult to read, then the above items shall be submitted on two or more plot plans. All plot plans shall use the same scale so as to facilitate plot plan comparison.
A cross-section through subject property, including the AOWTS, shall be submitted. The cross-section shall show the proposed subsurface disposal fields, the subsurface strata beneath the AOWTS, and the seasonal high groundwater level.
- 2) **System Specifications:** Complete specifications shall be submitted as to all components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of the proposed alternative onsite wastewater disposal system.

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 54 of 71

The AOWTS final design package shall contain the following information

- (a) Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day (gpd), and shall be supported by calculations relating the treatment capacity to the type of occupancy (wastewater flow and strength) and/or the subsurface effluent dispersal system acceptance rate. Maximum allowable occupancy factors (e.g., number of hotel rooms, restaurant seats, etc.) shall be clearly identified in association with the design treatment capacity. Average and peak rates of hydraulic loading and organic loading to the treatment system shall be specified in the final design.
 - (b) Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s); major components, manufacturers, and model numbers for "package" systems; and final design for engineered systems.
 - (c) Specifications for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit, subsurface drip, etc.) as well as the system's geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day (gpd) and gallons per square foot per day (gpsf). Design specifications for the subsurface effluent acceptance rate shall be shown to meet the required average and peak hydraulic loading capacity.
 - (d) All final design drawings shall be submitted with the wet signature and typed name of the OOWTS designer. If the plan scale is such that more space than is available on the 11" x 17" plot plan is needed to clearly show construction details, larger sheets may also be provided (up to a maximum size of 18" x 22" for review by Environmental Health). [Note: For AOWTS final designs, full-size plans for are also required for review by Building & Safety and/or Planning.]
- 3) **Supplemental Requirements for AOWTS Proposed to Serve New Commercial Development:** Provide substantial information documenting that the engineered AOWTS will be capable of achieving the effluent quality limits described in Malibu Plumbing Code Sections K1(J) and 222.
- (a) Submit information demonstrating that the AOWTS design approach, where previously applied to installations with similar design waste strengths and hydraulic loading, has resulted in the establishment of treatment works capable of achieving

effluent limits for all applicable parameters described in Malibu Plumbing Code Sections K1(J) and 222.

- (b) Provide references for existing installations where the method of treatment has been applied to similar design waste strengths and hydraulic loading. These references shall include the owner name/contact information and the regulatory jurisdiction/agency contact person.
 - (c) Final design documents must include engineering data supporting use of the proposed treatment technology for the design waste strength, hydraulic loading, and effluent quality specifications. Equipment vendors may supply data, but the design engineer takes responsibility for the data's accuracy.
 - (d) The wastewater engineer shall submit the results of any pilot testing s/he deems necessary to establish operational parameters for AOWTS design.
- 4) **Cumulative Impact Analysis:** The LCP/LIP requires all onsite wastewater treatment systems proposed for new commercial development to be evaluated for cumulative impacts on the groundwater level and quality. A cumulative impact analysis shall be submitted and approved by the City of Malibu Geologist and Geotechnical Engineer in consultation with the City of Malibu Environmental Health Specialist.
 - 5) **Operations & Maintenance Manual:** An operations and maintenance manual shall be submitted. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.
 - 6) **Proof of Ownership:** Proof of ownership of subject property shall be submitted.
 - 7) **Maintenance Contract:** A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed alternative onsite wastewater disposal system after construction shall be submitted. Please note only original "wet signature" documents are acceptable.
 - 8) **Covenant:** A covenant running with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive notice to any future purchaser for value that the onsite wastewater treatment system serving subject property is an alternative method of onsite wastewater disposal pursuant to the City of Malibu Uniform Plumbing Code, Appendix K, Section 1(i). Required language for said covenant shall be provided by the City of Malibu. Please note only original "wet signature" documents are acceptable.
 - 9) **City of Malibu Geologist/Geotechnical Approval:** City of Malibu Geologist and Geotechnical Engineer final approval shall be submitted.

- 10) **City of Malibu Biologist Approval:** City of Malibu Biologist final approval shall be submitted. The City of Malibu Biologist shall review the AOWTS design to determine any impact on any Environmentally Sensitive Habitat Area.
- 11) **Restaurant Plans:** Complete plans shall be submitted to the Los Angeles County Department of Health Services (DHS), Division of Environmental Health, Food Facilities Plan Check Section, 6053 Bristol Parkway, 2nd Floor, Culver City, CA 90230, (310) 665-8481. DHS is responsible for enforcing the California Uniform Food Facilities Law, California Health and Safety Code, Section 113700-113733. Plans approved by DHS shall then be submitted to the City of Malibu Environmental Health Specialist.
- 12) **Final Fee:** To be determined based on the City of Malibu's Wastewater Engineering contractor review fees and/or City of Malibu Environmental Building & Safety Division staff time spent for review of submittals in building plan check stage.

If you have any questions regarding the above requirements, please contact me at your earliest convenience.

Sincerely,

A. Sheldon

Andrew Sheldon, PhD, REHS
Environmental Health Specialist

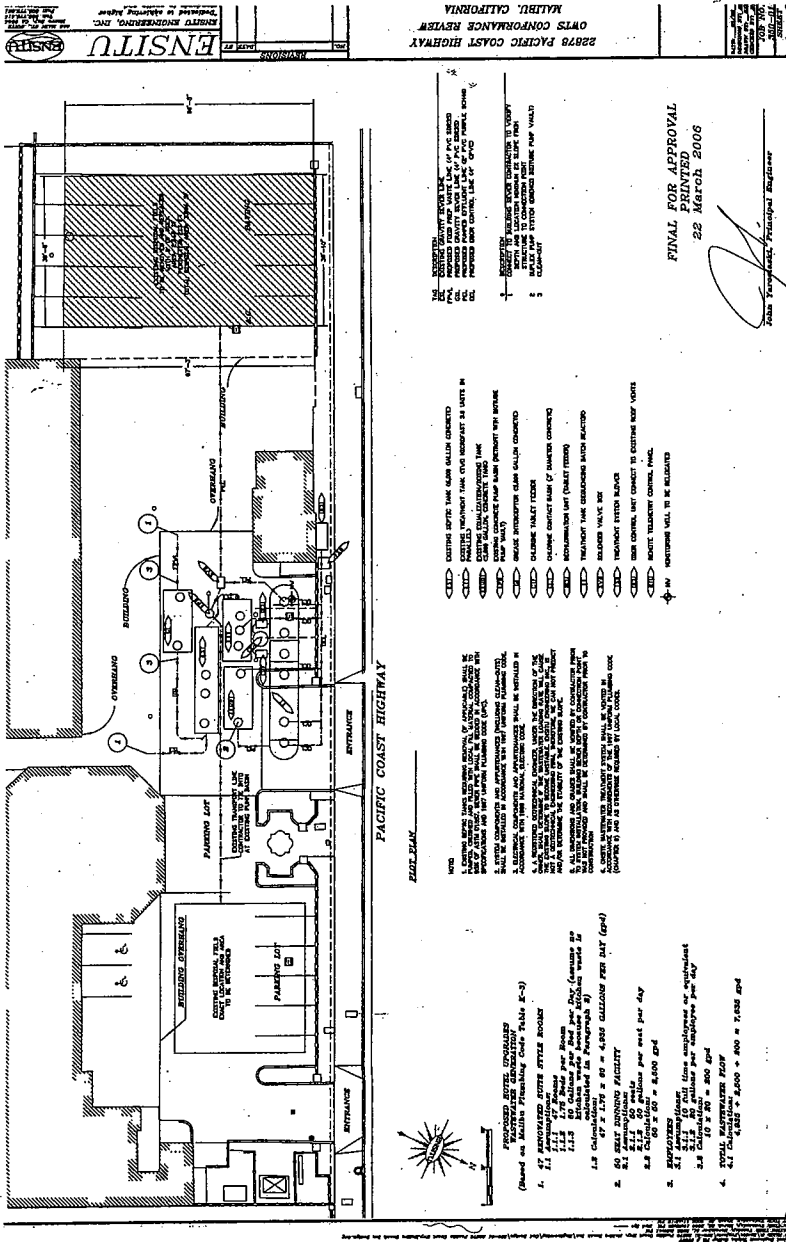
cc: Environmental Health main file
Environmental Health reference file
Planning Division

HOTEL:	47 Guest Rooms/22165 sq ft (R)
DINING:	50 Seats (R)
COMMERCIAL:	10 Full-time Employees (R)
GREASE TRAP:	5000 Gallon (E)
SEPTIC TANK:	6000 Gallon (E)
TREATMENT TANK:	5000 Gallon w/ 2 - FAST 3.0 (E)
DOSING TANK:	6000 Gallon w/ Duplex Pump (E)
TREATMENT TANK:	15000 Gallon Sequencing Batch Reactor (N)
DISINFECTION:	Norweco Bio-Dynamic Bio-Neutralizer Chlorination/Dechlorination System (N)
ACTIVE:	1 - 26' x 100' Drainfield (E) 1 - 39'-8" x 67'-3" Drainfield w/ 2' Extra Rock (N)
FUTURE:	N/A
PERC RATE:	Sand Category

NOTES:

1. This review is for a remodel of the Malibu Beach Inn, including renovation of the onsite wastewater treatment system. The new alternative onsite wastewater treatment system shown conforms to the requirements of the City of Malibu Plumbing Code (MPC) and the Local Coastal Plan (LCP).
2. This review relates only to the minimum requirements of the MPC, and the LCP, and does not include an evaluation of any geological or other potential problems, which may require an alternative method of wastewater treatment.
3. This review is valid for one year, or until MPC, and/or LCP, and/or Administrative Policy changes render it noncomplying.

CITY OF MALIBU ENVIRONMENTAL HEALTH	
CONFORMANCE REVIEW	
DATE	MAY 09 2006
BY	A. Shulman
THIS IS NOT AN APPROVAL. FINAL APPROVAL IS REQUIRED PRIOR TO THE ISSUANCE OF ANY CONSTRUCTION PERMITS	





City of Malibu

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

COASTAL ENGINEERING REVIEW SHEET

Project Information

Date: March 22, 2006 **Review Log #:** C149
Site Address: 22878 Pacific Coast Highway
Lot/Tract/PM #: n/a **Planning #:** CDP 06-011
Applicant/Contact: Lynn Heacox **BPC/GPC #:**
Contact Phone #: 714-965-1622 **Fax #:** 714-965-1692 **Planner:**
Project Type: New portico; add kitchen and dining

Submittal Information

Consultant(s): Pacific Engineering Group
Report Date(s): 2-7-06
Previous Reviews: N/A
Elevation Uprush: 18.42' MSL
Rec. Elevation FF: Parking area
Elevation, Bulkhead Top: N/A

Review Findings

Planning Stage

- ☒ **APPROVED** in PLANNING-stage from a coastal engineering perspective. The listed Building Plan-Check Coastal Review Comments shall be addressed prior to Building Plan-Check approval.
- ☐ **NOT APPROVED** in PLANNING-stage from a coastal engineering perspective. The listed Planning Stage Coastal Review Comments shall be addressed prior to Planning-stage approval.

Remarks:

The project submitted was reviewed from a coastal engineering perspective, and comprises the remodel of the gift shop area of the existing Malibu Beach Inn into a kitchen and dining area. A new portico is proposed at the entrance to the inn.

Planning Stage Review Comments:

1. None.

Building-Plan Check Stage Review Comments:

1. Prior to building plan check approval, please provide the wave forces on piles for potential lateral pressures.

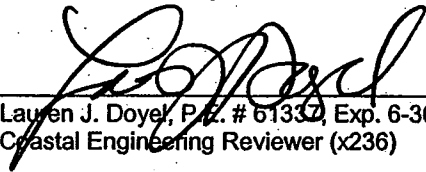
CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 59 of 71

Please direct questions regarding this review sheet to City Review staff listed below.

Coastal Engineering Review by:


Lauren J. Doyel, P.E. # 61332, Exp. 6-30-05
Coastal Engineering Reviewer (x236)

3-22-06
Date

This review sheet was prepared by City Geotechnical Staff contracted with Fugro as an agent of the City of Malibu.

FUGRO WEST, INC.
4820 McGrath Street, Suite 100
Ventura, California 93003-7778
(805) 650-7000 (Ventura office)
(310) 456-2489 x306 (City of Malibu)





City of Malibu

23555 Civic Center Way, Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 456-3356

BIOLOGY REVIEW REFERRAL SHEET

TO: City of Malibu City Biologist
FROM: City of Malibu Planning Department

DATE: 2/9/2006

PROJECT NUMBER: CUP 06-001, CDP 06-011
JOB ADDRESS: 22878 PACIFIC COAST HWY
APPLICANT / CONTACT: Lynn Heacox, Land and Water Co.
APPLICANT ADDRESS: 18822 Beach Blvd. #209
Huntington Beach, CA 92646
APPLICANT PHONE #: (714) 965-1622
APPLICANT FAX #: (714) 965-1692
PROJECT DESCRIPTION: new portico; add kitchen and dining

TO: Malibu Planning Department and/or Applicant

FROM: Dave Crawford, City Biologist

- ☐ The project review package is INCOMPLETE, please submit the following items (See Attached).
- ☒ The project is consistent with policies contained in the LCP and CAN proceed through the Planning process.
- ☐ The project CANNOT proceed through Final Planning Review until corrections and conditions from Biological Review are incorporated into the proposed project design (See Attached).
- ☐ The project may have the potential to significantly impact the following resources, either individually or cumulatively: Sensitive Species or Habitat, Watersheds, and/or Shoreline Resources, and therefore requires review by the Environmental Review Board (ERB).

SIGNATURE

DATE

3/12/06

Additional requirements/conditions may be imposed upon review of plan revisions.

Dave Crawford, City Biologist, may be contacted at the public counter on Mondays and Thursdays between 8:00 a.m. and 12:30 p.m., by e-mail at dcrawford@ci.malibu.ca.us, or by leaving a detailed message at (310) 456-2489, extension 277.

City of Malibu

23815 Stuart Ranch Road, Malibu, California 90265
(310) 456-2489 Fax (310) 456-7650

Planning Department

BIOLOGICAL REVIEW

Site Address: 22878 Pacific Coast Highway
Applicant/Phone: Lynn Heacox/ 714.965.1622
Project Type: New portico; add kitchen and dining
Project Number: CDP 06-011
Project Planner: Noah Greer

RECOMMENDATIONS:

1. The project is APPROVED.

The proposed project is not expected to result in any new biological impacts.

Reviewed By: _____

Dave Crawford, City Biologist

Date: 3/13/06

310-456-2489 ext.227 (City of Malibu); e-mail dcrawford@ci.malibu.ca.us
Available at Planning Counter Mondays and Thursdays 8:30 a.m. to 12:30 p.m.



City of Malibu

23815 Stuart Ranch Rd., Malibu, California CA 90265-4861
(310) 456-2489 FAX (310) 456-7650

PUBLIC WORKS REVIEW REFERRAL SHEET

TO: Public Works Department

DATE: 2/9/2006

FROM: Planning Division

PROJECT NUMBER: CUP 06-001, CDP 06-011

Department

JOB ADDRESS: 22878 PACIFIC COAST HWY

Public Works

APPLICANT / CONTACT: Lynn Heacox, Land and Water Co.

FEB 13 2006

APPLICANT ADDRESS: 18822 Beach Blvd. #209
Huntington Beach, CA 92646

RECEIVED
CITY OF MALIBU

APPLICANT PHONE #: (714)965-1622

APPLICANT FAX #: (714) 965-1692

PROJECT DESCRIPTION: new portico; add kitchen and dining

To: Malibu Planning Division

From: Public Works Department

_____ The following items described on the attached memorandum shall be addressed and resubmitted.

☒ The project was reviewed and found to be in conformance with the City's Public Works and LCP policies and CAN proceed through the Planning process. *subject to the attached conditions*

SIGNATURE

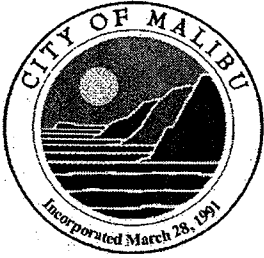
DATE

2/14/06

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 63 of 71



City of Malibu

MEMORANDUM

To: Planning Department

From: Public Works Department

Date: February 14, 2006

Re: Proposed Conditions of Approval for CDP 06-011, CUP 06-01 22878 Pacific Coast Highway Malibu Beach Inn

The Public Works Department has reviewed the plans submitted for the above referenced project. Based on this review sufficient information has been submitted to confirm that conformance with the Malibu Local Coastal Plan and the City's Municipal Code can be attained. Prior to the issuance of building and grading permits, the applicant shall comply with the following conditions.

- A Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the Grading permits for the project. This plan shall include:
 - Dust Control Plan for the management of fugitive dust during extended periods without rain.
 - Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff.
 - Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset.
 - Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
- A State Construction activity permit is required for this project due to the disturbance of more than one acre of land for development. Provide a copy of the letter from the State Water Quality Control Board containing the WDID number prior to the issuance of grading or building permits.
- Geology and Geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The Developers Consulting Engineer shall sign the final plans prior to the issuance of permits.

COMMERCIAL DEVELOPMENT

All commercial developments shall be designed to control the runoff of pollutants from structures, parking and loading docks. The following measures shall be implemented to minimize the impacts of commercial developments on water quality

- **RESTAURANTS – Properly design Equipment/accessory wash areas**
 - Install self-contained wash area, equipped with grease trap, and properly connected to Sanitary Sewer.
 - If the Wash area is located outdoors, it must be covered, paved, the area must have secondary containment and it shall be connected to the sanitary sewer.
- **TRASH STORAGE AREAS**
 - Trash container areas must have drainage from adjoining roofs and pavement diverted around the area.
 - Trash container areas must be screened or walled to prevent off-site transport of trash.

WASTE MANAGEMENT FOR CONSTRUCTION SITES

The City of Malibu is required by AB 939 to reduce the flow of wastes to the landfills of Los Angeles and Ventura Counties by 50%. The following projects shall comply with the following conditions:

1. All new construction (residential and nonresidential)
 2. Demolition (non-residential and apartment houses with 3 or more units)
 3. Addition/Alteration with construction valuation of \$50,000 or more.
- The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall. Prior to the issuance of a building/demolition permit, a Waste reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50% diversion Goal.
 - Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the Public Works Department with a Final WRRP. The Final WRRP shall designate all material that were land filled or recycled, broken down by material types. The Public Works Department shall approve the final WRRP.



City of Malibu

23815 Stuart Ranch Rd., Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 456-7650

GEOLOGY REVIEW REFERRAL SHEET

TO: City of Malibu City Geologist
FROM: City of Malibu Planning Department

DATE: 2/9/2006

RECEIVED

FEB 13 2006

PROJECT NUMBER: CUP 06-001, CDP 06-011
JOB ADDRESS: 22878 PACIFIC COAST HWY
APPLICANT / CONTACT: Lynn Heacox, Land and Water Co.
APPLICANT ADDRESS: 18822 Beach Blvd. #209
Huntington Beach, CA 92646
APPLICANT PHONE #: (714)965-1622
APPLICANT FAX #: (714) 965-1692
PROJECT DESCRIPTION: new portico; add kitchen and dining

TO: Malibu Planning Department and/or Applicant

FROM: Mr. Chris Dean, City Geologist

☒ The project is geologically feasible and CAN proceed through the planning process.

☐ The project CANNOT proceed through the planning process until geological feasibility is determined. Depending upon the nature of the project, this may require geology and/or geo-technical engineering (soils) reports which evaluate the site conditions, factor of safety, and potential geologic hazards. The following items are required to begin the review process (see attached.)

SIGNATURE

DATE

Determination of geologic feasibility for planning should not be construed as approval of building and/or grading plans which need to be submitted for Building Department approval. At that time, those plans may require approval of both the City Geologist and Geo-technical Engineer. Additional requirements/conditions may be imposed at the time building and/or grading plans are submitted for review, including requiring geology and geo-technical reports.

Mr. Chris Dean, City Geologist, may be contacted at the Building & Safety Counter Mondays and Thursdays between 8:00 AM and 12:30 PM or by calling (310) 456-2489, extension 306.

Originated: 11/29/04 (gs)

* Provide geotechnical report addressing the proposed portico entry area and kitchen/dining remodel on the first floor. New foundations, slabs require review. Potential hazards shall be discussed. Awa

CCC-16-CD-04 & CCC-16-AP-02

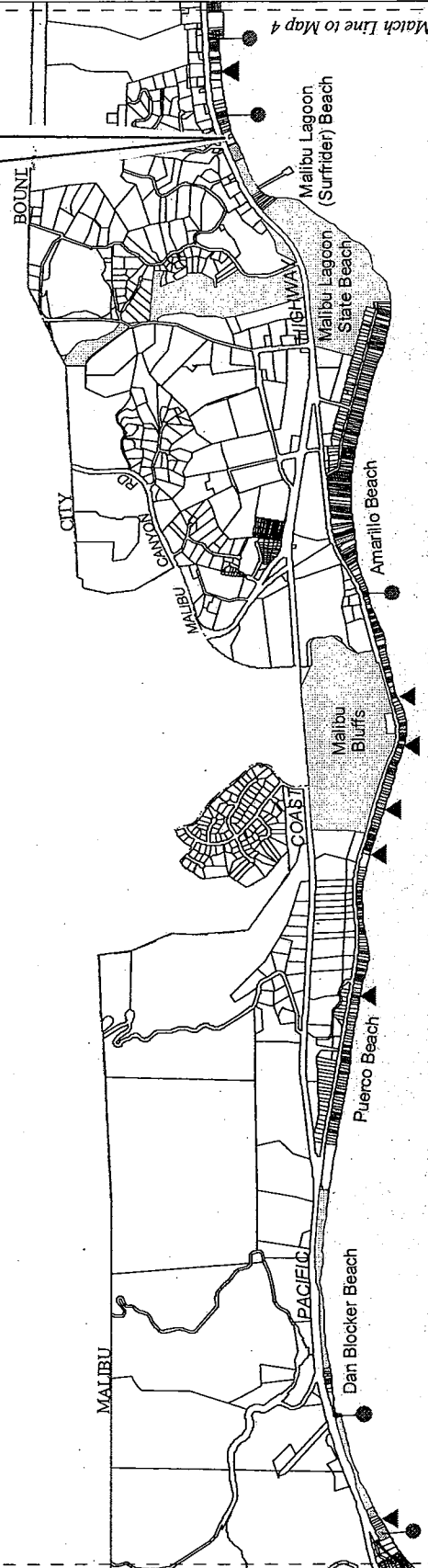
Exhibit 18

Page 66 of 71

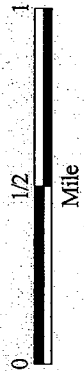
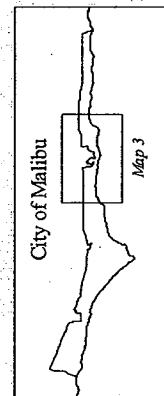
Local Coastal Program - City of Malibu
Public Access Map 3:
Dan Blocker to Malibu Pier

SITE

-  Lateral Access Document Recorded
-  Existing Lateral Accessway
-  Public Beach
-  Vertical Access Document Recorded
-  Existing Vertical Accessway



P a c i f i c O c e a n



Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 12/01

California Coastal Commission
 Technical Services Division



**NOTICE OF PUBLIC HEARING
CITY OF MALIBU
PLANNING COMMISSION**

The Malibu Planning Commission will hold a public hearing on **Monday, June 19, 2006, at 6:30 p.m. in the Council Chambers, Malibu City Hall, 23815 Stuart Ranch Road, Malibu, CA**, for the project identified below.

COASTAL DEVELOPMENT PERMIT NO. 06-002 AND CONDITIONAL USE PERMIT NO. 06-011 - An application for the installation of a new, alternative onsite wastewater treatment system and the construction of a portico addition and an interior remodel to create a dining area within an existing hotel.

APPLICATION NUMBER:	Coastal Development Permit No. 06-002 Conditional Use Permit No. 06-011
APPLICATION FILING DATE:	February 9, 2006
APPLICANT:	Lynn Heacox, The Land & Water Company
OWNER:	MBI PCH, LLC
LOCATION:	22878 Pacific Coast Highway within the coastal zone
APN:	4452-005-029, 4452-005-030, 4452-005-031
ZONING:	Commercial Visitor Serving – 2 (CV-2)
CITY PLANNER:	Noah Greer, 456-2489, ext. 256

Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the Planning Division has analyzed the proposal as described above. The Planning Division has found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and therefore, exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION (Class 3) will be prepared and issued pursuant to CEQA Guidelines Section 15303 – New construction or conversion of small structures. The Planning Division has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

A written staff report will be available at or before the hearing. Following an oral staff report at the beginning of the hearing, the applicant may be given up to 15 minutes to make a presentation. Any amount of that time may be saved for rebuttal. All other persons wishing to address the Commission will be provided up to three minutes to address the Commission. These time limits may be changed at the discretion of the Commission. At the conclusion of the testimony, the Commission will deliberate and its decision will be memorialized in a written resolution.

Copies of all related documents are available for review at City Hall during regular business hours. Written comments may be presented to the Planning Commission at any time prior to the close of the public hearing.

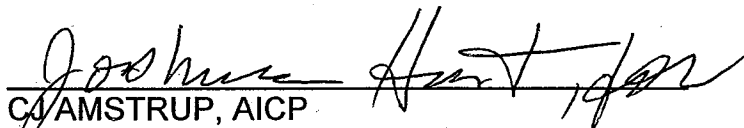
LOCAL APPEAL – Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) and Malibu Municipal Code Section 17.04.220, a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and the filing fee of \$623.00, as specified by the City Council. Appeal forms r

www.ci.malibu.ca.us or in person at City Hall, or by calling (310) 456-2489, ext. 245 or ext. 256.

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling 805-585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

If there are any questions regarding this notice, please contact Noah Greer, Contract Planner, at (310) 456-2489, ext. 256.


JOSHUA HUNT
Planning Manager

Publish Date: May 25, 2006

Notice Continued...

A written staff report will be available at or before the hearing. Following an oral staff report at the beginning of the hearing, the applicant may be given up to 15 minutes to make a presentation. Any amount of that time may be saved for rebuttal. All other persons wishing to address the Commission will be provided up to three minutes to address the Commission. These time limits may be changed at the discretion of the Commission. At the conclusion of the testimony, the Commission will deliberate and its decision will be memorialized in a written resolution.

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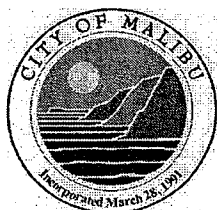
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any questions regarding this notice, please contact Noah Greer, Contract Planner, at (310) 456-256, ngreer@ci.malibu.ca.us

24, 2006

Noah Greer, AICP, Planning Manager



City of Malibu Planning Division
23815 Stuart Ranch Road
Malibu, CA 90265

Planning Division

City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265
(310) 456-2489 Fax (310) 456-7650

NOTICE OF PUBLIC HEARING

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APPLICATION NUMBER:
CDP No. 06-002
CUP 06-011

APPLICATION FILING DATE:
February 9, 2006

APPLICANT:
Lynn Heacock, The Land & Water Company

OWNER:
MBI PCH, LLC

LOCATION:
22878 Pacific Coast Hwy
within the appealable coastal zone

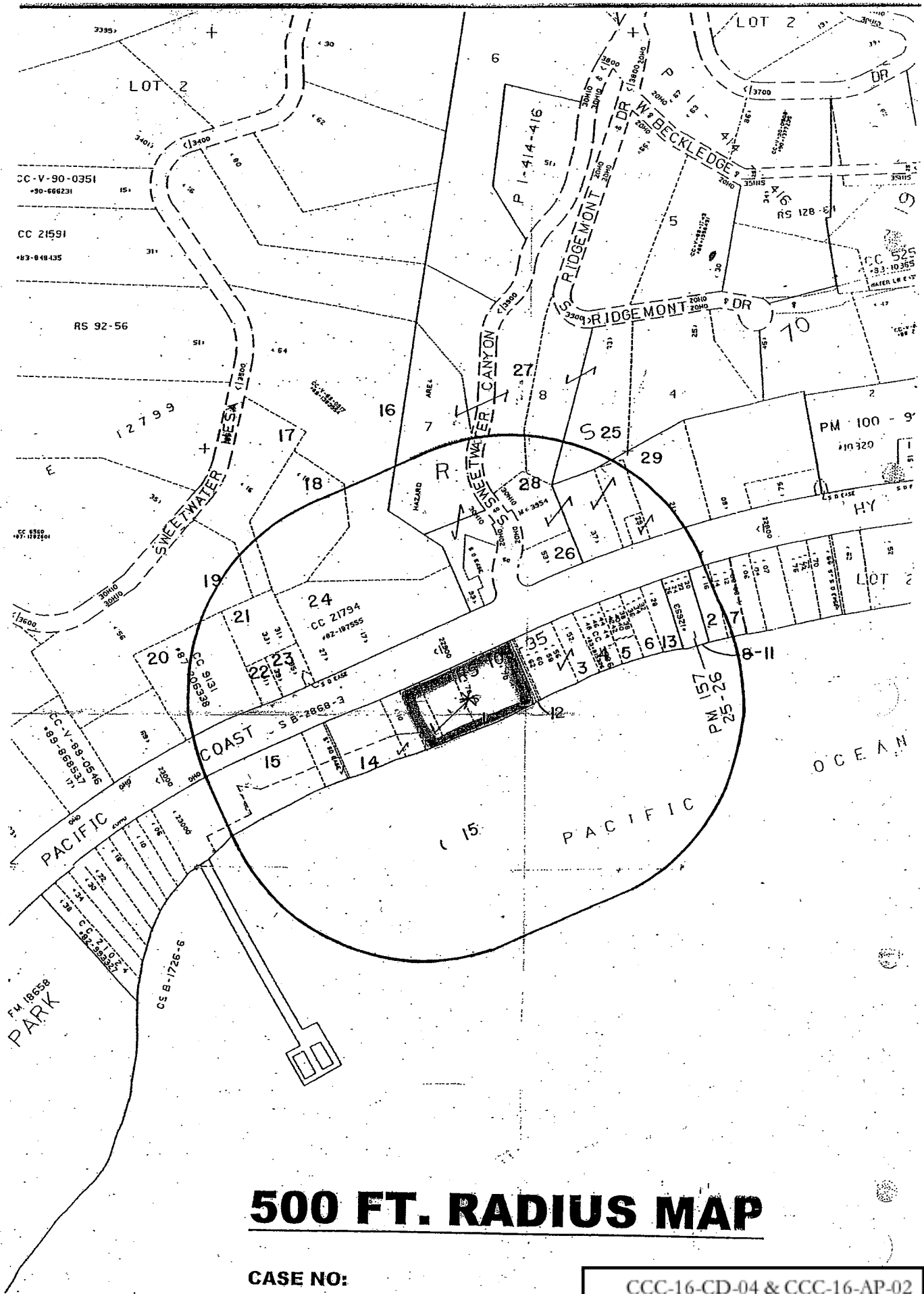
APN:
4452-005-029

ZONING:
Commercial Visitor
Serving—2 (CV-2)

CITY PLANNER:
Noah Greer, ext. 256
ngreer@hotmail.com

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CASE NO:

DATE: 10-17-05

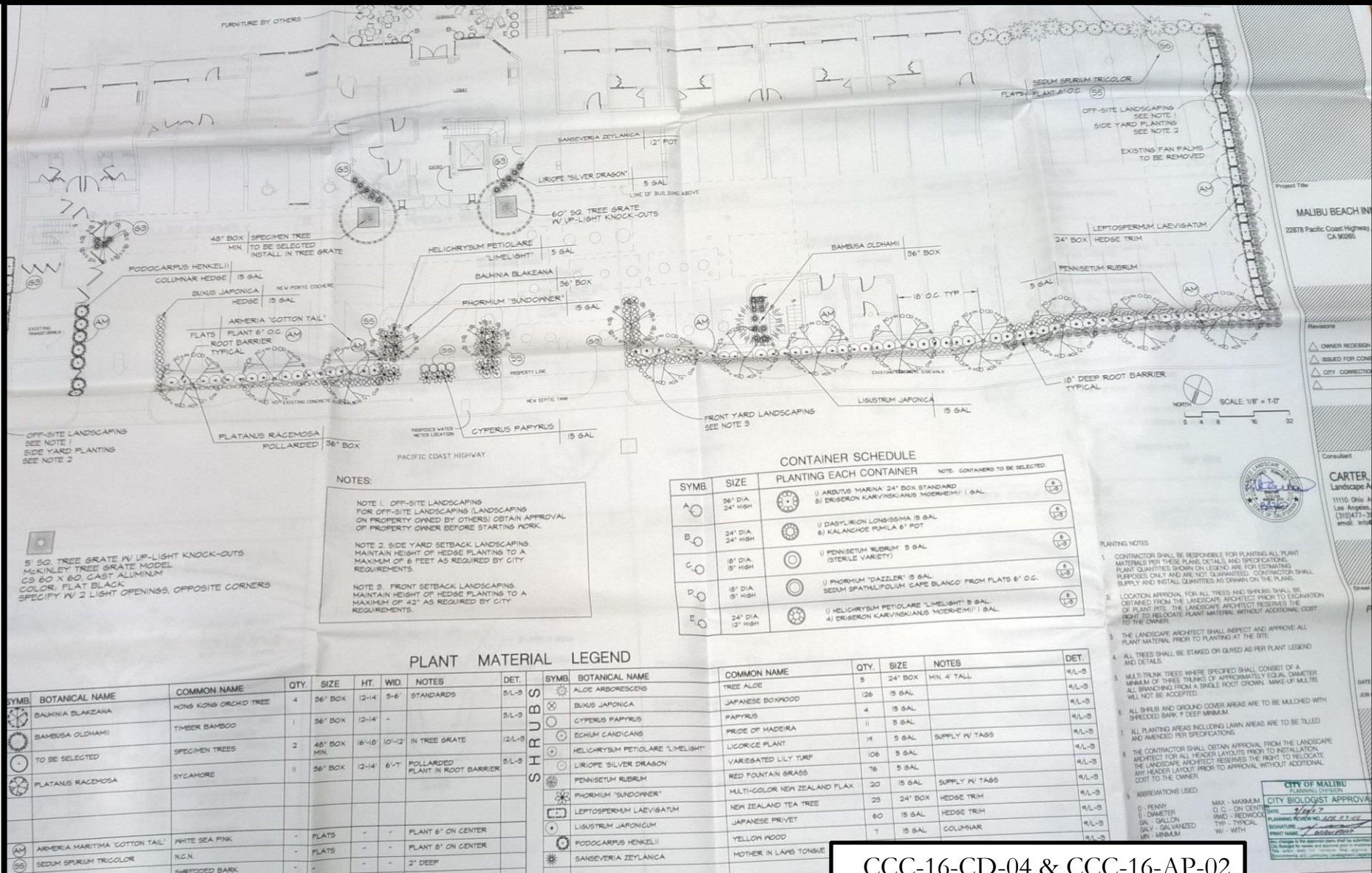
SCALE: 1" = 200'

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 18

Page 71 of 71

CITY OF MALIBU ADMINISTRATIVE PLAN REVIEW 07-011 (EXCERPT)



CCC-16-CD-04 & CCC-16-AP-02

Exhibit 19

CALIFORNIA COASTAL COMMISSION

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



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT

April 17, 2009

MBIPCH LLC
Richard Sherman
12011 San Vicente Blvd #606
Los Angeles, CA 90049

Violation File Number: V-4-09-015

Property location: 22878 Pacific Coast Highway, Malibu, Los Angeles
County, APNs 4452-005-029, 030, 031

Unpermitted Development: Non-compliance with Special Condition 3(g) of CDP
No. 5-87-576; failure to construct two public access
beach stairways from public beach parking lot to the
public beach.

Dear Mr. Sherman:

Our staff has confirmed that development undertaken on your client's property identified above by a previous owner does not fully comply with the terms and conditions of Coastal Development Permit No. 5-87-576, which was previously approved by the Commission, with conditions, on January 14, 1988, and issued on November 25, 1989, and the conditions of which run with the land, binding all owners of the property. This approved permit authorized demolition of an existing hotel and restaurant and construction of a 47 room three-level hotel with 52 parking spaces, 33 feet above existing grade and rock revetment. The permit also authorized and required the property owner to construct two stairways from the public beach parking lot to the public beach. It appears that the required stairways were never built.

Standard Condition Three (3) attached to your permit states:

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.

Additionally, Special Condition 3(g) of your permit states:

Prior to transmittal of the permit the applicants shall submit revised building and landscape plans conforming to Section 138 of the certified Malibu/Santa Monica Mountains Land Use Plan. The plans shall show:

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 20
Page 1 of 3

g) Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal.

A conceptual plan, approved by CA Dept. of Parks and Recreation (DPR), showing the proposed location of the stairs is in our files, but we find no evidence that a final plan was ever submitted or that the stairs were ever constructed. The failure to finalize the plans, obtain the required approvals, and construct said public access stairways constitutes a failure to comply with Special Condition 3(g) of Coastal Development Permit No. 5-87-576. Please be advised that non-compliance with the terms and conditions of an approved permit constitute a violation of the Coastal Act.

In most cases, a violation involving non-compliance with an approved coastal permit may be resolved administratively by applying for and obtaining an amendment to the previously issued coastal permit to either authorize the unpermitted changes to the approved project and/or to remove the unpermitted development and restore the site. However, in this case, pursuant to California Code of Regulations, Title 14, section 13166, staff could not legally accept an amendment application to delete the requirement to build the stairs, as such a change would "...lessen or avoid the intended effect of an approved or conditionally approved permit..."

Therefore, in order to resolve this matter in a timely manner and reduce the possibility of further enforcement action, we request that your client does all of the following:

1. Work with DPR to develop final plans for two beach stairways, or their equivalent, to be constructed on DPR property;
2. Submit said plans to DPR, the Commission and to LA County Beaches and Harbors for approval;
3. Construct the stairways pursuant to the approved plans.

Please contact me by no later than **May 1** regarding how you intend to resolve this violation.

While we are hopeful that this matter can be resolved amicably, please be advised that that Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit or is inconsistent with the terms and conditions of a previously issued permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. Such cease and desist orders may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act, respectively. Section 30811 also authorizes the Commission to order restoration of a site if unpermitted development is inconsistent with the policies of the Coastal Act and is causing continuing resource damage. A violation of a cease and

desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who performs or undertakes development that violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists. Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court is required to consider the amount of liability necessary to deter further violations.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

Thank you for your attention to this matter. We look forward to working with you and your clients to resolve this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

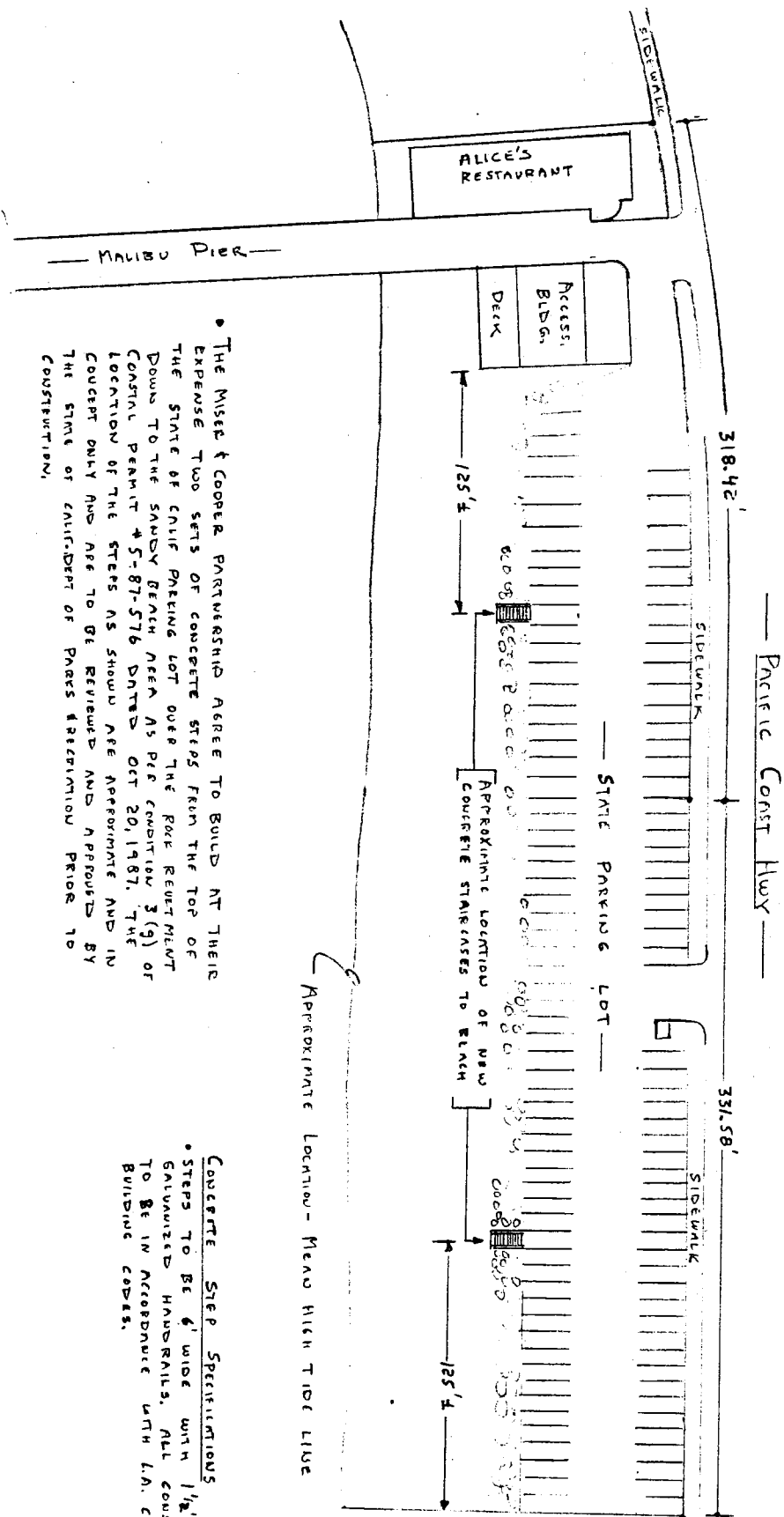
Sincerely,



Andrew D. Berner
South Central District Enforcement

cc: Lisa Haage, Chief of Enforcement
N. Patrick Veesart, Enforcement Supervisor
Tom Sinclair, District Enforcement Officer
Steve Hudson, District Manager
Barbara Carey, Supervisor, Planning and Regulation
Linda Locklin, Manager, Coastal Access Program
Alex Helperin, Staff Counsel
Ron P. Schafer, CA Dept. Of Parks and Recreation
Lynn Heacox, Agent

Scale 1" = 50'



• THE MISER & COOPER PARTNERSHIP AGREE TO BUILD AT THEIR EXPENSE TWO SETS OF CONCRETE STEPS FROM THE TOP OF THE STATE OF CALIF. PARKING LOT OVER THE ROSE REUDEMANT DOWN TO THE SANDY BEACH AREA AS PER CONDITION 3 (9) OF CONSTRUCTION PERMIT #5-87-576 DATED OCT 20, 1987. THE LOCATION OF THE STEPS AS SHOWN ARE APPROXIMATE AND IN CONCEPT ONLY AND ARE TO BE REVIEWED AND APPROVED BY THE STATE OF CALIF. DEPT OF PAVES & RECREATION PRIOR TO CONSTRUCTION.

CONCRETE STEP SPECIFICATIONS
• STEPS TO BE 6' WIDE WITH 1 1/2" GALVANIZED HANDRAILS. ALL CONSTRUCTION TO BE IN ACCORDANCE WITH L.A. COUNTY BUILDING CODES.

SUBMITTED BY: *Martin G. Miser* 10-29-87
MARTIN G. MISER

ACKNOWLEDGED BY: *Maurice H. Getty*
MAURICE H. GETTY
DISTRICT SUPERINTENDENT
DEPT. OF PAVES & RECREATION

ReedSmith

RECEIVED
APR 29 2009

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Kenneth A. Goldman
Direct Phone: +1 310 734 5234
Email: kgoldman@reedsmith.com

Reed Smith LLP
1901 Avenue of the Stars
Suite 700
Los Angeles, CA 90067-6078
+1 310 734 5200
Fax +1 310 734 5299
reedsmith.com

April 27, 2009

Certified; Return Receipt Requested

California Coastal Commission
Attention: Andrew D. Berner
89 South California Street, Suite 200
Ventura, CA 93001

Your Violation File Number V-4-09-015
MBIPCH, LLC
22878 Pacific Coast Highway, Malibu, CA
APNs 4452-005-029, 030, 031

Dear Mr. Berner:

On behalf of our client MBIPCH, LLC, the owner of the above-referenced property (the Malibu Beach Inn), we are responding to the Notice of Violation sent to them dated April 17, 2009.

First, we want to assure you that our client will cooperate with California Coastal Commission staff and DPR to reach an administrative solution satisfactory to the Commission, DPR and LA County Beaches and Harbors. MBIPCH, LLC has directed us and their consultants to work closely with staff to that end.

Please be aware that MBIPCH, LLC purchased the Malibu Beach Inn property in 2005 and had absolutely no knowledge of the permit condition cited in your April 17, 2009 letter. In fact, the former owner (and seller) assured MBIPCH, LLC in writing that, *"the Property and its current use and operation are in compliance with applicable laws, rules, codes, permits and regulations, including without limitation the Americans With Disabilities Act, as well as private covenants, conditions and restrictions applicable to the Property, if any"* and that, *"there exist no violations of existing laws, ordinances, orders, regulations or requirements affecting any portion of the Property, and Seller has no knowledge of any fact or condition that would constitute such a violation."* In fact, the permit condition cited in your letter first came to the attention of MBIPCH, LLC only upon receipt of your letter.

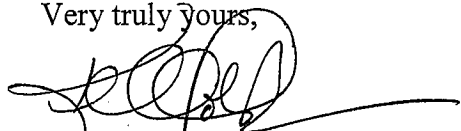
This is a vitally important property to our client and, certainly, to the life and economy of the City of Malibu. I know that you are aware of the recent complete remodel and upgrading of the Hotel. So MBIPCH, LLC and their consultants will fully cooperate with you in properly resolving this issue.

California Coastal Commission
April 27, 2009
Page 2

ReedSmith

We will contact DPR shortly to arrange a meeting to begin that resolution. Please do not hesitate to contact me or Lynn Heacox with any questions or concerns.

Very truly yours,



Kenneth A. Goldman
KAG/tw

cc: Lisa Haage, Chief of Enforcement
N. Patrick Veesart, Enforcement Supervisor
Tom Sinclair, District Enforcement officer
Steve Hudson, District Manager
Barbara Carey, Supervisor, Planning and Regulation
Linda Locklin, Manager, Coastal Access Program
Alex Helperin, Staff Counsel
Ron P. Schafer, CA Dept. of Parks and Recreation
Richard Sherman
Lynn Heacox

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 22

Page 2 of 2

RECEIVED
JUL 15 2009

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

The Land and Water Co.

14872 Sunnycrest Lane
Huntington Beach, CA 92647
714-766-6525 / Fax 714-766-6509 / Cell 714-614-0620
Lheacox@verizon.net

July 13, 2009

California Coastal Commission
89 So. California Street, Second Floor
Ventura, CA 93001

Re: Request for an Amendment to Coastal Permit No. 5-87-576 (copy attached). We wish to extend the deck on the ocean side of the Malibu Beach Inn to enhance the visitor serving experience of guests. Address of the permit is 22878 PCH, Malibu; APN's 4452-005-029, 030 & 031.

Dear Coastal Staff:

Please find enclosed a Coastal Application for an Amendment to extend the deck on the ocean side of the Malibu Beach Inn to enhance the visitor serving experience of guests. We propose to construct a five foot cantilevered deck on the west side of the existing viewing platform, and propose to construct a ten foot deck on pilings on the east side of the viewing platform.

The following information has been attached for your review:

1. Application for Amendment to CDP 5-87-576 signed by Lynn Heacox.
2. Two sets of plans and one set of 8.5" x 11" reductions.
3. Agent Authorization form signed by Richard Sherman, CFO and VP of MBIPCH, LLC which authorizes Lynn Heacox to represent the LLC in this matter.
4. Grant Deed of subject property evidencing ownership by MBIPCH, LLC.
5. Operating agreement of MBIPCH, LLC which authorizes Richard Sherman to sign Agent Authorization form and other instruments on behalf of the LLC.
6. Coastal Development Permit No. 5-87-576 issued November 25, 1987..
7. Mailing list and stamped/addressed envelopes of all owners of record and occupants within 100 feet of subject property.
8. Coastal Engineering report for the deck addition dated March 5, 2008, and City approval of the report dated September 24, 2008.
9. State Lands Commission review letter dated July 21, 2007.

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 23
Page 1 of 3

Background:

The original Coastal Permit (copy attached) was approved in 1987 to include "Demolish existing hotel and restaurant and construct three level, 47 room hotel with 52 parking spaces, 33 feet above grade, and rock-revetment". Conditions imposed on the original permit included lateral public access to the seaward face of the hotel. The first ten feet of lateral access area was a privacy buffer which extended over the rock revetment. Within the lateral access area the Commission approved a viewing platform conditioned to be setback 25 feet from the most landward MHT line.

An application for the deck addition was submitted to the City of Malibu for review back in 2008. At the time we were unaware that the offer to dedicate public access had been accepted and was open. When it was determined that the public accessway had been accepted and was open City staff directed us to the Coastal Commission office to review the project.

I met with Jack Aisworth and Steve Hudson to discuss this matter as well as a potential violation of Coastal Permit Condition 3.g. Condition 3.g. required that two stairways be constructed from the state owned parking lot to the west. It appears one stairway/ramp was constructed next to the pier and Coastal records indicate the condition had been satisfied. I discussed the history with State Parks but no records existed. Jack and Steve discussed the potential violation and deck extensions with me. They each supported the deck extension on the east side of the viewing platform but had reservations about extending the deck on the west side due to possible view impacts. I studied the site and contacted Jack at a later date stating that a five foot addition on the west side would have no impacts. Jack said that a five foot deck could be submitted as cantilevered. Both he and Steve hoped that with the deck addition submitted and with the input of State Parks Director Ron Schafer we could unravel the mysteries regarding the stairways from the state owned parking lot and come up with mitigation for the extended hotel deck that would improve the visitor serving experience without imposing a negative impact on overall public access.

Legality of Accepting the Proposed Amendment Under the Coastal Act of 1976:

Under the Coastal Act of 1976 Administrative Regulation Section 13166 provides that "The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted."

California Coastal Commission
July 13, 2009
Page 3 of 3

Our proposal will not lessen or avoid the intended effect of the conditionally approved permit. After reviewing the Coastal Commission archived file documents for the original permit it is apparent that the Coastal Commission approved the application for the hotel because the use was visitor serving and a priority under the Coastal Act. It was for the same reason the existing viewing deck was approved in the lateral public access area with pilings. The viewing deck would be well above the grade below and not block public access beneath the deck. The existing deck is also predominantly behind the beach stringline.

Also, LCP LIP Section 13.10.2.B2 provides that an applicant apply to the City of a Coastal Development Permit except for: "Development that would lessen or negate the purpose of any specific permit condition, any mitigation required by recorded documents, an recorded offer to dedicate or grant of easement or any restriction/limitation or other mitigation incorporated through the project description by the permittee, of a Commission issued coastal permit."

We are proposing development in an area where a "...recorded offer to dedicate or grant of easement..." was completed. Under these conditions we are required to submit the proposed deck extension to the Commission for review and approval.

Conclusion:

Permitting the deck additions will enhance the visitor serving nature of the hotel without impeding public access. We fee the additions will be a wonderful asset to improve the use of the hotel. We also feel the Coastal Act of 1976 and the certified LCP grant us the opportunity to have the Coastal Commission review the proposed deck additions. All new deck additions will be constructed generally landward of the rock revetment and landward of the beachfront stringline. In our opinion this request is in full compliance with the intent and spirit of the Coastal Act of 1976 and the Malibu LCP. Your time and attention to this matter are appreciated. If you have any questions or need further information please don't hesitate to contact me.

Sincerely,
The Land and Water Co.


Lynn J. Heacox

LJH:jt:sherman22878CCCsubmittaldecks07-09

James Johnson

From: Lynn Heacox [LHeacox@verizon.net] 587576 a 1
Sent: Monday, January 04, 2010 4:00 PM
To: John Ainsworth; James Johnson; Steve Hudson; Ron Schafer
Cc: Richard Sherman
Subject: Re: Conference CCC Staff re: Deck Addition at 22878 PCH and Mitigation

Ron: Can you provide me with some conceptual plans and approximate costs for construction of the items we discussed at our meeting regarding the Malibu Beach Inn. See below. I'd like to get this matter resolved and moving forward. Thanks.

Lynn J. Heacox
 The Land and Water Co.
 14872 Sunnycrest Lane
 Huntington Beach, CA 92647
 714-766-6525 / Cell 714-614-0620
 Fax 714-766-6509
LHeacox@verizon.net

----- Original Message -----

From: Lynn Heacox
To: Jack Ainsworth ; James Johnson ; Steve Hudson ; Ron Schafer
Cc: Richard Sherman
Sent: Monday, December 07, 2009 2:19 PM
Subject: Conference CCC Staff re: Deck Addition at 22878 PCH and Mitigation

Dear Jack, Steve, James & Ron:

Thank you for taking time out of your busy schedules to meet with me last week to discuss the referenced project and the resolution of the violations. You indicated that this project is being supported due to some unique circumstances. It is a visitor serving project, the proposed deck extension is in the buffer area but will continue to allow for public across the property and the proposed deck conforms to the stringline. Also the developed properties immediately to the east extend further seaward than MBI and effectively block access at higher tides with pilings, cross bracing and rip rap. Under these types of circumstances the proposed impacts are minimal and could be offset with mitigation. You also indicated that the Coastal staff report for the deck would also include mitigation to resolve the violation for not having the two stairs constructed to the beach from State Parks property. I went on to show you some photos that indicate our proposed deck extends over the rip rap and would stop short of the sandy beach used for public access. The public will continue to be able to use the rock revetment for access beneath the deck extension during higher tides. I think this needs to be clear because we will need to make some connection between the impacts of our deck extension (which is for visitor serving purposes) and the mitigation to offset that impact. I must also emphasize that we do not have unlimited funds. I hope we can be realistic or the deck extension will not be pursued.

From our meeting it is my understanding that you are considering the following possible items for mitigation to offset the deck extension and resolve the violation:

1. Access Ramp next to the pier - Construct an ADA (Americans with Disabilities Act) ramp that is a switch back. It can be used for "fat tire" wheelchairs. State Parks has one of these chairs onsite that is used on the beach. This same switch back might also be used for hand launching kayaks.
2. Viewing Platform on the revetment - Construct a centrally located viewing platform that could accommodate several tables and chairs for people who don't or can't get down to the beach.
3. Stair - Construct a second stair to the east side of the parking lot. Ron expressed concerns about

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 24

Page 1 of 2

1/11/2010

maintenance.

4. Storage building - Construct a building to store tables, chairs, wheelchairs, etc.

5. Maintenance scheme for repair of beach facilities - This is costly due to the harsh environment. You indicated that it would be desirable if such a scheme could be established to provide funding. No ideas on how to accomplish this were expressed.

Ron said that he would provide me (and you) some exhibits or plans and approximate costs of constructing the facilities mentioned above. Coastal staff stated that our project would be somewhat controversial because this is not the direction the Commission is moving but also noted that ours is a unique situation. Jack had told me previously that Peter Douglas was supportive.

Staff went on to say that the western deck extension should be limited to 5' so it would not have an impact on views from the public parking area. They would also like us to look into deck bracing that ties back into the existing pilings to reduce obstacles for public access. The east side deck extension could be 10'. I said that we would need vertical piles in this location due to loading. I think you supported the idea for the east side deck only.

I also asked a final question about the original parking requirements on the Hotel for "Public Recreational Areas". Our hotel was originally approved with 47 rooms and 52 parking spaces. It is 100% valet service and has never had an impact of public street parking or vehicular access. We have never had a shortage of parking. Based upon the 1986 LUP we need 40.5 (41 rounded) spaces based upon room count, and 1 space for each 100 sq.ft. of "Public Recreational Areas". We have 650 sq.ft. of viewing deck. I asked you if our viewing deck was a "Public Recreational Area". You said it was not. If it was a "Public Recreational Area" our parking requirement would have been 47 parking spaces and not 41. In either event the hotel does have an excess of parking spaces as I originally calculated.

Again, thank you for your time. I look forward to hearing from Ron. If you have any other questions please don't hesitate to call.

Lynn J. Heacox
The Land and Water Co.
14872 Sunnycrest Lane
Huntington Beach, CA 92647
714-766-6525 / Cell 714-614-0620
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LHeacox@verizon.net

Information from ESET NOD32 Antivirus, version of virus signature database 4668
(20091207)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

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CCC-16-CD-04 & CCC-16-AP-02

Exhibit 24

Page 2 of 2

CALIFORNIA COASTAL COMMISSION

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

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL**

April 1, 2015

Mani MBI DE LLC
c/o Pamela K. Prickett
601 S. Figueroa Suite 2320
Los Angeles, CA 90017

22878 Pacific Coast Highway
Malibu, CA 90265

Violation File Number: V-4-09-015

Property location: 22878 Pacific Coast Highway, Malibu; Los Angeles
County Assessor's Parcel Numbers 4452-005-029, 4452-
005-030, and 4452-005-031.

Alleged Violation¹: Non-compliance with Special Condition 3(g) of Coastal
Development Permit No. 5-87-576; failure to construct two
public access beach stairways from public beach parking
lot to the public beach.

Dear Ms. Prickett:

The California Coastal Act² was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats, such as native chaparral; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea, such as to the coastline fronting property located at 22878 Pacific Coast Highway, described by Los Angeles County as APNs 4452-005-029, 4452-005-030, and 4452-005-031 ("subject property").

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

² The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

In 1988, the Commission approved development (including the construction of the existing hotel) on the subject property and included conditions to protect public access (described in more detail below). Development occurred pursuant to the permit, and the permit conditions are therefore legally binding on the property. The subject property is located directly downcoast of the eastern parking lot at Surfrider State Beach, which is a heavily visited state beach and the site of an annual surfing contest because of a unique wave break. Additionally, the area directly downcoast of the subject property represents one of the longest stretches of beach in Malibu with development adjacent, and resultant limited public access opportunities. Section 30210 of the Coastal Act states that "maximum access... shall be provided for all the people..." and Section 30211 states that "Development shall not interfere with the public's right of access to the sea..." Preserving the public's right of access is a high priority for the Coastal Commission, so the requirements of this permit are especially important from a Coastal Act perspective. We look forward to working with you to ensure access is provided as required by the permit that authorized the hotel on the subject property.

Non-compliance with CDP No. 5-87-576

Commission staff has confirmed that development on the subject property does not fully comply with the terms and conditions of a previously issued Coastal Development Permit ("CDP"). CDP No. 5-87-576 was approved by the Commission, with conditions, on January 14, 1988, and issued on November 25, 1989, and the conditions of that permit run with the land, binding all owners of the property. This permit authorized demolition of an existing hotel and restaurant and construction of a 47 room three-level hotel with 52 parking spaces, 33 feet above existing grade, and a rock revetment on the subject property. The permit also authorized and required the property owner to construct two stairways from the California Department of Parks and Recreation (CDPR) public beach parking lot on APN 4452-005-902 to the public beach. It appears that the required stairways were never built.

Standard Condition Three (3) states:

All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

Additionally, Special Condition 3(g) states:

Prior to transmittal of the permit the applicants shall submit revised building and landscape plans conforming to Section 138 of the certified Malibu/Santa Monica Mountains Land Use Plan. The plans shall show:

g) Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal.

As of the date of this letter, the public access stairways have not been constructed as required by the permit. The failure to construct said stairways constitutes failure to comply with Special Condition 3(g) of CDP No. 5-87-576. Please be advised that non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act.

In order to resolve this matter in a timely manner and reduce the possibility of further formal enforcement action, we request that the Malibu Beach Inn schedule a meeting with Commission staff to go over the necessary steps to construct the public access stairways.

Administrative Resolution of Public Access Violation

As described above, preserving the public's right of access is a high priority for the Coastal Commission. In this case, failure to provide the required public access beach stairs denies the public its right to access the sea as required by Sections 30210 and 30211.

As you may know, recent legislative actions amended the Coastal Act to add Section 30821, which authorizes the Commission to administratively impose penalties for access-related violations of the Coastal Act. Pursuant to that section, in cases involving violation(s) of the public access provisions of the Coastal Act, which is the case here, the Commission may impose administrative civil penalties in an amount of up to \$11,250 per day for each violation.

Resolution

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act, including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

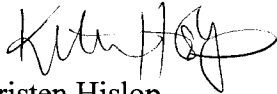
As noted above, in cases involving violation(s) of the public access provisions of the Coastal Act, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount not to exceed \$11,500 per day per violation in which the violation persists.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not

be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property³.

Thank you for your attention to this matter. We would like to resolve these issues and open this access way for public use and are happy to work with you to do so. Please call me by April 15, 2015 to discuss resolution. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

Sincerely,



Kristen Hislop
Enforcement Officer

cc: **Lisa Haage, Chief of Enforcement, CCC**
 Andrew Willis, Enforcement Supervisor, CCC
 Steve Hudson, District Manager, CCC
 Barbara Carey, Supervisor, Planning and Regulation, CCC
 Alex Helperin, Senior Staff Counsel, CCC
 Aaron McLendon, Deputy Chief of Enforcement, CCC
 Craig Sap, Superintendent, CDPR

³ Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will assume liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.

CALIFORNIA COASTAL COMMISSION

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



May 26, 2015

Tony Canzoneri
21016 Pacific Coast Highway
Malibu, CA 90265

Violation File Number: V-4-09-015

Property location: 22878 Pacific Coast Highway, Malibu; Los Angeles
County Assessor's Parcel Numbers 4452-005-029, 4452-
005-030, and 4452-005-031 ("subject property")

Alleged Violation¹: Non-compliance with Special Condition 3(g) of Coastal
Development Permit No. 5-87-576; failure to construct two
public access beach stairways from public beach parking
lot to the public beach and associated loss of public access.

Dear Mr. Canzoneri:

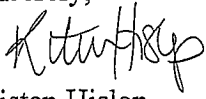
Thank you for meeting me and Andrew Willis, along with California State Parks and Los Angeles County Beaches and Harbors staff, on the subject property on May 12, 2015. During this meeting, you explained that your client is eager to work with Commission staff in order to construct the public access beach stairways, as required by Coastal Development Permit No. 5-87-576. You also stated you have evidence that you believe shows all conditions of this permit have been met and that you believe your client is not required to construct said stairways, though, regardless, they are willing to construct them. Commission staff has not found any evidence that would indicate Special Conditions 3(g) of that same permit has been met; perhaps most telling, the required stairways have not yet been constructed. However, Commission staff is happy to look over any documentation you may have that you believe might suggest otherwise.

As we discussed during the site visit, Commission staff will work with you and California State Parks staff to ensure that the public access improvements necessary to resolve this issue are constructed in a timely manner. I understand that you are on vacation until the week of June 1, 2015. Please call me by June 8, 2015, so we can discuss next steps towards resolution.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

Sincerely,



Kristen Hislop
Enforcement Officer

cc: Lisa Haage, Chief of Enforcement, CCC
Andrew Willis, Enforcement Supervisor, CCC
Steve Hudson, District Manager, CCC
Barbara Carey, Supervisor, Planning and Regulation, CCC
Alex Helperin, Senior Staff Counsel, CCC
Craig Sap, Superintendent, CDPR

From: [Tony Canzoneri](#)
To: Hislop_Kristen@Coastal
Subject: Your May 26 letter
Date: Friday, June 05, 2015 12:44:35 PM
Attachments: [CC 1990 Permit Monitoring Form.pdf](#)

Dear Kristen,

First, I have not received the contact sheet you were preparing listing the names and contact information of the person's who attended the May 12 on site meeting and would appreciate receiving it when completed.

Second, I received your May 26 letter in the mail yesterday and will put a call into you today. For the record, I want to correct certain misimpressions reflected in your letter regarding my statements at the May 12 onsite meeting.

We believe that the owners of the Malibu Beach Inn have no legal obligation to install the stairs under Special Condition 39(g) based on, among other reasons, the attached 1989-1990 PERMIT MONITORING REVIEW FORM in which your agency confirmed that "all special conditions have been met". That form also clearly recites and checks off all of the special conditions including 3(g). Further, we believe the condition is no longer in effect based on information from prior owners, common principles of waiver and estoppel, the passage of time, the fact that stairs were installed and still exist adjacent to the pier and the Commission's inability to obtain the required consent of State Parks and LA County Beaches and Harbor to allow the installation of the steps as contemplated in the condition. We understand that prior owners were ready, willing and able to install the steps but were prevented from doing so due to the inaction and lack of agreement by the State agencies. It would be unconscionable to now, decades later, attempt to impose such a condition at current inflated costs on a recent buyer who had every reason to believe the condition had been waived or satisfied by the existing stairway. Our understanding from prior owners was that State Parks, LA County Beaches and Harbors and Coastal Commission could never reach agreement regarding the location and design for the stairs. We believe that is why the mitigation monitoring report accurately reflected compliance with all conditions including the stairway condition.

Nevertheless, as I did indicate at our site meeting, the Malibu Beach Inn, as a good neighbor, will consider contributing a reasonable amount toward a plan for improving the walkway and beach access between the State parking lot and the beach. My understanding of the discussion at the meeting was that State Parks was going to develop a proposed plan and engineer's cost estimate for the proposed improvements in collaboration with the Commission, LA County Beaches and Harbor and the Malibu Pier concessionaire. At that point the public and private parties would all review the plans and sources of funding.

Please let me know if your understanding of next steps is any different than what I have stated above with the acknowledgement that the Coastal Commission does not agree that we have no legal obligation to install the stairs according to the original condition. Please also let me know if I need to send you a more formal response by regular mail or otherwise to have this response become part of your administrative record.

I do hope that we can work together to improve this area for the betterment of all. We are

very much in favor of the ideas that were expressed by all regarding the potential improvement of the beachfront between the pier and the Inn.

Thank you for your cooperation in facilitating the discussion and a mutually beneficial result.

Tony Canzoneri
Canzoneri Gottheim Law LLP
Strategic Solutions for Business and Government
310.283.4507
tony.canzoneri@icloud.com

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CALIFORNIA COASTAL COMMISSION

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



June 15, 2015

Tony Canzoneri
21016 Pacific Coast Highway
Malibu, CA 90265

Dear Mr. Canzoneri:

I am in receipt of the email and attachment (permit monitoring review form) you sent on June 5, 2015. In your email, you stated that you believe the owners of the Malibu Beach Inn have no legal obligation to install the public access stairways as required by Special Condition 3(g) of Coastal Development Permit (CDP) No. 5-87-576; however, we strongly disagree for the reasons noted below.

Your first assertion is in reference to the permit monitoring review form you attached to your email, which surveys compliance with all special conditions of CDP No. 5-87-576, including Special Condition 3(g), which requires construction of two public access staircases on State Parks property adjacent to the Malibu Beach Inn property. Special Condition 3(g) is as follows:

3. Prior to submittal of the permit the applicant shall submit revised building and landscape plans conforming to Section 138 of the certified Malibu/Santa Monica Land Use Plan. The plans shall show:

(g) Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal.

The plans for the public access stairway were submitted on October 29, 1987 and Commission staff determined that they were submitted in compliance with Special Condition 3(g). However, Special Condition 3(g) has not yet been fully satisfied because the stairways have not yet been constructed. Later in your email, you also state that the Commission was unable to obtain the required consent of State Parks to allow the installation. To the contrary, State Parks approved the above-referenced plans as submitted (see attachment).

The special conditions of CDP No. 5-87-576 run with the land and bind all successors in interest; your clients have received the benefits of CDP No. 5-87-576, i.e. construction of the Malibu Beach Inn; accordingly, they have also assumed the obligations of the permit.

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 28

Page 1 of 8

Your second assertion is based on information given to you by the prior owners but you do not describe what this information is. For your reference, we will briefly describe staff's recent contact with the prior property owner herein, through which we confirmed the outstanding non-compliance with CDP No. 5-87-576. On April 17, 2009, Commission staff sent a Notice of Violation to MBIPCH LLC, who was the owner of the subject property at that time (see attachment). This letter explained that the development on the subject property did not fully comply with the terms and conditions of CDP No. 5-87-576, as was explained in our April 1, 2015 letter to your clients. Commission staff attempted to work with the prior owners to address this violation over the course of many conversations with both permit and enforcement staff. As of the date of this letter, the violations remain unresolved. As was noted in our April 1, 2015 letter, even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists.¹ Therefore, Malibu Beach Inn assumes liability for, and the duty to correct, the violations on the site. Liability for these violations includes, but is not limited to, an obligation to mitigate for the years of coastal access that has been denied to the public as a result of the failure to construct public access stairways on the adjacent State Parks property, as required by CDP No. 5-87-576.

Third, you vaguely reference legal arguments that appear not to apply to this case, such as waiver, estoppel, and the passage of time. We are not in the position to fully respond to these arguments in this letter as you have not articulated them but, as you may know, these arguments do not apply against a government body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy.²

Lastly, you assert that your clients are not responsible for the construction of the stairways because of "the fact that stairs were installed and still exist adjacent to the pier." The referenced stairs were not constructed to comply with the requirements of CDP No. 5-87-576 and are entirely unrelated to this matter.

You explained in your email that your clients "will consider contributing a reasonable amount toward a plan for improving the walkway and beach access between the State parking lot and the beach." While we greatly appreciate your clients' willingness to work with Commission staff to resolve this violation, be advised that the construction of the two stairways is a condition of CDP No. 5-87-576 and is required of your clients. Additionally, this violation has persisted for over two decades, during which time the public has not been allowed to benefit from the use and enjoyment of the required public access stairways. The construction of the stairs, as approved,

¹ Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will assume liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.

² *State Air Resources Board v. Wilmshurst* (1999) 68 Cal.App.4th 1332, 1347

does not address this temporal loss. As was described to your clients in our April 1, 2015 letter, the Commission may impose administrative civil penalties in an amount of up to \$11,250 per day for each violation to mitigate for this loss.

Resolution

As was detailed in our April 1, 2015 letter to your clients, while we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act, including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

As noted above, in cases involving violation(s) of the public access provisions of the Coastal Act, Section 30821 authorizes the Commission to impose administrative civil penalties in an amount not to exceed \$11,500 per day per violation in which the violation persists.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property.

Thank you for your attention to this matter. We would like to resolve these issues to ensure construction of these access ways for public use and mitigation for the effects on coastal access that have occurred as a result of non-compliance with CDP No. 5-87-576; we are happy to work with you to do so. As we have noted in previous communications, our preference is to resolve this quickly and amicably through preparation of plans to construct the public access staircases described in CDP No. 5-87-576, and associated public access improvements. Since time is of the essence to address this matter quickly to halt the accrual of potential penalties under Section 30821, and other sections, we are requesting that you collaborate expeditiously with State Parks to prepare and implement such plans. Please call me by June 24, 2015 to confirm that you received this letter and to discuss how your clients intend to move forward with resolution. If

you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

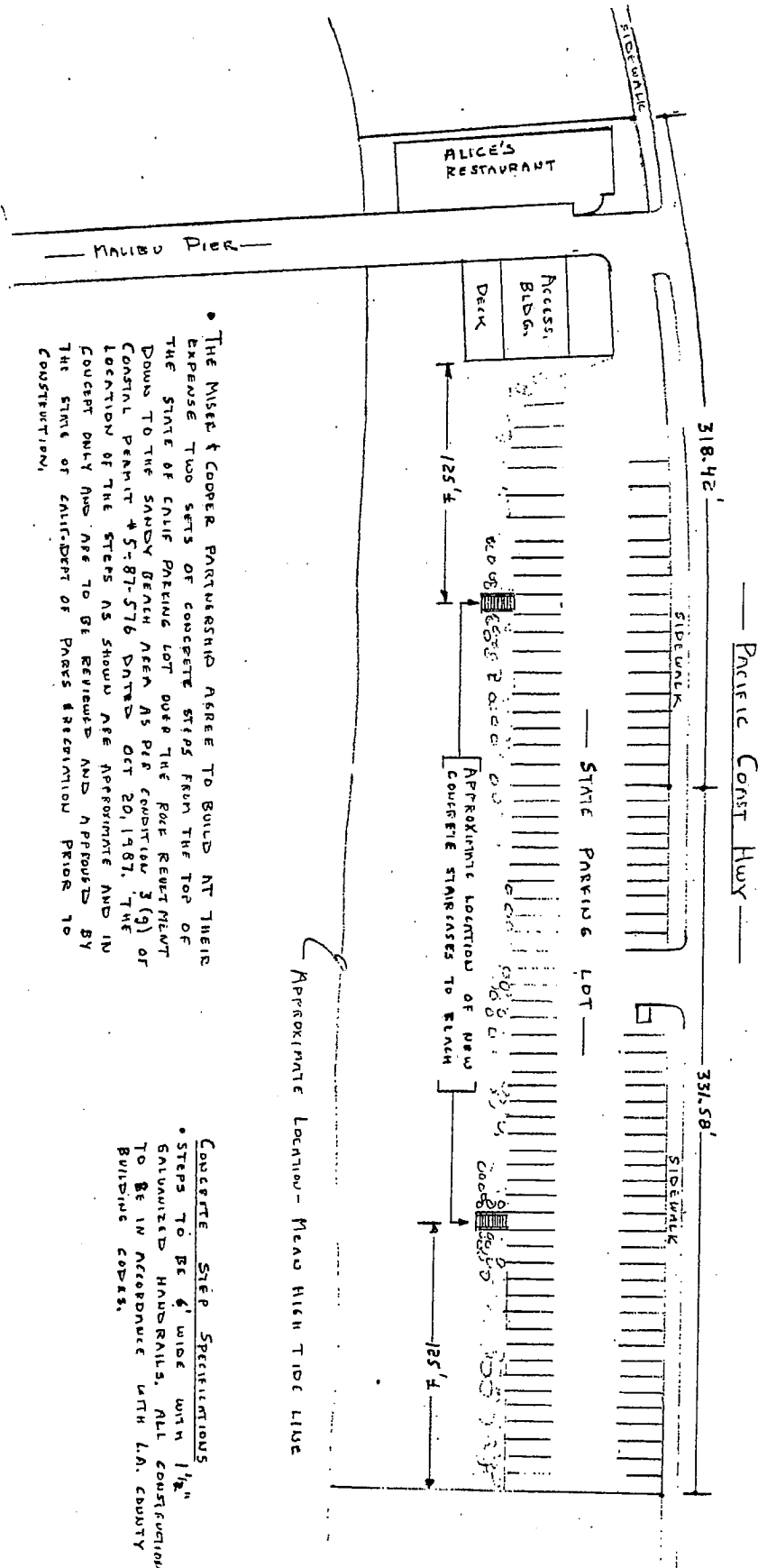
Sincerely,



Kristen Hislop
Enforcement Officer

cc: **Lisa Haage, Chief of Enforcement, CCC**
 Andrew Willis, Enforcement Supervisor, CCC
 Steve Hudson, District Manager, CCC
 Barbara Carey, Supervisor, Planning and Regulation, CCC
 Alex Helperin, Senior Staff Counsel, CCC
 Craig Sap, Superintendent, CDPR

Scale 1" = 50'



• THE MISEL & COOPER PARTNERSHIP AGREE TO BUILD AT THEIR EXPENSE TWO SETS OF CONCRETE STEPS FROM THE TOP OF THE STATE OF CALIF PARKING LOT OVER THE PUE REEPLMENT DOWN TO THE SANDY BEACH NEAR AS PER CONDITION 3 (9) OF CONSTRUCTION PERMIT #5-87-576 DATED OCT 20, 1987. THE LOCATION OF THE STEPS AS SHOWN ARE APPROXIMATE AND IN CONCEPT ONLY AND ARE TO BE REVIEWED AND APPROVED BY THE STATE OF CALIF. DEPT OF PARKS & RECREATION PRIOR TO CONSTRUCTION.

CONCRETE STEP SPECIFICATIONS
 • STEPS TO BE 6' WIDE WITH 1 1/2" GALVANIZED HANDRAILS. ALL CONSTRUCTION TO BE IN ACCORDANCE WITH L.A. COUNTY BUILDING CODES.

SUBMITTED BY: *M. G. Miser* 10-29-87
 MARLIN G. MISER

ACKNOWLEDGED BY: *Maurice H. Getty*
 MAURICE H. GETTY
 DISTRICT SUPERINTENDENT
 DEPT. OF PARKS & RECREATION

CALIFORNIA COASTAL COMMISSION

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



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT

April 17, 2009

MBIPCH LLC
Richard Sherman
12011 San Vicente Blvd #606
Los Angeles, CA 90049

Violation File Number: V-4-09-015

Property location: 22878 Pacific Coast Highway, Malibu, Los Angeles County, APNs 4452-005-029, 030, 031

Unpermitted Development: Non-compliance with Special Condition 3(g) of CDP No. 5-87-576; failure to construct two public access beach stairways from public beach parking lot to the public beach.

Dear Mr. Sherman:

Our staff has confirmed that development undertaken on your client's property identified above by a previous owner does not fully comply with the terms and conditions of Coastal Development Permit No. 5-87-576, which was previously approved by the Commission, with conditions, on January 14, 1988, and issued on November 25, 1989, and the conditions of which run with the land, binding all owners of the property. This approved permit authorized demolition of an existing hotel and restaurant and construction of a 47 room three-level hotel with 52 parking spaces, 33 feet above existing grade and rock revetment. The permit also authorized and required the property owner to construct two stairways from the public beach parking lot to the public beach. It appears that the required stairways were never built.

Standard Condition Three (3) attached to your permit states:

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.

Additionally, Special Condition 3(g) of your permit states:

Prior to transmittal of the permit the applicants shall submit revised building and landscape plans conforming to Section 138 of the certified Malibu/Santa Monica Mountains Land Use Plan. The plans shall show:

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 28

Page 6 of 8

g) Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal.

A conceptual plan, approved by CA Dept. of Parks and Recreation (DPR), showing the proposed location of the stairs is in our files, but we find no evidence that a final plan was ever submitted or that the stairs were ever constructed. The failure to finalize the plans, obtain the required approvals, and construct said public access stairways constitutes a failure to comply with Special Condition 3(g) of Coastal Development Permit No. 5-87-576. Please be advised that non-compliance with the terms and conditions of an approved permit constitute a violation of the Coastal Act.

In most cases, a violation involving non-compliance with an approved coastal permit may be resolved administratively by applying for and obtaining an amendment to the previously issued coastal permit to either authorize the unpermitted changes to the approved project and/or to remove the unpermitted development and restore the site. However, in this case, pursuant to California Code of Regulations, Title 14, section 13166, staff could not legally accept an amendment application to delete the requirement to build the stairs, as such a change would "...lessen or avoid the intended effect of an approved or conditionally approved permit..."

Therefore, in order to resolve this matter in a timely manner and reduce the possibility of further enforcement action, we request that your client does all of the following:

1. Work with DPR to develop final plans for two beach stairways, or their equivalent, to be constructed on DPR property;
2. Submit said plans to DPR, the Commission and to LA County Beaches and Harbors for approval;
3. Construct the stairways pursuant to the approved plans.

Please contact me by no later than **May 1** regarding how you intend to resolve this violation.

While we are hopeful that this matter can be resolved amicably, please be advised that that Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit or is inconsistent with the terms and conditions of a previously issued permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. Such cease and desist orders may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act, respectively. Section 30811 also authorizes the Commission to order restoration of a site if unpermitted development is inconsistent with the policies of the Coastal Act and is causing continuing resource damage. A violation of a cease and

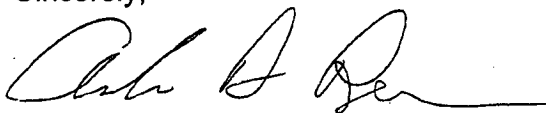
desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who performs or undertakes development that violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists. Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court is required to consider the amount of liability necessary to deter further violations.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

Thank you for your attention to this matter. We look forward to working with you and your clients to resolve this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

Sincerely,



Andrew D. Berner
South Central District Enforcement

cc: Lisa Haage, Chief of Enforcement
N. Patrick Veasart, Enforcement Supervisor
Tom Sinclair, District Enforcement Officer
Steve Hudson, District Manager
Barbara Carey, Supervisor, Planning and Regulation
Linda Locklin, Manager, Coastal Access Program
Alex Helperin, Staff Counsel
Ron P. Schafer, CA Dept. Of Parks and Recreation
Lynn Heacox, Agent

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 28

Page 8 of 8

From: [Tony Canzoneri](#)
To: [Hislop, Kristen@Coastal](#)
Cc: [Sap, Craig@Parks](#)
Subject: Your June 15 letter and our telephone conversation on June 22
Date: Thursday, June 25, 2015 9:11:21 PM

Dear Kristen,

As we discussed, I am following up on our conversation Monday and formally responding to your June 15 letter.

We are at the point where we both agree to disagree regarding whether or not the current owner of the Malibu Beach Inn has any legal obligations under CDP No. 5-87-576 Special Condition 3(g).

Further to seeking a cooperative resolution, I spoke to Deputy Craig Sap of State Parks on Monday who confirmed that State Parks would have to design and construct any steps from the parking lot to the beach and that we would not be allowed to do that so. Craig indicated that they have been busy with fiscal year end reporting but that they are setting up a meeting to follow through on the game plan we discussed at the May 12 meeting with all stakeholders. My understanding of that meeting was that the first step would be for State Parks, LA County Beaches and the Malibu Pier to formulate a proposed concept plan that could then be reviewed by Coastal Commission and the owner of the hotel. Given the passage of time and rising tides, it appears that the original location for the steps may not be feasible or safe. To the contrary, the viewing deck that these stakeholders have apparently been discussing for sometime, would better serve the public and potentially the disabled.

I think we are both in agreement that it would not be productive to continue to restate legal arguments regarding this condition given our hope that we will be able to reach an amicable resolution. Although we generally disagree with the points made in your June 15 letter, I want to specifically address certain issues raised in it to be sure there is no confusion about the facts:

1. If ever there were a case where the doctrine of waiver and estoppel properly applies to government action it would be this case. The 1989-1990 Permit Monitoring Review Form ("Review Form") issued on 1/8/90 was not limited to the submission of plans. It stated that "all special conditions have been met" and condition 3 (g) was recited specifically "Final Plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA county Department of Beaches **and constructed as part of this project.** [emphasis added]. The project had already been constructed so there is no other reasonable interpretation except that the condition had been waived. Without regard to whatever rights the Coastal Commission may have against prior owners, the current owner cannot be held responsible for this condition.

2. Consistent with the Review Form, the **Coastal Commission did not take any action to enforce the condition for approximately 20 years.** And when it did attempt to enforce it at that time, the then owner ran into the same issue that caused the waiver in 1990 and that we find today. The steps can't be safely built and maintained at the location shown on the original concept plan. The stakeholders, including California State Parks and the concessionaire of the pier restaurants,

explored the proposed viewing deck and stairway at that location as the best, and possibly only, feasible solution.

3. The Coastal Commission again took no further action to enforce the condition for **another 6 years between 2009 and your May 26, 2015 letter to the current owner.**

4. Finally, the statement in your letter that "State Parks approved the [10-29-87] plans" is incorrect. You will see on that plan that **State Parks "Acknowledged"** receipt and the plan recites that "The location of the steps as shown are approximate and in **concept only and are to be reviewed and approved by The State of California of Parks** and Recreation prior to construction.". It is impossible for us to comply with the demand in your letter given State Parks jurisdiction over the process.

Kristen, at this point, I trust that we can in fact just agree to disagree and get on with working toward a constructive and feasible resolution. Please let me know if your understanding of the appropriate next steps are different than I have indicated and/or if I need to send you this email in a letter by US mail to become a formal part of your administrative record.

Thank you for your cooperation and we will continue to be available to work with you and the other stakeholders to develop a feasible and beneficial plan.

Tony Canzoneri
Canzoneri Gottheim Law LLP
Strategic Solutions for Business and Government
310.283.4507
tony.canzoneri@icloud.com

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CALIFORNIA COASTAL COMMISSION

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



July 10, 2015

Mani MBI DE LLC
c/o Tony Canzoneri
21016 Pacific Coast Highway
Malibu, CA 90265

Dear Mr. Canzoneri:

I am in receipt of the email you sent on June 25, 2015. Coastal Commission ("Commission") staff disagrees with the factual accuracy and/or legal import of the assertions you make about the responsibility of Mani MBI DE LLC, the owner of Malibu Beach Inn, to resolve the violations subject of Commission Violation File No. V-4-09-015, as was discussed in our June 15, 2015 letter to you. We are confident in our position and could expand upon it in greater detail. Although we do not agree with your assessment of your client's obligation to comply with their coastal development permit, we do agree with your suggestion that we focus on a consensual resolution of this matter through the construction of the required public access beach stairways. To that end, we are happy to discuss construction of the stairways and the construction of a viewing platform or other related public access improvements in order to compensate for the many years of lost access to the public as a result of the failure to construct the stairways required by CDP No. 5-87-576, which authorized, with conditions, construction of the Malibu Beach Inn.

As I discussed with you during our June 22, 2015 telephone conversation, Commission staff is preparing to refer this case to our headquarters unit for formal action to ensure timely construction of the public access improvements. This referral is not intended to supplant the opportunity to resolve this matter consensually; rather, this is intended to facilitate resolution of the issues subject of File No. V-4-09-015, as we have discussed. As we have noted in previous communications, our preference is to resolve this quickly and amicably through the construction of the public access stairways described in CDP No. 5-87-576, and associated public access improvements.

Commission staff spoke with California Department of Parks and Recreation (CDPR) staff on June 29, 2015, in regards to this matter. In this conversation, CDPR staff agreed to allow the Malibu Beach Inn to design stairway plans, which would then be reviewed by CDPR and Commission staff. Since Commission staff believes this is the most efficient way to expedite resolution, we would like to schedule a telephone conversation with you and CDPR staff to discuss this option and create a timeline for submittal. Please call me at (805) 585-1800 or Andrew Willis at (562) 590-5071 by July 15, 2015 to schedule this discussion.

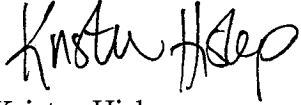
CCC-16-CD-04 & CCC-16-AP-02

Exhibit 30

Page 1 of 2

If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800 or Andrew Willis at (562) 590-5071.

Sincerely,



Kristen Hislop
Enforcement Officer

cc: **Lisa Haage, Chief of Enforcement, CCC**
 Aaron McLendon, Deputy Chief of Enforcement, CCC
 Andrew Willis, Enforcement Supervisor, CCC
 Steve Hudson, District Manager, CCC
 Barbara Carey, Supervisor, Planning and Regulation, CCC
 Alex Helperin, Senior Staff Counsel, CCC
 Craig Sap, Superintendent, CDPR

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 30

Page 2 of 2

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**VIA CERTIFIED AND REGULAR MAIL**

October 9, 2015

Mani MBI DE LLC
Attn: Joe Mani
9200 W Sunset Blvd #555
West Hollywood, CA 90069-3611
(Certified Receipt No. 7013 2250 0002 4589 443)

Canzoneri Gottheim Law LLP
Attn: Tony Canzoneri
21016 Pacific Coast Highway
Malibu, CA 90265
(Certified Receipt No. 7013 2250 0002 4589 4440)

MBIPCH LLC
12011 San Vicente Blvd, Ste 606
Los Angeles, CA 90049
(Certified Receipt No. 7013 2250 0002 4589 4266)

Subject: **Notice of Intent to Record Notices of Violation and to Commence Cease and Desist Order and Administrative Civil Penalties Proceedings**

Property Location: Three adjacent properties, collectively known as "The Malibu Beach Inn," 22878 Pacific Coast Highway, Malibu, Los Angeles County, also identified by Assessor's Parcel Numbers 4452-005-029, 4452-005-030, and 4452-005-031.

Violation Description: Development that is 1) unpermitted, 2) inconsistent with Coastal Development Permit ("CDP") No. 5-87-576, and 3) in violation of resource protection and public access provisions of the Coastal Act, including: failure to construct two public access stairways on the adjacent State Beach as required by CDP No 5-89-576; de facto privatization of a lateral public access easement on the beach in front of the Malibu Beach Inn and on State tidelands, in contravention of the public access easement and of Special Condition 1 of CDP No. 5-87-576, through grading the beach flat and placement of guest amenities and hosting private events on the beach that has the effect of dissuading public usage; and installation of 7' tall vegetation along the hotel parking area that precludes public views of the ocean from the Pacific Coast Highway, in violation of Special Conditions 3(c) and (d) of CDP No. 5-87-576.

Dear Messers Mani and Canzoneri:

California Coastal Commission ("Commission") staff appreciates your expressed willingness to work cooperatively towards resolution of the Coastal Act¹ violations on (and possibly seaward of) your

¹ The Coastal Act is codified in California Public Resources Code sections 30000 to 30900. All further section references are to the Public Resources Code, and thus to the Coastal Act, except where specified that the reference is made to the Commission's regulations.

October 9, 2015

properties located at 22878 Pacific Coast Highway, Malibu, Los Angeles County, also identified by Assessor's Parcel Numbers 4452-005-029, 4452-005-030, and 4452-005-031 (collectively known as the "Malibu Beach Inn"); and we look forward to continuing to work with you to address these matters as expeditiously as possible. As my staff has expressed to you, we continue to desire to work with you to resolve these impediments to public access, among other issues, amicably, and we remain open to discussing the consensual resolution of the matter through a "Consent" Cease and Desist Order ("Order"), which would then be taken to the Commission for its approval in the context of a formal hearing.

Prior to bringing an Order to the Commission (be it a consent or contested Order), our regulations² provide for notification of the initiation of formal proceedings. In accordance with those regulations, this letter notifies you of my intent, as the Executive Director of the Commission, to commence formal enforcement proceedings to address the Coastal Act violations noted above by recording a Notice of Violation against the properties known as the Malibu Beach Inn, and by issuing either a consent or regular Cease and Desist Order to the same. The intent of this letter is not to discourage or supersede productive settlement discussions; rather it is to provide formal notice of our intent to resolve these issues through the order process, which in no way precludes a consensual resolution. My staff remains ready and willing to continue working with you towards a mutually acceptable outcome. However, please note that should we be unable to reach an amicable resolution in a timely manner, this letter does lay the foundation for Commission staff to initiate a hearing before the Commission unilaterally, during which a proposed Order, including an assessment of civil penalties, against the Malibu Beach Inn would be presented for the Commission's consideration and possible adoption, along with a the proposed recordation of a Notice of Violation against the property.

Background and Coastal Act Violations

As you are aware, the Malibu Beach Inn, spanning three beach front lots, totaling approximately 1.06 acres, is located in the City of Malibu between Pacific Coast Highway and the Pacific Ocean on the far western periphery of Carbon Beach. Although the beach is public, Carbon Beach is recognized as one of the least publicly accessible beaches in California, with only three points of ingress across the entirety of the 1.5 miles of beach. Further, the nearly continuous wall of residential and commercial development fronting the highway largely precludes the public from seeing, let alone accessing, the beach or ocean from Pacific Coast Highway.

Immediately west of the Malibu Beach Inn is the Malibu Lagoon State Beach ("State Beach") and the Malibu Pier. The State Beach is home to world class surfing, and offers swimming, fishing and kayaking, while the Malibu Pier houses facilities that include a Surfing Museum, equipment rentals, coastal tours, and a restaurant. On the eastern side of the Malibu Pier the only structure facilitating public access to this heavily used state beach is a dilapidated set of pre-fabricated fiberglass stairs that are now closed due to disrepair; the next closest access on Carbon Beach is a full third of a mile downcoast.

The purpose of these enforcement proceedings is to address the failure of the Malibu Beach Inn to comply with terms and conditions of Coastal Development Permit ("CDP") No. 5-87-576,

² See Sections 13181 and 13191 of Title 14 of the California Code of Regulations.

October 9, 2015

authorizing development on the Malibu Beach Inn property (owned at the time by predecessor-in-interest Miser and Cooper) and addressing additional unpermitted development undertaken by the Malibu Beach Inn. These proceedings will propose to address these matters through the recordation of a Notice of Violation against the Malibu Beach Inn properties and issuance of an Order that will authorize and direct you to, among other things: 1) cease from performing any additional unpermitted development; 2) remove existing unpermitted development; 3) develop and implement a plan to construct two staircases on the adjacent State Beach property; 4) mitigate for the temporal losses to public access; 5) cease engaging in any activity, including grading/raking of the beach, placement of hotel guest amenities, and hosting private events, that gives the appearance that the area covered by the lateral public access easement and/or state tidelands are not available to the public, and 6) cease all activities that block or interfere with public use of the lateral public access easement and state tidelands in front of the Malibu Beach Inn. If we do not come to agreement on an approach and present a consent order to the Commission, staff will also recommend that the Commission impose an Administrative Penalty pursuant to Section 30821 of the Coastal Act. If these matters are resolved amicably through Consent Orders, any such resolution would include settlement of monetary claims associated with the Malibu Beach Inn's civil liability.

The violations at issue include, but are not necessarily limited to, development that is 1) unpermitted, 2) inconsistent with CDP No. 5-87-576, and 3) in violation of resource protection and public access provisions of the Coastal Act, including: failure to construct two public access stairways on the adjacent State Beach pursuant to CDP No 5-89-576; de facto privatization of a lateral public access easement on the Malibu Beach Inn and on State tidelands, in contravention of the public access easement and of Special Condition 1 of CDP No. 5-87-576, through grading the beach flat and placement of guest amenities and hosting private events on the beach in a manner dissuading public usage; and installation of 7' tall vegetation along the hotel parking area that precludes public views of the ocean from the Pacific Coast Highway, in violation of Special Conditions 3(c) and (d) of CDP No. 5-87-576.

Permitting and Violation History

On November 25, 1987 the Commission issued CDP No. 5-87-576, granting Marlin Miser and Martin Cooper authorization to demolish an existing fourteen unit hotel and restaurant and construct a 32-foot tall, 47-room hotel. The applicant had proposed to construct a 56-room hotel, covering 100% of the three lots; however, after the Commission raised several specific objections to the project during the October 1987 hearing, related to public access to - and views of - the ocean, the Commission imposed Special Condition 3(c) and 3(d), which required the applicant to reduce the scale of the hotel so that no more than 80% of the properties would be covered by development, leaving a viewshed open across the remaining 20% of the lots. Special Conditions 3(c) states:

Height of the wall along the property line at Pacific Coast Highway shall be limited to 30 inches for all opaque portions of the property-line wall, with the exceptions of pilasters. Other structures located at ground level including signs, shall be limited to those shown in the revised plot plan so that portions of the view from automobiles on Pacific Coast Highway to the ocean will be preserved.

Special Condition 3(d) states:

No more than eighty percent (80%) (220 feet, two hundred twenty feet) of the frontage of the lots (282.55 feet) shall be occupied by permanent structures visible from Pacific Coast Highway with the exception of the aforementioned low wall.

October 9, 2015

In addition to several other conditions designed to protect public views of - and access to - the beach, the permit also required the recordation of an offer to dedicate lateral access easements across the shoreline in front of all three parcels and explicitly prohibited "[a]ll fences, no trespassing signs, and other obstructions that may limit public access on the sandy beach..." (Special Condition 1). The offers to dedicate lateral access easements across all three parcels were accepted on June 1, 2006.

In response to the impacts that the new hotel would have on public access, including the footprint of the hotel and riprap on the beach, development of a parcel that had previously been used for beach access, and blocking views to the beach and ocean, the Commission required, in Special Condition 3(g) that:

Prior to transmittal of the permit the applicants shall submit revised building and landscape plans conforming to Section 138 of the certified Malibu/ Santa Monica Mountains Land Use Plan. The plans shall show:

...

(g) Final plans for no less than two stairways from the public beach parking lot to the public beach shall be approved by LA County Department of Beaches and constructed as part of this project. These stairways shall be reviewed by the Executive Director to ensure that extension beyond the present riprap is minimal.

The applicant submitted the plans on October 29, 1987. However despite a representative of State Parks³ approving the plans in concept, the stairways were never constructed as required by the CDP. When MBIPCH, LLC (as the owner of all three properties)⁴ sought to amend CDP No. 5-87-576 in 2009, Commission staff notified its representative, Richard Sherman, in an April 17, 2009 Notice of Violation letter, of the failure to construct the public access stairs. Commission staff attempted to work with the owners to address the violation over the course of numerous conversations with permit and enforcement staff, but the violations remained unaddressed. As of the date of this notice, impacts to public access persist as the stairways have not been constructed. As you are aware from previous conversations with Commission staff and our letter of June 15, 2015, liability for Coastal Act violations attaches to whomsoever owns the property upon which a Coastal Act violation persists, in addition to the person or persons originally responsible for said violation.

Additionally, despite the explicit language in Special Conditions 3(c) and 3(d) that requires the protection of the viewshed across the unbuilt 20 % of the property occupied by the parking area, the entire frontage of the Malibu Beach Inn is now obscured by vegetation; as a result, the public is unable to view the beach and ocean. Instead of an open viewshed, as required by the CDP, an approximately 7' hedge was placed on the property along PCH. As previously mentioned, one of the issues raised by the Commission at its 1987 hearing was that the original proposed hotel would totally obscure public views of the ocean; it was only after the design change was made as required by the CDP to provide for 80% lot coverage and preservation of the viewshed on the remaining areas that it was approved.

Further, Special Condition 1 of CDP No. 5-87-576 required that, with the exception of a 10' privacy buffer immediately adjacent to the structure that would be available for public pass and repass only, the private land seaward of the hotel was to be made publicly available through creation of a public access easement. Conditions of the CDP also prohibited the placement of signs or 'obstructions' that could interfere with public access to the beach. Commission staff has been made aware that the

³ While Los Angeles County Department of Beaches and Harbors operates the beach seaward of the parking lot, the State Parks owns the public parking lot and beach.

⁴ Current records indicate that MBIPCH LLC is still the owner of APN 4452-005-031.

October 9, 2015

Malibu Beach Inn has been placing hotel guest amenities on the beach (within the lateral easement area and/or State tidelands), effectively cordoning off these public areas of the beach for the exclusive use by guests. In fact, the hotel website advertises a "private beach" virtual tour – which links to a video of the *public* easement (and possibly State tidelands) in front of the hotel, within which are beach chairs laid out for use by hotel guests. As you are aware, this is not a private beach and any attempt to treat it as such is a violation of the CDP and also violates the public access policies of the Coastal Act.

Finally, it has come to the attention of Commission staff that the Malibu Beach Inn has been grading and raking the sandy beach, sometimes referred to as beach "grooming". The Commission has found on several occasions that this activity at other locations is 'development' requiring a permit under the Coastal Act. These activities have been shown to have numerous adverse, and presumably unintended, consequences, including that it can actually remove significant quantities of sand and alter grain size; seaweeds prevent fine sediment loss, so removing the seaweed and seagrass (wrack) and then raking the beach, which aerates and dries out the sand, both render fine grains vulnerable to wind erosion leaving the beach less plentiful and remaining grains coarser. Additionally, numerous species of shorebirds and crustaceans depend on natural beach contours and the deposited wrack for reproduction and food supply; grooming the beach and removing the wrack can impede reproduction and dramatically reduces beach biodiversity. The grading activity also gives the appearance that this beach area is only for guest of the hotel and is not available for public use, inconsistent with the CDP and, among other things, the access policies of the Coastal Act. As no permit has been granted by the Commission to the Malibu Beach Inn, the beach grooming at issue is unpermitted. Furthermore, grooming the beach in front of the hotel contributes, deliberately or not, to the erroneous perception that the beach is private.

Cease and Desist Order

By way of background, the Commission's authority to issue cease and desist orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

Section 30810(b) of the Coastal Act states that the cease and desist order may be subject to terms and conditions that the Commission determines are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development or material.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. "Development" is defined by Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto....

October 9, 2015

The various instances of unpermitted development at issue clearly constituted "development" within the meaning of the above-quoted definition and therefore is subject to the permit requirement of section 30600(a). A CDP or an amendment to the underlying CDP was not issued to authorize the subject unpermitted development. Further, as iterated above, the issues subject to this action are inconsistent with CDP 5-87-576. As the unpermitted development and activities undertaken by the Malibu Beach Inn and their predecessors-in-interest are inconsistent with the Coastal Act and a previously issued permit, the criteria for issuance of a cease and desist order under Section 30810(a) of the Coastal Act are thus satisfied.

For these reasons, I am issuing this Notice of Intent to commence cease and desist order proceedings. The procedures for the issuance of cease and desist orders are described in Sections 13180 through 13188 of the Commission's regulations, which are in Title 14 of the California Code of Regulations. As previously mentioned, these matters may be resolved in a consensual agreement between you and the Commission. The proposed cease and desist order will direct you to, among other things: 1) cease from performing any additional unpermitted development; 2) remove existing unpermitted development; 3) develop and implement a plan to construct two staircases on the adjacent State Beach property; 4) mitigate for the temporal losses to public access; 5) cease engaging in any activity, including grading/raking of the beach, placement of hotel guest amenities, and hosting private events, that gives the appearance that the area covered by the lateral public access easement and/or state tidelands are not available to the public; and 6) cease all activities that block or interfere with public use of the lateral public access easement and state tidelands in front of the Malibu Beach Inn. In addition to the aforementioned items, any resolution of this matter via a Consent Order would also include settlement of monetary claims associated with the Malibu Beach Inn's civil liability. If a consensual resolution is not reached, the proposed order would also include a recommendation for the imposition of Administrative Penalties pursuant to Section 30821 of the Coastal Act.

Notice of Violation

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

In our letter dated June 15, 2015, in accordance with Coastal Act Section 30812(g), Commission staff notified you of the potential for the recordation of a Notice of Violation against the Malibu Beach Inn properties. I am issuing this notice of intent to record a Notice of Violation because development inconsistent with the Coastal Act and CDP No. 5-87-576 has been undertaken at each of the Malibu Beach Inn properties, and because of the ongoing failure of the Malibu Beach Inn to comply with the terms and conditions of CDP No. 5-87-576.

If the owner(s) of the Malibu Beach Inn object to the recordation of a Notice of Violation in this matter and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, the property owner must specifically object, in writing, within 20

October 9, 2015

days of the postmarked mailing of this notification. The objection should be sent to the attention of Heather Johnston in the Commission's Ventura office at the address listed below. Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

Administrative Civil Penalties, Civil Liability, and Exemplary Damages

Under Section 30821 of the Coastal Act, in cases involving violations of the public access provisions of the Coastal Act, the Commission is authorized to impose administrative civil penalties by a majority vote of the Commissioners present at a public hearing. In this case, as described above, there are significant violations of the public access provisions of the Coastal Act; therefore the criterion of Section 30821 has been satisfied. The penalties imposed may be in an amount of up to \$11,250, for each violation, for each day the violation has persisted or is persisting, for up to five (5) years. If a person fails to pay an administrative penalty imposed by the Commission, under Section 30821(e) the Commission may record a lien on that person's property in the amount of the assessed penalty. This lien shall be equal in force, effect, and priority to a judgement lien.

Furthermore, please be advised that the Coastal Act also provides for the alternative imposition of civil liability (variously described as fines, penalties, and damages) by the courts for violations of the Coastal Act. Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with an CDP previously issued by the Commission, when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. In addition, once an order has been issued, Section 30821.6 provides that a violation of a cease and desist order, including an Executive Director Cease and Desist Order, or a restoration order can result in civil fines of up to \$6,000 for each day in which each violation persists. As you know, courts have held that property owners are liable for violations on their property even if they were not directly and actively responsible for creating the situation. Once again, notwithstanding the above, it is our hope that, with your cooperation, we may resolve these issues amicably.

Response Procedure

In accordance with Section 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Administrative Penalty proceedings by completing the enclosed statement of defense ("SOD") form.

The SOD form must be directed to the attention of Heather Johnston, at the address listed below, no later than October 29, 2015:

California Coastal Commission
South Central Coast District
89 S. California Street, Suite 200
Ventura, CA 93001

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 31

Page 7 of 13

October 9, 2015

However, should this matter be resolved via a Consent Order, an SOD form would not be necessary. In any case and in the interim, staff would be happy to accept any information you wish to share regarding this matter and may extend the deadline for submittal of the SOD form to allow additional time to discuss terms of a Consent Order and to resolve this matter amicably.

Commission staff currently intends to schedule the hearings of the cease and desist order and administrative penalty proceeding for either the Commission's November or December 2015 hearing.

Resolution

As my staff has discussed with you, we would like to continue to work with you to resolve these issues amicably through the Consent Order process. As we have previously indicated, Consent Cease and Desist Orders provide you opportunities to have more input into the process and timing of addressing the violations on at the Malibu Beach Inn and mitigating for interim losses caused by the unpermitted development. The consent process could potentially allow you to negotiate a penalty amount with Commission staff in order to fully resolve the violations addressed in the Consent Order without further formal legal action.

Another benefit of a Consent Order that you should consider is that in a Consent Order proceeding, Commission staff will be presenting and recommending approval or an agreement between you and staff rather than addressing the violations through a contested hearing. Alternatively, if we are not able to reach a consensual resolution, we will need to proceed with a unilateral order at the next available hearing and we will have to address the civil liabilities via an Administrative Penalty proceeding and possibly through litigation.

Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the Statement of Defense form mentioned above.

If you have any questions regarding this letter or the enforcement case, please call Heather Johnston at (805) 585-1800.

Sincerely,

Handwritten signature of Charles Lester in black ink, with a stylized 'HJ' monogram below the name.

Charles Lester
Executive Director

cc: Lisa Haage, Chief of Enforcement
Aaron McLendon, Deputy Chief of Enforcement
Alex Helperin, Senior Staff Counsel
Steve Hudson, South Central Coast Deputy Director
Andrew Willis, Southern California Enforcement Supervisor
Heather Johnston, Statewide Enforcement Analyst

Encl. Statement of Defense Form for Cease and Desist Order and Administrative Penalty Proceeding

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 31

Page 8 of 13

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**STATEMENT OF DEFENSE FORM**

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate cease and desist order and administrative civil penalties proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than October 29, 2015** to the Commission's enforcement staff at the following address:

Heather Johnston
89 S. California Street
Ste 200
Ventura, CA 32001

If you have any questions, please contact **Heather Johnston** at **(805) 585-1800**.

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 31

Page 9 of 13

1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):

2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):

3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):

-
-
-
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-
-

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.

CANZONERI GOTTHEIM LAW LLP

Strategic Solutions for Business and Government

TONY CANZONERI

(310) 283-4507

JOSHUA GOTTHEIM

(626) 224-6128

Forwarded by email c/o Andrew Willis (Andrew.Willis@coastal.ca.gov) followed by US Mail

October 16, 2015

Charles Lester
Executive Director
CALIFORNIA COASTAL COMMISSION
46 Fremont, Suite 2000
San Francisco, CA 94105

Lisa Haage
Chief of Enforcement
CALIFORNIA COASTAL COMMISSION
46 Fremont, Suite 2000
San Francisco, CA 94105

Andrew Willis
Southern California Enforcement Supervisor
CALIFORNIA COASTAL COMMISSION
200 Oceangate, 10th Floor
Long Beach, CA 9080289

Heather Johnston
Statewide Enforcement Analyst
CALIFORNIA COASTAL COMMISSION
S. California Street, Ste 200
Ventura CA 32001

Re: Malibu Beach Inn, 22878 Pacific Coast Hwy, Malibu CA

Dear Mr. Lester, Ms. Haage, Mr. Willis and Ms. Johnston,

This firm is legal counsel for the current owner of the Malibu Beach Inn, Mani MBI (DE), LLC. We received this week your Notice of Intent to Record Notices of Violation (etc.) letter dated October 9, 2015 and received by US Mail yesterday.

While we are troubled by the content of the letter -- including allegations of violations, threats of cease and desist orders, and warnings of fines and penalties -- we appreciate the emphasis on continuing to work amicably with us on a consensual resolution. As your local staff knows well, the record in this matter makes it abundantly clear the State has waived and is legally estopped from demanding compliance with the 1987 condition that two stairways be constructed. Nevertheless, as the recent purchaser of the Malibu Beach Inn, the Mani's have, on a voluntary basis, been extremely diligent in working with your staff to explore reaching an amicable resolution; and have spent significant sums in consulting fees to pursue a plan to construct the stairs. As I am sure you also know, there has never been agreement among the government agencies whose approval was required under the 1987 condition with respect to the number, location or configuration of the stairways. In part, through our efforts in requesting and participating in meetings among the stakeholders, State Parks recently approved a stairway design that was used by the Coastal Commission at Broad Beach in Malibu (attached). As soon as we obtained that approval, we undertook to have our engineers and contractors commence the process of determining a potential program and cost estimate for construction of two

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 32

Page 1 of 11

stairways as requested by your staff. That was done as a good neighbor without prejudice to our client's position that it has no legal obligation to construct those stairs.

Accordingly, in furtherance of our sincere desire to reach an amicable resolution, I attach two contractor bids for construction of the two stairs following the design concept approved by Coastal Commission staff (Andrew Willis) and Craig Sap at State Parks, based on a design comparable to the stairs recently added at Broad Beach. The bids range from \$118,971 to \$137,187 for both stairs, plus a separate bid for the stair railings that would be a \$38,056 addition to either of the foregoing (see attached bid proposals). Based on those bids, and subject to your assisting us in obtaining all required permits and approvals, my client is willing to design and construct the stairways. It will do so at its cost and expense with a reservation of all rights against prior owners for reimbursement and contribution.

Second, this offer is subject to (i) your immediately confirming that the October 29, 2015 date purportedly established for submittal of the Statement of Defense is extended to 90 days after we receive a subsequent notice (SOD Notice) demanding submittal of the SOD, (ii) confirmation that the date for a Commission hearing referenced in your letter will not occur until at least 60 days after the due date established in the SOD Notice, and (iii) an agreement that establishes reasonable terms, conditions and time periods for our submittal, review and approval of plans and permits for construction of the stairways, and (iv) a global resolution of all outstanding issues, including those referenced in your letter but which, other than the stairway condition, **have never before been mentioned by your staff verbally or in writing**. Recognizing that reaching agreement on all of the foregoing may require an extended period of time, we will continue to diligently pursue the work necessary to prepare for both designing and constructing the stairways and negotiating items (iii) and (iv) as soon as you confirm your agreement with items (i) and (ii).

Finally, in order to keep the emphasis on an amicable resolution, I will defer to our SOD (if ever required) and prior communications from us which have set out and will further provide the detailed bases upon which we dispute the allegations in your letter, which bases include, but are not limited to, our justifiable reliance on the Commission's 25+ year delay in seeking to enforce the 1987 permit condition and issuance of a 1990 permit monitoring report stating expressly that the condition was satisfied. This is one of those cases where estoppel against a government agency would be upheld by the courts. Suffice it to say for now that we reserve all rights, claims and arguments and hope to avoid the burdens of litigation, not only because of the cost but because my clients are particularly conscientious and civic-minded and desire to make every reasonable effort to be good stewards of the coastal environment and good partners and allies with state and local government.

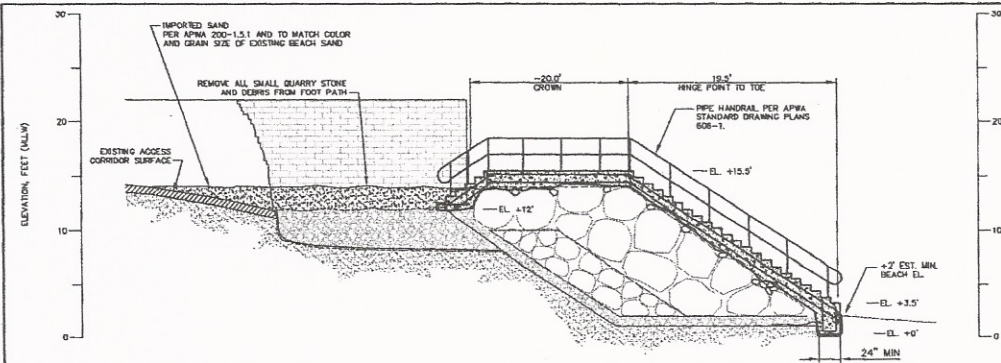
In that spirit, we look forward to working with you to attempt to finalize a consensual resolution. Please contact me by October 21, 2015 if possible to confirm extension of the SOD and potential hearing dates so that we can continue to work on having the stairs installed.

Sincerely,



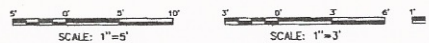
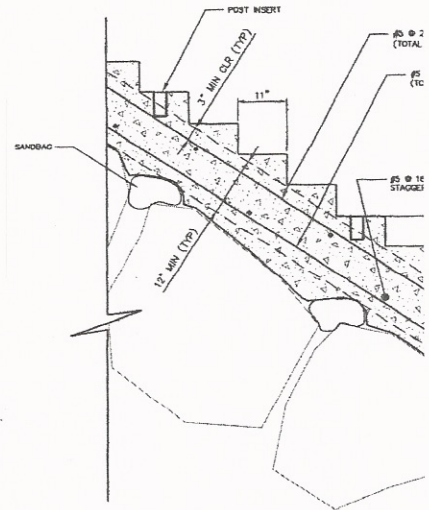
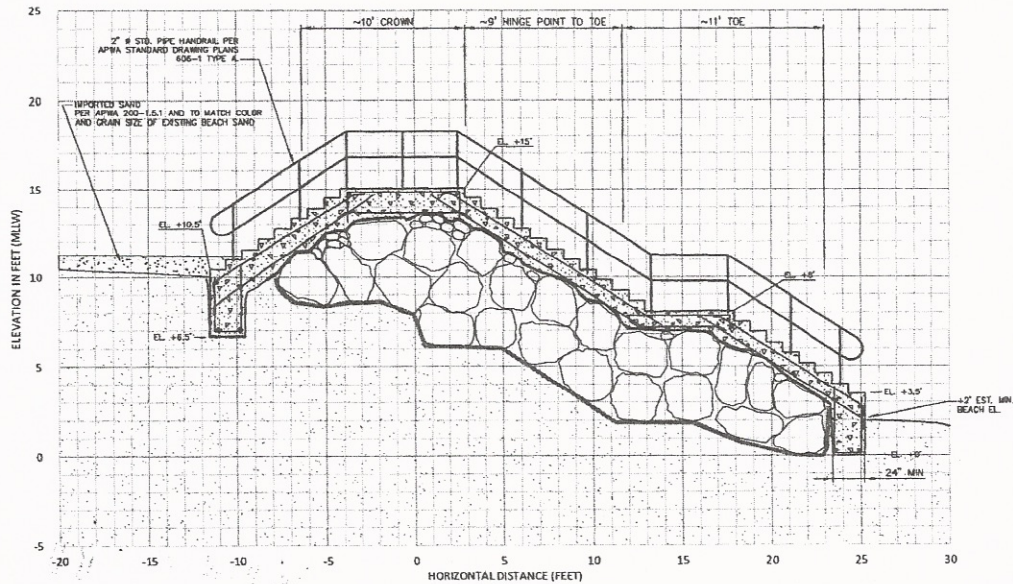
Tony Canzoneri

PUBLIC STAIRS

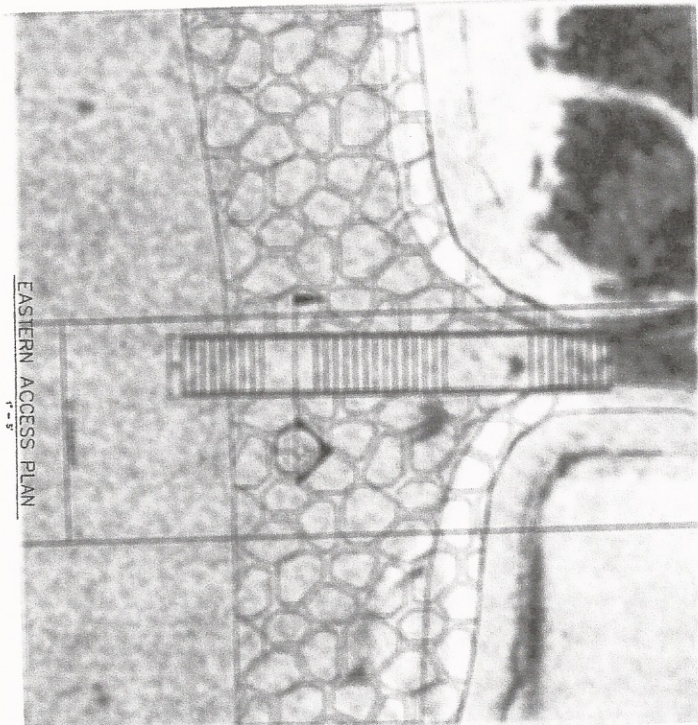
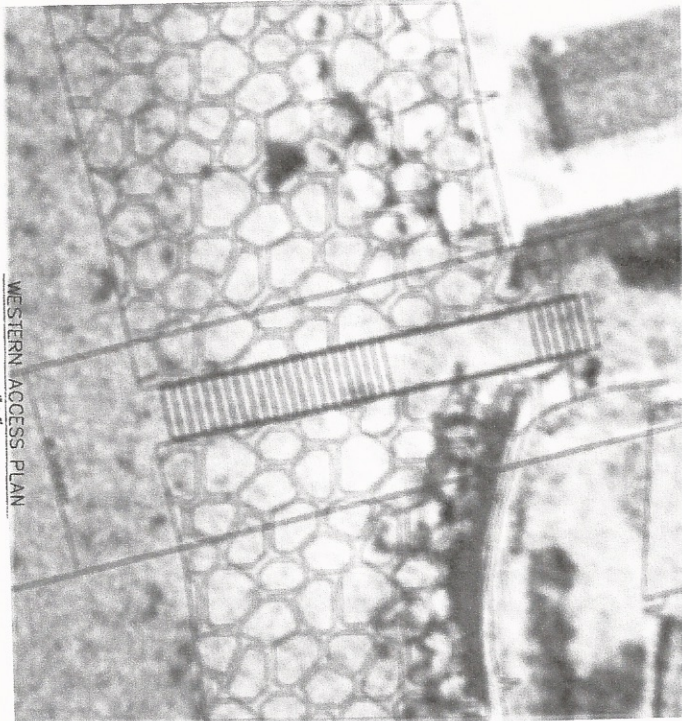


NOTES:

1. CONCRETE SHALL BE 5000 PSI, 8 1/2 SA WITH POLYMER FIBER REINFORCING (BS NOT EXCEED 0.4).
2. CONCRETE SHALL BE NO THINNER THAN
3. ALL REINFORCING BARS TO BE EPOXY C ASTM A615 OR A708.
4. SURFACE FINISH HEAVY BROOM
5. SANDBAGS TO BE PLACED IN ROCK VOK
6. REVETMENT AND SANDBAGS TO BE COV MIRA FILTER WEAVE 300 OR APPROVE
7. ALL METAL RAILING AND RAILING PARTS GALVANIZED STEEL. RAILING TO BE POA VISIBILITY WITHIN 30 HRS AFTER GALVA SURFACES PRIOR TO PAINTING PER AST
8. FURNISH SHOP DRAWINGS TO ENGINEER PROJECT MANAGER FOR APPROVAL
9. SURVEY AS-BUILT REVETMENT. RESUB APPROVAL PRIOR TO CONSTRUCTION
10. STAIR TREADS SHALL NOT EXCEED 7" RI



PUBLIC STAIRS

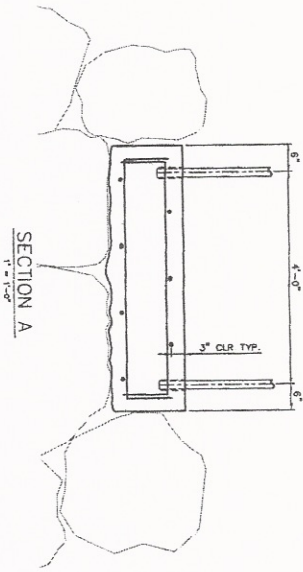


WESTERN ACCESS PLAN
1"=5'

EASTERN ACCESS PLAN
1"=5'

U.S. COAST & GEODETIC SURVEY
NORTH CENTRAL COAST DISTRICT

24 APR 2010



SCALE: 1"=5'

Sheet 2 of 2

Sheet Number

Sheet Number

Sheet Number

Sheet Number

Sheet Number

Sheet Number

Sheet Number

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Broad Beach
Emergency Revetment
TEMPORARY ACCESS
PLAN - 2

TPOA
TRANSNORTH
PROPERTY
ASSOCIATION

HEIDI CORPORATION DBA DONALD J. SCHEFFLER'S CONSTRUCTION

15815 Amar Road, City of Industry, CA 91744

e-mail: mailbox@donaldjscheffler.com

Tel: (626) 333- 6317

Fax: (626) 855-3428

PROPOSAL

JOB NO. : 15-239
JOB ADDRESS : 22788 PCH, Malibu, CA

Proposal Date: 8/20/15 Rev.: 9/9/15

Contact Person: Reynaldo Garcia

Customer: Mani Brothers

Project Owner:

Customer Address:

Project Address:

9220 Sunset Blvd
West Hollywood, CA 90069

22788 PCH
Malibu, CA 90265

Phone No.: (310) 777-5070

Fax No.: (310) 777-5080

THE ITEMS INCLUDED IN THIS BID ARE AS FOLLOWS:

**ESTIMATED COST AND QUANTITIES BASED ON PHOTOS TAKEN & STRUCTURAL SHEET
DATED 8/5/15 RECEIVED 8/20/15**

(SEE ATTACHED SHEETS/ 2 LOCATIONS)

1. Grade Beam 24" w X 36" d X 5' long (4 ea.)

- Layout
- Trench
- Form
- Rebar
- Concrete
- Strip / clean up

2. Structural Slab on Boulders, 12" Thk X 5' wide (2 ea.)

- Layout
- Form
- Rebar
- Concrete
- Strip / Clean up

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 32

Page 5 of 11

3. Structural Steps (2 ea.)

- Lay out
- Forms
- Rebar
- Concrete
- Strip / Clean up

4. Layout, mobilization, miscellaneous materials, tools and equipment

TOTAL PER ABOVE

\$ 118,971.00

Additional cost items

5. Work to be done on T&M basis

- Boulders / Rocks relocations
- Sand bags installation and removal
- Traffic control
- Removal of spoils into on site dumpster
- Dewatering
- Protection of work in progress and work in place

All elevations and dimensions per concrete, masonry and hardware to be clearly marked and to be reviewed and verified by framer and client/owner's on-site supervisor and signed off before beginning placement of forms or rebar and again before placement of concrete. All structural sheets to have grid lines with dimensions from concrete to concrete overlapping architectural sheets. DJS Construction will assist in placement of hardware only. All layout locations are the responsibility of framer and/or others. All costing to be based on Structural plans/details, not Architectural. Drypack to be done by others. Any new plans received before or during work in progress must have all changes clearly called out or clouded. If any item changes are found during work in progress, it will be brought up for a change order if required. Contract excludes any concrete encasement or slurry of any underground duct work or trenching, utilities etc. Any concrete placed beyond estimated in contract will be \$225.00 per yard for concrete, pump and labor.

Contract is based on one mobilization. Additional cost of \$2,500.00 will be charged for each additional demobilization and remobilization and delays. This contract excludes additional work required by City Inspector not shown on plans. Client/owner will provide parking for all deliveries and concrete pump and transit mixer on street and supply all necessary permits. Client/Owner agree to secure and pay the cost of all permits, fees, inspections, and changes/additions to the original design, that are connected with, called for, or necessary for Donald J. Scheffler Construction to perform its work under the Subcontract Agreement. Client/Owner shall indemnify and hold Donald J. Scheffler Construction harmless from all claims, demands, liabilities, judgments, liens, encumbrances, costs and expenses (including attorney fees), arising out of or in connection with the obligations of Client/Owner set forth above. Donald J. Scheffler Construction agrees to perform the works of improvement under the direct supervision of Client/Owner, and in accordance with the design plans provided by Client/Owner.

Indemnity: SCHEFFLER will perform all standard measures to protect against any damage or injury to adjacent property or persons. In the event that standard measures are insufficient and claims are made for any damages (i.e., from dust, water, noise vibrations, etc.) the client/owner expressly agrees to indemnify and defend SCHEFFLER from and against all claims, demands, liabilities, suits or judgments of whatsoever kind or nature, including all costs or expenses in connection therewith, including court



costs and reasonable attorney fees arising out of, or resulting from the above mentioned conditions. SCHEFFLER shall not be liable, and client/owner shall hold them harmless for any damage to, or breakage of unmarked underground pipes or conduits not visible from the surface or ground. If SCHEFFLER is working under the supervision or discretion of the client/owner, the client/owner will assume all responsibilities for such work or its ramifications.

Client/owner shall indemnify and hold SCHEFFLER harmless from claims, demands, liabilities, judgments, liens, encumbrances, costs and expenses, including attorney fees, arising out of or in connection with the obligations of the client/owner or other subcontractors under this agreement, or the operations and work conducted by client/owner, or its agents, employees, subcontractors, and subcontractors of other subcontractors. This indemnity agreement shall apply without regard to whether or not SCHEFFLER is actively or passively negligent and without regard to SCHEFFLER'S percentage of fault in respect to the claim, demand, loss or liability. SCHEFFLER may defend such claims at client/owners expense. Client/owner shall not provide indemnity against claims, liability, loss or expense when shown by final judgment of a court of competent jurisdiction to have been caused by the willful or sole negligence or sole misconduct of SCHEFFLER.

Payment: Progress billings are submitted every 15th and last day of the month and are due upon receipt unless other terms are agreed to in writing. SCHEFFLER reserves the right to stop operations due to non-payment of invoices.

Rock Clause: If backhoe/hand-digging crew, drill machine cannot dig under normal soil conditions, are delayed due to granite, rock, water or if abnormal soil is encountered, then extra drill machine, backhoe and/or hand-digging crew time and equipment will be charged accordingly including drill teeth and coring time. If the existing grade and bedrock turn out to be too hard to excavate by conventional backhoe trenching or loaders, and it becomes necessary to use a hoe-ram or any other type of jack-hammer equipment, that equipment and labor shall be paid for as an extra, on a T&M basis. If the City inspectors or the project geologist do not allow the spoils from that jack-hammer removal to be used for backfill and compaction, export of those excess spoils and replacement with acceptable imported material shall be paid for as an extra on a T&M basis. This rock clause shall apply to all types of excavation or trenching on the site- excavation and grading, foundations, underground utilities, storm drains, landscaping etc.

Additional work and items of work specifically excluded but performed, or delays resulting from rock drilling and/or digging, interference or nonperformance of others shall be invoiced as additional work based on the following rates of equipment and labor.

Personnel

A) Labor: \$45.00 B) Asst. Leadman/Skilled: \$55.00 C) Leadman: \$65.00 D) Supervisor: \$75.00
(Above rates are regular day rates. Saturday and overtime will be time and a half)

Equipment

CAT 120 Lo Drill LMP	\$285.00 per hour
CAT 320 Lo Drill LMFB	\$295.00 per hour
CAT 325 Lo Drill LLM	\$320.00 per hour
CAT 330 Lo Drill LLMHTFB	\$340.00 per hour
Soilmec R208	\$330.00 per hour
Soilmec R312 HD	\$380.00 per hour
Soilmec R516	\$440.00 per hour
Soilmec R312 & CFA Eqpt	\$480.00 per hour
Soilmec R516 & CFA Eqpt	\$630.00 per hour
DK 50	\$330.00 per hour
Watson 2500 Trackmount	\$330.00 per hour
Truckmount Watson 2000	\$280.00 per hour
Hillside 007	\$275.00 per hour
Hillside 007-2	\$275.00 per hour
Hillside 007-70	\$295.00 per hour
LAD	\$275.00 per hour
453 Bobcat	\$98.00 per hour

CAT 120 E Excavator	\$155.00 per hour
CAT 977 w/ Ripper	\$150.00 per hour
KRUPP Drill Rig	\$275.00 per hour
750 CFM Compressor	\$125.00 per hour
275-350 CFM Compressor	\$225.00 per day
Chemgrout plant w/ power pack	\$106.00 per hour
All Terrain 18 ton Crane	\$175.00 per hour
All Terrain 25 ton Crane	\$195.00 per hour
All Terrain 45 ton Crane	\$235.00 per hour
Rubber Tire 22 ton Crane	\$130.00 per hour
Gehl 4625 DX Skip Loader	\$95.00 per hour
Klemm 804	\$325.00 per hour
939 CAT Loader	\$95.00 per hour
Concrete saw w/ blade	\$65.00 per day
Jackhammer	\$50.00 per day
Welder	\$90.00 per hour
Acetylene Torches & tasks	\$75.00 per hour

CCC-16-CD-04 & CCC-16-AP-02

Exhibit 32

Page 7 of 11



753 or 763 Bobcat	\$110.00 per hour	Walk behind concrete saw	\$165.00 per day
Track Bobcat	\$110.00 per hour	Super 10 Wheelers	\$90.00 per hour
Bobcat Excavator	\$110.00 per hour	Regular 10 Wheelers	\$85.00 per hour
Bobcat Excavator w/ Breaker	\$155.00 per hour	Semi-end Dump	\$90.00 per hour
Regular Backhoe	\$110.00 per hour	High side Semis	\$95.00 per hour
Offset Backhoe	\$140.00 per hour	gasoline	\$6.00 per gallon
Backhoe w/ Breaker	\$155.00 per hour	¾ ton pick up truck	\$15.00 per hour
4-wheel Drive Backhoe	\$120.00 per hour	Support Vehicle	\$18.00 per hour
Concrete pump SCH1250	\$125.00 per hour	Water pump	\$85.00 per day

Any equipment not listed above will be charged at the prevailing market rate plus 15% overhead and 10% profit.

Any and all work to be done on a Time / Material / Equipment basis & any and all work to be done on a unit cost basis will be cost plus 15% overhead and 10% profit. Any work to be deducted from scope of work shall be unit cost value or value of work less 20% only if without a deduct unit called out. Prices of materials, such as but not limited to, concrete, rebar, and lumber are variable and subject to change without prior notice. Any cost increase will automatically become a change order to the contract.

Notice to Client: Do not sign this agreement before you read it, or if it contains any blank spaces. You are entitled to a completely filled in copy of this agreement. Owner/client acknowledges that they have read and received a legible copy of this agreement signed by Contractor, before any work was done, and that they have read and received a legible copy of every document that Owner/client has signed during negotiations. If owner/client cancels this agreement after the right of recession has expired, and before commencement of construction, he shall pay contractor the amount of expenses incurred to that date plus loss of profits.

Included unless noted in the work description:

Job walk ; Mobilization and layout to survey points supplied by others; Excavation of footings and pads provided the soil is free of rocks, boulders, water and other obstructions; Backhoe trenching if accessible; Finish grading for slabs (after grading, compaction to be done by others; Foundation per building; Forming lumber and lumber treatment; Hardware: all anchor bolts up to ¾" (Layout on forms by others); Hardware placement: HD's, CB's and templates supplied by others (Layout on forms by others); Rebar reinforcement; Daily clean-up (dumpster supplied on site by Client/owner); Traffic control and clearing access for concrete trucks to jobsite; All pour in place walls and shotcrete walls to be constructed using construction grade CDX plywood; excludes architectural finish and/or final finish; all pour in place walls to be constructed using snap tie method; Capping rebar for protection where required; Trenching to a maximum depth of 24 inches into existing grade (Includes excavation with hand tools only); Soil stockpile up to 20 ft away; Concrete strength per specifications

Excluded unless noted in the work description:

Clearing lot; Caissons (Price is based on good drilling and /or digging conditions, straight shafts, no belling, no rock drilling, casing, dewatering and allowance of 10% concrete overbreak. Additional concrete beyond overbreak will be an additional \$225.00/yard. One mobilization included; additional rig mobilization will be \$2,500.00); Deepening footings beyond details called out per plan or bid; Heavy excavation (Excludes rock digging, jackhammer attachments, location and protection from damaging of underground utilities, existing structures and/or unforeseen obstructions or materials; Rough grading ; Access ramps (Unless specified, access ramps must be provided and removed by General Contractor); Removal and disposal of dirt ;Special finishers; Masonry per building ; Strip and stockpile topsoil; Miscellaneous iron: frames, grates or any special hardware; Stainless steel and/or galvanized anchors, hardware, snap ties; Special post anchors, tie-downs or bolts in-beds ; Deputy inspector for concrete foundation; Slab on grade ;Lightweight slab; Slabs on pan decks, wood deck or post tension slab ; Removal or breakout of grade slabs, walks, curbs etc. (Saw-cutting); Concrete stairs; Architectural finishes; Special vertical grain cedar; Colored concrete; Grinding concrete surfaces smooth or sack and patching for smooth surfaces; Fireplace hardware of any kind; Foundations and concrete per site work; Masonry per site work; Shoring, Vertical, Horizontal and/or ABC slot cutting; Waterproofing; Patching of plumbing holes or any other penetrations through deck or steel pans (Fireproofing); Perforated drain pipe (Stubbed out of wall only; Excludes drain box hook-up or to street hook-up); Backfill (on site soil only, excludes any importing of material); Backfill or compaction of electrical or plumbing ditches; Scaffolding; Soil report reviewed; Soils engineering requirements ; Permits, lab, miscellaneous, and/or any inspection fees; Erosion control and/or clean-up cost or damage cost to work completed or in progress due to weather or other conditions; Demolition; Toilets, temporary fencing, electric power, water or telephone; Grinding and cleaning behind concrete or block walls for waterproofing; Drainage, catch basins, drain boxes, grate frames or lids, super pump boxes of any kind ;Barricades, walks or canopies; Concrete topping on plywood floors or deck ; Epoxy of new hardware, drilling through existing structures or concrete footings etc. for access of new hardware, anchoring into



existing structure; Sleeving through and/or block outs of concrete or trenches for other trades & adjusting and/or cutting rebar and/or forms; Additional Insured endorsement certificates available upon request; limit 2 - \$100.00 each per extra certificate; City work not expressly specified above; Dewatering of any kind; Clean-up of footings or work hindered, damaged or destroyed by weather or other factors; Special concrete additives; Concrete swale (Includes placement of forms, rebar and concrete per detail only; Excludes excavation, grading, trenching; hand work prepared by others during backfill); Any concrete encasement or slurry of any underground duct work or trenching, utilities etc; Snap ties to be left open, any plugging of holes to be done on a Time and Material plus overhead basis after approval of samples prior to plugging holes on finished wall; Any covering and/or protection of walls during construction to be by others or on Time and Material plus overhead basis; Any concrete sealers, patching of walls and plugging of tie holes will be additional cost; Placement of regular grey concrete unless requested in sample to be poured with added color, which will be additional cost; Any mock-up and/or samples (If requested to be done, work will be performed on a time and material plus overhead basis)

Contractor and Owner/client agree that a facsimile signature on all contractual documents to be legally binding.

Integration: This agreement, including all terms and conditions hereof are expressly agreed to and constitute the entire agreement. No other agreements or understandings, verbal or written, expressed or implied, are part of this agreement unless specified herein. In case of conflict, this contract will govern.

Note: This proposal may be withdrawn if not accepted within 30 days.

Donald J. Scheffler's Construction
(Contractor)

Owner/Client

Signature

Signature

Please type or print name

Please type or print name

Title

Title

Date

Date

= *Blaha Construction & Development, Inc.* =
CONCRETE & GENERAL CONTRACTORS
28376 Constellation Rd. Valencia, Ca 91355
(661) 799-1618 Fax (661) 799-1617
License Number 595743 / C-8/ C29
office@blahaconcrete.com

September 11, 2015

Page 1 of 2

Mani Brothers
9220 Sunset Blvd.
West Hollywood, CA 90069

RE: PRIVATE RESIDENCE
22788 PCH
Malibu, CA 90265

PROPOSAL AND CONTRACT

We propose to furnish labor and material for the new concrete footings, pads, and steps for the above referenced project. Said work shall be performed according to S-sheet and job conditions. Plans Dated 8/5/15.

INCLUSIONS

1. Layout, trench, form and pour all foundations figured as per plan 24"-36" into existing grade.
2. Excavation of footings and pads providing the soil is free of rocks, boulders, water and other obstructions.
3. All typical Simpson hold-downs. (Anchors bolts only)
4. Structural rebar.
5. Grade, set up and pour slab on grade.
6. Form lumber to be #2 or better CDX construction grade plywood. (Form work)
7. Footing, and grade slab figured double pour.
8. Concrete: 4000 PSI 3/8" & 1" pump mix with ash. (Common grey)
9. Pour in place hardware for footings, building slab and walls to be laid out by framer or project superintendent. (Stock Simpson hardware only)
10. Access ramps must be provided and removed by general contractor or owner for all phases of concrete work.
11. Pumping of concrete.
12. (4) gradebeams. (2) bolder structural slabs, (2) structural steps.
13. Dry packing of steel column using L.A. city approved product.
14. Grade to be + or - 1/10 before starting any structural concrete.
15. Scope of work to be as per sheets S with details to match.
16. Additional insured endorsement certificates available upon request - limit 2-\$100.00/each per extra.

EXCLUSIONS

1. Mass excavation, backfill, compaction or removal of footing dirt off site. (Dirt piled where excavation occurs)
2. Miscellaneous iron: frames, grates, special hardware, tie downs, special post anchors guard rail or inbeds
3. Civil Engineer layout of site.
4. Deputy inspection and testing of concrete masonry, rebar, or epoxy.
5. Removal or breakout of walks, curbs, etc. (Saw-cutting)
6. Pour in place concert walls.
7. Temporary utilities: water, power or telephone.
8. Drainage, drain boxes or sump pump boxes of any kind.
9. Sealing or staining any concrete.
10. Lateral shoring of footings for shoring.
11. Special finishers/pre cast or saw cut pavers.
12. Dumpsters.
13. Erosion control (supplying or placing of sand bags)

Initial _____

14. Soils reports or inspections.
15. Obstruction and delay time.
16. Barricades, walks or canopies.
17. Engineering or engineering observations.
18. City work not specified above.
19. Permits, permit fees, or plan printing fees.
20. Street use permits: parking, hauling, police escorts material, equipment pumping, traffic control, signals.
21. Onsite or offsite flat work of any kind site walls, walks, patios, stairs, & driveways.
22. Patching of plumbing holes or any other penetrations through deck, steel pans, P.I.P., or masonry walls (Fireproofing)
23. Waterproofing or de-watering of any kind.
24. ROCK CLAUSE: If backhoe and/or hand-digging crew, drill machine cannot dig footing under normal soil conditions, are delayed due to granite, rock water, or if abnormal soil is encountered, then extra drill machine backhoe and/or hand-digging crew time and equipment will be charged accordingly including drill teeth or coring time.
25. Blaha Construction and Development will not be responsible for the backfill or compaction of electrical or plumbing ditches.
26. Relocating of any rocks.
27. Concrete topping plywood floors, or garage light weight over pour.
28. Waterproof add mixtures
29. Steel casing, drilling mud, drilling tooth

STRUCTURAL CONCRETE PRICING

STRUCTURAL CONCRETE – Beams, Slabs & Steps; Labor, Material & Equipment: \$137,187.00

**STRUCTURAL CONCRETE – Additional Labor & Equipment on T & M Bases for
Items Out Side the Scope of Work.**

***STRUCTURAL CONCRETE AND MASONRY PRICES MAY VARY DUE TO INCOMPLETE PLANS
(DETAILS MISSING, CHANGES ON PERMITTED PLANS, OR REBAR INCREASE)**

PAYMENTS

Progressive payments are to be made every 10 days upon presentation of correct invoices and releases on completed work. Extras shall be paid on the same payment schedule. If payment is not made in a timely manner, Blaha Construction and Development retains the right to lien the above referenced property.

If either party to this agreement fails to perform to the extent that it becomes necessary to enlist legal assistance to settle any discrepancies, then all legal costs incurred are to be borne by the party determined to be at fault.

We appreciate the opportunity to offer you this proposal. This job price is valid for 30 days. In addition, this contract price does not include recommendations from the soil report.

Sincerely,

Matthew Blaha
President
MB/db

Accepted by: _____

Date: _____

CALIFORNIA COASTAL COMMISSION

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



VIA ELECTRONIC AND REGULAR MAIL

December 7, 2015

Tony Canzoneri
21016 Pacific Coast Highway
Malibu, CA 90265

RE: Proposed Consent Cease and Desist Order

Dear Mr. Canzoneri:

As I mentioned in my voicemail on Friday, attached please find the proposed Consent Cease and Desist Order ("Consent Order") regarding unpermitted development on the Malibu Beach Inn properties for your review. Thank you for your patience while California Coastal Commission ("Commission") staff work to craft the proposed Consent Order to reflect the extant condition of the properties. We appreciate the opportunity to work collaboratively with you and your clients to resolve these longstanding issues and bring the Malibu Beach Inn into compliance with the Coastal Act and its Coastal development Permit ("CDP").

We would also like to take this opportunity to respond to some of the issues raised in your October 16, 2015 letter.¹ As a threshold matter, for the sake of continuing the amicable discussions that you began with the Commission's District Enforcement staff, while Commission staff does not agree with your assertions regarding estoppel, they will not be addressed here beyond noting that estoppel arguments are available in only the most limited of circumstances – not here applicable (see for example *Feduniak v. California Coastal Com'n*, *Cal.App. 6 Dist.*, 2007, March 27, 2007).

Additionally, your correspondence indicated a note of dissatisfaction at being informed of additional Coastal Act violations in the context of the Notice of Intent: please understand that when cases are elevated to the statewide division for formal resolution comprehensive review of permit and property is undertaken. Certain additional items were noted to be occurring or in place in contravention of CDP 5-87-576 and we wanted to inform you of them as soon as possible so as to ensure that they could be made part of the resolution and the entire property could be compliant with the Coastal Act. Ensuring that the scope of the resolution is comprehensive will ultimately be of benefit to your client in the long run as it will prevent having to return to the Commission multiple times, each time with separate concomitant civil liability to resolve.

You further assert that "there has never been agreement among the government agencies whose approval was required under the 1987 condition with respect to the number, location or

¹ We are hopeful that we can resolve these issues via the Consent Order process and therefore are electing not to respond to defenses raised in prior correspondence. Silence by staff regarding specific claims or defenses raised should in no way be interpreted as assent or waiver of opportunity to respond.

December 7, 2015

configuration of the stairways." Please note that the terms and conditions of CDP 5-87-576 are explicit and call for "no less than two stairways"; the onus was, and continues to be, on the property owner, not the Commission or Commission staff, to coordinate with the relevant agencies to ensure concurrence and approval.

Please call me when you receive this letter and we can set a time to discuss the proposed Consent Order in more detail; we would like to receive comments on the proposal by December 22, 2015. As I mentioned in the voicemail on Friday, December 4, 2015, in an effort to facilitate settlement of this matter and allow your client sufficient time to consider the proposed Consent Order, the deadline to submit a Statement of Defense form is also extended from December 11, 2015 to January 6, 2016. Please note that any further extensions of time to submit a Statement of Defense would only be granted upon the showing that the extra time was necessary to resolve remaining issues for settlement. If you have questions or would like to discuss the content of the Consent Order, we would be happy to do so; please do not hesitate to contact me at 805.585.1817. Thank you,

Sincerely,



Heather Johnston
Statewide Enforcement

cc: Lisa Haage, Chief of Enforcement, CCC
Andrew Willis, Enforcement Supervisor, CCC
Aaron McLendon, Deputy Chief of Enforcement, CCC
Steve Hudson, South Central Coast Deputy Director, CCC
Alex Helperin, Senior Staff Counsel, CCC

CALIFORNIA COASTAL COMMISSION

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



VIA REGULAR MAIL

November 19, 2015

Douglas Cleavenger
dcleavenger@malibucity.org
23825 Stuart Ranch Road
Malibu, CA 90265-4861

Re: Enforcement Coordination

Dear Mr. Cleavenger:

Thank you for taking the time to speak with me on Monday, November 16, 2015, regarding a pending California Coastal Commission ("Commission") enforcement matter at 22878 Pacific Coast Highway in Malibu; I appreciate your time and consideration. As we discussed, Commission staff is pursuing resolution of a variety of violations of a Commission-issued coastal development permit; CDP 5-87-576. The violations that staff are currently seeking resolution of include, among other things, the failure to construct two public access stairways on the adjacent California Department of Parks and Recreation owned property, as required by the permit. As I mentioned during our conversation on Monday, should you have any questions about the enforcement matter, please do not hesitate to contact me - again, my email is heather.johnston@coastal.ca.gov, and my direct line is 805.585.1817. We will be sure to keep you apprised of major developments as this matter moves towards formal resolution before the Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Johnston".

Heather Johnston
Statewide Enforcement

CCC-16-CD-04 & CCC-16-AP-02
Exhibit 34