

CALIFORNIA COASTAL COMMISSION

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STATE COASTAL COMMISSION
OAKLAND, CALIF.

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 Hearing Date: 7/12/90
 Comm. Hearing on Findings:
 (9/13/90)

PROPOSED REVISED FINDINGS

Thida

APPLICATION NO.: 5-89-1197

APPLICANT: J.A. Edwards Trustee for J.A. Edwards Trust, 1989
 AGENT: Marvin Burns, De Castro,
 West, Chodorow, and Burns

PROJECT LOCATION: 27944 Pacific Coast Highway, Malibu,
 Los Angeles County. APN 4460-32-12

PROJECT DESCRIPTION: Subdivision of 4.82 acre parcel into two parcels, of
 2.48 and 2.34 acres

Lot area:	4.82 acres
Zoning:	R-1-20,000
Plan designation:	2 du acre (bluff top); 1 du/2 acre beach
Project density:	2 acres per du gross

COMMISSION ACTION: Approval With Conditions.

DATE OF COMMISSION ACTION: 7/12/90

COMMISSIONERS ON PREVAILING SIDE: Hisserich, Giacomini, Glickfeld, Mori,
 Rynerson, Slates, and Neely.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on July 12, 1990, approving with special conditions as modified coastal development permit 5-89-1197 for a subdivision of a beachfront lot downcoast of Paradise Cove in the Malibu area of Los Angeles County.

SUBSTANTIVE FILE DOCUMENTS:

1. All staff reports, findings, and materials part of applications No. 5-88-170 (Black Tor) and No. 5-89-161 (Black Tor), and noted in Appendix Y of this report.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution and revised findings:

I. APPROVAL WITH CONDITIONS.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development 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, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of 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.

III. SPECIAL CONDITIONS.1. Access Impact Mitigation

Prior to the issuance of the permit, applicant shall complete one of the following:

- a. Record an offer of dedication of vertical access along the route identified in the 9-2-90 staff recommendation on Permit 5-88-170; or,
- b. Provide evidence of payment of funds to the State Coastal Conservancy in an interest-bearing account for the sole purpose of constructing public access improvements. The amount of funds shall be either 1) \$337,928 pursuant to the 2/23/90 estimate prepared by the CGH Group for the State Coastal Conservancy of the costs of improvements necessary and sufficient for public use of the Chiate-Wildman easement, or 2) if verified in writing by the Executive Officer of the State Coastal Conservancy to the Executive Director of the Commission, payment in an amount of no less than \$236,000 nor more than \$337,928 determined by the State Coastal Conservancy as necessary and sufficient to develop the same improvements at Chiate-Wildman or an alternative easement to the same general beach area, generally between Paradise Cove and Escondido Creek. The funds shall be specifically for construction of access improvements at the Chiate-Wildman easement unless the Executive Officer of the State Coastal Conservancy and the Executive Director of the Commission determine that an alternative easement could be developed with the same funds that provides equivalent access to the same beach area. If at the end of two years from the date of issuance of the permit the funds have not been expended for the physical development of improvements at the Chiate-Wildman easement or an alternative easement to the same beach area determined acceptable by the Executive Director of the Commission and the Executive Officer of the State Coastal Conservancy then the Commission on its own initiative or at the request of the Conservancy, may direct the Conservancy to allocate the funds for opening an existing improved accessway not yet open to the public in the same beach area between Paradise Cove and Escondido Creek. Such funds shall be redirected only if it is determined by future action of the Commission that physical improvements to an existing easement are not feasible or necessary to provide adequate access to this beach area.
- c. Cause improvements of the Chiate-Wildman easement necessary and sufficient for public use of said easement to be made to the satisfaction of the State Coastal Conservancy at the applicant's expense.

Site plans for any access facilities proposed will require separate coastal permit review.

2. Applicant's Assumption of Risk.

Prior to transmittal of the permit, the applicant 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, earthquake, faulting, flood hazard, bluff failure and earth movement including landslide; and, (b) that the applicant hereby waives any future claim of liability against the Commission or its successors in interest for damage from such hazards

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

3. Tract Map Approval.

Prior to the issuance of the permit, the applicant shall submit evidence of approval by the County of Los Angeles of the revised tentative map with the revised lot lines.

IV. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. Project Description and History

The applicant proposes to divide a 4.8-acre parcel into two lots of 2.48 and 2.34 acres. The lot extends from Pacific Coast Highway to the mean high tide. The parcel is 153.09 feet wide at Pacific Coast Highway. About a third of the parcel is bluff face and beach.

The present application for a two-lot subdivision is similar to proposals for division of land that was involved in three previous requests: 5-86-046 (applicant withdrew the application); 5-88-170 (denied by the Commission); and 5-89-161 (denied by the Commission; suit by Black Tor against the Commission pending). The applicant has amended the submittal to slightly modify the lot lines from the previous proposals. (Exhibit 3)

This parcel has also been the subject of several permit applications for increased development on the existing parcel. The most recent, Application 5-87-321, for extensive remodeling and additions, was approved by the Commission with conditions. That permit, now exercised in part, provided for extensive additions to the existing house and other development on this property. The building coverage at that time was 8,800 sq. feet and the gross floor area 9,503 sq. ft. That development included the single family residence, garage, auxiliary structure identified as a sculpture studio, pool and pool house, guesthouse, tennis court, parking lot at the beach level, playhouse, equipment shelter, and driveway and parking areas. That development had been placed upon the site over a period of time; available records show that the first coastal development permit was the conversion of an approximately 2,200 sq. ft. duplex to a single family house.

Permit 5-87-321 proposed to add approximately 5,000 additional sq. ft. of structures, including a garage with a guesthouse on the second floor (to replace a guesthouse to be lost during remodeling), a screening room, greenhouse enclosures, utility rooms, sculpture studio and lap pool including an underground garage, and gating, fencing, and a storage shelter at the toe of the bluff. In its initial action on this permit, the Commission imposed lateral and vertical access conditions, including a lateral easement from the mean high tide line to the toe of the bluff. In reconsidering this action subsequent to the Nollan decision, the Commission deleted those lateral and vertical access conditions and instead required resiting of the beach level structures to eliminate adverse impact upon public access, required that the applicant agree not to prejudice any subsequent assertion of public rights, e.g., prescriptive rights, public trust, etc. and reaffirmed an existing deed restriction, a 25 foot ambulatory lateral access that had been required as a condition of a 1977 approval of a guest house that was never constructed.. Other conditions on Permit 5-87-321 included requiring the applicant to comply with bluff setbacks.

The site is surrounded on both the upcoast and downcoast sides by generally similar sized parcels with residential development. Nearby downcoast is the property that was the subject of coastal permit P-78-2707. The Commission approved a 2-lot subdivision in that permit with the requirement that a vertical access easement be offered for dedication. That condition was fulfilled and the State Coastal Conservancy has accepted title to the easement, but has not developed it.

B. Development

The Coastal Act provides for close scrutiny of requests for divisions of land in order to achieve the goals of the Coastal Act of 1976. This strategy has been followed in the development of the Malibu/Santa Monica Mountains Land Use Plan, which was certified by the Commission in December, 1986.

New development is controlled in part by Section 30250 of the Coastal Act, which states:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Along with other Coastal Act sections, Section 30250 regulates the location, intensity, manner, and cumulative impact of development, including divisions of land. In four interrelated policies (271, 272, 273 and 274), along with the Land Use Plan map and three resource overlays, the Malibu/Santa Monica Mountains Land Use Plan has incorporated designations, standards and specific implementation methods to carry out this section. The Malibu/Santa Monica Mountains Land Use Plan allows higher density on the coastal terrace in Malibu, where this project is located, than in the ecologically fragile watershed lands in the Santa Monica Mountains. The Plan permits an increase in density under specified circumstances, but limits specific projects by site constraints shown in the Hazard and Visual Resources overlays of the LUP.

1) Land Use Plan Map--Designations

In this instance, the Land Use Plan designates the blufftop area for a maximum density of two parcels per acre and the bluff face and beach for a maximum density of one parcel per two acres. Hazard and beach access overlays discourage the actual siting of any structures on the bluff face or on the beach (Policy 165, Policy 150, and Policy 273(b)).

This project would create a 2.3-acre lot and a 2.48-acre lot from a 4.8-acre parcel. Therefore, it would conform to the aforementioned LUP density designations of one-half acre and two acres.

2) Hazards

Section 30253 requires the Commission to assure the safety and structural integrity of development:

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.

The LUP specifically directs that all the policies must be followed before a subdivision is permitted:

P273b On beachfront parcels, land divisions shall be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure, on-site sewage disposal system, if necessary, and any other necessary facilities without development on sandy beaches,

consistent with all other policies of the LUP, including those regarding geologic and tsunami hazard.

Pursuant to policy provisions of the Land Use Plan, this parcel is subject to a hazard overlay--flooding and tsunami. Also pursuant to LCP provisions, the bluff face is designated hazardous because of potential slope failure. This hazard overlay designation does not necessarily reduce density, but it confines development to those portions of the lot that are not subject to hazard.

a) Wave Hazard

Paradise Cove is the westernmost unit in the Santa Monica Bay sand cell that extends from Point Dume to the Redondo Submarine Canyon. Sand for this beach comes off the bluffs to some degree and down streams, most notably, on this beach, Ramirez Canyon. Upstream owners in Ramirez Canyon have been engaging in minor channelization projects, which have resulted in less upstream erosion and less sand available for the beaches.

The Department of Navigation and Ocean Development in its report entitled Assessment and Atlas of Shoreline Erosion on the California Coast identified this beach area as "protective beach," a beach that is currently wide enough to protect the limited development that occurs on its inland edge. The DNOD report describes Paradise Cove as

"Wide sandy beach backed by cliff. Houses on beach, benched into face and at top of cliff. Timber seawall at shore end of Paradise Cove Pier."

In a previous action on this property, 5-87-321 (Black Tor), the Commission adopted an extensive analysis of the wave hazards on this property. The Commission determined that the entire beach, a fill slope at the toe of the bluff, and the toe of the bluff itself are subject to wave action. During the 1983 storms, the house on a beach parcel two lots to the west suffered wave attack, and the owners were forced to take emergency measures to protect a leach field that was located in the sand in front of the house. When sand bags and timbers washed away they put in rocks. During this storm the nearby Paradise Cove restaurant also installed a revetment.

Surface sloughing is an additional hazard. Most surface sloughing on coastal bluffs is due to excessive watering on the top, but removal of the toe by wave action can also cause raveling of the surface and endanger houses located too close to the bluff edge. There remains some possibility that an extraordinary storm will erode portions of the toe of the bluff. This occurred during January 1988 at the eastern end of Paradise Cove.

The application as submitted does not incorporate a setback line consistent with applicable Coastal Act and LUP policies as set forth above; nor does the application propose to incorporate a recorded deed restriction that would communicate this hazardous condition to any future purchasers of the

property. While no development is proposed with this subdivision future blufftop development will have to conform to bluff setback requirements in order to address their impacts and applicable Coastal Act policies.

b) Geologic Hazards

A second set of hazards consists of those to be expected on any blufftop development where the bluff erodes or fails. Any creation of new lots must incorporate a design such that any subsequent development can be set back far enough to minimize risks to life and property over the expected life of the development and to assure that the development will not contribute to additional erosion or site instability.

To protect blufftop development, the County of Los Angeles adopted the following policies in the certified Land Use Plan:

- P164 On bluff-tops, new development shall be set back a minimum of 25 feet from the top of the bluff or at a stringline drawn between the nearest corners of adjacent structures, whichever distance is greater, but in no case less than would allow a 75-year useful life for the structure.
- P165 No further permanent structures shall be permitted on a bluff face, except for engineered staircases or accessways to provide public beach access where no feasible alternative means of public access exists.
- P128 In addition to that required for safety, further bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures should be set back from the bluff edge sufficiently far to insure that the structure does not infringe on views from the beach except in areas where existing structures on both sides of the proposed structure already impact public views from the beach. In such cases, the new structure should be located no closer to the bluff's edge than the adjacent structures.
- P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

In order to conform the proposed parcels and any subsequent development upon them to Section 30253 of the Coastal Act as carried out in these policies, the Commission in previous permit actions has eliminated a proposed cut in the face of the bluff, set back all development from the bluff edge or from a stringline, required mapping of the fault traces on the parcel maps, and required an assumption of risk for all the hazards identified in the geology report. Future development will be required to continue these safeguards, and, as conditioned to require the deed restriction to identify potential hazards and assume liability in connection with this subdivision, the Commission finds that the development can be approved

The geological report (Holt, 1984, 4-87, and 6-87) identified unstable bedding planes and surface sloughing on the face of the bluff. Based on borings, however, the applicant's geologist identified some favorably oriented bedding planes dipping away from the face of the bluff farther back from the bluff face.

According to Holt, the seaward edge of the lot is crossed by two splays of the Malibu coast fault. Since the Holt report was originally written, reports reviewed for other projects (see General Motors, 5-85-418 (Adamson)) have shown that the Malibu coast fault zone is not "potentially active," but "active," which means that it has moved within the past 11,000 years. The Commission notes that a fault trace is merely the external sign of an area subject to earthquake damage and shaking and that it does not indicate the precise location of the next earth movement. The proposed subdivision would create an additional buildable site that is in close proximity to this fault. The Commission finds that future development must address locating the fault trace on the parcel map and incorporating adequate setback.

Policy 164 of the Malibu Land Use Plan requires that new development be set back at least 25 feet or within a stringline drawn between the nearest corners of adjacent structures, whichever is greater, but in no case less than would allow a 75-year useful life for the structure. The specified setbacks are thus minimums that may be utilized only where substantiated by site-specific geological analysis. The applicant's geologist has stated that future structures on the parcels proposed to be created may be located with their foundations at a 2:1 slope drawn from the toe of the bluff. The geologic setback line emerges on the surface at a location that is roughly contiguous with a stringline drawn from the two nearest bluff-front houses (Evans and Palance). Holt also advised the applicant to plan to trim back oversteepened portions of the crest of the bluff to an engineered, 1:1 slope in conjunction with any future development. Such an approach, however, would not be consistent with the approach set forth in the applicable plan policies cited above, and future development will be reviewed for incorporation of setbacks in lieu of trimming in order to comply with Section 30253 of the Coastal Act.

3) Visual Impact

Sections 30251 and 30253 of the Coastal Act protect views to and along the beach and protect natural landforms. They 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 of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California

Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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.
- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (4) Minimize energy consumption and vehicle miles traveled.
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The Land Use Plan also requires the views along the beach and from Pacific Coast Highway to be protected. The LUP requires stringlines, prohibition of structures on the face of a bluff or on beaches, and minimization of alterations of landforms. As seen above, policy 128 and policy 165 of the LUP protect the face of coastal bluffs from construction and may require that additional setbacks be provided to protect views from the beach. Most of the policies listed above are also policies that relate to visual impact.

Paradise Cove is one of the few beaches in Malibu that is generally undeveloped. Most bluffs in the Paradise Cove area have been disturbed only by private narrow access roads and beach stairways. Visitors to this beach are attracted by the present undeveloped nature of the beach. The undeveloped nature of the bluff face, including natural vegetation and the natural irregularity of the eroding bluff, creates the visual attraction. Visible development would significantly reduce the recreational value of the use of public tidelands.

The Commission has generally set all development back from the beach itself and has eliminated beach-level appurtenant structures from plans. However, there have been a few exceptions. Where older subdivisions created beach-level lots, the bluff face itself has been developed with single family houses. This is the case on two lots near this property. In the present case the applicant already has one road through the bluff and does not propose a second road as part of the development. In the vicinity, there remain periodic incursions on the beach, and there have been several requests to place bluff retaining walls and rocks on the beach in order to protect the toe of the bluff. These requests have been from nearby property owners whose houses were constructed with insufficient blufftop setbacks.

The building site proposed to be created through subdivision would not be visible from Pacific Coast Highway. However, the application as submitted did not include provisions that would protect the bluff face, restrict further development on the bluff face, eliminate additional roads, or locate future development so that no sea-level walls would be necessary for the protection of such development and visual impacts are minimized. Neither did the application provide for the protection of the existing rock outcroppings at the top of the bluffs. The sculpture studio authorized in 5-87-321 has been constructed.

If these safeguards are maintained in future development, the additional development that could be permitted on the parcels proposed to be created under this request would not create a significant adverse visual impact as seen from along the shoreline, consistent with Section 30251 of the Coastal Act and Policies 128 and 165 of the certified Malibu/Santa Monica Mountains Land Use Plan of the County of Los Angeles.

4) Public Shoreline Access and Recreation

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. Based on the access, recreation, and development sections of the Coastal Act the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The California Constitution in Article X, Section 4 provides:

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

The Coastal Act contains more specific policies regarding the provision of public access to the state's shoreline. Coastal Act Section 30210, as set forth below, stipulates that in meeting the requirements of Section 4 of Article X of the Constitution, maximum public access, conspicuously posted, shall be provided subject to certain conditions. Section 30212 requires that access be provided in all new development. These sections state:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect

public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5 states:

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, or overcrowding or overuse by the public of any single area.

Other sections of the Coastal Act require that lower cost visitor and recreational facilities be provided. Developments providing public recreational opportunities are preferred to increased commitment of the coastline to private use.

Section 30212 (c) reflects the state's long-term public interest in maintaining those rights in subdivisions.

Section 30212.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Lateral access is not at issue in the present development. In 1977 the applicant recorded a deed restriction providing an ambulatory 25 foot lateral access on this beach (Coastal Development Permit No. P-11-19-76-9463). This dedication requirement was reaffirmed in connection with Permit No. 5-87-321, as noted above, and the applicant has furnished conformed copies of the recorded deed restriction providing lateral access. The Commission notes that the recorded deed restriction covers an ambulatory area 25' in width and that the County Land Use Plan certified by the Commission in December, 1986, would require lateral access from the mean high tide line to the base of the bluff, as set forth in Policy P52.

The policies of the certified Land Use Plan provide as follows in regard to vertical access:

Vertical Access

P51 For all land divisions, non-residential new development, and residential new development on lots with 75 or more feet of frontage or with an existing drainage or utility easement connecting a public street with the shoreline or on groups of two or more lots with 50 feet or more of frontage per lot, an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line shall be required, unless public access is already available at an existing developed accessway within the standard of separation provided under "Beach Access Program" (see below). "New development" shall be as defined by Public Resource Code Sec. 30106 and Sec. 30212(b). Such offer of dedication shall be valid for a period of 21 years, and shall be recorded free of prior liens except tax liens. The access easement shall measure at least 10 feet wide. Where two or more offers of dedication closer to each other than the standard of separation provides have been made pursuant to this policy, the physical improvement and opening to public use of offered accessways sufficient to meet the standard of separation shall result in the abandonment of other unnecessary offers.

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

P56-9 requires vertical accessways at a standard of separation of every 2000 feet in this area.

The Land Use Plan requires both lateral and vertical public access for all subdivisions as well as for any development on shoreline parcels that are greater than 75 feet in width (Policy 52, Policy 52b, and Policy 51). The Commission notes that the width of the lot at the highway, 153 feet, is greater than 75 feet, and that the Land Use Plan requires that this lot and similar lots offer to dedicate vertical access as appropriate in conjunction with specified development permit requests until public access points are provided along Paradise Cove every 2,000 feet, in accordance with Policy P56-9. Therefore, the Land Use Plan requires additional dedications of vertical access; the Plan further allows unutilized vertical access offers to revert to the underlying property owners once public vertical accessways are developed and opened at the standard of one vertical accessway per two thousand feet.

a) Vertical Access Presently Provided or Required

In order to determine whether the currently proposed project complies with the access provisions of the Coastal Act and more specifically with Section 30212 of the Coastal Act, the Commission must determine whether adequate access exists nearby. Therefore, to determine whether vertical access is required, the plan provides first for a survey to find out if adequate access exists nearby. As a result of the existence of many potential (offered) accessways that are not developed, the Commission has found in previous decisions and the County found in the LUP that the standard for provision of access under the Constitution and the Coastal Act was the existence of actual open and operating access nearby.

The distance between the closest access points upcoast and downcoast of this site, Escondido Beach and Point Dume State Beach, is about three miles. The closest public accessway on the upcoast side of the site is at Point Dume, where the County of Los Angeles operates Point Dume State Beach, which is the easterly end of Zuma Beach. The nearest accessway to the east (downcoast) is a public accessway located approximately one mile away from this site, at Escondido Creek at the junction of Malibu Cove Colony Drive with Pacific Coast Highway. This accessway connects to the trail system through existing roads. At this location the managing entity, the Los Angeles County Department of Beaches and Harbors, maintains one trash can at the head of the flight of steps leading to the public tidelands; there is also a Rapid Transit District bus stop at this location (as there is at the point where the access road to Paradise Cove intersects with Pacific Coast Highway).

The nearest location at which members of the public currently reach the public tidelands is a privately owned facility approximately 2,000 feet upcoast of the project site. This is at Paradise Cove, where there is a cafe and fishing pier. In past permit actions on this site the applicant has indicated that the public has been reaching this site by walking from the privately owned Paradise Cove area. In the statement of facts provided by the applicant at the June 12, 1987 hearing on 5-87-321 (Black Tor), the applicant's representative stated:

The property is located in the Paradise Cove area of Malibu. The western boundary of the property is less than 2,000 feet from Paradise Cove, where public parking and recreational opportunities are provided to encourage the public to use the beach.

Visitors may daily enter at Paradise Cove and walk the short distance to the beach on the Black Tor property, where they enjoy the sandy area and the Pacific Ocean. (Objections to Staff Report, p.3)

Applicant emphasizes that Paradise Cove is less than 2,000 feet from the subject property and not only permits public access to the beach but actively encourages and advertises such access. Black Tor is within a short, comfortable walking distance from Paradise Cove parking and pedestrian access. (ibid, p.15)

A site visit for 55-88-170 confirmed the applicant's description of public use on this beach. To get to the property, the staff member parked at Paradise Cove and walked east along the beach. No one attempted to stop or question either the staff member or the party of tourists who proceeded up the beach before the staff member. The tourists stayed on the wet sand, giving the houses wide berth, except where there were no structures at beach level, when the tourists climbed the berm to the foreshore.

The parking lot at Paradise Cove has been open to the public on a pay basis for at least 20 years. The lot accommodates approximately 224 cars. In addition, the Coastal Slope Trail is designed to connect down Ramirez Canyon to the beach at Paradise Cove. The Commission notes that the Paradise Cove accessway is a privately owned and operated accessway, where a fee is charged by the operators for use of the beach. The last known charge was \$7.00 for drive-in access and \$2.00 per person for pedestrians to get access to the beach and the pier. Continued use of this site to provide a fee vertical access is not guaranteed. The Paradise Cove property has recently been advertised for sale. The State Parks and Recreation Commission discussed its desirability as a public facility at its April 13 hearing and heard testimony that public access should be guaranteed at this site, but such assurance does not now exist.

The beach access survey done by Los Angeles County in 1981 found that the public entered the beach on which the subject property is located, which the County identified as "western Escondido Beach," at Paradise Cove. Most users clustered at the pier and west of the pier, then some users walked down the beach toward Escondido Beach. The survey found some visitors on this portion of the beach, but noticeably fewer visitors than it found either at the Escondido Creek vertical access or at the Paradise Cove access. The reason for this was the distance from vertical accessways. The owners on this beach do not confine themselves to their own lots, but likewise use the wet sand portion of Paradise Cove freely, walking along the beach. Paradise Cove is also occasionally used by equestrians, who enter at Escondido Beach.

In regard to vertical access, there are four locations of potential vertical accessways in the near vicinity. The potential accessway that is closest to the property is the one required as a condition of subdivision in permit (P-78-2707), and is located two lots away, about 420 feet. The State Coastal Conservancy has accepted this offer of dedication of an access easement; no accessway is yet developed and open. This accessway is discussed further below.

There are three other recorded offers of dedication of vertical access between Escondido Beach and Paradise Cove, but none of these has been accepted, improved, or opened. One of these, Shane (now Seacliff Partnership), at 27420-28 Pacific Coast Highway, was required by the conditions of approval on Permit No. A-184-80-A2 to open and maintain for public use the private stairway on the project site, and to provide public parking and a public access sign; these provisions were imposed by means of a deed restriction that specified that the provisions were to remain in effect until the recorded

offer of dedication of an easement also provided in conjunction with the permit approval was accepted by an appropriate management entity or until the offer expired. The applicant has constructed a very large stairway but has not fulfilled the conditions of the permit and no public access is presently available at this site. The potential violation on this site represented by these circumstances is presently under investigation as V-5 Mal 85-09.

Another recorded offer, Permit P-78-3473 (Clark), is at 27700 Pacific Coast Highway, approximately 1,800 feet downcoast of the subject property. It has not been accepted, improved, or opened. Another possible location of vertical access is a stairway that exists approximately 3,800 feet downcoast of the present application, at Geoffrey's Restaurant at 27400 Pacific Coast Highway. Here the conditions of approval on Permit 5-83-517 (BFSA) required that the stairway down the bluff be made available for public use. There is a series of permits with conflicting provisions on this site, and no entity has accepted management responsibility for this site. There is no public parking and no public access sign.

When the presently proposed subdivision was approved at Los Angeles County, the County did not require it to provide access, on the basis that the adjacent property, Chiate, had provided access. Also, at the time that the tentative tract map was being considered by the County, the County's standard of review was not yet the Land Use Plan.

The conditions require a mitigation program that would provide funds to improve the accessway held by the State Coastal Conservancy (at Chiate-Wildman) or alternative easement to this beach. The amount proposed by the applicant was determined by the applicant's consultant's estimate of the construction cost for the improvement. This is proposed by the applicant as a way of dealing with the burdens upon public access caused by additional development. The estimate of construction differs from an estimate developed by consultant's to the State Coastal Conservancy. Condition III (1)(b) addresses this discrepancy by basing the fee on the Conservancy's estimate unless they agree that facilities can be provided for a lesser amount not less than the applicant's estimate.

The Commission notes that it has examined in detail, in prior applications as noted in the project history and in other sections of this report, the types of burden and the cumulative effects of additional development upon public access. Funding of improvements to an existing easement or funding of operational costs necessary to open to public use an existing developed easement represent responses to these burdens. Such responses are appropriate in this particular case where there are existing public easements to other portions of this same beach and where there are particularly difficult siting constraints for development of new accessways. Because of the present existing access easements which are not yet opened to this beach, at this location one impediment to realizing public use of these easements has been the development and maintenance of these existing easements. This permit, as conditioned, will result in new public access to this beach area.

The Commission notes also that the record reflects discussion of the possibility of shifting this easement to another site. If a subsequent

proposal is made to implement this approach, it can be evaluated on its own merits. In this instance, the funds made available through this action could be utilized to improve the alternate site to the same general beach area and thus provide public access in that manner. In order to provide that access impacts are adequately mitigated, the Commission must assure that expenditure of any funds will result in new public access. As noted previously, there are several recorded offers in the same beach area, some of which already have facilities, but are not yet open to public use because they lack operating agencies and funds. In order to assure that the funds are allocated to the realization of public access the condition III (1)(b) provides that if the funds are not spent within two years, the Commission may, if they determine in a future action that improvements to an existing easement are not feasible or necessary to provide adequate access to this beach area, reallocate the funds for operational costs in order to fully open an existing improved easement to public use. The Commission finds that, as conditioned, there is a reasonable expectation that access can be achieved through means of either dedication or improvements to or opening of an existing easement. Accordingly, the approach embodied in the conditions can be found to be consistent with the applicable requirements of the Coastal Act and the relevant provisions of the certified Malibu/Santa Monica Mountains Land Use Plan of the County of Los Angeles.

5) Cumulative Impacts of Development

The access policies of the Coastal Act must be read together with Section 30250, which requires a determination of whether or not a new subdivision will, in conjunction with other subdivisions, have adverse cumulative impacts that will overburden the resources and infrastructure of the Malibu/Santa Monica Mountains plan area. In previous actions the Commission has found that residential subdivisions in that area will have cumulative impacts on, among other things, natural vegetative cover, wildlife habitat, public shoreline access, and limited road capacity on Pacific Coast Highway and the cross-mountain roads, with associated impacts on the ability of the general public to reach the recreational resources of the Malibu beaches and mountains.

Section 30105.5 of the Coastal Act defines the term "cumulatively", as it is used in Section 30250(a), to mean that

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The Court of Appeal has consistently upheld the Commission's use of analysis of cumulative impacts as a basis for either denying or conditionally approving proposed development projects. The case of Coastal S.W. Dev. Corp. v. California Coastal Zone C. C. (1976) 55 Cal.App.3d 525 involved a legal challenge to a denial under Proposition 20 (which had no express requirement for consideration of cumulative impacts analogous to that in Section 30250(a)) of a proposed Holiday Inn near the mouth of the San Luis Rey River in San Diego County. The Commission based its denial in significant part on the finding that "the cumulative effect of this and other projects in the area could adversely affect the valuable wildlife habitat at the mouth of the San Luis Rey River." In upholding the Commission's reliance upon its analysis of the cumulative impact of the proposed development, the court held that

careful consideration must be given to the cumulative effect of projects proposed to be undertaken...[, i.e.,] to...[a] single project in relation to the conditions then existing and to conditions that would inevitably or probably result from accelerating or setting in motion a trend productive of adverse impact upon environment and ecology. (Emphasis added.)

Similarly, the case of Stanson v. San Diego Coast Reg'l Com'n (1980) 101 Cal.App.3d 38 involved a legal challenge to the Commission's consideration of "the cumulative environmental impact of future restaurants which might be built" in its review of a permit application for the conversion of commercial storage space into a restaurant. The court rejected this challenge, holding that

the policy of the [Coastal] Act requires the agency to consider cumulative impacts before granting approval of a project. (Emphasis added)

The court went on to observe that the absence of consideration of cumulative impacts

would reduce the...Commission's planning function to a shambles resulting in a piecemeal approach which would guarantee the destruction of coastal resources.

The factual circumstances of the case of Bel Mar Estates v. Cal. Coastal Com'n (1981) 115 Cal.App.3d 936 are closely related to the circumstances of this permit application in that the former request also involved an application for a division of land located in the Malibu-Santa Monica Mountains area. In rejecting a legal challenge to the Commission's denial of that application, the court expressly sanctioned consideration of the existing traffic condition of Pacific Coast Highway. The court found the evidence in the record to support the finding that such condition was "overused, with frequent bumper-to-bumper delays" and ultimately held that it was proper for the Commission to deny the permit in significant part on the basis of the "cumulative effect of this...development" on the already overburdened condition of Pacific Coast Highway.

More recently, the court has expressly approved the imposition of access conditions as an appropriate method of mitigating the cumulative impacts of proposed development on access to the shoreline. In Remmenga v. Cal. Coastal Commission (1985) 163 Ca. App.3d 623, the court held that an access condition may be imposed if the effect of a proposed development

together with the cumulative impact of similar projects would in the future create or increase the need for a system of such compensating accessways.

Similarly, in Whaler's Village Club v. Cal. Coastal Com'n (1986) 173 Cal.App.3d 240 the court held that the demonstrated erosive effect on shoreline sand supply of the revetment at issue in that case together with similar effects of similar protective works "up and down the coast"

constitutes a cumulative adverse impact...on public access to and along State tide and submerged lands for which corresponding compensation by means of public access is reasonable.

The Commission reaffirms its conclusions as drawn from previous examination of the above cases. These are that it not only may properly examine the cumulative effects of the proposed development and all other development like it in determining whether to approve or deny a proposed development, but that in fact it has an affirmative duty to examine such anticipated effects and to give them full consideration in reaching a decision upon a particular development request.

a) Build Out Analysis

The Malibu/Santa Monica Mountains Land Use Plan certified by the Commission on December 11, 1986 will allow buildout of an estimated 6,582 new residential dwelling units in addition to the approximately 6,000 dwelling units now existing in the planning area--the entire coastal zone. The State Department of Finance estimates a figure of 2.62 persons per household for the year 2000 in Los Angeles County, which will result in an addition of approximately 17,245 persons in the Malibu-Santa Monica Mountains area.

When there is a burden on access the Coastal Act and the County's Land Use Plan provide for the dedication of access or a denial of the proposed subdivision. The access requirements are based on the impacts of the development allowed in the Plan on access in Malibu, both direct and cumulatively.

The findings of the LUP as approved by the Commission estimated that the proposed development and other divisions of land and related development ([primarily] guest houses allowed on larger lots and counted for density cap and phasing purposes as .5 dwelling unit) could add 998 new dwelling units seaward of Pacific Coast Highway.

However, a review of the Land Use Plan adoption files and of the basis of that estimate of 998 additional dwelling units seaward of PCH indicates that this estimate may be lower than appropriate. The Commission's findings of January 15, 1987 on the Malibu/Santa Monica Mountains Land Use Plan state that up to 998 additional dwelling units seaward of Pacific Coast Highway could be developed consistent with the LUP. The reason that a higher level of actual development is possible is that the residential densities allowable under the LUP in Land Use categories #8A through 9C are stated as a range, rather than as a fixed density. For instance, Category 8A allows from two to four dwelling units per acre, and Category 9C allows from ten to twenty units per acre.

The figure of 998 units was based on allowable densities at or near the low end of each range, rather than the middle or top of the range. There is no assurance in the Land Use Plan that projects approved will in fact reflect densities at the bottom of each range. If individual development projects were approved at the top of each range, the figure of 998 units could be increased substantially, by 60 percent or more (1,656 units, exclusive of guest houses, would be allowed by the LUP on the coastal terrace seaward of Pacific Coast Highway, using the top of each density range).

An additional reason why the figure of 998 units is too low is that the estimate of 998 dwelling units did not account for guest houses. Such structures are allowed by the plan to be up to 750 square feet in size and to have full kitchen and bath facilities, unlike guest houses in such other jurisdictions as Monterey County, where such structures are limited to 400 square feet and may not contain independent cooking facilities.

Without a parcel-by-parcel analysis, it is not possible to determine precisely how many parcels would qualify for construction of a guest house. However, since the basic qualification for construction of such an additional structure is that the parcel be at least 2 acres, a large number of both existing and potential parcels would be eligible.

The Commission finds that as discussed here and in other sections of this report, both the increased demands for public use of the public tidelands by the residents of the additional dwelling units that would be permitted under the plan and the potential for exacerbation of existing levels of conflicts and demands for management time and funding would be substantially increased as the result of the proposed creation of additional potential residential density seaward of PCH and all other development like it allowed under the Coastal Act and the approved plan.

Malibu is a partially developed community with twenty-one miles of shoreline where 14 miles are in private ownership and already subdivided. The plan concentrated on requiring access from existing subdivided lots. The Land Use Plan estimates that each of the additional dwelling units will put nine vehicle trips per day on the crowded coastal access routes.

The Commission notes that most divisions of land to be expected between the first public road and the sea will have five or fewer units, and the greatest number will, like this one, create only one unit.

The reason that most divisions are likely to be small is that the Malibu beachfront is already parcelized. While the LUP allows for vertical access on subdivisions and allows for densities as high as two dwelling units per acre on the seaward side of PCH, relatively few parcels between the first public road and the sea are likely to provide more than three units, if subdivided for single family houses. There are two locations where there are numerous lots that are larger than two acres between the first public road and the sea--Paradise Cove and outer Malibu above Nicholas Beach.

The total range of parcel sizes in the areas of Malibu seaward of Pacific Coast Highway as a whole is, excluding publicly owned parcels: no parcels greater than ten acres; two parcels between five and ten acres, including one in Paradise Cove (probably the Cafe and trailer park); 47 lots between two and five acres, including 26 in Paradise Cove-Escondido; 239 lots less than two acres, including some as small as one third of an acre, including 39 in Paradise Cove; and approximately 688 small lots, which have no apparent possibility of further subdivision or provision of vertical access. Of the various Malibu subareas, Paradise Cove contains the largest of the available single family lots, and the greatest potential for subdivision. A rough count done for 5-88-170, in assessors map books 4460 and 4459, which include Paradise Cove, showed only one lot greater than five acres, 26 lots between two and 4.9 acres, 39 lots less than two acres, but conforming, and 130 small lots on the beach. (The smaller parcels are generally concentrated along Escondido Beach Road, Latigo Shores, and Malibu Cove Colony). In contrast, outer Malibu, parcel book 4473, contained 20 lots between two and five acres. The Commission accepts this rough count, which may involve inaccuracies from the treatment of parcels as if they were development sites, to indicate that the cumulative effect of lot splits on the shoreline in Malibu will be to create a large number of new units through one- and two-parcel lot splits and multiple unit development with no additional access provided to the shoreline unless the Coastal Act and the plan standards are followed. The Commission notes that the parcel that is the subject of the present subdivision request was in itself formed through a minor subdivision of a larger parcel.

The pattern of development that can be expected to occur in light of this continued pattern of parcelization will not involve major subdivisions (five or more parcels); however, the number of new units will cumulatively equal the effects of major subdivisions on beach resources. The LUP does not show the likely number of subdivisions per sector, but clearly it is possible to create forty lots in minor land divisions along Paradise Cove. The estimate of forty lots is based on an assumption that most divisions will occur in the 26 lots that are larger than two acres. Some existing parcels smaller than two acres may be able to be divided as well, and some beachfront parcels are designated for higher density development. The residents of the additional units will use public accessways to public beaches and public tidelands, and the beach and tidelands areas themselves, and will compete for the already limited space available on public roads.

In its consideration of a proposed subdivision, the Commission must consider methods to avoid or mitigate the cumulative impacts of the project. The Commission recognizes that a large part of the Malibu shoreline consists of parcels that could be subdivided by a process of two- and three-lot divisions. The result of development in Malibu in the past has been the creation of stretches of two to three miles of shoreline without vertical accessways.

The Commission reaffirms its previous findings that the cumulative effect of approving minor subdivisions such as the present application with no vertical access requirement would be that plan buildout could occur with subdivision

patterns similar to those utilized in this area in the past with some consistency, as reflected in the creation of the present parcel, and that no new access would be provided to mitigate impacts to public access in conjunction with this process. The Commission finds that such a result would be inconsistent with the California Constitution, applicable Coastal Act policies, and the certified Land Use Plan. The application as conditioned contains a program responding to this need, and so can be found consistent with the California Constitution, and applicable Coastal Act policies, and the certified Land Use Plan.

b) Cumulative Impacts of Beach Subdivisions on Public Shoreline Access

The Commission routinely examines the cumulative impact of any subdivision in the area served by Pacific Coast Highway and the cross-mountain roads. Beach subdivisions share in all the impacts routinely associated with subdivisions anywhere in the Malibu-Santa Monica Mountains Coastal Zone. Beach subdivisions also have impacts that are separate and distinct and that relate specifically to impacts on the ability of the people of California to exercise their constitutionally protected right of access to the beaches, tidelands, and coastal waters of the state.

Increased development of residential units along the shoreline will have cumulative impacts such as overcrowding and congestion that will degrade the quality of the shoreline areas for public use and enjoyment and that will increase the difficulties experienced by the general public in getting to publicly owned land. The greatest conflict with the protection of resources that the Coastal Commission is charged by law to carry out is a cumulative adverse impact on the beach as a public recreation resource. More coastal lots mean more local residents regularly using state tidelands. Subdivisions, individually and cumulatively, increase the population of individuals competing for the use of public tidelands and increase the frequency and the severity of conflicts between residents and visitors.

i) Development of Additional Residential Units in the Beach Area Increases the Use by Residents of Public Beaches and Tidelands and Vertical Accessways

Recreation facilities in the Malibu-Santa Monica Mountains area are overcrowded and congested, a pattern becoming increasingly common and controversial in Southern California, where the State Department of Parks and Recreation projects increases in user activity days in a wide variety of recreational activities, including beach-related ones. Projections in District 8 include increases in days of ocean swimming from 29,777,877 in 1980 to 35,945,772 in the year 2000, an increase in saltwater fishing from 5,899,093 to 7,725,946, an increase in body and board surfing from 22,474,744 to 27,103,817, and a rise in beachcombing from 4,528,342 to 5,619,844. An added population of 17,245 persons in the Malibu-Santa Monica Mountains area can be expected to create a demand for new parks, additional miles of trails, and new or enlarged public beach areas.

The existing capacity of the public accessways that lead to public beaches and tidelands, the beaches, the trail system, and other recreational facilities is not adequate to meet the reasonably foreseeable increase in demand attributable to future development, including this development and other projects like it, in the Malibu-Santa Monica Mountains area. A locally increasing population has increased the demand for public beaches as community open space. Use of the public beach nearest the subject property, Zuma Beach, has grown to the point at which beach use is near capacity on summer weekends. The LUP estimated that the number of beach visitors per summer weekend increased from 79,600 visitors in 1979 to 106,000 visitors in 1981.

In addition to direct competition, the intensification of lands next to public beaches and tidelands reduces the quality of the public's ability to use state tidelands. In a recent study on visual carrying capacity, "Projecting the Visual Carrying Capacity of Recreation Areas" (Nieman and Futrell), it was shown that "individuals prefer less crowded areas for their recreational experiences...individuals are disturbed by what they perceive as crowded conditions in outdoor recreation areas. This negatively affects their enjoyment level and, thus, the perceptual or visual carrying capacity of the recreation area is decreased or surpassed." It was also shown that "as the incidence of man-made elements in the landscape increased the percentage of very disturbed responses increased and vice versa for the non-disturbed responses."

In other studies, similar conclusions are drawn. Because continued subdivision and subsequent residential development such as that represented by this application will convert portions of the Malibu area from a relatively lightly developed area to that of a suburban residential neighborhood, the findings of these studies are particularly applicable. Investigations have demonstrated that such changes affect users' perceptions of the nature and value of the recreational experience. "The Effects of People and Man-Induced Conditions on Preferences for Outdoor Recreation Landscapes" (Carls) concludes that "the results...strongly indicate that numbers of people and levels of development have a notable effect on preference for outdoor recreation landscapes...the presence of greater numbers of people and higher levels of development, as elements of the landscape, tend to reduce preference." In "Recreational Use of the Coastal Zone: Effects of Crowding and Development" Carls notes that "there is growing evidence that esthetic factors, such as the number of people...have an important influence on choice of recreation facilities and over-all user satisfaction...people tend to select those places with lower levels of crowding and development"; further, "...as the number of people in a landscape scene increased, preferences for that scene decreased." Other studies report even stronger reactions by users. "The Assessment of Environmental Aesthetics in Scenic Highway Corridors" (Evans and Wood) noted that "even slight changes in adjacent roadside development affect significant changes in perception of roadside quality. People felt that with increasing human intrusion the corridor became proportionately more worthless, useless, cluttered, unpleasant, ugly, and drab. Increased development also reduced ratings of scenic quality and preferences." Another recent article, "Oil and

Gas Development in a Coastal Landscape: Visual Preferences and Management Implications" (Nassauer), found that "apparent naturalness...strongly influenced preference. Naturalness was clearly noted in the description of landscape features and favored in ratings of landscape views."

The conclusions of these studies are consistent with some of the most distinct preferences expressed in a 1987 State Department of Parks and Recreation survey of public opinions and attitudes on outdoor recreation. Almost 90 percent of the participants approved of increasing the protection of scenery and the natural environment. Two thirds approved of an increase in the number of wilderness areas where no vehicles or developments are allowed. On a specific question of support for developing more riding and hiking trails where no vehicles are allowed, 56.7 percent of respondents expressed the strongest possible support (5 on a scale of 5-1) and an additional 23.6 percent chose a ranking of 4. Support for the provision of open space in urban areas was almost as strong: 55 percent of participants ranked such a program as of highest support, a 5, and 22.7 percent gave it a ranking of 4.

Because of the magnitude of the new development represented by the present proposal and others like it as allowed in the plan, the Commission finds that these findings are particularly applicable to an evaluation of the present application. The Commission reaffirms this conclusion as reached in previous examination of this question.

ii) Conflict Between Recreational and Residential Users

The nature and extent of the reported conflicts between recreational and residential users in the Malibu area, including the reported problems at the publicly operated beach area that is physically most similar to the area of the proposed land division, the Robert H. Meyer Memorial State Beaches (El Pescador, La Piedra, and El Matador), have been reviewed. The types of resident-visitor conflicts and the management questions that tend to develop that were identified by staff of the State Department of Parks and Recreation (personal communications, M. Getty and B. Taylor) are discussed below.

In many cases where additional subdivision would be allowed under approved plan land use designations, the topography and the existing parcel pattern is such that once a parcel is in existence, it is not always possible to site a subsequent dwelling in a manner that minimizes potential conflict between public recreational use of the state tidelands and private residential use of the adjacent uplands. Just upcoast of the subject parcel, for instance, a house on Sea Drive, 5-85-758 (Norred), was literally carved into a bluff that already had dwellings at the top of it. The only alternative in that case, however, given the inauspicious nature of the site in regard to plan policies designed to preclude additional building on bluff faces, was to locate the new structure on the beach itself, a result also not favored under plan policies, and one that could heighten conflicts between residents of the new structure and members of the public walking downcoast along the beach from Paradise Cove. That use pattern has been acknowledged to be a common and well-established pattern.

Because use of the public recreational sites in this area is growing, these sorts of conflicts can be expected to increase as the level of residential use increases. Use figures for the Robert H. Meyer Memorial State Beaches, are available from through the 88-89 fiscal year. Current use is estimated at more than 210,000 persons per year. The opportunities for the public to enjoy a relatively secluded low-use intensity beach experience in the Malibu area are fairly limited. When the Robert H. Meyer Memorial State Beaches were opened in 1984, a small article on the editorial page of Sunset Magazine pictured one of the coves and noted the unusual opportunity that this unit afforded to members of the public.

A major article in Sunset in July, 1986 similarly identified the Robert H. Meyer Memorial State Beaches as being among the "choicest recent additions to the public coastline," providing an unusual opportunity to enjoy a recreational experience. The environment at these beaches is radically different from that available at Zuma Beach, for instance, where there are some 3,200 parking spaces, two snack stands, nine restroom buildings, and 12 lifeguard towers serving a long stretch of sand. Physically, Zuma is quite uniform along almost all of the entire length: sand backed by unlandscaped parking lots interspersed at intervals with service buildings, and with a fence separating the parking lot from the immediately adjacent Pacific Coast Highway.

In contrast, the beach areas of the Robert H. Meyer Memorial State Beaches are located in coves of varying sizes, reached by stairways down from the blufftop parking areas, and substantially removed, aurally and psychologically, from Pacific Coast Highway. State Department of Parks and Recreation personnel report that almost to a person, visitors to the Robert H. Meyer Memorial State Beaches remark with pleasure upon the beauty and relative isolation of the sites, and that the visitors often volunteer comments of appreciation for the availability of such a different beach experience.

State Parks and Recreation Department personnel have observed several changes in public use patterns in the Malibu area in the past several years. A large parking lot was opened in the Point Mugu area several years ago, and the level of public use increased dramatically and has kept increasing. In addition to meeting overflow demand coming from the downcoast (easterly) direction, Parks staff notes that the extensive growth in the San Fernando Valley area, the increased availability of cross-mountain roads, and particularly the very high rate of growth in the northwestern Los Angeles County-southwestern Ventura County area have combined to create very substantial increases in demand for public beach and tidelands areas in this vicinity; they expect this pattern to continue and intensify.

The State Department of Parks and Recreation staff has publicly acknowledged that an increased level of management is needed to deal with the conflicts caused by increased residential development and increased use of public beaches and tidelands. The staff in the Santa Monica Mountains District, which is part of the Southern Region, has repeatedly requested additional

staffing, based upon the substantial and growing public demand for public recreational facilities and services in the beach units of the Santa Monica Mountains District.

In addition to perceiving the need for more funding and staffing to meet management and public safety needs arising from continued increases in public use of the Malibu beaches, Parks staff has reported incidents of conflict or calls of complaint. These have included complaints by members of the public about allegedly being told by private security guards that they could not enter a given sand area, and calls of complaint by occupants of homes adjacent to the public tidelands about members of the public allegedly trespassing upon private property. Parks staff notes that their general approach is to handle complaints or conflicts through education and discussion whenever appropriate and possible, and that written citations are issued only as a last resort. They indicate that the management and enforcement needs are of particular concern at locations where private residential development occurs within close proximity to public beaches and tidelands.

Because of the large number of parcels existing west of Pacific Coast Highway at the time of adoption of the certified Malibu/Santa Monica Mountains Land Use Plan, and the potential for increases in the number of such lots because of land divisions such as the one proposed in this application (and construction of guest houses as well as main residential structures) that may be allowed under the LUP, as documented elsewhere in this report, the possibility for an increased level of conflict, or at the least an increased need for educational and management services to prevent or minimize such conflict, may be expected to increase.

This is in addition to the potential for increased competition for use of the public beach and tidelands areas themselves resulting from the proposed land division and others like it and the resulting increase in the number of residents living in close proximity to public beach and tidelands areas, as detailed elsewhere in this report. It is also in addition to the perceived aesthetic and psychological conflicts discussed in this report.

There have been numerous reported incidents of verbal altercations between residents and visitors. There have also been reported threats of physical action, including indications of the possible use of guard dogs, and threats or actions on the part of residents that the sheriff's office would be called. There is also an extensive history of alleged violations and of the construction of barriers, including chain link fences and rubble walls, ostensibly erected to mark public-private boundary lines, and of the placement of "keep out", "poison", and similar signs, sometimes allegedly without necessary permits. More elaborate signs sometimes purport to identify the location of the mean high tide line. One such sign is located on Malibu Road downcoast of the present application. Investigations by Commission staff include the apparent placement of such fences, barriers, and signs upon public beach and tidelands areas themselves as well as upon the adjacent private lands.

Many alleged violations that are investigated by the violations unit involve questions of access, often as it relates to resident-visitor conflict. Within a short distance of the present application, several major alleged violations regarding access are currently under investigation; all represent long-standing controversies, in some cases of several years duration.

The potential for resident-public conflict includes at least two types of conflict. First, as discussed above, the actual extent of beach use and of access routes to the public beach and tidelands areas by residents, their families, and their guests may lead to actual or perceived overcrowding or competition for public accessway and public beach space and thus cause conflict with members of the public. In the past staff has observed individuals using the dry sand area within existing 10 foot wide public vertical accessways as a location for sunbathing, possibly because of conflicts with neighbors. This practice reduces the amount of space within the vertical accessway that is available for use by other members of the public.

The second type of resident-visitor conflict that increases with residential buildout is one of perception. As more and more homes are built in close proximity to the public tidelands, the resulting perception on the part of the public that the beach is a private one will irretrievably alter the nature of the beach experience. In the case of those parcels that are particularly poorly located, the new construction is so substantial and so close to the public tidelands that the very presence of the house is intimidating. When this is coupled with a pattern of active and institutionalized conflict as described above, including incidents such as the hiring of private guards who make representations to visitors as to where the limits of private property lie (as the State Department of Parks and Recreation reported was the case at the Meyer Memorial State Beaches over the July 4 holiday in 1988), a psychological factor of intimidation needs to be examined. This is in addition to the practical and legal questions of having a private security force make representations as to the precise location of the line of public-private ownership.

It is these conflict-creating impacts of beach subdivisions which are dependent upon their location that cannot be fully mitigated without an affirmative measure to improve public access to state tidelands.

iii) Intensification Reduces Informal Use of Land

In addition to creating the types of resident-public conflict detailed above and creating the adverse effects upon traffic discussed elsewhere in this report, increased residential development on lots that occupy the land between the first public road and Malibu's beaches has reduced the use by the public of beaches, accessways, and trails formerly used by the public.

In 1972, after the Gion and Dietz decisions, Los Angeles County shot aerial photos of the coastline and identified many potential accessways in Malibu and other communities (personal communication, Ken Kvammen). These photographs

were not used for the basis of adverse condemnation lawsuits for a number of reasons, one of which was the overwhelming expense.

Near the subject property there was a trail that went down a canyon to a beach. This trail was principally used by residents of the coastal terrace, although it was theoretically available to the general public. In 1981, a single family house was constructed on the lot three parcels to the east that included the trail. As part of the house development, the new owner constructed a wrought iron fence that blocked the trail. Construction of fences, like this, are a not unexpected result of increased conflict between new residents in a community that is building out and long-term beach use.

iv) Mitigation Program for Cumulative Impacts Associated with Subdivision of Land in the Market Area

On June 18, 1981, the Commission adopted the following findings on the impacts of subdivisions in the area in which the applicant's project is located:

...Cumulative Impacts

Land divisions establish both the location and intensity of new development and, therefore, determine the amount of impact on coastal resources which will occur in the future. For the most part, land divisions are irreversible. Consequently, land divisions, especially those which occur outside of or expand the boundaries of existing developed areas, must be carefully reviewed so as not to undermine the basic Coastal Act goals of resource conservation and concentration of development.

The Coastal Act requires that new development, including subdivisions, can only occur where public services are adequate and only where coastal access and resources will not be cumulatively affected by such development. About 9000 parcels in the area are still undeveloped, almost 2/3 of the total.

The creation of new building sites in the area, thus committing the land to more intense development, while a very large number of undeveloped lots already exist, will cause adverse effects on wildlife habitat, scenic and visual resources, natural landforms and potential future recreational use of the mountains and beaches. Development on new parcels will also cause an increase in the risks to life and property due to high geologic and flood hazards common to the region and would increase the amount of erosion due to grading for roads, utilities and building pads.

Because of the potential direct and cumulative impacts on coastal access and coastal resources, prior to the preparation of a Local Coastal Program conforming to the policies of the Coastal Act, no further divisions of land should be approved. This guideline applies to all portions of the Malibu-Santa Monica Mountains coastal zone.

The underlying principle of this guideline, which has generally been followed by the Commission and which is reflected in the Land Use Plan, is that all projects must mitigate cumulative impacts, and comply with the requirements of Section 30250(a) of the Coastal Act and Policy 273 of the certified Land Use Plan. The Land Use Plan land division policies--271, 272, 273, and 274--require, among other things, that the cumulative impacts of new subdivisions be adequately mitigated. The Commission finds that the application as conditioned includes a substantial mitigation provision designed to either provide vertical access or improve or open to public use an existing public easement, and thus it can be found to have made an appropriate mitigation to deal with the cumulative effects of the division.

6) Traffic Impacts

One of the principal cumulative adverse impacts caused by new development is traffic. The Pacific Coast Highway Study (ACR 123) prepared by Caltrans (December, 1983) stated in the section on Recreational Influence that "Pacific Coast Highway is a designated scenic highway which provides spectacular vistas of natural and man-made features. The Pacific Ocean, the beaches and parks served by Pacific Coast Highway, and Pacific Coast Highway itself, constitute an integrated and irreplaceable recreational resource for the vast, growing population of the Los Angeles area. Approximately 23.5 million people visit the beach annually. Access to the beaches between Santa Monica and the Ventura County line, a distance of 33 miles, is through the mountains via four cross-mountain roads and along Pacific Coast Highway." The study noted that "the beach area is such a sought after recreational resource during the summer months that on certain days congestion is inevitable." Caltrans further noted in the DRAFT Route Concept Report prepared for Pacific Coast Highway between the McClure Tunnel in Santa Monica and the Malibu Canyon Road intersection (8/14/84) that there are no alternate, parallel routes in the immediate vicinity of Pacific Coast Highway along this section. The ocean on one side and the rugged Santa Monica Mountains on the other have presented barriers to highway development. The nearest parallel highway or route of any significance is Route 101 (Ventura Freeway) located 12.4 miles north of Route 1 via Route 27 (Topanga Canyon Boulevard). This report characterized Pacific Coast Highway as presently "able to handle the traffic volume except for the stretch between Topanga Canyon and Sunset Boulevard."

Section 30252 of the Coastal Act states that the location and amount of new development should maintain and enhance public access to the coast by minimizing use of coastal access roads, and Section 30254 provides that where existing or planned public works facilities can accommodate only a limited amount of new development, public recreation shall not be precluded by other development. Contrary to these requirements, the traffic studies done by Caltrans in 1983 and 1984 show that traffic generated by this and other new residential development allowed in the approved Malibu/Santa Monica Mountains plan will increase vehicular use of coastal access routes and thus will have a detrimental effect upon the ability of the new residents and other recreationists to reach and enjoy recreation areas in Malibu and the Santa Monica Mountains, and upon visitor enjoyment of the travel experience itself.

Increased levels of traffic resulting from private development make it more difficult for recreational users to find parking and other support areas. An article in Proceedings of a Forum on Recreational Access to the Coastal Zone (Fawcett) noted that "recreational access is often limited by the highway network's traffic capacity and the amount of available parking." The San Diego Regional Coastal Access Study (Prescott) points out that "vehicular traffic caused by people who are coming to or from recreation areas, or searching for off-site parking spaces, can often result in serious congestion of streets used for internal circulation within recreational zones. This problem is particularly severe when the same street network is used to accommodate high volumes of recreational traffic as well as traffic generated by local residents and local commercial/retail activities." Various studies have documented that the inability to reach an area because of traffic can foster a sense that an area is a private reserve, just as can an inability to find parking.

The population growth that results from the proposed and similar residential development will create much higher traffic levels than those existing today. Caltrans studied the effect of anticipated additional development upon the ability of the public to reach and enjoy this recreational resource and issued its findings in a 1984 report entitled "DRAFT Route Concept Report for Pacific Coast Highway between the McClure Tunnel in Santa Monica and the Malibu Canyon Road Intersection." Caltrans used the LARTS model to forecast the year 2000 traffic estimates. The growth forecast was based on "SCAG's 82" Growth Forecast Policy. In Traffic Analysis Zone 8004 (Malibu west of Malibu Canyon Road), this yielded an increase of residential population from 9,953 in 1980 to 25,300 in 2000, along with an estimated employment growth during the same period from 2,578 to 4,300. The estimated result was to increase the average daily traffic volumes in peak summer months from 46,000 in 1980 to 61,200 in the year 2000. With no improvements in the road, this was estimated to cause the level of service to deteriorate from Level D existing in 1980 to Level F in the year 2000. (Caltrans definitions are: Level D: borders on unstable flow; small increases in flow cause substantial disruption; 46 mph or more can be maintained; freedom to move is severely limited; traffic stream has little space to absorb disruptions. Level E: extremely unstable; cars spaced at four car lengths; any disruptions to traffic stream cause disruptive wave; at capacity no ability to dissipate disruption; substantial deterioration in service; average is 30 mph. Level F: breakdown in flow; stop and go traffic; breakdowns or bottleneck due to excess of cars at one point.) Only with improvements such as an added reversible lane that could provide a third lane in the commute direction did Caltrans estimate that level of service D could be maintained. Even with such improvements, the level of service would be no better in peak summer months in the year 2000 than it is now. The chief proposal of the Land Use Plan to deal with traffic is to add another lane on Pacific Coast Highway; no proposals for substantial expansion of the feeder road network are included in the plan.

On the basis of these studies, the Commission found in approving the Land Use Plan that the added residential development, plus commercial and recreational development as allowed in the approved plan, will greatly increase both local

and regional traffic levels, and so will make it much more difficult for users to reach beaches, parks, trails, and other recreational, historical, cultural, and educational facilities in the Malibu-Santa Monica Mountains area. The Commission specifically concluded that "the existing highway operates at poor levels of service which frustrate the ability of residents and visitors to use it." (Emphasis added) The reasonably foreseeable increase in demand attributable to future development, including that presently requested, is expected to result in a substantially greater adverse effect upon the ability of people to reach present and planned recreational facilities. The new development will exacerbate existing traffic congestion. This conclusion is consistent with an earlier study (Burke, Coastal Access Analysis in California: An Assessment of Recreation Transportation Analysis in Coastal Planning) which concluded, based upon analytical studies of eight coastal areas, that residential traffic due to intense residential development in an urbanized part of southern Orange County would account for 67 percent to 78 percent of future traffic volumes on certain transit routes, thereby limiting the amount of recreational traffic possible. Such an effect is inconsistent with Section 30252 of the Coastal Act, which states that the location and amount of new development should maintain and enhance public access to the coast, and with Section 30254, which provides that public recreation, among other uses, shall not be precluded by other development when public works facilities have limited capacity. The County estimated in the Land Use Plan that of the 500,000 people visiting Malibu beaches, 400,000 will arrive by private automobile.

A project on Pacific Coast Highway has direct impacts on PCH because the project uses the state highway for driveway cuts and guest parking. The residents facing PCH do not have a circuitous alternative access route during heavy beach use times. Therefore the competition with beachgoers for traffic and parking is marginally more direct than for a theoretical lot located in Zuma or Cold Canyon. Allowance of new subdivisions and increased population along the shoreline increases competition for the use of streets and roads. These people will compete for space on limited capacity highways.

Increased levels of traffic resulting from private development make it more difficult for recreational users to find parking and other support areas. The San Diego Regional Coastal Access Study (Prescott) cited above concluded that vehicular traffic caused by people who are coming to or from recreation areas, or searching for off-site parking spaces, can often result in serious congestion of streets used for internal circulation within recreational zones. It noted that this problem is particularly severe when the same street network is used to accommodate high volumes of recreational traffic as well as traffic generated by local residents and local commercial and retail activities. Other studies, as noted above, have documented that the inability to reach an area because of traffic can foster a sense that an area is a private reserve, just as can an inability to find parking.

To mitigate a portion of this impact, Los Angeles County required the dedication of a strip the entire width of the applicant's property, 54 feet deep, as a condition of approval of the subdivision. The Commission notes

that the resulting ability to improve Pacific Coast Highway will provide an opportunity to improve traffic flow.

7. Response to Cumulative Impacts

As a means of addressing the cumulative impact problem in past actions, the Coastal Commission has consistently required participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program has resulted in the retirement from development of existing poorly sited and non-conforming parcels at the same time new parcels or units were created. The intent has been to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

However, the Commission notes that under applicable legal precedent it is under no obligation to utilize the TDC program in this instance. In the case of Bel Mar Estates, cited previously, the Court of Appeal held definitively that the Commission has no duty to condition proposed development to make it environmentally acceptable. (115 Cal. App.3d at 942)

The certified Malibu/Santa Monica Mountains Land Use Plan does not contain the TDC Program as a means of mitigating the cumulative impacts of the potential buildout of all existing lots. Instead, the LUP contains, in Policy 272, six alternative mitigation techniques to prevent the buildout of non-conforming lots, lots in small-lot subdivisions, and lots of less than 20 acres in designated Significant Watersheds. These programs allow new land divisions and multiple-unit projects that are consistent with the requirements of Section 30250(a). Policy 272 essentially has two goals. The first is to recognize that Malibu and the Santa Monica Mountains have a limited infrastructure capacity (sewers, traffic, recreation facilities, beaches, etc.); the second is to direct development away from nonconforming lots in small-lot subdivisions and significant watersheds by retiring lots in those areas.

At its meeting of February 25, 1987, the Commission considered applications for land divisions (5-86-592, Central Diagnostic Labs), multi-unit residential projects (5-86-951, Ehrman and Coombs), and amendment requests to remove or modify the TDC condition on approved permits (5-85-459A2, Ohanian and 5-86-299A2 & A3, Young and Golling), all of which raised the issue of cumulative impact mitigation. The Commission approved the permit and amendment requests with a revised special condition that required that cumulative impacts be mitigated through an alternative means of extinguishing development rights on existing residential building sites in the Malibu Coastal Zone.

The approved condition allows an applicant to choose one of several methods to extinguish development rights, including those programs contained in the certified LUP or through continued voluntary participation in the TDC

program. In approving these permit requests, the Commission found that none of the County's six mitigation programs contained in the LUP, including the residential building cap, were "self-implementing," and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique, remains a valid means of mitigating cumulative impacts in the interim period during which the County is preparing its implementation program. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a).

The intent of LUP Policy 272 is to extinguish development on nonconforming parcels in small-lot subdivisions and significant watersheds by applying one of the five acquisition or retirement policies along with the building cap in order to mitigate the cumulative impacts associated with the potential buildout of the nonconforming lots. All of the impacts of traffic could be addressed by retiring a beach lot. But retiring one of the inland building sites does not reduce direct impacts on shoreline recreation, and the provision of a shoreline access does not reduce the effects of an increase in number of households.

In its previous action the Commission found that it could conditionally approve subdivisions in the Santa Monica Mountains pending completion of an approved implementation plan; however, this approach could delay the proposed development indefinitely. The result could be a "de facto" denial of land divisions and multi-family projects until an acceptable program for implementing the LUP policies is developed.

The Commission therefore adopted an alternative to the original Transfer of Development Credit program that allows the applicant to mitigate the cumulative impacts of the proposed development by choosing one of the County's proposed programs to extinguish development rights on certain lots (which may necessitate waiting until the County adopts an implementation program), or by another program that accomplishes the same objective by purchasing TDCs as originally required.

The action of the Commission in this case is another alternative to the original program. The application before the Commission as conditioned will include a significant response to the effects that will be caused by the development. The Commission thus finds that the application is consistent with Section 30250(a) of the Coastal Act or Policy 272 of the certified Land Use Plan.

7. Summary

The above findings lead the Commission to conclude that absent the mitigation as included in the conditions the proposed subdivision would both directly generate and cumulatively contribute to impacts on coastal resources and public access. Without the mitigation program outlined in condition III(1), the subdivision would result in the intensification of land use in the

Malibu/Santa Monica Mountains area and have impacts on the public tidelands and recreation areas seaward of Pacific Coast Highway which are not mitigated.

The Commission specifically finds that the subdivision would have an adverse impact on public access to the shoreline. Historically, the Commission has required mitigation measures to alleviate this kind of impact, in particular, a vertical access easement. In this case, the project as conditioned is responsive to the need for access. The Commission emphasizes that the impacts of this two-lot subdivision must be mitigated. If the application before the Commission were for a forty-lot subdivision between the first public road and the shoreline, there would probably be no argument over the impacts of the development and the need to provide for public access. However, this area of coastline will rarely see a subdivision of that size, and the Commission must therefore not overlook its responsibility under the law to consider the mitigation of impacts of smaller projects. Instead the typical project will be like this one, that is, a subdivision of two or three lots. It is the cumulative impact of these subdivisions on the Malibu coast that concerns the Commission. As detailed in the above findings, when added up, these small projects will be responsible for the deterioration of the ability of the public to reach the shoreline unless mitigated.

The Commission recognizes that it allowed for these small subdivisions as part of its approval of the Malibu Land Use Plan. However, that plan also requires the provision of vertical access. The application before the Commission as conditioned will provide an alternative method of dealing with the need for vertical access, in the form of a mitigation feature that is responsive to the need to provide access. As detailed above, the Commission finds that the approach in this particular case is a reasonable response to the need for access created by new development in the Malibu/Santa Monica area.

C. Local Coastal Program Consistency

Section 30604(a) of the Coastal Act states in part:

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

The Board of Supervisors of the County of Los Angeles approved the Land Use Plan portion of the Malibu/Santa Monica Mountains LCP on December 28, 1982. In March of 1983, the Commission denied the Land Use Plan as submitted. Subsequently in January of 1985 and June of 1985, the Commission conducted hearings on Suggested Modifications. At its June 13, 1985 hearing, the Commission adopted extensive "Suggested Modifications" to the County's Land Use Plan. In November 1985, the Commission acted to approve a resubmitted

Land Use Plan for the County with Suggested Modifications. In December 1986, the Commission certified the resubmitted Land Use Plan.

The proposed project is consistent with the density designations contained in the LUP. In the form of the mitigation program, it provides for public access on site or at a nearby location. The Commission finds that as conditioned, the provision of the mitigation program is consistent with the intent of the public access provisions of the plan and that as conditioned, the project follows land capability policies and overlays of the certified plan.

D. California Environmental Quality Act.

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved

if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

Previous sections of these findings discuss the potential significant adverse cumulative impacts that the development would have on the environment of the Malibu/Santa Monica Mountains area, absent the provisions included in this application. The land use plan provides that :

P67 Any project or use which cannot mitigate significant adverse impacts as defined in the California Environmental Quality Act on sensitive environmental resources (as depicted on Figure 6) shall be denied.

and asserts in the general goals and objectives that the intention is to follow the policy that is most protective of resources.

As demonstrated above, there are feasible mitigation measures that have not been presented in this project. The first alternative is the provision of an easement for shoreline access. The most severe impact of this project is the continuation individually and cumulatively of development that blocks public access for substantial portions, often as long as two to three miles, of the 14 miles of privately owned land, with over 976 subdivided private lots, between the first public road and the sea. Second, as seen above, there are measures that could be applied to the project that could protect the most geologically and visually sensitive portions of the property.

As discussed above, there are feasible and important mitigation measures that as conditioned will be part of this project. Absent the provision to assure mitigation of public access impacts, there would be a continuation of the pattern of development that blocks public access for substantial portions of the coastline.

Provisions of the California Environmental Quality Act (CEQA) and its implementing regulations (CEQA Guidelines) to which the Commission is subject mandate consideration of the cumulative impacts of a proposed development. Section 13096(a) of the Commission's regulations requires that the Commission's action on a permit application be supported "by written conclusions about the consistency of the application with Public Resources Code, Section...21000 and following,..." i. e., with the provisions of the Commission's program of reviewing permit applications under Section 21080.5 of CEQA. Although this certification exempts the Commission from the obligation to prepare an Environmental Impact Report in connection with its permit actions, the Commission remains subject to CEQA's substantive standards of environmental review. One of these standards is the duty to consider cumulative impacts. In the case of Environmental Protection Info. v. Johnson (1985) 170 Cal.App.3d 604 the Court of Appeal held that in proceeding under the authority of its Section 21080.5 certification the California Department of Forestry (CDF) remained subject to CEQA's requirement to evaluate the cumulative impacts of proposed development. The Court held that

CDF did not proceed in the manner required by law by failing to consider the impact of cumulative effects,.... The failure to consider cumulative impact was a prejudicial abuse of discretion.

The statutory basis for CEQA's requirement of cumulative impact analysis is PRC Section 21083(b). That section requires a finding of

significant effect on the environment if...the possible effects of a project are individually limited but cumulatively considerable.

The definition of "cumulative impact" contained in this provision and in Section 15355 of the CEQA Guidelines is substantially similar to that contained in Section 30105.5 of the Coastal Act. Section 15130(b)(3) of the CEQA Guidelines requires an analysis of cumulative impacts to be accompanied by an examination of

reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project.

In emphasizing the importance of the evaluation of cumulative effects which CEQA requires to be performed, the Court of Appeal has said:

No one project may appear to cause a significant amount of adverse effects. However, without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of...development. Without such control, piecemeal development would inevitably cause havoc in virtually every aspect of the...environment. (San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61.)

In this case the cumulative effect of the creation of lots between the first public road and the mean high tide is being addressed. The Commission finds that as it is before them, the significant cumulative adverse impacts of permitting this project have been mitigated.

The Commission finds, therefore, that the project, with the provisions and conditions specified, may be approved.

6659P

2. Appeal Number 185-81 (Malibu Deville); 185-81 (Malibu Pacific); 2-84-77 (Schiff); 2-83-288 (Malibu Vista); 2-83-282A (Dardonn); 2-83-282 (Central Diagnostic Labs).

7. 2-82-102 (Blakey); 2-84-108 (Hagan); 2-83-204 (Hagan); 2-81-218 (Huggins); 2-84-27 (Linder); 2-83-138 (Verlander); 2-82-202 (Jackson); 2-84-228 (Hecker); 2-83-881 (Los Angeles County Parks and Recreation); 2-81-1880 (Los Angeles County Parks and Recreation).

8. Access and beach processes 4-81-181 (Price family trust); 2-81-211 (Von Buskirk); 2-81-216 (Wizer and Cooper); 2-82-226 (Roland); 2-82-288 (Chringer); 4188-8108 185-81 (Mussel Shoals); 2-82-219 (Surfside Colony); 2-84-288 (Polos); 4-84-01 (Griswold); 2-83-282 (Chevron); 4-79-238 (Edison); 2-81-414 (Fresman); Appeal numbers 2-78 (Benton); 288-78 (Smith); 180-78 (Gersowin); 2-81-411 (De Pariza); 2-81-228 (Zorn); 2-81-423 (Verzax); 2-81-402 (Ward); 2-81-280 (Vinton).

9. Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1987).

10. Economic Profiting of Beach Killers: Coastal Geologists' 77, Richard Silverstar.

11. Shore and Sea Boundaries, U.S. Department of Commerce, Aaron Shofstet.

12. Shore Protection in California (1978) California Department of Beaching and Waterways.

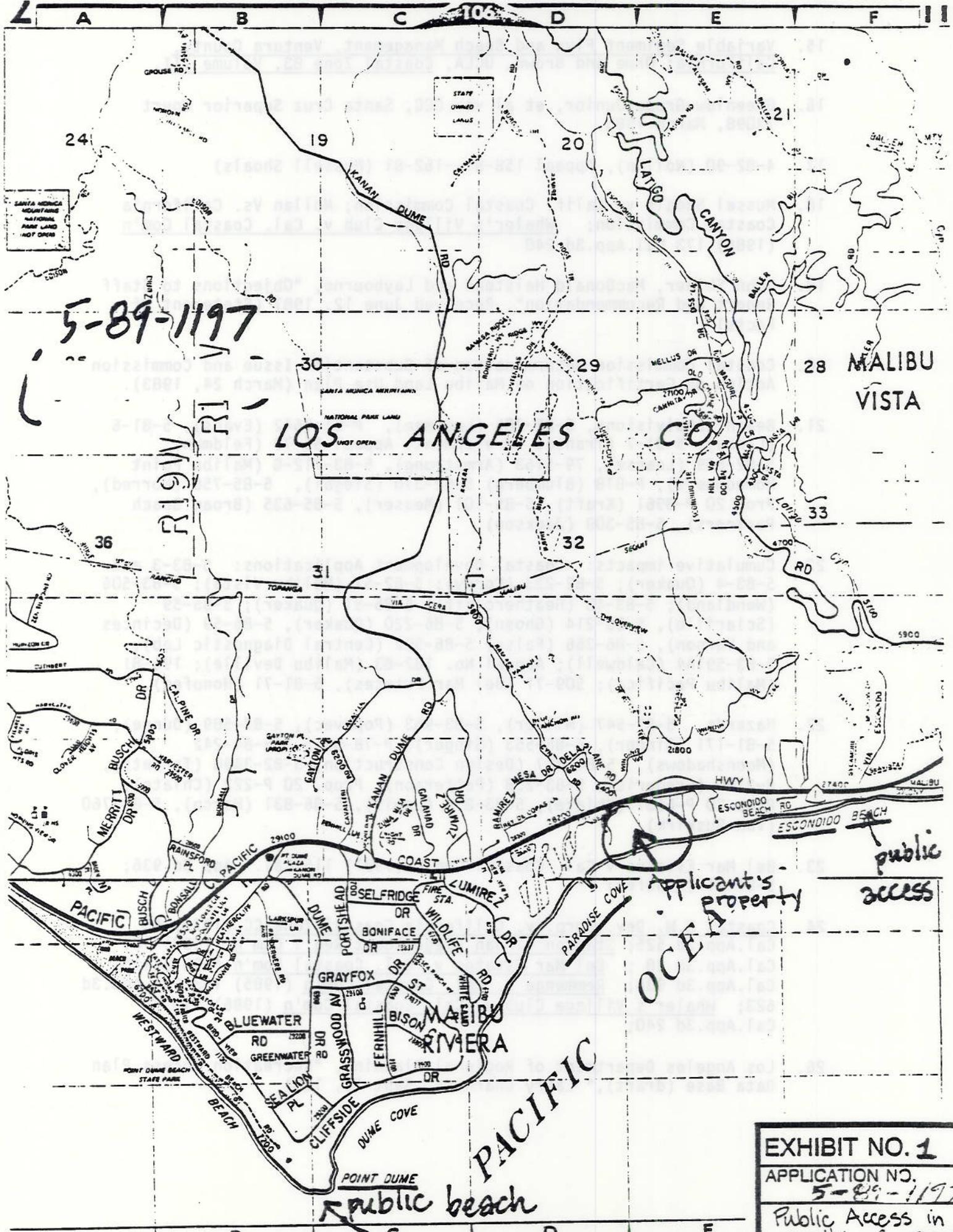
13. Georgia-Pacific Corporation v. California Coastal Commission (1982) 133 Cal. App. 3d 878.

14. Assessment and Atlas of Shoreline Erosion Along the California Coast, California Department of Navigation and Ocean Development, July 1977.

APPENDIX Y
ADDITIONAL SUBSTANTIVE FILE DOCUMENTS
CONSIDERED IN PREPARING FINDINGS ON REQUEST FOR BEACH SUBDIVISION
5-89-1197

4. Vertical and lateral access 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); 5-87-706 (Lachman), 5-87-845 (Zaman).
5. 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).
7. 5-82-703 (Blakely), 5-84-108 (Haagen), 5-83-504 (Haagen), 5-81-218 (Huggins), 5-85-57 (Linder), 5-85-438 (Verlander), 5-85-309 (Jackson), P-79-6238 (Heckler). 5-83-881 (Los Angeles County Parks and Recreation), P-81-7690 (Los Angeles County Parks and Recreation)
8. Access and beach processes 4-87-161 (Pierce family trust), 6-87-311 (Van Buskirk), 5-87-576 (Miser and Cooper), 5-83-996 (Roland), 5-83-288 (Ehringer), A158-8100 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). 6-87-471 (De Peralta), 3-87-226 (Sohm), 5-87-423 (Vedress), 5-87-406 (Ward), 6-87-590 (Vinton),
9. Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981).
10. "Economic Profiling of Beach Fills" Coastal Sediments ' 77, Richard Silvester.
11. Shore and Sea Boundaries, U.S. Department of Commerce, Aaron Sholowitz.
12. Shore Protection in California (1976) California Department of Boating and Waterways.
13. Georgia-Pacific Corporation v. California Coastal Commission (1982) 132 Cal. App 3d 678.
14. Assessment and Atlas of Shoreline Erosion Along the California Coast, California Department of Navigation and Ocean Development, July 1977.

15. Variable Sediment Flux and Beach Management, Ventura County, California; Orme and Brown, UCLA, Coastal Zone 83, Volume III.
16. Greenlaw-Grupe Junior, et al vs. CCC, Santa Cruz Superior Court 73098, March 1985.
17. 4-82-90 (Nollan), Appeal 158-81--162-81 (Mussell Shoals)
18. 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
19. John Shiner, MacDonald Halstead and Laybourne, "Objections to Staff Report and Recommendation", Received June 12, 1987 (Statement of Facts)
20. Coastal Commission Determination of Substantial Issue and Commission Action on Certification on Malibu Land Use Plan (March 24, 1983).
21. Beach subdivisions, 5-87-706 (Lachman), P-81-7642 (Evans), 5-81-6 (Landy), 5-81-7 (Trancas Development) Appeal 55-79 (Feldman), 5-82-659 (Leanse), 79-5163 (Armstrong), 5-83-712-G (Malibu Point Homeowners), P-878 (Blumberg) 5-82-370 (Siegal), 5-85-758 (Norred), Prop 20 P-8961 (Kraft), 5-85-101 (Measer), 5-85-635 (Broad Beach Partners), 5-85-309 (Jackson)
22. Cumulative impacts: Coastal Development Applications: 5-83-3 and 5-83-4 (Quaker); 5-82-223 (Corey); 5-82-57 (Malibu Vista); 5-83-506 (Wendland); 5-83-43 (Heathercliff); 5-85-51 (Quaker); 5-85-59 (Sciarillo), 5-85-214 (Ghosn), 5-86-220 (Quaker), 5-86-59 (Decinces and Vernon), 5-86-366 (Falso) 5-86-592 (Central Diagnostic Lab), 5-83-591A4 (Caldwell); Appeal No. 182-83 (Malibu Deville); 196-81 (Malibu Pacifica); 509-77 (Bel Mar Estates), 5-81-71 (Honofed).
22. Hazards 5-87-547 (Miller), 5-83-963 (Popovec), 5-83-589 (Dunne), 5-81-171 (Singer), 5-86-553 (Singer), P-78-3675, 5-84-242 (Moonshadows), 5-84-437 (Design Construction, 5-82-349G (Tarrets), P-2780 (Frederic), 5-83-258 (Patterson), Prop. 20 P-222 (Chiate), Prop 20 P-6637 (Chiate), 5-83-873 (Lewis), 5-86-831 (Harco), 5-86-760 (Van Buskirk)
23. Bel Mar Estates v Cal Coastal Com'n (1981) 115 Cal. App 3d 936; 5-81-71 (Honofed)
24. Coastal S.W. Dev. Corp. v. California Coastal Zone CC (1976) 55 Cal.App.3d.525; Stanson v. San Diego Coast Reg'l Com'n (1980) 101 Cal.App.3d 38 ; Bel Mar Estates v. Cal. Coastal Com'n (1981) 115 Cal.App.3d 936; Remmenga v. Cal. Coastal Com'n (1985) 163 Cal.App.3d 623; Whaler's Village Club v. Cal. Coastal Com'n (1986) 173 Cal.App.3d 240;
26. Los Angeles Department of Regional Planning, "Recreation Access Plan Data Base (draft)," Larry Charness, Sept 15, 1981



5-89-1197

RIGW RIVER

LOS ANGELES CO

MALIBU VISTA

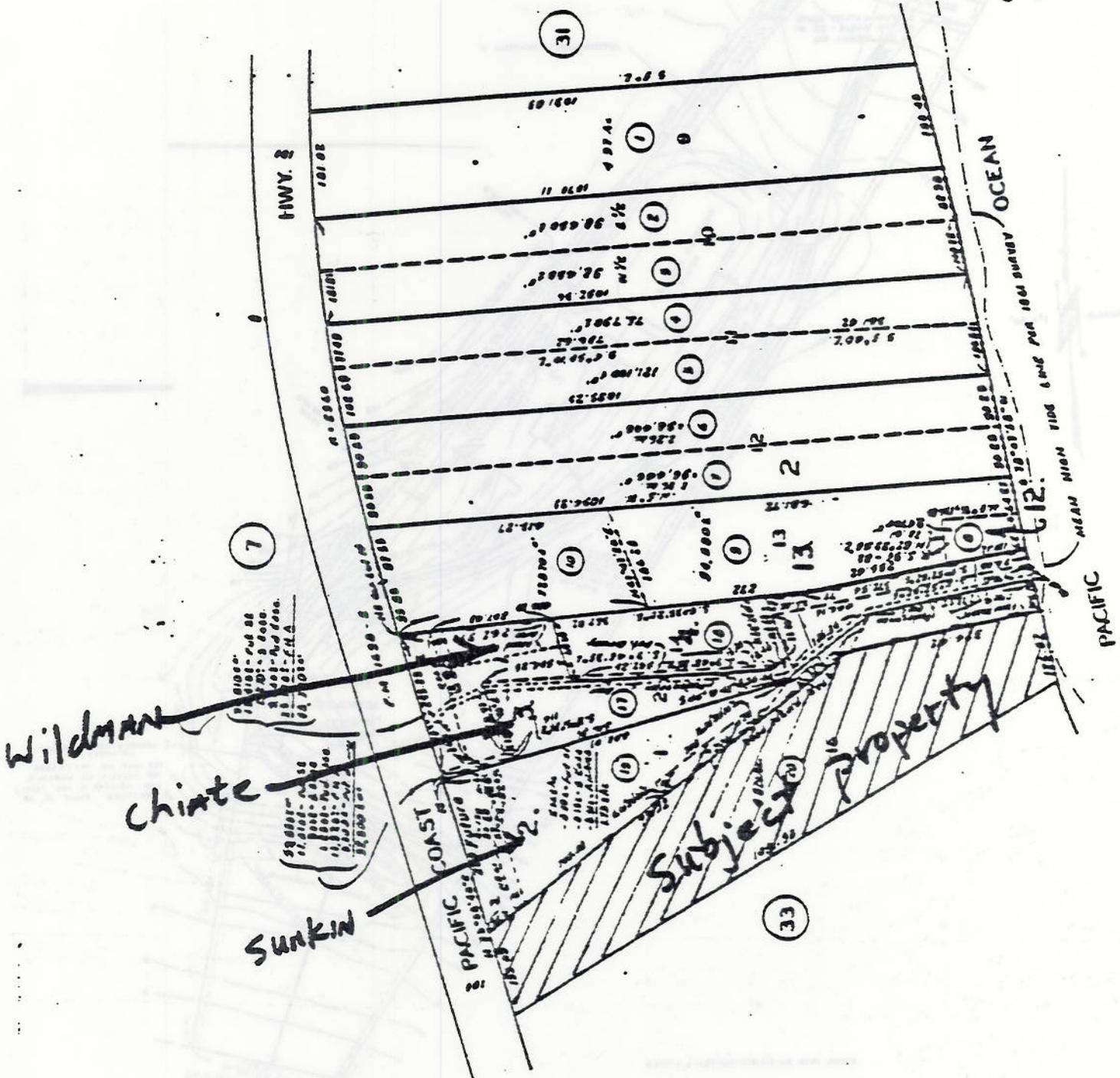
Applicant's property

public access

public beach

EXHIBIT NO. 1
APPLICATION NO. 5-89-1197
Public Access in vicinity of property and Location Map
California Coastal Commission

5-89-1197



1987

32
200'

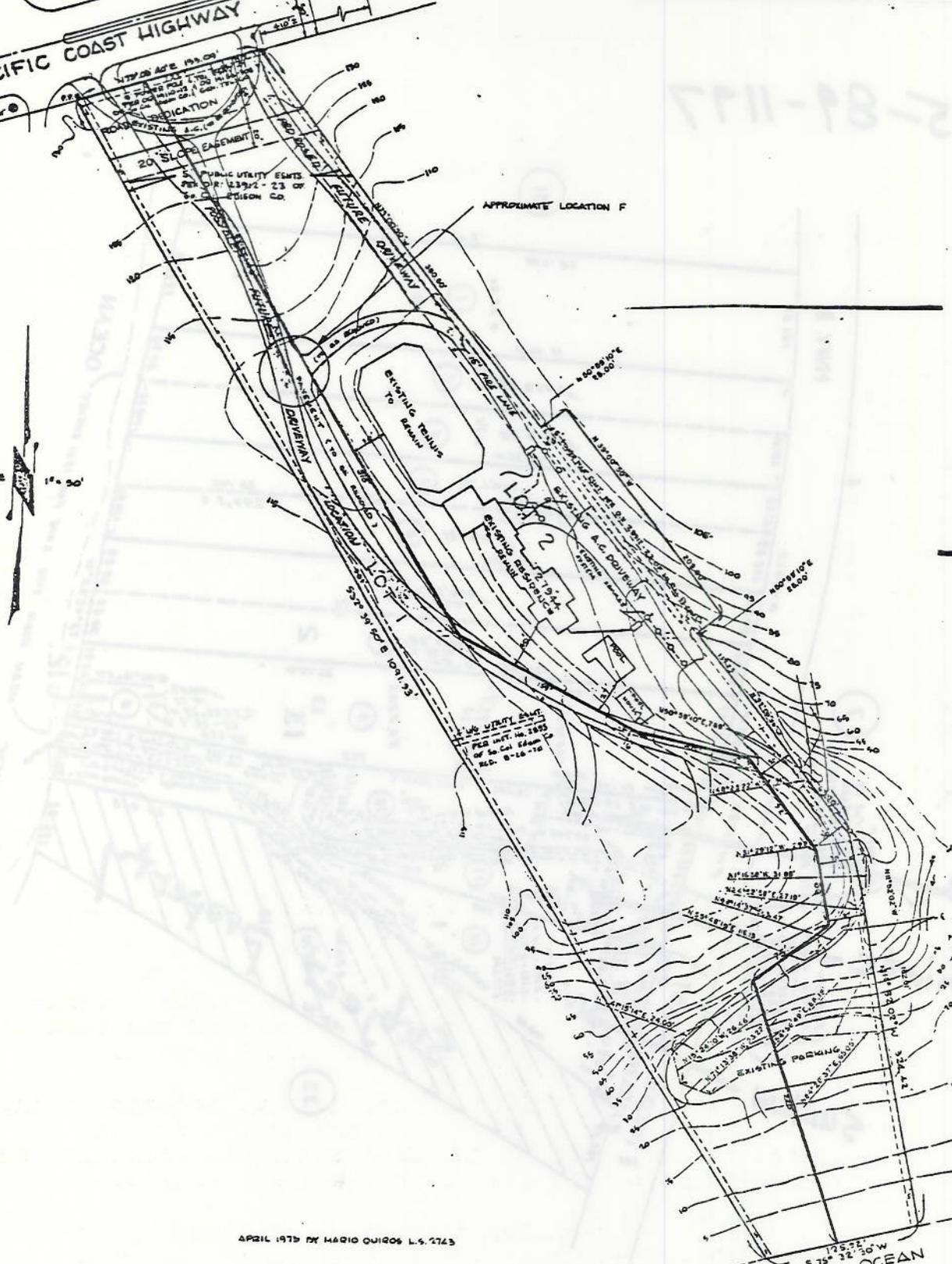


EXHIBIT NO. 2
APPLICATION NO.
5-89-1197
Nearby lots
California Coastal Commission

PACIFIC COAST HIGHWAY

58-117-2

SCALE 1" = 50'



APRIL 1979 BY MARIO QUIROS L.S. 2763

INGRESS & EGRESS EASEMENT
 (10' WIDE)
 PER INST NO 75-185506
 OF ROGER S. AND MARY M.E.
 AND KENNETH R. AND JEAN
 RECORDED JULY 10, 1975

EXHIBIT NO. 3
 APPLICATION NO.
 58-117-2
 SUBDIVISION

EXHIBIT NO. 3
 APPLICATION NO.
 5-89-1197 (Edwards
 TRACT)
 Subdivision w/revise
 lot lines
 California Coastal Commission

LAW OFFICES OF

DE CASTRO, WEST, CHODOROW & BURNS, INC.

EIGHTEENTH FLOOR

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June 13, 1990

RECEIVED
JUN 15 1990
CALIFORNIA
COASTAL COMMISSION

VIA FEDERAL EXPRESS

California Coastal Commission
631 Howard St., 4th Fl.
San Francisco, CA 94105

Attn.: Ms. Liz Fuchs

Re: Application Nos. 5-89-1197; 5-89-287

Dear Gentilepersons:

On March 2, 1990 you forwarded to me a memorandum of the CGH Group outlining their estimate of the cost of improvement of the Chiate-Wildman Coastal Access.

John Gary Wallis, Architect (California License No. C 5824), at our request, has prepared a drawing of proposed improvements to the Chiate-Wildman Coastal Access and has estimated the cost of those improvements.

The enclosed drawing, prepared by Mr. Wallis (3 sets) shows the Chiate-Wildman easement, shows a profile of the proposed improvements (lower left corner) and notes the nature of the improvements required (drawing - middle right).

Mr. Wallis' estimate of the costs of making those

EXHIBIT NO. 4
APPLICATION NO. 5-89-1197
Letter from applicant
3 COST ESTIMATES
California Coastal Commission

California Coastal Commission
June 13, 1990
Page -2-

improvements are set forth on the enclosed "Chiate-Wildman Coastal Access Development/Projected Budget Estimate" (3 sets).

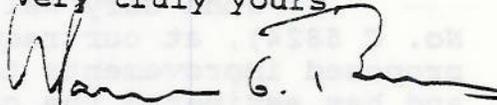
Please note that the cost estimates indicated are: For a private contractor - \$236,054 or, if performed by the Los Angeles County Parks and Recreation Department - \$196,726. The difference between those estimates is the contractor's profit and a lesser sum for engineering and architectural if the work is performed by the county.

To mitigate the effects of the projects described in Applications 5-89-1197 and 5-89-287 our client, the applicant, hereby offers to pay a mitigation fee measured by the cost of improving the Chiate-Wildman Coastal Access, in the sum of \$236,054 as a condition of issuing the permits required by said applications. Said sum is the higher of Mr. Wallis' cost estimates.

The applicant desires to change the configuration of the lot split being applied for in Application No 5-89-1197 per the enclosed Proposed Lot Line Revision For Tentative Minor Land Division Map No. 14-882. We propose obtaining your permit for such revised land division and then applying to the Los Angeles County Planning Commission for the revision and upon its approval recording the tentative map.

In light of the foregoing, we request that you place these applications on the July agenda of the Coastal Commission.

Very truly yours,



Marvin G. Burns of
DE CASTRO, WEST, CHODOROW & BURNS, INC.

MGB/cam
Encls.

cc: Steven H. Kaufman, Esq.
(w/o encls.)

EXHIBIT NO. 4
APPLICATION NO.
5-89-1197
Letter from applicant
to Coastal Commission
June 13, 1990

CHIATE-WILDEMAN COASTAL ACCESS
Development/Projected Budget Estimate.

EXHIBIT 1
(cont'd)

<u>Description</u>	<u>Totals</u>
1. Performance and Materials Bonds	\$ 3,500
2. Seeding	\$ 260
3. Signs	\$ 500
4. Topography as required	\$ 7,000
5. Roughgrading Parking Lot Area (30,000 @ 10¢ sf)	\$ 3,000
6. Fine Grading Parking Area (" ")	\$ 3,000
7. Compacting Slopes at P.Lot(12,000 @ 10¢ sf)	\$ 1,200
8. Paving 2" AC Over 4" Base Striping/Curbs Included (15,000 @ 2.15)	\$ 32,250
9. Pathway (6 ft.wide) Figured @ 10ft. 8,800 sf @ 2.50 sf (Note: Decomposed Granite or A.C.Paving w/Railroad Ties at Steeper Areas)	\$ 22,000
10. Path Grading (8,800 @ 20¢ sf)	\$ 1,760
11. Stairways: A 15 lin.ft.@ \$150	\$ 2,250
B 45 lin.ft.@ \$150	\$ 6,750
12. Bridge (25 lin.ft. @ \$500 lin.ft.)	\$ 12,500
13. Caissons (two @ \$3,000 ea.)	\$ 6,000
14. Concrete Retaining Walls:	
A 180 lin.ft.x 10 ^F H 6ft @\$20/sf	\$ 36,000
B 140 lin.ft.x 10 ^F H 6ft @\$20/sf	\$ 28,000
15. Fencing (8ft.Chainlink 1780 lin.ft. @ \$8 lf	\$ 14,240
SUB TOTAL	\$ 180,210
Contractor Profit (10%+10% or 21% rounded)	\$ 37,844
Engineering, Architect Plans & Specs (10%)	\$ 18,000
PRIVATE CONTRACTOR - <u>GRAND TOTAL I</u>	\$ 236,054

If L.A.County Parks develop this access per my discussion with
the proposed budget could amount to Grand Total II as follows:

1 wk @ \$300/day L.A.Cty. Parks Labor	\$ 2,100
Engineering Fee @ 8%	\$ 14,416
Sub Total (above)	\$ 180,210
L.A.COUNTY PARKS - <u>GRAND TOTAL II</u>	\$ 196,726

CALIFORNIA COASTAL COMMISSION

631 HOWARD STREET, 4TH FLOOR
 SAN FRANCISCO, CA 94105-3973
 (415) 543-8555
 Hearing Impaired/TDD (415) 896-1825

Filed: 12/20/89
 49th Day: 2/7/90
 180th Day: 6/18/90
 270th Day: 9/16/90
 Staff Report: 6/29/90
 Hearing Date: 7/12/90

REGULAR CALENDARRECOMMENDATION AND FINDINGS**Th 86**

APPLICATION NO.: 5-89-1197

APPLICANT: J.A. Edwards Trustee for J.A. Edwards Trust, 1989
 AGENT: Marvin Burns, De Castro,
 West, Chodorow, and Burns

PROJECT LOCATION: 27944 Pacific Coast Highway, Malibu,
 Los Angeles County. APN 4460-32-12

PROJECT DESCRIPTION: Subdivision of 4.82 acre parcel into two parcels, of
 2.48 and 2.34 acres

Lot area: 4.82 acres
 Zoning: R-1-20,000
 Plan designation: 2 du acre (bluff top);
 1 du/2 acre beach
 Project density: 2 acres per du gross

SITE: 27944 Pacific Coast Highway, Malibu, Los Angeles County
 APN 4460-32-12

LOCAL APPROVALS RECEIVED: Parcel Map No. 14882 and CUP No. 2210, Map dated
 December 9, 1982, extended to February, 1989, and
 suspended indefinitely by the County.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission approve with conditions the application for subdivision of a beachfront lot downcoast of Paradise Cove in the Malibu area of Los Angeles County.

SUBSTANTIVE FILE DOCUMENTS:

1. All staff reports, findings, and materials part of applications No. 5-88-170 (Black Tor) and No. 5-89-161 (Black Tor).

STAFF NOTE:

The recommendation before the Commission is to approve the application with the condition to include provisions to mitigate impacts to public access from

a subdivision of shorefront land. (Another related permit, 5-89-287, for construction of a beachfront recreation room, a carport and holding tank will be before the Commission at a future hearing.) The applicant also revised the application to include a minor change in the proposed configuration of the subdivision. The proposed staff recommendation therefore also recommends a condition to require submittal of a tentative map approved by the County.

Staff is recommending alternatives to mitigate access impacts resulting from the subdivision which will result in either a dedication of land on site for public access or the development of access facilities at another existing nearby vertical easement. The State Coastal Conservancy previously presented an estimate of \$337,928 for the cost to develop an existing easement the Conservancy presently holds at the Chiate-Wildman site, about 420 feet downcoast from the subject site. By letter of 6/13/90, the applicant submitted their own estimate of costs to improve the Chiate-Wildman easement totally \$236,054, and proposed to pay \$236,054 for the costs of improvements as mitigation for the effects of both projects proposed by the applicant on the subject site. (However, the recreation room permit is not yet before the Commission for review.) Estimates for the provision of public access improvements at the Chiate-Wildman site differ. It appears that some of the significant differences in the two estimates by the Conservancy's consultant and the applicant's consultant are the following: 1) the location and extent of retaining walls necessary; 2) the manner and extent of the proposed bridging of a ravine area (the Conservancy estimate is based on stairways and a 200' stretch of "bridgelike" structure; the applicant proposes a smaller 25 foot bridge with stairs and retaining walls); and, 3) the amount of design contingency fees.

Because these differences appear significant, the staff recommendation provides the option for the applicant to construct the improvements themselves or reconcile the cost of construction with the State Coastal Conservancy to assure provision of the access facilities.

This staff recommendation also includes language that would allow use of the funds at an alternative location provided it assures equivalent access to the same general beach area. Normally the Commission has not favored in lieu fee payments unless a relevant project capable of achievement had already been designated and work instituted. In this case, staff recommends that the condition be adopted because it will result in either provision of an access easement or assurances to construct improvements at an existing easement.

When this site was before the Commission under 5-77-170 in September, 1988, the Commission expressed its concern about the lack of public access in the Paradise Cove area. The application now before the Commission would be conditioned to include an option allowing an alternative mitigation to the direct provision of access in response to the adverse impacts of this shoreline subdivision.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution and findings:

I. APPROVAL WITH CONDITIONS.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development 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, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of 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.

III. SPECIAL CONDITIONS.

1. Access Impact Mitigation

Prior to the issuance of the permit, applicant shall complete one of the following:

213-590-6043
Comm hearing

- a. Record an offer of dedication of vertical access along the route identified in the 9-2-90 staff recommendation on Permit 5-88-170; or,
- b. Provide evidence of payment of funds to the State Coastal Conservancy in an interest-bearing account for the sole purpose of constructing public access improvements. The amount of funds shall be either 1) \$337,928 pursuant to the 2/23/90 estimate prepared by the CGH Group for the State Coastal Conservancy of the costs of improvements necessary and sufficient for public use of the Chiate-Wildman easement, or 2) if verified in writing by the Executive Officer of the State Coastal Conservancy to the Executive Director of the Commission, payment in an amount of no less than \$236,000 nor more than \$337,928 determined by the State Coastal Conservancy as necessary and sufficient to develop the same improvements at Chiate-Wildman or an alternative easement to the same general beach area, generally between Paradise Cove and Escondido Creek. The funds shall be specifically for construction of access improvements at the Chiate-Wildman easement unless the State Coastal Conservancy and the Commission determine that an alternative easement could be developed with the same funds that provides equivalent access to the same beach area.
- c. Cause improvements of the Chiate-Wildman easement necessary and sufficient for public use of said easement to be made at the applicant's expense.

to develop
open to
the public

and opened to the public

Site plans for access facilities proposed under (b) or (c) will require separate coastal permit review.

2. Applicant's Assumption of Risk.

Prior to transmittal of the permit, the applicant 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, earthquake, faulting, flood hazard, bluff failure and earth movement including landslide; and, (b) that the applicant hereby waives any future claim of liability against the Commission or its successors in interest for damage from such hazards

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

3. Tract Map Approval.

Prior to the issuance of the permit, the applicant shall submit evidence of approval by the County of Los Angeles of the revised tentative map with the revised lot lines.

IV. FINDINGS AND DECLARATIONS.

The Commission finds and declares as follows:

A. Project Description and History

The applicant proposes to divide a 4.8-acre parcel into two lots of 2.48 and 2.34 acres. The lot extends from Pacific Coast Highway to the mean high tide. The parcel is 153.09 feet wide at Pacific Coast Highway. About a third of the parcel is bluff face and beach.

The present application for a two-lot subdivision is similar to proposals for division of land that was involved in three previous requests: 5-86-046 (applicant withdrew the application); 5-88-170 (denied by the Commission); and 5-89-161 (denied by the Commission; suit by Black Tor against the Commission pending). The applicant has amended the submittal to slightly modify the lot lines from the previous proposals. (Exhibit 3)

This parcel has also been the subject of several permit applications for increased development on the existing parcel. The most recent, Application 5-87-321, for extensive remodeling and additions, was approved by the Commission with conditions. That permit, now exercised in part, provided for extensive additions to the existing house and other development on this property. The building coverage at that time was 8,800 sq. feet and the gross floor area 9,503 sq. ft. That development included the single family residence, garage, auxiliary structure identified as a sculpture studio, pool and pool house, guesthouse, tennis court, parking lot at the beach level, playhouse, equipment shelter, and driveway and parking areas. That development had been placed upon the site over a period of time; available records show that the first coastal development permit was the conversion of an approximately 2,200 sq. ft. duplex to a single family house.

Permit 5-87-321 proposed to add approximately 5,000 additional sq. ft. of structures, including a garage with a guesthouse on the second floor (to replace a guesthouse to be lost during remodeling), a screening room, greenhouse enclosures, utility rooms, sculpture studio and lap pool including an underground garage, and gating, fencing, and a storage shelter at the toe of the bluff. In its initial action on this permit, the Commission imposed lateral and vertical access conditions, including a lateral easement from the mean high tide line to the toe of the bluff. In reconsidering this action subsequent to the Nollan decision, the Commission deleted those lateral and vertical access conditions and instead required resiting of the beach level structures to eliminate adverse impact upon public access, required that the applicant agree not to prejudice any subsequent assertion of public rights, e.g., prescriptive rights, public trust, etc. and reaffirmed an existing deed restriction, a 25 foot ambulatory lateral access that had been required as a condition of a 1977 approval of a guest house that was never constructed.. Other conditions on Permit 5-87-321 included requiring the applicant to comply with bluff setbacks.

The site is surrounded on both the upcoast and downcoast sides by generally similar sized parcels with residential development. Nearby downcoast is the property that was the subject of coastal permit P-78-2707. The Commission approved a 2-lot subdivision in that permit with the requirement that a

vertical access easement be offered for dedication. That condition was fulfilled and the State Coastal Conservancy has accepted title to the easement, but has not developed it.

B. Development

The Coastal Act provides for close scrutiny of requests for divisions of land in order to achieve the goals of the Coastal Act of 1976. This strategy has been followed in the development of the Malibu/Santa Monica Mountains Land Use Plan, which was certified by the Commission in December, 1986.

New development is controlled in part by Section 30250 of the Coastal Act, which states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Along with other Coastal Act sections, Section 30250 regulates the location, intensity, manner, and cumulative impact of development, including divisions of land. In four interrelated policies (271, 272, 273 and 274), along with the Land Use Plan map and three resource overlays, the Malibu/Santa Monica Mountains Land Use Plan has incorporated designations, standards and specific implementation methods to carry out this section. The Malibu/Santa Monica Mountains Land Use Plan allows higher density on the coastal terrace in Malibu, where this project is located, than in the ecologically fragile watershed lands in the Santa Monica Mountains. The Plan permits an increase in density under specified circumstances, but limits specific projects by site constraints shown in the Hazard and Visual Resources overlays of the LUP.

1) Land Use Plan Map--Designations

In this instance, the Land Use Plan designates the blufftop area for a maximum density of two parcels per acre and the bluff face and beach for a maximum density of one parcel per two acres. Hazard and beach access overlays discourage the actual siting of any structures on the bluff face or on the beach (Policy 165, Policy 150, and Policy 273(b)).

This project would create a 2.3-acre lot and a 2.48-acre lot from a 4.8-acre parcel. Therefore, it would conform to the aforementioned LUP density designations of one-half acre and two acres.

2) Hazards

Section 30253 requires the Commission to assure the safety and structural integrity of development:

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.

The LUP specifically directs that all the policies must be followed before a subdivision is permitted:

P273b On beachfront parcels, land divisions shall be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure, on-site sewage disposal system, if necessary, and any other necessary facilities without development on sandy beaches, consistent with all other policies of the LUP, including those regarding geologic and tsunami hazard.

Pursuant to policy provisions of the Land Use Plan, this parcel is subject to a hazard overlay--flooding and tsunami. Also pursuant to LCP provisions, the bluff face is designated hazardous because of potential slope failure. This hazard overlay designation does not necessarily reduce density, but it confines development to those portions of the lot that are not subject to hazard.

a) Wave Hazard

Paradise Cove is the westernmost unit in the Santa Monica Bay sand cell that extends from Point Dume to the Redondo Submarine Canyon. Sand for this beach comes off the bluffs to some degree and down streams, most notably, on this beach, Ramirez Canyon. Upstream owners in Ramirez Canyon have been engaging in minor channelization projects, which have resulted in less upstream erosion and less sand available for the beaches.

The Department of Navigation and Ocean Development in its report entitled Assessment and Atlas of Shoreline Erosion on the California Coast identified this beach area as "protective beach," a beach that is currently wide enough to protect the limited development that occurs on its inland edge. The DNOD report describes Paradise Cove as

"Wide sandy beach backed by cliff. Houses on beach, benched into face and at top of cliff. Timber seawall at shore end of Paradise Cove Pier."

In a previous action on this property, 5-87-321 (Black Tor), the Commission adopted an extensive analysis of the wave hazards on this property. The Commission determined that the entire beach, a fill slope at the toe of the bluff, and the toe of the bluff itself are subject to wave action. During the 1983 storms, the house on a beach parcel two lots to the west suffered wave attack, and the owners were forced to take emergency measures to protect a leach field that was located in the sand in front of the house. When sand bags and timbers washed away they put in rocks. During this storm the nearby Paradise Cove restaurant also installed a revetment.

Surface sloughing is an additional hazard. Most surface sloughing on coastal bluffs is due to excessive watering on the top, but removal of the toe by wave action can also cause raveling of the surface and endanger houses located too close to the bluff edge. There remains some possibility that an extraordinary storm will erode portions of the toe of the bluff. This occurred during January 1988 at the eastern end of Paradise Cove.

The application as submitted does not incorporate a setback line consistent with applicable Coastal Act and LUP polices as set forth above; nor does the application propose to incorporate a recorded deed restriction that would communicate this hazardous condition to any future purchasers of the property. While no development is proposed with this subdivision future blufftop development will have to conform to bluff setback requirements in order to address their impacts and applicable Coastal Act policies.

b) Geologic Hazards

A second set of hazards consists of those to be expected on any blufftop development where the bluff erodes or fails. Any creation of new lots must incorporate a design such that any subsequent development can be set back far enough to minimize risks to life and property over the expected life of the development and to assure that the development will not contribute to additional erosion or site instability.

To protect blufftop development, the County of Los Angeles adopted the following policies in the certified Land Use Plan:

- P164 On bluff-tops, new development shall be set back a minimum of 25 feet from the top of the bluff or at a stringline drawn between the nearest corners of adjacent structures, whichever distance is greater, but in no case less than would allow a 75-year useful life for the structure.
- P165 No further permanent structures shall be permitted on a bluff face, except for engineered staircases or accessways to provide public beach access where no feasible alternative means of public access exists.

P128 In addition to that required for safety, further bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures should be set back from the bluff edge sufficiently far to insure that the structure does not infringe on views from the beach except in areas where existing structures on both sides of the proposed structure already impact public views from the beach. In such cases, the new structure should be located no closer to the bluff's edge than the adjacent structures.

P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

In order to conform the proposed parcels and any subsequent development upon them to Section 30253 of the Coastal Act as carried out in these policies, the Commission in previous permit actions has eliminated a proposed cut in the face of the bluff, set back all development from the bluff edge or from a stringline, required mapping of the fault traces on the parcel maps, and required an assumption of risk for all the hazards identified in the geology report. Future development will be required to continue these safeguards, and, as conditioned to require the deed restriction to identify potential hazards and assume liability in connection with this subdivision, the Commission finds that the development can be approved

The geological report (Holt, 1984, 4-87, and 6-87) identified unstable bedding planes and surface sloughing on the face of the bluff. Based on borings, however, the applicant's geologist identified some favorably oriented bedding planes dipping away from the face of the bluff farther back from the bluff face.

According to Holt, the seaward edge of the lot is crossed by two splays of the Malibu coast fault. Since the Holt report was originally written, reports reviewed for other projects (see General Motors, 5-85-418 (Adamson)) have shown that the Malibu coast fault zone is not "potentially active," but "active," which means that it has moved within the past 11,000 years. The Commission notes that a fault trace is merely the external sign of an area subject to earthquake damage and shaking and that it does not indicate the precise location of the next earth movement. The proposed subdivision would create an additional buildable site that is in close proximity to this fault. The Commission finds that future development must address locating the fault trace on the parcel map an incorporating adequate setback.

Policy 164 of the Malibu Land Use Plan requires that new development be set back at least 25 feet or within a stringline drawn between the nearest corners of adjacent structures, whichever is greater, but in no case less than would allow a 75-year useful life for the structure. The specified setbacks are thus minimums that may be utilized only where substantiated by site-specific geological analysis. The applicant's geologist has stated that future structures on the parcels proposed to be created may be located with their

foundations at a 2:1 slope drawn from the toe of the bluff. The geologic setback line emerges on the surface at a location that is roughly contiguous with a stringline drawn from the two nearest bluff-front houses (Evans and Palance). Holt also advised the applicant to plan to trim back oversteepened portions of the crest of the bluff to an engineered, 1:1 slope in conjunction with any future development. Such an approach, however, would not be consistent with the approach set forth in the applicable plan policies cited above, and future development will be reviewed for incorporation of setbacks in lieu of trimming in order to comply with Section 30253 of the Coastal Act.

3) Visual Impact

Sections 30251 and 30253 of the Coastal Act protect views to and along the beach and protect natural landforms. They 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 of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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.
- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (4) Minimize energy consumption and vehicle miles traveled.
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The Land Use Plan also requires the views along the beach and from Pacific Coast Highway to be protected. The LUP requires stringlines, prohibition of structures on the face of a bluff or on beaches, and minimization of alterations of landforms. As seen above, policy 128 and policy 165 of the LUP protect the face of coastal bluffs from construction and may require that

additional setbacks be provided to protect views from the beach. Most of the policies listed above are also policies that relate to visual impact.

Paradise Cove is one of the few beaches in Malibu that is generally undeveloped. Most bluffs in the Paradise Cove area have been disturbed only by private narrow access roads and beach stairways. Visitors to this beach are attracted by the present undeveloped nature of the beach. The undeveloped nature of the bluff face, including natural vegetation and the natural irregularity of the eroding bluff, creates the visual attraction. Visible development would significantly reduce the recreational value of the use of public tidelands.

The Commission has generally set all development back from the beach itself and has eliminated beach-level appurtenant structures from plans. However, there have been a few exceptions. Where older subdivisions created beach-level lots, the bluff face itself has been developed with single family houses. This is the case on two lots near this property. In the present case the applicant already has one road through the bluff and does not propose a second road as part of the development. In the vicinity, there remain periodic incursions on the beach, and there have been several requests to place bluff retaining walls and rocks on the beach in order to protect the toe of the bluff. These requests have been from nearby property owners whose houses were constructed with insufficient blufftop setbacks.

The building site proposed to be created through subdivision would not be visible from Pacific Coast Highway. However, the application as submitted did not include provisions that would protect the bluff face, restrict further development on the bluff face, eliminate additional roads, or locate future development so that no sea-level walls would be necessary for the protection of such development and visual impacts are minimized. Neither did the application provide for the protection of the existing rock outcroppings at the top of the bluffs. The sculpture studio authorized in 5-87-321 has been constructed.

If these safeguards are maintained in future development, the additional development that could be permitted on the parcels proposed to be created under this request would not create a significant adverse visual impact as seen from along the shoreline, consistent with Section 30251 of the Coastal Act and Policies 128 and 165 of the certified Malibu/Santa Monica Mountains Land Use Plan of the County of Los Angeles.

4) Public Shoreline Access and Recreation

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. Based on the access, recreation, and development sections of the Coastal Act the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The California Constitution in Article X, Section 4 provides:

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

The Coastal Act contains more specific policies regarding the provision of public access to the state's shoreline. Coastal Act Section 30210, as set forth below, stipulates that in meeting the requirements of Section 4 of Article X of the Constitution, maximum public access, conspicuously posted, shall be provided subject to certain conditions. Section 30212 requires that access be provided in all new development. These sections state:

Section 30210

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

Section 30212

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5 states:

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, or overcrowding or overuse by the public of any single area.

Other sections of the Coastal Act require that lower cost visitor and recreational facilities be provided. Developments providing public recreational opportunities are preferred to increased commitment of the coastline to private use.

Section 30212 (c) reflects the state's long-term public interest in

maintaining those rights in subdivisions.

Section 30212.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Lateral access is not at issue in the present development. In 1977 the applicant recorded a deed restriction providing an ambulatory 25 foot lateral access on this beach (Coastal Development Permit No. P-11-19-76-9463). This dedication requirement was reaffirmed in connection with Permit No. 5-87-321, as noted above, and the applicant has furnished conformed copies of the recorded deed restriction providing lateral access. The Commission notes that the recorded deed restriction covers an ambulatory area 25' in width and that the County Land Use Plan certified by the Commission in December, 1986, would require lateral access from the mean high tide line to the base of the bluff, as set forth in Policy P52.

The policies of the certified Land Use Plan provide as follows in regard to vertical access:

Vertical Access

P51 For all land divisions, non-residential new development, and residential new development on lots with 75 or more feet of frontage or with an existing drainage or utility easement connecting a public street with the shoreline or on groups of two or more lots with 50 feet or more of frontage per lot, an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line shall be required, unless public access is already available at an existing developed accessway within the standard of separation provided under "Beach Access Program" (see below). "New development" shall be as defined by Public Resource Code Sec. 30106 and Sec. 30212(b). Such offer of dedication shall be valid for a period of 21 years, and shall be recorded free of prior liens except tax liens. The access easement shall measure at least 10 feet wide. Where two or more offers of dedication closer to each other than the standard of separation provides have been made pursuant to this policy, the physical improvement and opening to public use of offered accessways sufficient to meet the standard of separation shall result in the abandonment of other unnecessary offers.

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

P56-9 requires vertical accessways at a standard of separation of every

2000 feet in this area.

The Land Use Plan requires both lateral and vertical public access for all subdivisions as well as for any development on shoreline parcels that are greater than 75 feet in width (Policy 52, Policy 52b, and Policy 51). The Commission notes that the width of the lot at the highway, 153 feet, is greater than 75 feet, and that the Land Use Plan requires that this lot and similar lots offer to dedicate vertical access as appropriate in conjunction with specified development permit requests until public access points are provided along Paradise Cove every 2,000 feet, in accordance with Policy P56-9. Therefore, the Land Use Plan requires additional dedications of vertical access; the Plan further allows unutilized vertical access offers to revert to the underlying property owners once public vertical accessways are developed and opened at the standard of one vertical accessway per two thousand feet.

a) Vertical Access Presently Provided or Required

In order to determine whether the currently proposed project complies with the access provisions of the Coastal Act and more specifically with Section 30212 of the Coastal Act, the Commission must determine whether adequate access exists nearby. Therefore, to determine whether vertical access is required, the plan provides first for a survey to find out if adequate access exists nearby. As a result of the existence of many potential (offered) accessways that are not developed, the Commission has found in previous decisions and the County found in the LUP that the standard for provision of access under the Constitution and the Coastal Act was the existence of actual open and operating access nearby.

The distance between the closest access points upcoast and downcoast of this site, Escondido Beach and Point Dume State Beach, is about three miles. The closest public accessway on the upcoast side of the site is at Point Dume, where the County of Los Angeles operates Point Dume State Beach, which is the easterly end of Zuma Beach. The nearest accessway to the east (downcoast) is a public accessway located approximately one mile away from this site, at Escondido Creek at the junction of Malibu Cove Colony Drive with Pacific Coast Highway. This accessway connects to the trail system through existing roads. At this location the managing entity, the Los Angeles County Department of Beaches and Harbors, maintains one trash can at the head of the flight of steps leading to the public tidelands; there is also a Rapid Transit District bus stop at this location (as there is at the point where the access road to Paradise Cove intersects with Pacific Coast Highway).

The nearest location at which members of the public currently reach the public tidelands is a privately owned facility approximately 2,000 feet upcoast of the project site. This is at Paradise Cove, where there is a cafe and fishing pier. In past permit actions on this site the applicant has indicated that the public has been reaching this site by walking from the privately owned Paradise Cove area. In the statement of facts provided by the applicant at the June 12, 1987 hearing on 5-87-321 (Black Tor), the applicant's representative stated:

The property is located in the Paradise Cove area of Malibu. The western boundary of the property is less than 2,000 feet from Paradise Cove, where public parking and recreational opportunities are provided to encourage the public to use the beach.

Visitors may daily enter at Paradise Cove and walk the short distance to the beach on the Black Tor property, where they enjoy the sandy area and the Pacific Ocean. (Objections to Staff Report, p.3)

Applicant emphasizes that Paradise Cove is less than 2,000 feet from the subject property and not only permits public access to the beach but actively encourages and advertises such access. Black Tor is within a short, comfortable walking distance from Paradise Cove parking and pedestrian access. (ibid, p.15)

A site visit for 55-88-170 confirmed the applicant's description of public use on this beach. To get to the property, the staff member parked at Paradise Cove and walked east along the beach. No one attempted to stop or question either the staff member or the party of tourists who proceeded up the beach before the staff member. The tourists stayed on the wet sand, giving the houses wide berth, except where there were no structures at beach level, when the tourists climbed the berm to the foreshore.

The parking lot at Paradise Cove has been open to the public on a pay basis for at least 20 years. The lot accommodates approximately 224 cars. In addition, the Coastal Slope Trail is designed to connect down Ramirez Canyon to the beach at Paradise Cove. The Commission notes that the Paradise Cove accessway is a privately owned and operated accessway, where a fee is charged by the operators for use of the beach. The last known charge was \$7.00 for drive-in access and \$2.00 per person for pedestrians to get access to the beach and the pier. Continued use of this site to provide a fee vertical access is not guaranteed. The Paradise Cove property has recently been advertised for sale. The State Parks and Recreation Commission discussed its desirability as a public facility at its April 13 hearing and heard testimony that public access should be guaranteed at this site, but such assurance does not now exist.

The beach access survey done by Los Angeles County in 1981 found that the public entered the beach on which the subject property is located, which the County identified as "western Escondido Beach," at Paradise Cove. Most users clustered at the pier and west of the pier, then some users walked down the beach toward Escondido Beach. The survey found some visitors on this portion of the beach, but noticeably fewer visitors than it found either at the Escondido Creek vertical access or at the Paradise Cove access. The reason for this was the distance from vertical accessways. The owners on this beach do not confine themselves to their own lots, but likewise use the wet sand portion of Paradise Cove freely, walking along the beach. Paradise Cove is also occasionally used by equestrians, who enter at Escondido Beach.

In regard to vertical access, there are four locations of potential vertical accessways in the near vicinity. The potential accessway that is closest to the property is the one required as a condition of subdivision in permit (P-78-2707), and is located two lots away, about 420 feet. The State Coastal Conservancy has accepted this offer of dedication of an access easement; no accessway is yet developed and open. This accessway is discussed further below.

There are three other recorded offers of dedication of vertical access between Escondido Beach and Paradise Cove, but none of these has been accepted, improved, or opened. One of these, Shane (now Seacliff Partnership), at 27420-28 Pacific Coast Highway, was required by the conditions of approval on Permit No. A-184-80-A2 to open and maintain for public use the private stairway on the project site, and to provide public parking and a public access sign; these provisions were imposed by means of a deed restriction that specified that the provisions were to remain in effect until the recorded offer of dedication of an easement also provided in conjunction with the permit approval was accepted by an appropriate management entity or until the offer expired. The applicant has constructed a very large stairway but has not fulfilled the conditions of the permit and no public access is presently available at this site. The potential violation on this site represented by these circumstances is presently under investigation as V-5 Mal 85-09.

Another recorded offer, Permit P-78-3473 (Clark), is at 27700 Pacific Coast Highway, approximately 1,800 feet downcoast of the subject property. It has not been accepted, improved, or opened. Another possible location of vertical access is a stairway that exists approximately 3,800 feet downcoast of the present application, at Geoffrey's Restaurant at 27400 Pacific Coast Highway. Here the conditions of approval on Permit 5-83-517 (BFSA) required that the stairway down the bluff be made available for public use. There is a series of permits with conflicting provisions on this site, and no entity has accepted management responsibility for this site. There is no public parking and no public access sign.

When the presently proposed subdivision was approved at Los Angeles County, the County did not require it to provide access, on the basis that the adjacent property, Chiate, had provided access. Also, at the time that the tentative tract map was being considered by the County, the County's standard of review was not yet the Land Use Plan.

The applicant proposes to provide a mitigation program that would provide funds to improve the accessway held by the State Coastal Conservancy (at Chiate-Wildman). The amount proposed by the applicant was determined by the applicant's consultant's estimate of the construction cost for the improvement. This is proposed by the applicant as a way of dealing with the burdens upon public access caused by additional development. The estimate of construction differs from an estimate developed by consultant's to the State Coastal Conservancy.

The Commission notes that it has examined in detail, in prior applications as noted in the project history and in other sections of this report, the types

of burden and the cumulative effects of additional development upon public access. Funding of improvements to an existing easement represents one response to these burdens.

The Commission notes also that the record reflects discussion of the possibility of shifting this easement to another site. If a subsequent proposal is made to implement this approach, it can be evaluated on its own merits. In this instance, the funds made available through this action could be utilized to improve the alternate site to the same general beach area and thus provide public access in that manner. The Commission finds, that as conditioned, there is a reasonable expectation that access can be achieved through means of either dedication or improvements to an existing easement. Accordingly, the approach embodied in the conditions can be found to be consistent with the applicable requirements of the Coastal Act and the relevant provisions of the certified Malibu/Santa Monica Mountains Land Use Plan of the County of Los Angeles.

5) Cumulative Impacts of Development

The access policies of the Coastal Act must be read together with Section 30250, which requires a determination of whether or not a new subdivision will, in conjunction with other subdivisions, have adverse cumulative impacts that will overburden the resources and infrastructure of the Malibu/Santa Monica Mountains plan area. In previous actions the Commission has found that residential subdivisions in that area will have cumulative impacts on, among other things, natural vegetative cover, wildlife habitat, public shoreline access, and limited road capacity on Pacific Coast Highway and the cross-mountain roads, with associated impacts on the ability of the general public to reach the recreational resources of the Malibu beaches and mountains.

Section 30105.5 of the Coastal Act defines the term "cumulatively", as it is used in Section 30250(a), to mean that

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The Court of Appeal has consistently upheld the Commission's use of analysis of cumulative impacts as a basis for either denying or conditionally approving proposed development projects. The case of Coastal S.W. Dev. Corp. v. California Coastal Zone C. C. (1976) 55 Cal.App.3d 525 involved a legal challenge to a denial under Proposition 20 (which had no express requirement for consideration of cumulative impacts analogous to that in Section 30250(a)) of a proposed Holiday Inn near the mouth of the San Luis Rey River in San Diego County. The Commission based its denial in significant part on the finding that "the cumulative effect of this and other projects in the area could adversely affect the valuable wildlife habitat at the mouth of the San Luis Rey River." In upholding the Commission's reliance upon its analysis of the cumulative impact of the proposed development, the court held that

careful consideration must be given to the cumulative effect of projects

proposed to be undertaken...[, i.e.,] to...[a] single project in relation to the conditions then existing and to conditions that would inevitably or probably result from accelerating or setting in motion a trend productive of adverse impact upon environment and ecology. (Emphasis added.)

Similarly, the case of Stanson v. San Diego Coast Reg'l Com'n (1980) 101 Cal.App.3d 38 involved a legal challenge to the Commission's consideration of "the cumulative environmental impact of future restaurants which might be built" in its review of a permit application for the conversion of commercial storage space into a restaurant. The court rejected this challenge, holding that

the policy of the [Coastal] Act requires the agency to consider cumulative impacts before granting approval of a project. (Emphasis added)

The court went on to observe that the absence of consideration of cumulative impacts

would reduce the...Commission's planning function to a shambles resulting in a piecemeal approach which would guarantee the destruction of coastal resources.

The factual circumstances of the case of Bel Mar Estates v. Cal. Coastal Com'n (1981) 115 Cal.App.3d 936 are closely related to the circumstances of this permit application in that the former request also involved an application for a division of land located in the Malibu-Santa Monica Mountains area. In rejecting a legal challenge to the Commission's denial of that application, the court expressly sanctioned consideration of the existing traffic condition of Pacific Coast Highway. The court found the evidence in the record to support the finding that such condition was "overused, with frequent bumper-to-bumper delays" and ultimately held that it was proper for the Commission to deny the permit in significant part on the basis of the "cumulative effect of this...development" on the already overburdened condition of Pacific Coast Highway.

More recently, the court has expressly approved the imposition of access conditions as an appropriate method of mitigating the cumulative impacts of proposed development on access to the shoreline. In Remmenga v. Cal. Coastal Commission (1985) 163 Ca. App.3d 623, the court held that an access condition may be imposed if the effect of a proposed development

together with the cumulative impact of similar projects would in the future create or increase the need for a system of such compensating accessways.

Similarly, in Whaler's Village Club v. Cal. Coastal Com'n (1986) 173 Cal.App.3d 240 the court held that the demonstrated erosive effect on shoreline sand supply of the revetment at issue in that case together with similar effects of similar protective works "up and down the coast"

constitutes a cumulative adverse impact...on public access to and along State tide and submerged lands for which corresponding compensation by means of public access is reasonable.

The Commission reaffirms its conclusions as drawn from previous examination of the above cases. These are that it not only may properly examine the cumulative effects of the proposed development and all other development like it in determining whether to approve or deny a proposed development, but that in fact it has an affirmative duty to examine such anticipated effects and to give them full consideration in reaching a decision upon a particular development request.

a) Build Out Analysis

The Malibu/Santa Monica Mountains Land Use Plan certified by the Commission on December 11, 1986 will allow buildout of an estimated 6,582 new residential dwelling units in addition to the approximately 6,000 dwelling units now existing in the planning area--the entire coastal zone. The State Department of Finance estimates a figure of 2.62 persons per household for the year 2000 in Los Angeles County, which will result in an addition of approximately 17,245 persons in the Malibu-Santa Monica Mountains area.

When there is a burden on access the Coastal Act and the County's Land Use Plan provide for the dedication of access or a denial of the proposed subdivision. The access requirements are based on the impacts of the development allowed in the Plan on access in Malibu, both direct and cumulatively.

The findings of the LUP as approved by the Commission estimated that the proposed development and other divisions of land and related development ([primarily] guest houses allowed on larger lots and counted for density cap and phasing purposes as .5 dwelling unit) could add 998 new dwelling units seaward of Pacific Coast Highway.

However, a review of the Land Use Plan adoption files and of the basis of that estimate of 998 additional dwelling units seaward of PCH indicates that this estimate may be lower than appropriate. The Commission's findings of January 15, 1987 on the Malibu/Santa Monica Mountains Land Use Plan state that up to 998 additional dwelling units seaward of Pacific Coast Highway could be developed consistent with the LUP. The reason that a higher level of actual development is possible is that the residential densities allowable under the LUP in Land Use categories #8A through 9C are stated as a range, rather than as a fixed density. For instance, Category 8A allows from two to four dwelling units per acre, and Category 9C allows from ten to twenty units per acre.

The figure of 998 units was based on allowable densities at or near the low end of each range, rather than the middle or top of the range. There is no assurance in the Land Use Plan that projects approved will in fact reflect densities at the bottom of each range. If individual development projects

were approved at the top of each range, the figure of 998 units could be increased substantially, by 60 percent or more (1,656 units, exclusive of guest houses, would be allowed by the LUP on the coastal terrace seaward of Pacific Coast Highway, using the top of each density range).

An additional reason why the figure of 998 units is too low is that the estimate of 998 dwelling units did not account for guest houses. Such structures are allowed by the plan to be up to 750 square feet in size and to have full kitchen and bath facilities, unlike guest houses in such other jurisdictions as Monterey County, where such structures are limited to 400 square feet and may not contain independent cooking facilities.

Without a parcel-by-parcel analysis, it is not possible to determine precisely how many parcels would qualify for construction of a guest house. However, since the basic qualification for construction of such an additional structure is that the parcel be at least 2 acres, a large number of both existing and potential parcels would be eligible.

The Commission finds that as discussed here and in other sections of this report, both the increased demands for public use of the public tidelands by the residents of the additional dwelling units that would be permitted under the plan and the potential for exacerbation of existing levels of conflicts and demands for management time and funding would be substantially increased as the result of the proposed creation of additional potential residential density seaward of PCH and all other development like it allowed under the Coastal Act and the approved plan.

Malibu is a partially developed community with twenty-one miles of shoreline where 14 miles are in private ownership and already subdivided. The plan concentrated on requiring access from existing subdivided lots. The Land Use Plan estimates that each of the additional dwelling units will put nine vehicle trips per day on the crowded coastal access routes.

The Commission notes that most divisions of land to be expected between the first public road and the sea will have five or fewer units, and the greatest number will, like this one, create only one unit.

The reason that most divisions are likely to be small is that the Malibu beachfront is already parcelized. While the LUP allows for vertical access on subdivisions and allows for densities as high as two dwelling units per acre on the seaward side of PCH, relatively few parcels between the first public road and the sea are likely to provide more than three units, if subdivided for single family houses. There are two locations where there are numerous lots that are larger than two acres between the first public road and the sea--Paradise Cove and outer Malibu above Nicholas Beach.

The total range of parcel sizes in the areas of Malibu seaward of Pacific Coast Highway as a whole is, excluding publicly owned parcels: no parcels greater than ten acres; two parcels between five and ten acres, including one in Paradise Cove (probably the Cafe and trailer park); 47 lots between two and five acres, including 26 in Paradise Cove-Escondido; 239 lots less than two

acres, including some as small as one third of an acre, including 39 in Paradise Cove; and approximately 688 small lots, which have no apparent possibility of further subdivision or provision of vertical access. Of the various Malibu subareas, Paradise Cove contains the largest of the available single family lots, and the greatest potential for subdivision. A rough count done for 5-88-170, in assessors map books 4460 and 4459, which include Paradise Cove, showed only one lot greater than five acres, 26 lots between two and 4.9 acres, 39 lots less than two acres, but conforming, and 130 small lots on the beach. (The smaller parcels are generally concentrated along Escondido Beach Road, Latigo Shores, and Malibu Cove Colony). In contrast, outer Malibu, parcel book 4473, contained 20 lots between two and five acres. The Commission accepts this rough count, which may involve inaccuracies from the treatment of parcels as if they were development sites, to indicate that the cumulative effect of lot splits on the shoreline in Malibu will be to create a large number of new units through one- and two-parcel lot splits and multiple unit development with no additional access provided to the shoreline unless the Coastal Act and the plan standards are followed. The Commission notes that the parcel that is the subject of the present subdivision request was in itself formed through a minor subdivision of a larger parcel.

The pattern of development that can be expected to occur in light of this continued pattern of parcelization will not involve major subdivisions (five or more parcels); however, the number of new units will cumulatively equal the effects of major subdivisions on beach resources. The LUP does not show the likely number of subdivisions per sector, but clearly it is possible to create forty lots in minor land divisions along Paradise Cove. The estimate of forty lots is based on an assumption that most divisions will occur in the 26 lots that are larger than two acres. Some existing parcels smaller than two acres may be able to be divided as well, and some beachfront parcels are designated for higher density development. The residents of the additional units will use public accessways to public beaches and public tidelands, and the beach and tidelands areas themselves, and will compete for the already limited space available on public roads.

In its consideration of a proposed subdivision, the Commission must consider methods to avoid or mitigate the cumulative impacts of the project. The Commission recognizes that a large part of the Malibu shoreline consists of parcels that could be subdivided by a process of two- and three-lot divisions. The result of development in Malibu in the past has been the creation of stretches of two to three miles of shoreline without vertical accessways.

The Commission reaffirms its previous findings that the cumulative effect of approving minor subdivisions such as the present application with no vertical access requirement would be that plan buildout could occur with subdivision patterns similar to those utilized in this area in the past with some consistency, as reflected in the creation of the present parcel, and that no new access would be provided to mitigate impacts to public access in conjunction with this process. The Commission finds that such a result would be inconsistent with the California Constitution, applicable Coastal Act policies, and the certified Land Use Plan. The present application includes

contains a program responding to this need, and so can be found consistent with the California Constitution, and applicable Coastal Act policies, and the certified Land Use Plan.

b) Cumulative Impacts of Beach Subdivisions on Public Shoreline Access

The Commission routinely examines the cumulative impact of any subdivision in the area served by Pacific Coast Highway and the cross-mountain roads. Beach subdivisions share in all the impacts routinely associated with subdivisions anywhere in the Malibu-Santa Monica Mountains Coastal Zone. Beach subdivisions also have impacts that are separate and distinct and that relate specifically to impacts on the ability of the people of California to exercise their constitutionally protected right of access to the beaches, tidelands, and coastal waters of the state.

Increased development of residential units along the shoreline will have cumulative impacts such as overcrowding and congestion that will degrade the quality of the shoreline areas for public use and enjoyment and that will increase the difficulties experienced by the general public in getting to publicly owned land. The greatest conflict with the protection of resources that the Coastal Commission is charged by law to carry out is a cumulative adverse impact on the beach as a public recreation resource. More coastal lots mean more local residents regularly using state tidelands. Subdivisions, individually and cumulatively, increase the population of individuals competing for the use of public tidelands and increase the frequency and the severity of conflicts between residents and visitors.

i) Development of Additional Residential Units in the Beach Area Increases the Use by Residents of Public Beaches and Tidelands and Vertical Accessways

Recreation facilities in the Malibu-Santa Monica Mountains area are overcrowded and congested, a pattern becoming increasingly common and controversial in Southern California, where the State Department of Parks and Recreation projects increases in user activity days in a wide variety of recreational activities, including beach-related ones. Projections in District 8 include increases in days of ocean swimming from 29,777,877 in 1980 to 35,945,772 in the year 2000, an increase in saltwater fishing from 5,899,093 to 7,725,946, an increase in body and board surfing from 22,474,744 to 27,103,817, and a rise in beachcombing from 4,528,342 to 5,619,844. An added population of 17,245 persons in the Malibu-Santa Monica Mountains area can be expected to create a demand for new parks, additional miles of trails, and new or enlarged public beach areas.

The existing capacity of the public accessways that lead to public beaches and tidelands, the beaches, the trail system, and other recreational facilities is not adequate to meet the reasonably foreseeable increase in demand attributable to future development, including this development and other projects like it, in the Malibu-Santa Monica Mountains area. A locally increasing population has increased the demand for public beaches as community

open space. Use of the public beach nearest the subject property, Zuma Beach, has grown to the point at which beach use is near capacity on summer weekends. The LUP estimated that the number of beach visitors per summer weekend increased from 79,600 visitors in 1979 to 106,000 visitors in 1981.

In addition to direct competition, the intensification of lands next to public beaches and tidelands reduces the quality of the public's ability to use state tidelands. In a recent study on visual carrying capacity, "Projecting the Visual Carrying Capacity of Recreation Areas" (Nieman and Futrell), it was shown that "individuals prefer less crowded areas for their recreational experiences...individuals are disturbed by what they perceive as crowded conditions in outdoor recreation areas. This negatively affects their enjoyment level and, thus, the perceptual or visual carrying capacity of the recreation area is decreased or surpassed." It was also shown that "as the incidence of man-made elements in the landscape increased the percentage of very disturbed responses increased and vice versa for the non-disturbed responses."

In other studies, similar conclusions are drawn. Because continued subdivision and subsequent residential development such as that represented by this application will convert portions of the Malibu area from a relatively lightly developed area to that of a suburban residential neighborhood, the findings of these studies are particularly applicable. Investigations have demonstrated that such changes affect users' perceptions of the nature and value of the recreational experience. "The Effects of People and Man-Induced Conditions on Preferences for Outdoor Recreation Landscapes" (Carls) concludes that "the results...strongly indicate that numbers of people and levels of development have a notable effect on preference for outdoor recreation landscapes...the presence of greater numbers of people and higher levels of development, as elements of the landscape, tend to reduce preference." In "Recreational Use of the Coastal Zone: Effects of Crowding and Development" Carls notes that "there is growing evidence that esthetic factors, such as the number of people...have an important influence on choice of recreation facilities and over-all user satisfaction...people tend to select those places with lower levels of crowding and development"; further, "...as the number of people in a landscape scene increased, preferences for that scene decreased." Other studies report even stronger reactions by users. "The Assessment of Environmental Aesthetics in Scenic Highway Corridors" (Evans and Wood) noted that "even slight changes in adjacent roadside development affect significant changes in perception of roadside quality. People felt that with increasing human intrusion the corridor became proportionately more worthless, useless, cluttered, unpleasant, ugly, and drab. Increased development also reduced ratings of scenic quality and preferences." Another recent article, "Oil and Gas Development in a Coastal Landscape: Visual Preferences and Management Implications" (Nassauer), found that "apparent naturalness...strongly influenced preference. Naturalness was clearly noted in the description of landscape features and favored in ratings of landscape views."

The conclusions of these studies are consistent with some of the most distinct preferences expressed in a 1987 State Department of Parks and Recreation survey of public opinions and attitudes on outdoor recreation. Almost 90

percent of the participants approved of increasing the protection of scenery and the natural environment. Two thirds approved of an increase in the number of wilderness areas where no vehicles or developments are allowed. On a specific question of support for developing more riding and hiking trails where no vehicles are allowed, 56.7 percent of respondents expressed the strongest possible support (5 on a scale of 5-1) and an additional 23.6 percent chose a ranking of 4. Support for the provision of open space in urban areas was almost as strong: 55 percent of participants ranked such a program as of highest support, a 5, and 22.7 percent gave it a ranking of 4.

Because of the magnitude of the new development represented by the present proposal and others like it as allowed in the plan, the Commission finds that these findings are particularly applicable to an evaluation of the present application. The Commission reaffirms this conclusion as reached in previous examination of this question.

ii) Conflict Between Recreational and Residential Users

The nature and extent of the reported conflicts between recreational and residential users in the Malibu area, including the reported problems at the publicly operated beach area that is physically most similar to the area of the proposed land division, the Robert H. Meyer Memorial State Beaches (El Pescador, La Piedra, and El Matador), have been reviewed. The types of resident-visitor conflicts and the management questions that tend to develop that were identified by staff of the State Department of Parks and Recreation (personal communications, M. Getty and B. Taylor) are discussed below.

In many cases where additional subdivision would be allowed under approved plan land use designations, the topography and the existing parcel pattern is such that once a parcel is in existence, it is not always possible to site a subsequent dwelling in a manner that minimizes potential conflict between public recreational use of the state tidelands and private residential use of the adjacent uplands. Just upcoast of the subject parcel, for instance, a house on Sea Drive, 5-85-758 (Norred), was literally carved into a bluff that already had dwellings at the top of it. The only alternative in that case, however, given the inauspicious nature of the site in regard to plan policies designed to preclude additional building on bluff faces, was to locate the new structure on the beach itself, a result also not favored under plan policies, and one that could heighten conflicts between residents of the new structure and members of the public walking downcoast along the beach from Paradise Cove. That use pattern has been acknowledged to be a common and well-established pattern.

Because use of the public recreational sites in this area is growing, these sorts of conflicts can be expected to increase as the level of residential use increases. Use figures for the Robert H. Meyer Memorial State Beaches, are available from through the 88-89 fiscal year. Current use is estimated at more than 210,000 persons per year. The opportunities for the public to enjoy a relatively secluded low-use intensity beach experience in the Malibu area are fairly limited. When the Robert H. Meyer Memorial State Beaches were opened in 1984, a small article on the editorial page of Sunset Magazine

pictured one of the coves and noted the unusual opportunity that this unit afforded to members of the public.

A major article in Sunset in July, 1986 similarly identified the Robert H. Meyer Memorial State Beaches as being among the "choicest recent additions to the public coastline," providing an unusual opportunity to enjoy a recreational experience. The environment at these beaches is radically different from that available at Zuma Beach, for instance, where there are some 3,200 parking spaces, two snack stands, nine restroom buildings, and 12 lifeguard towers serving a long stretch of sand. Physically, Zuma is quite uniform along almost all of the entire length: sand backed by unlandscaped parking lots interspersed at intervals with service buildings, and with a fence separating the parking lot from the immediately adjacent Pacific Coast Highway.

In contrast, the beach areas of the Robert H. Meyer Memorial State Beaches are located in coves of varying sizes, reached by stairways down from the blufftop parking areas, and substantially removed, aurally and psychologically, from Pacific Coast Highway. State Department of Parks and Recreation personnel report that almost to a person, visitors to the Robert H. Meyer Memorial State Beaches remark with pleasure upon the beauty and relative isolation of the sites, and that the visitors often volunteer comments of appreciation for the availability of such a different beach experience.

State Parks and Recreation Department personnel have observed several changes in public use patterns in the Malibu area in the past several years. A large parking lot was opened in the Point Mugu area several years ago, and the level of public use increased dramatically and has kept increasing. In addition to meeting overflow demand coming from the downcoast (easterly) direction, Parks staff notes that the extensive growth in the San Fernando Valley area, the increased availability of cross-mountain roads, and particularly the very high rate of growth in the northwestern Los Angeles County-southwestern Ventura County area have combined to create very substantial increases in demand for public beach and tidelands areas in this vicinity; they expect this pattern to continue and intensify.

The State Department of Parks and Recreation staff has publicly acknowledged that an increased level of management is needed to deal with the conflicts caused by increased residential development and increased use of public beaches and tidelands. The staff in the Santa Monica Mountains District, which is part of the Southern Region, has repeatedly requested additional staffing, based upon the substantial and growing public demand for public recreational facilities and services in the beach units of the Santa Monica Mountains District.

In addition to perceiving the need for more funding and staffing to meet management and public safety needs arising from continued increases in public use of the Malibu beaches, Parks staff has reported incidents of conflict or calls of complaint. These have included complaints by members of the public about allegedly being told by private security guards that they could not enter a given sand area, and calls of complaint by occupants of homes adjacent

to the public tidelands about members of the public allegedly trespassing upon private property. Parks staff notes that their general approach is to handle complaints or conflicts through education and discussion whenever appropriate and possible, and that written citations are issued only as a last resort. They indicate that the management and enforcement needs are of particular concern at locations where private residential development occurs within close proximity to public beaches and tidelands.

Because of the large number of parcels existing west of Pacific Coast Highway at the time of adoption of the certified Malibu/Santa Monica Mountains Land Use Plan, and the potential for increases in the number of such lots because of land divisions such as the one proposed in this application (and construction of guest houses as well as main residential structures) that may be allowed under the LUP, as documented elsewhere in this report, the possibility for an increased level of conflict, or at the least an increased need for educational and management services to prevent or minimize such conflict, may be expected to increase.

This is in addition to the potential for increased competition for use of the public beach and tidelands areas themselves resulting from the proposed land division and others like it and the resulting increase in the number of residents living in close proximity to public beach and tidelands areas, as detailed elsewhere in this report. It is also in addition to the perceived aesthetic and psychological conflicts discussed in this report.

There have been numerous reported incidents of verbal altercations between residents and visitors. There have also been reported threats of physical action, including indications of the possible use of guard dogs, and threats or actions on the part of residents that the sheriff's office would be called. There is also an extensive history of alleged violations and of the construction of barriers, including chain link fences and rubble walls, ostensibly erected to mark public-private boundary lines, and of the placement of "keep out", "poison", and similar signs, sometimes allegedly without necessary permits. More elaborate signs sometimes purport to identify the location of the mean high tide line. One such sign is located on Malibu Road downcoast of the present application. Investigations by Commission staff include the apparent placement of such fences, barriers, and signs upon public beach and tidelands areas themselves as well as upon the adjacent private lands.

Many alleged violations that are investigated by the violations unit involve questions of access, often as it relates to resident-visitor conflict. Within a short distance of the present application, several major alleged violations regarding access are currently under investigation; all represent long-standing controversies, in some cases of several years duration.

The potential for resident-public conflict includes at least two types of conflict. First, as discussed above, the actual extent of beach use and of access routes to the public beach and tidelands areas by residents, their families, and their guests may lead to actual or perceived overcrowding or competition for public accessway and public beach space and thus cause

conflict with members of the public. In the past staff has observed individuals using the dry sand area within existing 10 foot wide public vertical accessways as a location for sunbathing, possibly because of conflicts with neighbors. This practice reduces the amount of space within the vertical accessway that is available for use by other members of the public.

The second type of resident-visitor conflict that increases with residential buildout is one of perception. As more and more homes are built in close proximity to the public tidelands, the resulting perception on the part of the public that the beach is a private one will irretrievably alter the nature of the beach experience. In the case of those parcels that are particularly poorly located, the new construction is so substantial and so close to the public tidelands that the very presence of the house is intimidating. When this is coupled with a pattern of active and institutionalized conflict as described above, including incidents such as the hiring of private guards who make representations to visitors as to where the limits of private property lie (as the State Department of Parks and Recreation reported was the case at the Meyer Memorial State Beaches over the July 4 holiday in 1988), a psychological factor of intimidation needs to be examined. This is in addition to the practical and legal questions of having a private security force make representations as to the precise location of the line of public-private ownership.

It is these conflict-creating impacts of beach subdivisions which are dependent upon their location that cannot be fully mitigated without an affirmative measure to improve public access to state tidelands.

iii) Intensification Reduces Informal Use of Land

In addition to creating the types of resident-public conflict detailed above and creating the adverse effects upon traffic discussed elsewhere in this report, increased residential development on lots that occupy the land between the first public road and Malibu's beaches has reduced the use by the public of beaches, accessways, and trails formerly used by the public.

In 1972, after the Gion and Dietz decisions, Los Angeles County shot aerial photos of the coastline and identified many potential accessways in Malibu and other communities (personal communication, Ken Kvammen). These photographs were not used for the basis of adverse condemnation lawsuits for a number of reasons, one of which was the overwhelming expense.

Near the subject property there was a trail that went down a canyon to a beach. This trail was principally used by residents of the coastal terrace, although it was theoretically available to the general public. In 1981, a single family house was constructed on the lot three parcels to the east that included the trail. As part of the house development, the new owner constructed a wrought iron fence that blocked the trail. Construction of fences, like this, are a not unexpected result of increased conflict between new residents in a community that is building out and long-term beach use.

iv) Mitigation Program for Cumulative Impacts Associated with Subdivision of Land in the Market Area

On June 18, 1981, the Commission adopted the following findings on the impacts of subdivisions in the area in which the applicant's project is located:

...Cumulative Impacts

Land divisions establish both the location and intensity of new development and, therefore, determine the amount of impact on coastal resources which will occur in the future. For the most part, land divisions are irreversible. Consequently, land divisions, especially those which occur outside of or expand the boundaries of existing developed areas, must be carefully reviewed so as not to undermine the basic Coastal Act goals of resource conservation and concentration of development.

The Coastal Act requires that new development, including subdivisions, can only occur where public services are adequate and only where coastal access and resources will not be cumulatively affected by such development. About 9000 parcels in the area are still undeveloped, almost 2/3 of the total.

The creation of new building sites in the area, thus committing the land to more intense development, while a very large number of undeveloped lots already exist, will cause adverse effects on wildlife habitat, scenic and visual resources, natural landforms and potential future recreational use of the mountains and beaches. Development on new parcels will also cause an increase in the risks to life and property due to high geologic and flood hazards common to the region and would increase the amount of erosion due to grading for roads, utilities and building pads.

Because of the potential direct and cumulative impacts on coastal access and coastal resources, prior to the preparation of a Local Coastal Program conforming to the policies of the Coastal Act, no further divisions of land should be approved. This guideline applies to all portions of the Malibu-Santa Monica Mountains coastal zone.

The underlying principle of this guideline, which has generally been followed by the Commission and which is reflected in the Land Use Plan, is that all projects must mitigate cumulative impacts, and comply with the requirements of Section 30250(a) of the Coastal Act and Policy 273 of the certified Land Use Plan. The Land Use Plan land division policies--271, 272, 273, and 274--require, among other things, that the cumulative impacts of new subdivisions be adequately mitigated. The Commission finds that the application as conditioned includes a substantial mitigation provision designed to either provide vertical access or improve an existing public easement, and thus it can be found to have made an appropriate mitigation to deal with the cumulative effects of the division.

6) Traffic Impacts

One of the principal cumulative adverse impacts caused by new development is traffic. The Pacific Coast Highway Study (ACR 123) prepared by Caltrans (December, 1983) stated in the section on Recreational Influence that "Pacific Coast Highway is a designated scenic highway which provides spectacular vistas of natural and man-made features. The Pacific Ocean, the beaches and parks served by Pacific Coast Highway, and Pacific Coast Highway itself, constitute an integrated and irreplaceable recreational resource for the vast, growing population of the Los Angeles area. Approximately 23.5 million people visit the beach annually. Access to the beaches between Santa Monica and the Ventura County line, a distance of 33 miles, is through the mountains via four cross-mountain roads and along Pacific Coast Highway." The study noted that "the beach area is such a sought after recreational resource during the summer months that on certain days congestion is inevitable." Caltrans further noted in the DRAFT Route Concept Report prepared for Pacific Coast Highway between the McClure Tunnel in Santa Monica and the Malibu Canyon Road intersection (8/14/84) that there are no alternate, parallel routes in the immediate vicinity of Pacific Coast Highway along this section. The ocean on one side and the rugged Santa Monica Mountains on the other have presented barriers to highway development. The nearest parallel highway or route of any significance is Route 101 (Ventura Freeway) located 12.4 miles north of Route 1 via Route 27 (Topanga Canyon Boulevard). This report characterized Pacific Coast Highway as presently "able to handle the traffic volume except for the stretch between Topanga Canyon and Sunset Boulevard."

Section 30252 of the Coastal Act states that the location and amount of new development should maintain and enhance public access to the coast by minimizing use of coastal access roads, and Section 30254 provides that where existing or planned public works facilities can accommodate only a limited amount of new development, public recreation shall not be precluded by other development. Contrary to these requirements, the traffic studies done by Caltrans in 1983 and 1984 show that traffic generated by this and other new residential development allowed in the approved Malibu/Santa Monica Mountains plan will increase vehicular use of coastal access routes and thus will have a detrimental effect upon the ability of the new residents and other recreationists to reach and enjoy recreation areas in Malibu and the Santa Monica Mountains, and upon visitor enjoyment of the travel experience itself. Increased levels of traffic resulting from private development make it more difficult for recreational users to find parking and other support areas. An article in Proceedings of a Forum on Recreational Access to the Coastal Zone (Fawcett) noted that "recreational access is often limited by the highway network's traffic capacity and the amount of available parking." The San Diego Regional Coastal Access Study (Prescott) points out that "vehicular traffic caused by people who are coming to or from recreation areas, or searching for off-site parking spaces, can often result in serious congestion of streets used for internal circulation within recreational zones. This problem is particularly severe when the same street network is used to accommodate high volumes of recreational traffic as well as traffic generated by local residents and local commercial/retail activities." Various studies

have documented that the inability to reach an area because of traffic can foster a sense that an area is a private reserve, just as can an inability to find parking.

The population growth that results from the proposed and similar residential development will create much higher traffic levels than those existing today. Caltrans studied the effect of anticipated additional development upon the ability of the public to reach and enjoy this recreational resource and issued its findings in a 1984 report entitled "DRAFT Route Concept Report for Pacific Coast Highway between the McClure Tunnel in Santa Monica and the Malibu Canyon Road Intersection." Caltrans used the LARTS model to forecast the year 2000 traffic estimates. The growth forecast was based on "SCAG's 82" Growth Forecast Policy. In Traffic Analysis Zone 8004 (Malibu west of Malibu Canyon Road), this yielded an increase of residential population from 9,953 in 1980 to 25,300 in 2000, along with an estimated employment growth during the same period from 2,578 to 4,300. The estimated result was to increase the average daily traffic volumes in peak summer months from 46,000 in 1980 to 61,200 in the year 2000. With no improvements in the road, this was estimated to cause the level of service to deteriorate from Level D existing in 1980 to Level F in the year 2000. (Caltrans definitions are: Level D: borders on unstable flow; small increases in flow cause substantial disruption; 46 mph or more can be maintained; freedom to move is severely limited; traffic stream has little space to absorb disruptions. Level E: extremely unstable; cars spaced at four car lengths; any disruptions to traffic stream cause disruptive wave; at capacity no ability to dissipate disruption; substantial deterioration in service; average is 30 mph. Level F: breakdown in flow; stop and go traffic; breakdowns or bottleneck due to excess of cars at one point.) Only with improvements such as an added reversible lane that could provide a third lane in the commute direction did Caltrans estimate that level of service D could be maintained. Even with such improvements, the level of service would be no better in peak summer months in the year 2000 than it is now. The chief proposal of the Land Use Plan to deal with traffic is to add another lane on Pacific Coast Highway; no proposals for substantial expansion of the feeder road network are included in the plan.

On the basis of these studies, the Commission found in approving the Land Use Plan that the added residential development, plus commercial and recreational development as allowed in the approved plan, will greatly increase both local and regional traffic levels, and so will make it much more difficult for users to reach beaches, parks, trails, and other recreational, historical, cultural, and educational facilities in the Malibu-Santa Monica Mountains area. The Commission specifically concluded that "the existing highway operates at poor levels of service which frustrate the ability of residents and visitors to use it." (Emphasis added) The reasonably foreseeable increase in demand attributable to future development, including that presently requested, is expected to result in a substantially greater adverse effect upon the ability of people to reach present and planned recreational facilities. The new development will exacerbate existing traffic congestion. This conclusion is consistent with an earlier study (Burke, Coastal Access Analysis in California: An Assessment of Recreation Transportation Analysis in Coastal Planning) which concluded, based upon analytical studies of eight coastal

areas, that residential traffic due to intense residential development in an urbanized part of southern Orange County would account for 67 percent to 78 percent of future traffic volumes on certain transit routes, thereby limiting the amount of recreational traffic possible. Such an effect is inconsistent with Section 30252 of the Coastal Act, which states that the location and amount of new development should maintain and enhance public access to the coast, and with Section 30254, which provides that public recreation, among other uses, shall not be precluded by other development when public works facilities have limited capacity. The County estimated in the Land Use Plan that of the 500,000 people visiting Malibu beaches, 400,000 will arrive by private automobile.

A project on Pacific Coast Highway has direct impacts on PCH because the project uses the state highway for driveway cuts and guest parking. The residents facing PCH do not have a circuitous alternative access route during heavy beach use times. Therefore the competition with beachgoers for traffic and parking is marginally more direct than for a theoretical lot located in Zuma or Cold Canyon. Allowance of new subdivisions and increased population along the shoreline increases competition for the use of streets and roads. These people will compete for space on limited capacity highways.

Increased levels of traffic resulting from private development make it more difficult for recreational users to find parking and other support areas. The San Diego Regional Coastal Access Study (Prescott) cited above concluded that vehicular traffic caused by people who are coming to or from recreation areas, or searching for off-site parking spaces, can often result in serious congestion of streets used for internal circulation within recreational zones. It noted that this problem is particularly severe when the same street network is used to accommodate high volumes of recreational traffic as well as traffic generated by local residents and local commercial and retail activities. Other studies, as noted above, have documented that the inability to reach an area because of traffic can foster a sense that an area is a private reserve, just as can an inability to find parking.

To mitigate a portion of this impact, Los Angeles County required the dedication of a strip the entire width of the applicant's property, 54 feet deep, as a condition of approval of the subdivision. The Commission notes that the resulting ability to improve Pacific Coast Highway will provide an opportunity to improve traffic flow.

7. Response to Cumulative Impacts

As a means of addressing the cumulative impact problem in past actions, the Coastal Commission has consistently required participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program has resulted in the retirement from development of existing poorly sited and non-conforming parcels at the same time new parcels or units were created. The intent has been to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while

allowing development to proceed consistent with the requirements of Section 30250(a).

However, the Commission notes that under applicable legal precedent it is under no obligation to utilize the TDC program in this instance. In the case of Bel Mar Estates, cited previously, the Court of Appeal held definitively that the Commission has no duty to condition proposed development to make it environmentally acceptable. (115 Cal. App.3d at 942)

The certified Malibu/Santa Monica Mountains Land Use Plan does not contain the TDC Program as a means of mitigating the cumulative impacts of the potential buildout of all existing lots. Instead, the LUP contains, in Policy 272, six alternative mitigation techniques to prevent the buildout of non-conforming lots, lots in small-lot subdivisions, and lots of less than 20 acres in designated Significant Watersheds. These programs allow new land divisions and multiple-unit projects that are consistent with the requirements of Section 30250(a). Policy 272 essentially has two goals. The first is to recognize that Malibu and the Santa Monica Mountains have a limited infrastructure capacity (sewers, traffic, recreation facilities, beaches, etc.); the second is to direct development away from nonconforming lots in small-lot subdivisions and significant watersheds by retiring lots in those areas.

At its meeting of February 25, 1987, the Commission considered applications for land divisions (5-86-592, Central Diagnostic Labs), multi-unit residential projects (5-86-951, Ehrman and Coombs), and amendment requests to remove or modify the TDC condition on approved permits (5-85-459A2, Ohanian and 5-86-299A2 & A3, Young and Golling), all of which raised the issue of cumulative impact mitigation. The Commission approved the permit and amendment requests with a revised special condition that required that cumulative impacts be mitigated through an alternative means of extinguishing development rights on existing residential building sites in the Malibu Coastal Zone.

The approved condition allows an applicant to choose one of several methods to extinguish development rights, including those programs contained in the certified LUP or through continued voluntary participation in the TDC program. In approving these permit requests, the Commission found that none of the County's six mitigation programs contained in the LUP, including the residential building cap, were "self-implementing," and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique, remains a valid means of mitigating cumulative impacts in the interim period during which the County is preparing its implementation program. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a).

The intent of LUP Policy 272 is to extinguish development on nonconforming parcels in small-lot subdivisions and significant watersheds by applying one of the five acquisition or retirement policies along with the building cap in

order to mitigate the cumulative impacts associated with the potential buildout of the nonconforming lots. All of the impacts of traffic could be addressed by retiring a beach lot. But retiring one of the inland building sites does not reduce direct impacts on shoreline recreation, and the provision of a shoreline access does not reduce the effects of an increase in number of households.

In its previous action the Commission found that it could conditionally approve subdivisions in the Santa Monica Mountains pending completion of an approved implementation plan; however, this approach could delay the proposed development indefinitely. The result could be a "de facto" denial of land divisions and multi-family projects until an acceptable program for implementing the LUP policies is developed.

The Commission therefore adopted an alternative to the original Transfer of Development Credit program that allows the applicant to mitigate the cumulative impacts of the proposed development by choosing one of the County's proposed programs to extinguish development rights on certain lots (which may necessitate waiting until the County adopts an implementation program), or by another program that accomplishes the same objective by purchasing TDCs as originally required.

The action of the Commission in this case is another alternative to the original program. The application before the Commission as conditioned will include a significant response to the effects that will be caused by the development. The Commission thus finds that the application is consistent with Section 30250(a) of the Coastal Act or Policy 272 of the certified Land Use Plan.

7. Summary

The above findings lead the Commission to conclude that absent the mitigation as included in the conditions the proposed subdivision would both directly generate and cumulatively contribute to impacts on coastal resources and public access. With the mitigation program outlined in condition III(1), the subdivision would result in the intensification of land use in the Malibu/Santa Monica Mountains area and have impacts on the public tidelands and recreation areas seaward of Pacific Coast Highway which are not mitigated.

The Commission specifically finds that the subdivision would have an adverse impact on public access to the shoreline. Historically, the Commission has required mitigation measures to alleviate this kind of impact, in particular, a vertical access easement. In this case, the project as conditioned is responsive to the need for access. The Commission emphasizes that the impacts of this two-lot subdivision must be mitigated. If the application before the Commission were for a forty-lot subdivision between the first public road and the shoreline, there would probably be no argument over the impacts of the development and the need to provide for public access. However, this area of coastline will rarely see a subdivision of that size, and the Commission must therefore not overlook its responsibility under the law to consider the mitigation of impacts of smaller projects. Instead the typical project will

be like this one, that is, a subdivision of two or three lots. It is the cumulative impact of these subdivisions on the Malibu coast that concerns the Commission. As detailed in the above findings, when added up, these small projects will be responsible for the deterioration of the ability of the public to reach the shoreline unless mitigated.

The Commission recognizes that it allowed for these small subdivisions as part of its approval of the Malibu Land Use Plan. However, that plan also requires the provision of vertical access. The application before the Commission as conditioned will provide an alternative method of dealing with the need for vertical access, in the form of a mitigation feature that is responsive to the need to provide access. As detailed above, the Commission finds that the approach in this particular case is a reasonable response to the need for access created by new development in the Malibu/Santa Monica area.

C. Local Coastal Program Consistency

Section 30604(a) of the Coastal Act states in part:

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

The Board of Supervisors of the County of Los Angeles approved the Land Use Plan portion of the Malibu/Santa Monica Mountains LCP on December 28, 1982. In March of 1983, the Commission denied the Land Use Plan as submitted. Subsequently in January of 1985 and June of 1985, the Commission conducted hearings on Suggested Modifications. At its June 13, 1985 hearing, the Commission adopted extensive "Suggested Modifications" to the County's Land Use Plan. In November 1985, the Commission acted to approve a resubmitted Land Use Plan for the County with Suggested Modifications. In December 1986, the Commission certified the resubmitted Land Use Plan.

The proposed project is consistent with the density designations contained in the LUP. In the form of the mitigation program, it provides for public access on site or at a nearby location. The Commission finds that as conditioned, the provision of the mitigation program is consistent with the intent of the public access provisions of the plan and that as conditioned, the project follows land capability policies and overlays of the certified plan.

D. California Environmental Quality Act.

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of

the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved

if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

Previous sections of these findings discuss the potential significant adverse cumulative impacts that the development would have on the environment of the Malibu/Santa Monica Mountains area, absent the provisions included in this application. The land use plan provides that :

P67 Any project or use which cannot mitigate significant adverse impacts as defined in the California Environmental Quality Act on sensitive environmental resources (as depicted on Figure 6) shall be denied.

and asserts in the general goals and objectives that the intention is to follow the policy that is most protective of resources.

As demonstrated above, there are feasible mitigation measures that have not been presented in this project. The first alternative is the provision of an easement for shoreline access. The most severe impact of this project is the continuation individually and cumulatively of development that blocks public access for substantial portions, often as long as two to three miles, of the 14 miles of privately owned land, with over 976 subdivided private lots, between the first public road and the sea. Second, as seen above, there are measures that could be applied to the project that could protect the most geologically and visually sensitive portions of the property.

As discussed above, there are feasible and important mitigation measures that as conditioned will be part of this project. Absent the provision to assure mitigation of public access impacts, there would be a continuation of the pattern of development that blocks public access for substantial portions of the coastline.

Provisions of the California Environmental Quality Act (CEQA) and its implementing regulations (CEQA Guidelines) to which the Commission is subject mandate consideration of the cumulative impacts of a proposed development. Section 13096(a) of the Commission's regulations requires that the Commission's action on a permit application be supported "by written conclusions about the consistency of the application with Public Resources Code, Section...21000 and following,..." *i. e.*, with the provisions of the Commission's program of reviewing permit applications under Section 21080.5 of CEQA. Although this certification exempts the Commission from the obligation to prepare an Environmental Impact Report in connection with its permit actions, the Commission remains subject to CEQA's substantive standards of environmental review. One of these standards is the duty to consider cumulative impacts. In the case of Environmental Protection Info. v. Johnson (1985) 170 Cal.App.3d 604 the Court of Appeal held that in proceeding under the authority of its Section 21080.5 certification the California Department of Forestry (CDF) remained subject to CEQA's requirement to evaluate the

cumulative impacts of proposed development. The Court held that

CDF did not proceed in the manner required by law by failing to consider the impact of cumulative effects,.... The failure to consider cumulative impact was a prejudicial abuse of discretion.

The statutory basis for CEQA's requirement of cumulative impact analysis is PRC Section 21083(b). That section requires a finding of

significant effect on the environment if...the possible effects of a project are individually limited but cumulatively considerable.

The definition of "cumulative impact" contained in this provision and in Section 15355 of the CEQA Guidelines is substantially similar to that contained in Section 30105.5 of the Coastal Act. Section 15130(b)(3) of the CEQA Guidelines requires an analysis of cumulative impacts to be accompanied by an examination of

reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project.

In emphasizing the importance of the evaluation of cumulative effects which CEQA requires to be performed, the Court of Appeal has said:

No one project may appear to cause a significant amount of adverse effects. However, without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of...development. Without such control, piecemeal development would inevitably cause havoc in virtually every aspect of the...environment. (San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61.)

In this case the cumulative effect of the creation of lots between the first public road and the mean high tide is being addressed. The Commission finds that as it is before them, the significant cumulative adverse impacts of permitting this project have been mitigated.

The Commission finds, therefore, that the project, with the provisions and conditions specified, may be approved.

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APPENDIX Y
ADDITIONAL SUBSTANTIVE FILE DOCUMENTS
CONSIDERED IN PREPARING FINDINGS ON REQUEST FOR BEACH SUBDIVISION
5-89-1197

4. Vertical and lateral access 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); 5-87-706 (Lachman), 5-87-845 (Zaman).
5. 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).
7. 5-82-703 (Blakely), 5-84-108 (Haagen), 5-83-504 (Haagen), 5-81-218 (Huggins), 5-85-57 (Linder), 5-85-438 (Verlander), 5-85-309 (Jackson), P-79-6238 (Heckler). 5-83-881 (Los Angeles County Parks and Recreation), P-81-7690 (Los Angeles County Parks and Recreation)
8. Access and beach processes 4-87-161 (Pierce family trust), 6-87-311 (Van Buskirk), 5-87-576 (Miser and Cooper), 5-83-996 (Roland), 5-83-288 (Ehringer), A158-8100 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). 6-87-471 (De Peralta), 3-87-226 (Sohm), 5-87-423 (Vedress), 5-87-406 (Ward), 6-87-590 (Vinton),
9. Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981).
10. "Economic Profiling of Beach Fills" Coastal Sediments ' 77, Richard Silvester.
11. Shore and Sea Boundaries, U.S. Department of Commerce, Aaron Sholowitz.
12. Shore Protection in California (1976) California Department of Boating and Waterways.
13. Georgia-Pacific Corporation v. California Coastal Commission (1982) 132 Cal. App 3d 678.
14. Assessment and Atlas of Shoreline Erosion Along the California Coast, California Department of Navigation and Ocean Development, July 1977.

15. Variable Sediment Flux and Beach Management, Ventura County, California; Orme and Brown, UCLA, Coastal Zone 83, Volume III.
16. Greenlaw-Grupe Junior, et al vs. CCC, Santa Cruz Superior Court 73098, March 1985.
17. 4-82-90 (Nollan), Appeal 158-81--162-81 (Mussell Shoals)
18. 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
19. John Shiner, MacDonald Halstead and Laybourne, "Objections to Staff Report and Recommendation", Received June 12, 1987 (Statement of Facts)
20. Coastal Commission Determination of Substantial Issue and Commission Action on Certification on Malibu Land Use Plan (March 24, 1983).
21. Beach subdivisions, 5-87-706 (Lachman), P-81-7642 (Evans), 5-81-6 (Landy), 5-81-7 (Trancas Development) Appeal 55-79 (Feldman), 5-82-659 (Leanse), 79-5163 (Armstrong), 5-83-712-G (Malibu Point Homeowners), P-878 (Blumberg) 5-82-370 (Siegal), 5-85-758 (Norred), Prop 20 P-8961 (Kraft), 5-85-101 (Measer), 5-85-635 (Broad Beach Partners), 5-85-309 (Jackson)
22. Cumulative impacts: Coastal Development Applications: 5-83-3 and 5-83-4 (Quaker); 5-82-223 (Corey); 5-82-57 (Malibu Vista); 5-83-506 (Wendland); 5-83-43 (Heathercliff); 5-85-51 (Quaker); 5-85-59 (Sciarillo), 5-85-214 (Ghosn), 5-86-220 (Quaker), 5-86-59 (Decinces and Vernon), 5-86-366 (Falso) 5-86-592 (Central Diagnostic Lab), 5-83-591A4 (Caldwell); Appeal No. 182-83 (Malibu Deville); 196-81 (Malibu Pacifica); 509-77 (Bel Mar Estates), 5-81-71 (Honofed).
22. Hazards 5-87-547 (Miller), 5-83-963 (Popovec), 5-83-589 (Dunne), 5-81-171 (Singer), 5-86-553 (Singer), P-78-3675, 5-84-242 (Moonshadows), 5-84-437 (Design Construction, 5-82-349G (Tarrets), P-2780 (Frederic), 5-83-258 (Patterson), Prop. 20 P-222 (Chiate), Prop 20 P-6637 (Chiate), 5-83-873 (Lewis), 5-86-831 (Harco), 5-86-760 (Van Buskirk)
23. Bel Mar Estates v Cal Coastal Com'n (1981) 115 Cal. App 3d 936; 5-81-71 (Honofed)
24. Coastal S.W. Dev. Corp. v. California Coastal Zone CC (1976) 55 Cal.App.3d.525; Stanson v. San Diego Coast Reg'l Com'n (1980) 101 Cal.App.3d 38 ; Bel Mar Estates v. Cal. Coastal Com'n (1981) 115 Cal.App.3d 936; Remmenga v. Cal. Coastal Com'n (1985) 163 Cal.App.3d 623; Whaler's Village Club v. Cal. Coastal Com'n (1986) 173 Cal.App.3d 240;
26. Los Angeles Department of Regional Planning, "Recreation Access Plan Data Base (draft)," Larry Charness, Sept 15, 1981

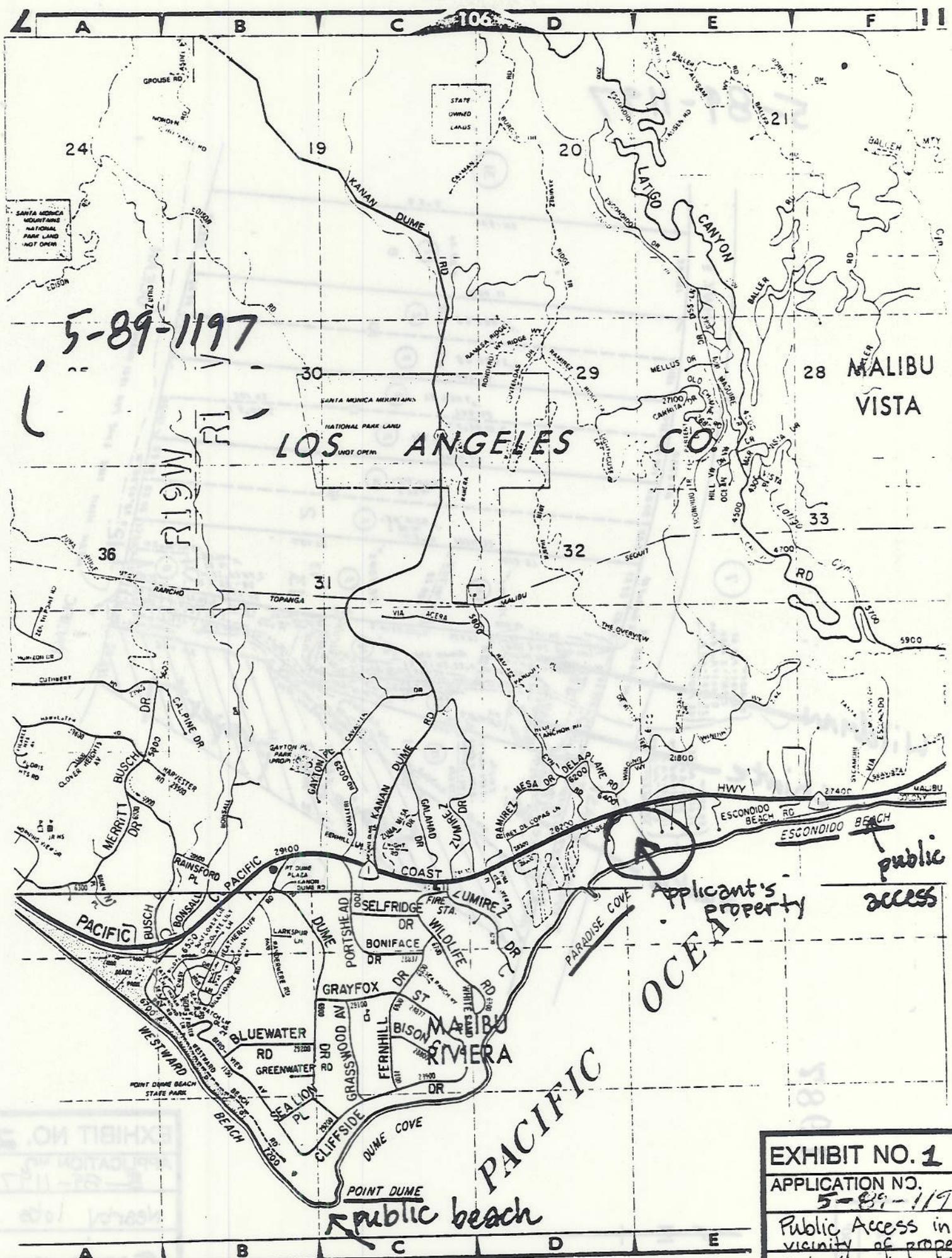
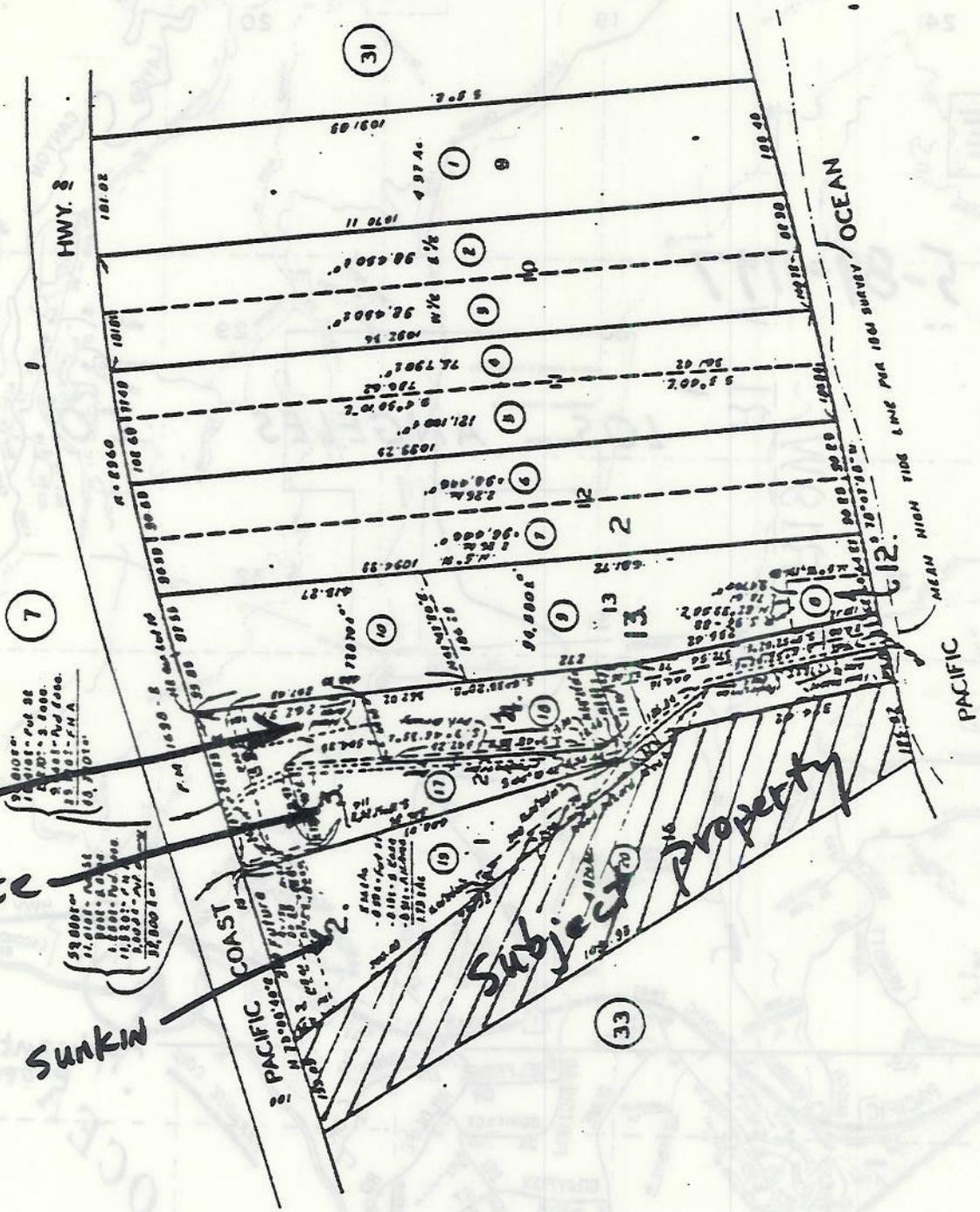


EXHIBIT NO. 1
 APPLICATION NO.
 5-89-1197
 Public Access in
 vicinity of property
 and Location Map
 California Coastal Commission

5-89-1197



Wildman

Chiate

Sunkin

Subject Property

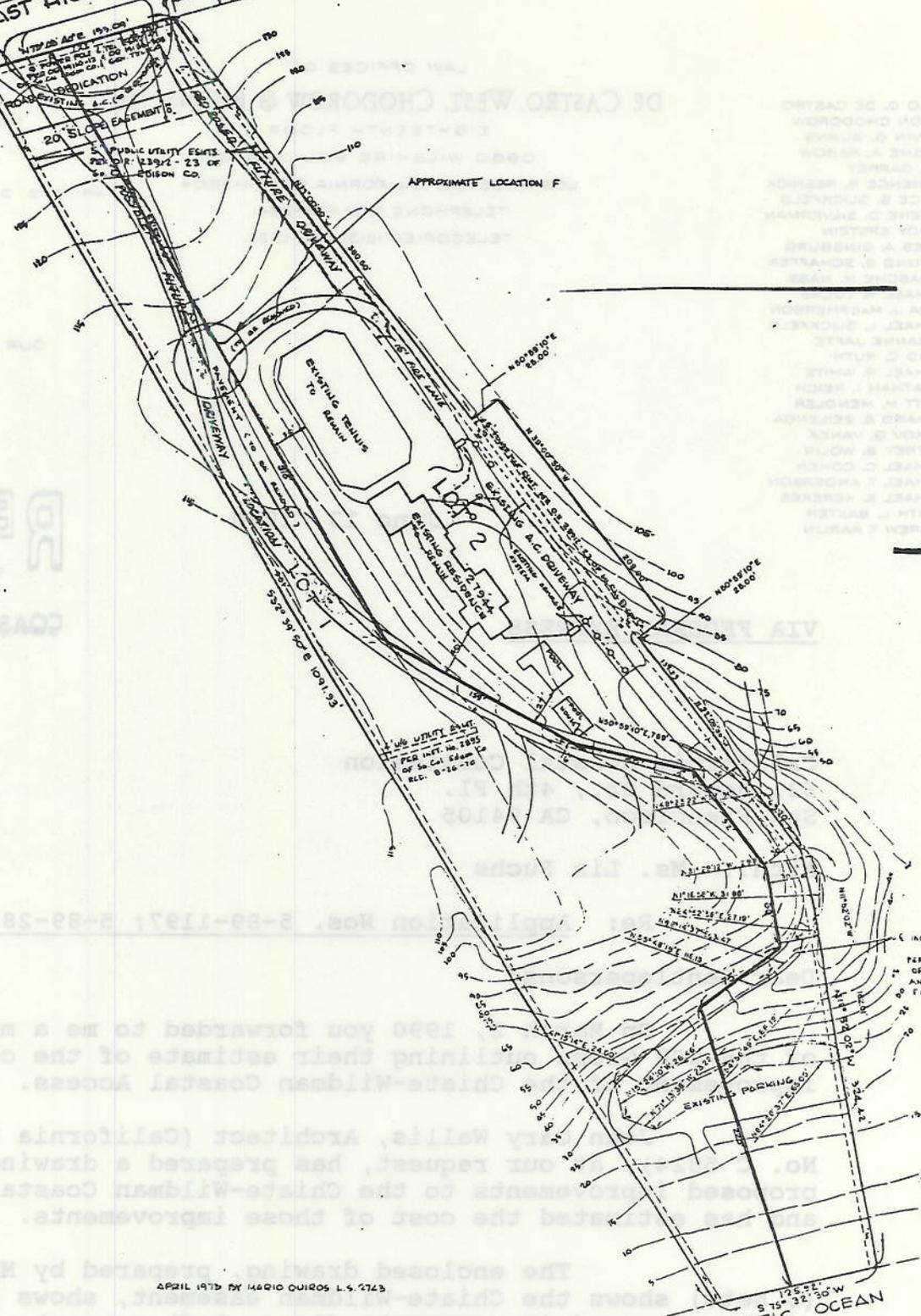
2861

EXHIBIT NO. 2
APPLICATION NO. 5-89-1197
Nearby lots
California Coastal Commission



32
200'

PACIFIC COAST HIGHWAY



APPROXIMATE LOCATION F

UTILITY EASEMENT
PER INST. NO. 1895
OF So Cal Edison Co.
REC. 8-16-12

INGRESS & EGRESS EASEMENT
(10' WIDE)
PER INST NO 75-75506
OF ROSER S. AND MARILYN S.
AND HERBERT R. AND JENN
RECORDED JULY 10, 19

APRIL 1973 BY MARIO QUIROS L.S. 2723

EXHIBIT NO. 3
APPLICATION NO. 5-89-1197 (Edwards) TRUST
Subdivision w/ revised lot lines
California Coastal Commission

EXHIBIT NO. 3
APPLICATION NO. 5-89-1197
Letter from applicant & Cost Estimate
California Coastal Commission

LAW OFFICES OF
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MICHAEL C. COHEN
MICHAEL T. ANDERSON
MICHAEL S. KERESKES
JUDITH L. BAXTER
ANDREW T. KARLIN

OUR FILE NUMBER

June 13, 1990

RECEIVED
JUN 15 1990
CALIFORNIA
COASTAL COMMISSION

VIA FEDERAL EXPRESS

California Coastal Commission
631 Howard St., 4th Fl.
San Francisco, CA 94105

Attn.: Ms. Liz Fuchs

Re: Application Nos. 5-89-1197; 5-89-287

Dear Gentlepersons:

On March 2, 1990 you forwarded to me a memorandum of the CGH Group outlining their estimate of the cost of improvement of the Chiate-Wildman Coastal Access.

John Gary Wallis, Architect (California License No. C 5824), at our request, has prepared a drawing of proposed improvements to the Chiate-Wildman Coastal Access and has estimated the cost of those improvements.

The enclosed drawing, prepared by Mr. Wallis (3 sets) shows the Chiate-Wildman easement, shows a profile of the proposed improvements (lower left corner) and notes the nature of the improvements required (drawing - middle right).

Mr. Wallis' estimate of the costs of making those

EXHIBIT NO. 4
APPLICATION NO. 5-89-1197
Letter from applicant
COST ESTIMATES
California Coastal Commission

EXHIBIT NO. 4
APPLICATION NO.
5-89-1197
Subdivision/revise
of lines
California Coastal Commission

EXHIBIT 4
(Cont.)

LAW OFFICES OF
DE CASTRO, WEST, CHODOROW & BURNS, INC.

California Coastal Commission
June 13, 1990
Page -2-

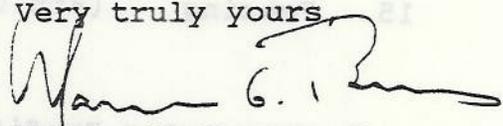
improvements are set forth on the enclosed "Chiate-Wildman Coastal Access Development/Projected Budget Estimate" (3 sets).

Please note that the cost estimates indicated are: For a private contractor - \$236,054 or, if performed by the Los Angeles County Parks and Recreation Department - \$196,726. The difference between those estimates is the contractor's profit and a lesser sum for engineering and architectural if the work is performed by the county.

To mitigate the effects of the projects described in Applications 5-89-1197 and 5-89-287 our client, the applicant, hereby offers to pay a mitigation fee measured by the cost of improving the Chiate-Wildman Coastal Access, in the sum of \$236,054 as a condition of issuing the permits required by said applications. Said sum is the higher of Mr. Wallis' cost estimates.

The applicant desires to change the configuration of the lot split being applied for in Application No 5-89-1197 per the enclosed Proposed Lot Line Revision For Tentative Minor Land Division Map No. 14-882. We propose obtaining your permit for such revised land division and then applying to the Los Angeles County Planning Commission for the revision and upon its approval recording the tentative map.

In light of the foregoing, we request that you place these applications on the July agenda of the Coastal Commission.

Very truly yours,


Marvin G. Burns of
DE CASTRO, WEST, CHODOROW & BURNS, INC.

MGB/cam
Encls.

cc: Steven H. Kaufman, Esq.
(w/o encls.)

CHIATE-WILDEMAN COASTAL ACCESS
Development/Projected Budget Estimate.

<u>Description</u>	<u>Totals</u>
1. Performance and Materials Bonds	\$ 3,500
2. Seeding	\$ 260
3. Signs	\$ 500
4. Topography as required	\$ 7,000
5. Roughgrading Parking Lot Area (30,000 @ 10¢ sf)	\$ 3,000
6. Fine Grading Parking Area (" ")	\$ 3,000
7. Compacting Slopes at P.Lot(12,000 @ 10¢ sf)	\$ 1,200
8. Paving 2" AC Over 4" Base Striping/Curbs Included (15,000 @ 2.15)	\$ 32,250
9. Pathway (6 ft.wide) Figured @ 10ft. 8,800 sf @ 2.50 sf (Note: Decomposed Granite or A.C.Paving w/Railroad Ties at Steeper Areas)	\$ 22,000
10. Path Grading (8,800 @ 20¢ sf)	\$ 1,760
11. Stairways: A 15 lin.ft.@ \$150	\$ 2,250
B 45 lin.ft.@ \$150	\$ 6,750
12. Bridge (25 lin.ft. @ \$500 lin.ft.)	\$ 12,500
13. Caissons (two @ \$3,000 ea.)	\$ 6,000
14. Concrete Retaining Walls:	
A 180 lin.ft.x 10 ^F H 6ft @ \$20/sf	\$ 36,000
B 140 lin.ft.x 10 ^F H 6ft	\$ 28,000
15. Fencing (8ft.Chainlink 1780 lin.ft. @ \$8 lf	\$ 14,240
	<u>SUB TOTAL</u> \$ 180,210
Contractor Profit (10%+10% or 21% rounded)	\$ 37,844
Engineering, Architect Plans & Specs (10%)	\$ 18,000
PRIVATE CONTRACTOR - <u>GRAND TOTAL I</u>	<u>\$ 236,054</u>

If L.A.County Parks develop this access per my discussion with t
the proposed budget could amount to Grand Total II as follows:

1 wk @ \$300/day L.A.Cty. Parks Labor	\$ 2,100
Engineering Fee @ 8%	\$ 14,416
Sub Total (above)	<u>\$ 180,210</u>
L.A.COUNTY PARKS - <u>GRAND TOTAL II</u>	<u>\$ 196,726</u>