

CALIFORNIA COASTAL COMMISSION

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

Th 20b

Appeal Filed: 9/30/08
49th Day: 11/18/08
Staff: D. Christensen
Staff Report: 10/23/08
Hearing Date: 11/13/08



STAFF REPORT: APPEAL **SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-MAL-08-074

APPLICANT: Los Angeles County Beaches and Harbors

APPELLANTS: Commissioner Sara Wan and Commissioner Patrick Kruer

PROJECT LOCATION: 30050 Pacific Coast Highway, Malibu, Los Angeles County

PROJECT DESCRIPTION: Restoration and repair of the portion of Zuma Creek that runs along the Zuma Beach access road to correct current flood damage and prevent future road flooding of the Zuma Beach underpass that crosses Pacific Coast Highway.

SUBSTANTIVE FILE DOCUMENTS: September 2, 2008 Staff Report for City of Malibu Coastal Development Permit No. 07-130; City of Malibu Planning Commission Resolution No. 08-49; "Biological Resources Assessment Report," prepared by Entrix Inc., dated June 19, 2006; California Department of Fish & Game letter stating statutory deadline had lapsed to issue an agreement regarding Streambed Alteration Notification No. 1600-2007-0349-R5, dated December 21, 2007.

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the stream ESHA protection provisions of the certified Local Coastal Program (LCP). Motion and resolution can be found on **Page 4**.

I. APPEAL JURISDICTION

The proposed project is located along a 500-foot stretch of Zuma Creek in the City of Malibu, approximately 1,500 feet upstream from the creek's outlet to the Pacific Ocean (**Exhibit 1**). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends 300 feet from the inland extent of the beach. The project area is located within this appeal area. In addition, the proposed project is located within a stream channel, so it is also within the appeal area that extends 100 feet from streams. As such, the City's coastal development permit for the subject project is appealable to the Commission.

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of its Local Coastal Program (LCP), a local government's actions on a Coastal Development Permit application in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603[a]). Any development approved by a County that is not designated as a principal permitted use within the zoning district where the development will take place may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]). Finally, any local government action on an application for a development that would constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5]).

2. Grounds for Appeal

The grounds for appeal for development approved by the local government and subject to appeal to the Commission are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (Coastal Act Section 30603[a][4]).

3. Substantial Issue Determination

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that the Commission find that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on the question of the existence of a substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of the Commissioners present at the hearing to find that no substantial issue is raised by the appeal.

4. De Novo Permit Application Review

If a substantial issue is found to exist, the Commission will consider the application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and, in certain cases, the public access and recreation policies of the Coastal Act. If a de novo review is conducted, testimony may be taken from all interested persons. In this case, if the Commission finds a substantial issue, the de novo coastal development permit consideration portion of the Commission's hearing will be scheduled for a future Commission meeting.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On September 2, 2008, the City of Malibu Planning Commission voted unanimously to adopt Resolution No. 08-49 approving Coastal Development Permit No. 07-130 for the proposed project. The Notice of Final Action for the project was received by Commission staff on September 17, 2008. A ten working day appeal period was set and notice was provided beginning September 18, 2008. The final day of the appeal period was October 1, 2008. The Notice of Final Action identified the project as appealable to the Coastal Commission, since the project is located within the Commission's appeal jurisdiction. An appeal of the City's action was filed by Commissioners Wan and Kruer on September 30, 2008, during the appeal period. Commission staff notified the City, the applicant, and all known interested parties and requested that the City provide its administrative record for the permit. The administrative record was received on October 1, 2008.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-MAL-08-074 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Following the staff recommendation will result in a de novo review of the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local actions will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-MAL-08-074 presents a **substantial issue** with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The City of Malibu Planning Commission approved Coastal Development Permit (CDP) No. 07-130 for repair of a 500-foot long portion of Zuma Creek that runs along the Zuma Beach underpass access road beneath Pacific Coast Highway (PCH) to correct current flood damage and prevent future road flooding. The Coastal Development Permit was approved subject to thirty conditions (**Exhibit 3**). Special conditions of approval included biological monitoring, pre-construction nesting bird and aquatic species surveys, water quality BMPs, agency approvals, revegetation, archaeological resource protection, and off-site disposal of excavated material.

Zuma Beach underpass access road, which serves PCH northbound traffic going to Zuma Beach, runs alongside Zuma Creek and beneath the PCH bridge over the creek (**Exhibits 4-5**) in the project location. Pacific Coast Hwy southbound traffic accesses Zuma Beach at a different location. Zuma Creek is a blue-line stream that originates in

Zuma Canyon to the north and drains beneath Pacific Coast Hwy to the east of Point Dume before its mouth opens up into a small estuary. According to the applicant, winter storms have filled the Zuma Creek bed in the project location with excessive sediment, which is causing the creek to periodically flood Zuma Beach underpass access road. A concrete roadside levee exists along the creekside edge of the 30-foot wide underpass access road. The levee, which the County stated was constructed in 1983 to protect the underpass access road from being undercut by the creek, extends from road grade to approximately 9 feet below road grade. However, the sediment that has built up so extensively in the creek channel has resulted in the creek channel being higher than the road grade and the top of the levee structure, so high creek flows can overtop the roadway.

The stated intent of the project is to regain full use of the beach access road and prevent its future flooding. The approved project involves restoring a 500 linear foot long section of Zuma Creek channel to its previous profile and capacity, as it existed in 1983 when the creek was channelized by construction of the concrete roadside levee (**Exhibit 6**). An estimated 2,000 cu. yds. of sediment will be excavated from the creek bed during the dry season (if feasible) and disposed off-site. The existing concrete roadside levee along the creek's west bank will not be altered. The creek's east bank will be graded to a slope not to exceed 2:1 (**Exhibits 6-8**). The project description states that the disturbed creek bank areas will be re-planted with native species and non-natives will be removed. However, there is no revegetation plan included in the applicant's plan set in the City's record. Nor did the City condition the project to require review and approval of a revegetation planting plan prior to permit issuance.

Zuma Creek, in the project location, is vegetated with southern willow scrub riparian vegetation. Aquatic habitat within Zuma Creek in the project area was determined to be poor by the County's consulting biologist (Entrix, Inc.) due to the confinement of the channel, excess sediment, and intermittent flows. No fish or amphibian species were observed during an April 2006 survey. Two special status bird species (California Species of Special Concern) were observed in the area of the project during the April 2006 biological survey: Cooper's Hawk and Common Yellowthroat. The project site, consisting of Zuma Creek and associated riparian habitat, are designated ESHA in the Malibu LCP.

B. APPELLANTS' CONTENTIONS

The City's action was appealed by Commissioner Wan and Commissioner Kruer. This appeal is attached as **Exhibit 2**. The appeal contends that the approved project is not consistent with the stream ESHA protection policies of the certified City of Malibu Local Coastal Program (LCP) and applicable policies of the Coastal Act as incorporated by reference into the certified LCP. The Commissioners' appeal alleges that the project is not consistent with LUP Policies 3.32 and 3.121, and Coastal Act Sections 30240, 30231, and 30236, as incorporated in the LUP.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access and recreation policies of the Coastal Act. In this case, the appellants did not cite the public access and recreation policies of the Coastal Act as a ground for appeal. However, should the Commission find Substantial Issue based on the grounds that are cited, the public access and recreation policies of the Coastal Act would be addressed in the de novo review of the project.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, the appeal raises a substantial issue with regard to the grounds on which the appeals have been filed, as discussed below.

1. Factual and Legal Support for Finding LCP Consistency

The first factor in evaluating the issue of whether the appeal raises a substantial issue, is the degree of factual and legal support for the City's decision that the development, as conditioned, is consistent with the City of Malibu's certified LCP. The issues of environmentally sensitive habitat area, flood protection, and stream alteration were addressed in the Planning Commission's approval of the coastal development permit.

The Commissioners' appeal alleges that the project is not consistent with LUP Policies 3.32 and 3.121, and Coastal Act Sections 30240, 30231, and 30236, as incorporated in the LUP.

The Malibu LUP mandates that environmentally sensitive habitat areas (ESHAs) shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources (Coastal Act Section 30240).

Section 30231 of the Coastal Act, incorporated into the Malibu LUP as a policy, mandates that a certain level of biological productivity and quality of coastal waters shall be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. Section 30236 of the Coastal Act, also incorporated into the Malibu LUP as a policy, allows for alterations to streambeds only when the primary function is either 1) a necessary water supply project, 2) flood protection for existing development where there is no other feasible alternative, or 3) the improvement of fish and wildlife habitat and the alteration incorporates the best mitigation measures feasible. Land Use Plan (LUP) Policies 3.32 and 3.121 also prohibit the channelization or alteration of streams for flood control purposes except where no feasible alternative exists.

Section 3.32 of the Malibu LUP states:

Channelizations or other substantial alterations of streams shall be prohibited except for: 1) necessary water supply projects where no feasible alternative exists; 2) flood protection for existing development where there is no other feasible alternative, or 3) the improvement of fish and wildlife habitat. Any channelization or stream alteration permitted for one of these three purposes shall minimize impacts to coastal resources, including the depletion of groundwater, and shall include maximum feasible mitigation measures to mitigate unavoidable impacts. Bioengineering alternatives shall be preferred for flood protection over "hard" solutions such as concrete or riprap channels.

Section 3.121 of the Malibu LUP states:

Alterations or disturbance of streams or natural drainage courses or human-made or altered drainage courses that have replaced natural streams or drainages and serve the same function, shall be prohibited, except where consistent with Policy 3.32. Any permitted stream alterations shall include BMPs for hydromodification activities.

The appellants have raised the issue of whether the approved project is consistent with the above-mentioned stream ESHA protection policies of the LCP. The project site, consisting of Zuma Creek and associated riparian habitat, are designated ESHA in the Malibu LCP. The stated intent of the proposed project is to regain full use of the Zuma Beach underpass access road and prevent its future flooding by excavating the Zuma Creek channel to its previous profile and capacity. The project would involve removal of a significant amount of riparian vegetation and substantial stream channel alteration. In the City's staff report, it is stated that the proposed work is a permitted use within the stream ESHA because the project will protect existing development (access road) from flooding.

Pursuant to Section 3.32 of the Malibu LUP, substantial alterations of streams shall be prohibited except for flood protection for existing development where there is no other feasible alternative. However, the feasibility of alternatives to the approved project that would serve to minimize stream alteration and protect stream ESHA were not

adequately analyzed by the City. The applicant provided a brief discussion of alternatives as part of its submittal to the City, although no supporting data or evidence was provided to substantiate the conclusions. The City staff report discusses the same two alternatives offered by the applicant: a “no project” alternative and an “alternate park entrance” alternative. The City states that each of these alternatives would result in abandonment of the subject access road and access to Zuma Beach for northbound traffic would need to be redirected either to the southbound entrance or via a left turn lane and signalization on PCH for northbound traffic to enter Zuma Beach. Increased traffic congestion and reduced public safety were the reasons given why these alternatives were deemed infeasible. However, detailed analysis was not provided to substantiate that conclusion.

There exist alternatives available to the applicant that may eliminate the need to substantially change the morphology of the Zuma Creek channel and impact stream ESHA for flood protection, and thus allow for reestablishment of a more natural channel configuration in this constrained location. An alternative park entrance for northbound traffic on PCH would likely be the least environmentally damaging alternative as it would eliminate significant disruption of stream ESHA. However, it has not been demonstrated that less environmentally damaging alternatives to the proposed project would be infeasible. Coastal Act Section 30236, as incorporated in the LUP, and LUP Policies 3.32 and 3.121, specifically prohibit the channelization or alteration of streams for flood control purposes except where no feasible alternative exists. In this case, there appear to be feasible alternatives to the proposed project, including but not limited to relocation of the park entrance further west, in order to avoid impacts to Zuma Creek and ESHA. For the reasons discussed above, it appears that the project may not be consistent with the noted policies of the City’s LCP relating to ESHA, flood protection, and stream alteration. In any event, the Commission finds that the City’s determination that there were no available feasible alternatives is not supported by adequate factual evidence in the record.

2. Extent and Scope of the Development

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved by the City.

The project includes approximately 2,000 cu. yds. of excavation and removal of riparian vegetation along a 500 linear foot long stretch of the Zuma Creek stream corridor. Given that this is an environmentally sensitive habitat area, the extent and scope of the development is significant.

3. Significance of Coastal Resources

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision.

In this case, streams and riparian ESHA are considered extremely significant coastal resources under the policies and provisions of the Malibu LCP and are accorded

maximum protection from impacts. Zuma Creek in particular is considered a significant stream and watershed, in that it remains in pristine condition throughout most of the watershed area. Although the proposed project site has been disturbed over time, given the existing PCH bridge and entrance roadway, it does contain riparian habitat that meets the criteria of ESHA pursuant to the Malibu LCP. As such, the Commission finds that the coastal resources at issue in this coastal development permit are significant.

4. Precedential Value for Future Interpretation of the LCP

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the City's decision for future interpretation of its LCP.

There are many stream corridors within the City of Malibu that could be subject to similar stream alteration projects for flood protection purposes. The subject City decision could be a precedent for how project alternatives are considered in such projects.

5. Local, Regional, or Statewide Issues

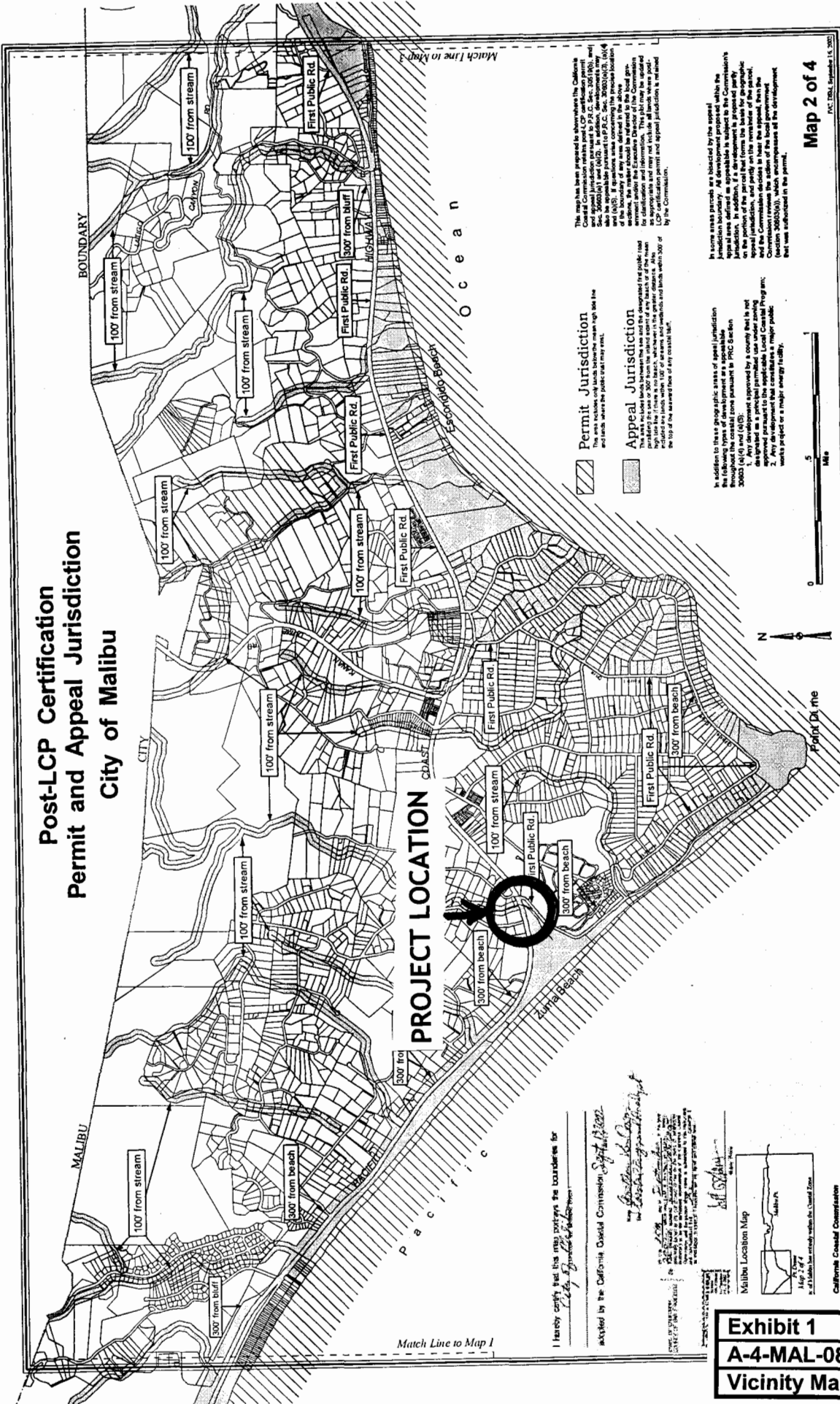
The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance.

The issues raised by this appeal with regard to the protection of streams and ESHA, as well as the consideration of feasible alternatives with regard to stream alteration, is not limited to only local issues. Rather, these issues are implicated in similar decisions regarding stream protection through the region and the rest of the state.

6. Conclusion

The purpose of the substantial issue determination is to review the administrative record and establish whether a substantial question is raised with respect to the appellants' assertions that the project does not conform to the certified LCP. As described above, the Commission finds that substantial issue is raised with respect to the appellant's contention that alternatives that may serve to minimize stream alteration and protect stream ESHA were not adequately analyzed in approval of the project, as required by the ESHA and stream protection policies and provisions of the certified City of Malibu Local Coastal Program. Additionally, the factors discussed above demonstrate that the issues raised in the appeal are substantial. The Commission therefore declines to make a finding that this appeal raises no substantial issue.

Post-LCP Certification Permit and Appeal Jurisdiction City of Malibu



Match Line to Map 1

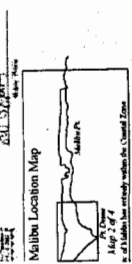
Match Line to Map 2

I hereby certify that this map purveys the boundaries for
 City of Malibu

Approved by the California Coastal Commission August 13, 2002

[Signature]
 Malibu City Clerk

DATE: 8/13/02
 TIME: 10:00 AM
 PLACE: MALIBU, CALIFORNIA



California Coastal Commission
 Division of Services

Permit Jurisdiction
 The area includes only lands between the mean high tide line and lands where the public use they exist.

Appeal Jurisdiction
 This area includes lands between the sea and the designated first public road extending the use of 300 feet from the shoreline or the average center. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of any coastal wall.

In addition to these geographic areas of special jurisdiction the following types of development are a separable part of the coastal zone pursuant to PRC Section 30603 (a) (4) and (a) (5):
 - Development sponsored by a county that is not designated as a principal permitted use under zoning regulations.
 - Development pursuant to the special use zoning program.
 - Works project or major energy facility.

The map has been prepared to show the California Coastal Commission's permit LCP certification permit and appeal jurisdiction pursuant to P.R.C. Sec. 30615(b). Any development within the permit jurisdiction shall be subject to the applicable permit (P.R.C. Sec. 30603(a)(2), (a)(4) and (a)(5)). If questions arise concerning the boundaries location and extent of the permit and appeal jurisdiction, the applicant should be referred to the local government and the Commission. This plan may be updated as appropriate and may not reflect all laws where post-approval changes have occurred. The Commission's permit and appeal jurisdiction is not limited by the Commission.

In some areas parcels are bisected by the special jurisdiction boundary. All development proposed within the special jurisdiction shall be subject to the Commission's jurisdiction. In addition, if a development is proposed partly on the portion of the parcel that forms the basis for geographic appeal jurisdiction, the applicant shall file an appeal with the Commission (within the appeal jurisdiction) and the local government (within 30603(a)(5)), which encompasses all the development that uses authorized in the permit.

Exhibit 1
A-4-MAL-08-074
Vicinity Map

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-4508
VOICE (805) 585-1800 FAX (805) 641-1732

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Wan, Commissioner Kruer, California Coastal Commission

Mailing Address: C/O South Central Coast District, 89 South California Street

City: Ventura

Zip Code: 93001

Phone: 805 585-1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Restoration and repair of the portion of Zuma Creek that runs along the Zuma Beach access road to correct current flood damage and prevent future road flooding of the Zuma Beach underpass that crosses Pacific Coast Highway.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

30050 Pacific Coast Highway, City of Malibu (APN 4467-029-900 and 4469-027-901)

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-4-MAL-08-074

DATE FILED:

9/30/08

DISTRICT:

So. Central Coast

Exhibit 2

A-4-MAL-08-074

Appeal Form

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

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

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

6. Date of local government's decision: September 2, 2008

7. Local government's file number (if any): CDP 07-130

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Los Angeles County Beaches and Harbors
c/o John Schock of Halcrow HPA
6700 E. Pacific Coast Highway
Long Beach, CA 90803

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

(1) Shelley Luce
Santa Monica Bay Restoration Commission
320 West 4th Street, Suite 200
Los Angeles, CA 90013

(2) Mark Abramson
Santa Monica Baykeeper
PO Box 10096
Marina del Rey, CA 90295

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

Exhibit A attached

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

SECTION V. Certification

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

Signed: *Laura J. Wan*
Appellant or Agent

Date: 9/30/08

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

Signed: _____

Date: _____

(Document2)

ex. 2

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

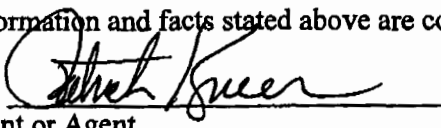
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

Exhibit A attached

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: 9/30/08

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

Signed: _____

Date: _____

(Document2)

EXHIBIT A
Reasons Supporting the Appeal

Stream/ESHA Protection

According to the City's staff report, winter storms have filled the Zuma Creek bed in the project location with excessive sediment, which causes the creek to periodically flood Zuma Beach underpass access road. The access road lies adjacent to the creek on its west side. A concrete levee, constructed in 1983-1984 to protect the underpass access road from being undercut by the creek, is located between the creek and the road. The east side of the creek is vegetated with dense riparian vegetation. The subject portion of the access road serves only Pacific Coast Highway (PCH) northbound traffic going to Zuma Beach. PCH southbound traffic accesses Zuma Beach in a different location.

The project involves restoring a 500 linear foot section of Zuma Creek channel to its previous profile and capacity, as it existed in 1984 when the creek was channelized by construction of the concrete levee. An estimated 2,000 cu. yds. of sediment will be excavated from the creek bed during the dry season and disposed off-site. The existing levee on the west side of the creek will not be altered. The creek bank on the east side will be graded to a slope not to exceed 2:1. Disturbed creek bank areas will be replanted with native species and non-natives will be removed. The stated intent of the project is to regain full use of the beach access road and prevent its future flooding. The project site, consisting of Zuma Creek and associated riparian habitat, are designated ESHA in the Malibu LCP. In the City staff report, it is stated that the proposed work is a permitted use within the stream ESHA because the project will protect existing development (access road) from flooding.

Issue is raised with regard to whether the approved project is consistent with stream and ESHA protection policies of the Malibu LCP. The Malibu LUP mandates that environmentally sensitive habitat areas (ESHA) shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources. Section 30231 of the Coastal Act, incorporated into the Malibu LUP as a policy, mandates that the biological productivity and quality of coastal waters shall be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. Section 30236 of the Coastal Act, also incorporated into the Malibu LUP as a policy, allows for alterations to streambeds only when the primary function is either 1) a necessary water supply project, 2) flood protection for existing development where there is no other feasible alternative, or 3) the improvement of fish and wildlife habitat and the alteration incorporates the best mitigation measures feasible. Land Use Plan (LUP) Policies 3.32 and 3.121 also prohibit the channelization or alteration of streams for flood control purposes except where no feasible alternative exists.

Issue is raised with regard to whether the approved project is consistent with the above-mentioned LCP policies and provisions. The feasibility of alternatives to the approved project that would serve to minimize stream alteration and protect stream ESHA were not adequately analyzed by the City. Aside from the proposed project, two other alternatives were considered and discussed in the City staff report: a "no project" alternative and an "alternate park entrance" alternative. The City states that each of these alternatives would result in abandonment of the subject access road and access to Zuma Beach for northbound traffic would need to be redirected either to the southbound entrance or via a left turn lane and signalization on PCH for northbound traffic to enter Zuma Beach. Increased traffic congestion and reduced public safety were the reasons given why these alternatives were deemed infeasible. However, detailed analysis was not provided to substantiate that conclusion. There exist alternatives available to the applicant that may eliminate the need to substantially change the morphology of the Zuma Creek channel and impact stream ESHA for flood protection, and thus allow for reestablishment of a more natural channel configuration in this constrained location. An alternative park entrance for northbound traffic on PCH would likely be the least environmentally damaging alternative as it would eliminate significant disruption of stream ESHA. However, it has not been demonstrated that less environmentally damaging alternatives to the proposed project would be infeasible. Coastal Act Section 30236, as incorporated in the LUP, and LUP Policies 3.32 and 3.121, specifically prohibit the channelization or alteration of streams for flood control purposes except where no feasible alternative exists. In this case, there appear to be feasible alternatives to the proposed project, including but not limited to relocation of the park entrance further west, in order to avoid impacts to Zuma Creek and ESHA.

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 08-49**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-130 TO ALLOW FOR THE RESTORATION AND REPAIR OF THE PORTION OF ZUMA CREEK THAT RUNS ALONG THE ZUMA BEACH ACCESS ROAD TO CORRECT CURRENT FLOOD DAMAGE AND PREVENT FUTURE ROAD FLOODING OF THE ZUMA BEACH UNDERPASS THAT CROSSES PACIFIC COAST HIGHWAY WITHIN THE INSTITUTIONAL AND PUBLIC OPEN SPACE ZONING DISTRICTS LOCATED AT 30050 PACIFIC COAST HIGHWAY (COUNTY OF LOS ANGELES)

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

Section 1. Recitals.

A. On October 30, 2007, John Schock of Halcrow HPA, on behalf of the County of Los Angeles, the property owner, applied for Coastal Development Permit (CDP) No. 07-130 for the restoration and repair of the portion of Zuma Creek that runs along the Zuma Beach access road. The County of Los Angeles Department of Beaches and Harbors maintains the Zuma Beach access road which provides public access for northbound traffic on Pacific Coast Highway to the main entrance of Zuma County Beach. During the winter storms of 2004-2005, sediment filled the Zuma Creek bed, which diverted the watercourse over the Zuma Beach underpass that crosses Pacific Coast Highway. Use of the beach access road has been restricted by the excessive sediment accumulation and recurrent flooding. The project proposes to restore the creek flow line profile back to the previous course it followed when the creek was channelized and the road improved in 1983 following storms. The proposed project will not affect previously undisturbed areas and will return the creek flows back into the channel. The goals of the project are to prevent future sediment deposition and road flooding, protect public safety and regain full use of the beach access road. The application was reviewed by the Planning Division, the City Biologist and City Public Works Department.

B. On June 24, 2008, a Notice of Application was posted on the subject property.

C. On July 7, 2008, the application was deemed complete for processing.

D. On August 21, 2008, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

E. On September 2, 2008, the Planning Commission held a duly noticed public hearing on the subject applications, reviewed and considered the agenda report, reviewed and considered written reports, public testimony and other information in the record.

Section 2. Environmental Review.

This project is proposed by the County of Los Angeles and in accordance with the California Environmental Quality Act (CEQA), the County of Los Angeles is the lead agency. Pursuant to the authority and criteria contained in CEQA, the County has analyzed the project and found that it is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and, therefore, is exempt from the provisions of CEQA. Based on CEQA Guidelines Sections 15333(b) and (c) – Small Habitat Restoration Projects and Section 15269 – Emergency Projects, the County has issued a CATEGORICAL EXEMPTION for the project. The County further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B and 13.9 of the City Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission hereby adopts the findings in the agenda report, the findings of fact below, and approves CDP No. 07-130.

The proposed project has been reviewed by the City Biologist and Public Works Department, as well as Planning Division staff. The project area has previously been disturbed by channelization of the creek and construction of the Zuma Beach access road and levee. Although the City's Cultural Resources Sensitivity Map shows that the subject property may have the potential to contain sensitive cultural resources, properties that have been studied in the surrounding area have been found to have a low risk of having archaeological resources. The records search conducted for the project site by Thomas David Shackford of the Southern Central Coastal Information Center (August 30, 2007) found no documentation of cultural resources within the project area. Due to the disturbed nature of the project site and the results of the records search, no further study is required at this time. Nevertheless, conditions of approval have been included in Section 4 of this resolution which require that in the event that potentially important cultural resources are found in the course of geologic testing or any other activity, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information.

A. General Coastal Development Permit (LIP Chapter 13)

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The project proposes to restore and repair the previous creekbed profile to prevent future flooding, regain lost streambed capacity, protect the beach access road and improve public safety. The project does not propose to disturb any areas that have not been disturbed previously. The project, as conditioned, conforms to the LCP.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

A portion of the project area is located between the first public road and the sea. The project will restore full use of the Zuma Beach access road, thereby improving the public's access to coastal resources. Therefore, the project conforms to the public access and recreation policies.

Finding A3. The project is the least environmentally damaging alternative.

As mentioned previously, pursuant to the CEQA, the County of Los Angeles has issued a categorical exemption for the proposed project and none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2). The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the requirements of the LCP and the Malibu Municipal Code (M.M.C.). The project will not result in potentially significant impacts on the physical environment.

The Planning Commission considered three project alternatives in determining which was the least environmentally damaging.

1. No Project – The no project alternative would avoid any change in the project site and would not achieve the goals of the project. The project is designed to remove excessive sedimentation and restore the previous stream profile. The no project alternative would eventually result in the complete closure of the access road, with increased flooding and flows of the creek over the existing pavement. Without the use of the access road by northbound traffic, drivers would be forced to use the southbound entrance, resulting in increased traffic congestion and reduced public safety. The no project alternative is not a feasible alternative.

2. Alternate Park Entrance – The present access road could be abandoned and a new entrance could be constructed into the Zuma Beach parking lots. This alternative would require the construction and signalization of a left turn lane on Pacific Coast Highway for northbound traffic going to Zuma Beach. The queue for this turn lane would back up Pacific Coast Highway during peak park use periods. Due to traffic congestion and public safety issues associated with this alternative, it is not the least environmentally damaging alternative.

3. Proposed Project – The proposed project will restore the previously channelized and excavated stream to its previous profile, thereby regaining the lost capacity, preventing future flooding, redirecting flows back into the creek channel and improving public access to coastal resources. The project has minimized the removal of vegetation to facilitate native vegetation growing back following construction. If any activities are scheduled between February 1 and August 30 within the stream and associated riparian habitat, nesting bird surveys will be conducted to ensure adequate buffers are established from any active nests. The proposed project will not disturb areas which have not been previously disturbed, will return the creek flows back into the channel and is compatible with existing resources. Therefore, the proposed project is the least environmentally damaging

alternative.

The proposed project complies with the requirements of the LCP and the M.M.C., and is consistent with the zoning designations of the project site. The proposed project, as conditioned, will not result in potentially significant impacts on the physical environment. The proposed project is the least environmentally damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms to the recommendations of the Environmental Review Board, or if it does not conform to the recommendations, findings are included which explain why it is not feasible to take the recommended action.

The subject parcel is located adjacent to an ESHA, ESHA buffer zone or stream as designated in the LCP ESHA map. However, the proposed project involves the repair of the existing road structure through the removal of sediment and returning the stream profile to the configuration previously established in 1984 when the access road and levee were constructed. Pursuant to LIP Section 4.4.4, the City Biologist determined that review by the Environmental Review Board (ERB) was not required since the work would be conducted within the previously permitted channelized area to protect the existing road structure and would not require additional fuel modification. The City Biologist has determined that the project is not expected to result in any new adverse biological impacts and would improve the biological condition as it would redirect the stream flows from the road back into the stream channel. The Biological Resources Assessment Report prepared by Entrix Environmental Consultants (June 19, 2006) identifies the existing conditions and provides recommendations regarding minimization of temporary impacts associated with the proposed project.

B. Environmentally Sensitive Habitat Area (LIP Chapter 4)

The ESHA Overlay chapter applies to CDP applications when the proposed project site is designated ESHA on the LIP ESHA Overlay map. Pursuant to LIP Section 4.7, the supplemental findings of LIP Section 4.7.6 are only applicable for a CDP proposing a use other than one permitted in the ESHA overlay district. This project is proposed within the ESHA Overlay; however, pursuant to LIP Section 4.5.2.B, flood protection where no other method for protecting existing structures, such as the access road, within the floodplain is feasible and where such protection is necessary for public safety or to protect existing development is a permitted use within streams. Accordingly, the findings of LIP Section 4.7.6 are not applicable to the proposed project.

C. Native Tree Protection Ordinance– (LIP Chapter 5)

The provisions of the Native Tree Protection chapter only apply to those areas containing one or more native Oak, California Walnut, Western Sycamore, Alder or Toyon trees that has at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, 4½ feet from the ground. Western sycamore trees were observed in the project area; however, it is not known whether removal of a sycamore of a protected size will be necessary. The project plans have been designed to limit removal of vegetation to the minimum

needed to conduct the project. Removal of sycamore trees is not anticipated. The state and federal regulatory agencies involved in the permitting of the project require standard and specific restorative plantings in conjunction with their permits. Conditions of approval for the CDP have been included in Section 4 of this resolution requiring that all other agency permits be obtained prior to beginning the proposed work, and that all conditions outlined in those permits be fully adhered to. Conditions are also included to require copies of these permits to be provided to the City. Because of these state and federal permit conditions, and because the proposed project involves restoration and repair to a previously existing permitted condition, no additional mitigation for impacts to native trees is required and the supplemental Native Tree Protection findings are not applicable.

D. Scenic, Visual and Hillside Resource Protection Ordinance (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection chapter governs those CDP applications concerning any parcel of land that is located along, within, provides views to, or is visible from any scenic area, scenic road, or public viewing area. The project may be visible from a scenic road (Pacific Coast Highway) and Zuma Beach Park; therefore, the Scenic, Visual and Hillside Resource Protection chapter applies and the five findings set forth in LIP Section 6.4 are hereby made as follows.

Finding D1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

The project consists of restoring the creek to its previous profile and clearing the beach access road of excess sediment. Due to necessary vegetation removal, the project will involve impacts to visual resources from Pacific Coast Highway and the Zuma Beach access road; however, these impacts are anticipated to be temporary in nature and associated with the construction period. Removal of vegetation will be limited to the minimum necessary to conduct the project. Compliance with the conditions of the permitting state and federal agencies will be required as a condition of approval of this CDP. Therefore, the project will not result in significant adverse scenic or visual impacts.

Finding D2. The project, as conditioned, will have less than significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As stated above in Finding D1, the project, as conditioned, is not expected to cause adverse scenic or visual impacts.

Finding D3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the project, as conditioned, is the least environmentally damaging alternative.

Finding D4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As discussed in Findings A3 and D1, the proposed project is the least environmentally damaging alternative and will not result significant impacts on visual scenic resources.

Finding D5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

The proposed project is a permitted use in stream ESHA under LIP Section 4.5.2.B. The proposed flood control measures are expected to regain former stream capacity and restore the profile of the creek to its previous configuration. The City Biologist has determined that the project is not expected to result in any new adverse biological impacts. The project would improve the existing biological condition as it would redirect the stream flows back into the stream channel and prevent flows over the road. Therefore, the project meets the goals of the resource protection policies of the LCP.

E. Transfer Development Credits (LIP Chapter 7)

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

F. Hazards (LIP Chapter 9)

The project was analyzed for the hazards listed in LIP Section 9.2.A.1-7. The proposed project is not anticipated to result in the potential to create adverse impacts on site stability or structural integrity. The project includes the restoration and repair of the portion of Zuma Creek that runs along the Zuma Beach access road to correct current flood damage and prevent future road flooding. The project has been reviewed by all applicable City specialists and has been determined to be consistent with all relevant policies and regulations outlined in the LCP. Therefore, according to LIP Section 9.3, LIP hazard findings need not be made.

G. Shoreline and Bluff Development (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the proposed project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project does not include development of a parcel located on or along the shoreline, a coastal bluff or bluff top fronting the shoreline as defined by the LCP. The proposed project will restore the previously channelized and excavated stream, thereby increasing capacity and preventing excessive sediment deposition on the access road. Since beach sand supplies can be affected by the flow of rivers and streams, by redirecting stream flows back into the creek channel, the project is not expected to result in potentially significant adverse impacts to sand supply. The project will improve public access to coastal resources. Therefore, in accordance with LIP Section 10.3, the shoreline and bluff development findings are not applicable.

H. Public Access (LIP Chapter 12)

A portion of the project site is located between the first public road and the sea. However, since the project involves repair to and restoration of the use of a public beach access road, improved access to coastal resources within Zuma County Beach will result from the project without the need for a grant of easement or offer to dedicate an easement. The project may temporarily hinder public use of the access road during construction but will result in improved public access following completion of the project. In accordance with Section 12.6.B.2 of the Malibu LIP, the project is exempt from providing public lateral, vertical and bluff top access for the following reasons:

Lateral Access - The project is not located on or adjacent to a shoreline; and therefore, no condition for lateral access is required by the LCP.

Vertical Access - The project is not located on or adjacent to a shoreline; therefore, no condition for vertical access is required.

Bluff Top Access - The project is not located on a bluff top; and therefore, no condition for bluff top access is required by the LCP.

I. Land Division (LIP Chapter 15)

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

J. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. The project does not involve a new OWTS or changes to existing fixtures or systems. Therefore, this chapter does not apply.

Section 4. Conditions of Approval

Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, the Planning Commission hereby approves CDP No. 07-130, subject to the conditions set forth herein.

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the restoration and repair of approximately 500

linear feet of Zuma Creek adjacent to the Zuma Beach access road and underpass. Subsequent submittals for this project shall be in substantial compliance with the plans date stamped by the Planning Division June 30, 2008. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

3. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until all permittees or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 working days of this decision.
4. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the CDP approved by the City is void.
5. This permit shall be null and void if the project has not commenced within two years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to the expiration of the two-year period and shall set forth the reasons for the request.
6. This resolution (including signed and notarized Acceptance of Conditions Affidavit and Department Review Sheets) shall be copied in its entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
7. The applicant shall submit three complete sets of plans, which include the pages described in Condition No. 6, to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
8. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
9. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the LCP. An application with all required materials and fees may be required.
10. All development shall conform to the City of Malibu Environmental and Building Safety Division, City Biologist and City Public Works Department. Notwithstanding this review, all required permits shall be secured.

11. This CDP runs with the land and binds all future owners of the property.
12. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
13. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Where, as a result of this evaluation, the Planning Manager determines that the project may have an adverse impact on cultural resources; a Phase II Evaluation of cultural resources shall be required pursuant to Chapter 11.3 (F) of the LCP.
14. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 48 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Biology

15. Prior to the initiation of construction activity, the applicant shall obtain project approval from the California Department of Fish and Game under a Stream Alteration Agreement, the United States Army Corps of Engineers under a Nationwide permit, and the Los Angeles Regional Water Quality Control Board under a Water Quality Certification. Copies of these permits shall be submitted to the Planning Division.
16. All conditions, guidelines, best management practices (BMPs), direction, and recommendations provided in the California Department of Fish and Game, US Army Corps of Engineers and California Regional Water Quality Control Board permits and agreements and the Biological Resources Assessment Report prepared by Entrix (June 19, 2006) shall be fully adhered to unless in conflict with the following conditions. In such case, the more restrictive shall apply.
17. The proposed project design shall minimize the removal of existing native vegetation to the greatest extent feasible.
18. Work within the stream channel and riparian habitat shall be scheduled only during the dry season from April 1 to October 31. If it becomes necessary to conduct activities within these areas from November 1 to March 31, a comprehensive erosion control plan shall be submitted for approval prior to and implemented prior to initiation of vegetation removal and/or grading activities.
19. Activities within the stream and associated riparian habitat scheduled between February 1 and August 30 will require nesting bird surveys by a qualified biologist no more than five days

prior to initiation of grading activities. Should active nests be identified, a buffer area of no less than 150 feet (300 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to any vegetation removal on the site.

20. A qualified biological monitor shall be onsite during all native vegetation removal. The monitoring biologist shall insure that native vegetation removal/trimming is limited to the permitted limits. The biologist shall have the authority to stop all work if he/she determines the approved limits have been exceeded. In such a case, the monitoring biologist shall be responsible for contacting all responsible regulatory agencies involved and supervising any and all appropriate remedies for any infraction determined by the responsible regulatory agencies.

Grading/Public Works

21. The non-exempt grading for the project shall not exceed 1,000 cubic yards of cut and fill.
22. Grading permits shall not be issued between November 1 and March 31 each year (LCP 264). Project approved for grading permit shall not receive grading permit unless the project can be rough-graded before November 1.
23. The ocean between Latigo Point and the western City limits has been established by the State Water Resources Control Board as an Area of Special Biological Significance (ASBS) as part of the California Ocean Plan. This designation prohibits the discharge of any waste including storm water runoff directly to the ASBS.
24. Exported soil from the site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
25. A Grading and Drainage Plan shall be approved containing the following information prior to the issuance of permits for the project:
 - a) Public Works Department General Notes.
26. A Storm Water Pollution Prevention Plan (SWPPP) shall be provided prior to the issuance of the grading permits for this project. This plan shall include:
 - a. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset.
 - b. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
27. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the rainy season). The following elements shall be included:
 - b. Plans for the stabilization of disturbed areas of the project, along with the proposed schedule for the installation of protective measures.
 - c. Location and sizing criteria for silt basins, sandbag barriers, and silt fencing.

- d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.

Solid Waste

28. Prior to the issuance of a building/grading permit, a Waste Reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion goal.

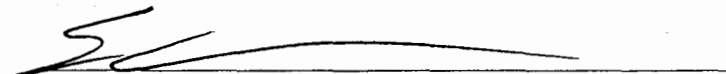
Prior to Final Building and Safety Division Sign Off

29. The applicant shall request a final inspection by the City Biologist and the Planning Division prior to final inspection by the City of Malibu Environmental and Building Safety Division. Final sign off by the Building and Safety Division shall not occur until the Planning Division has determined that the project complies with this CDP.
30. Prior to final sign off by the Building and Safety Division, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.

Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 2nd day of September, 2008.


ED GILLESPIE, Planning Commission Vice Chair

ATTEST:


JESSICA DUBAN, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.ci.malibu.ca.us, in person at City Hall, or by calling (310) 456-2489, ext. 245.

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission’s decision to the Coastal Commission within 10 working days of the issuance of the City’s Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal

Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling 805-585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 08-49 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting held on the 2nd day of September, 2008, by the following vote:

AYES: COMMISSIONERS: JENNINGS, MAZZA AND GILLESPIE

NOES:

ABSTAIN:

ABSENT: COMMISSIONERS: SCHAAR AND HOUSE



JESSICA DUBAN, Recording Secretary

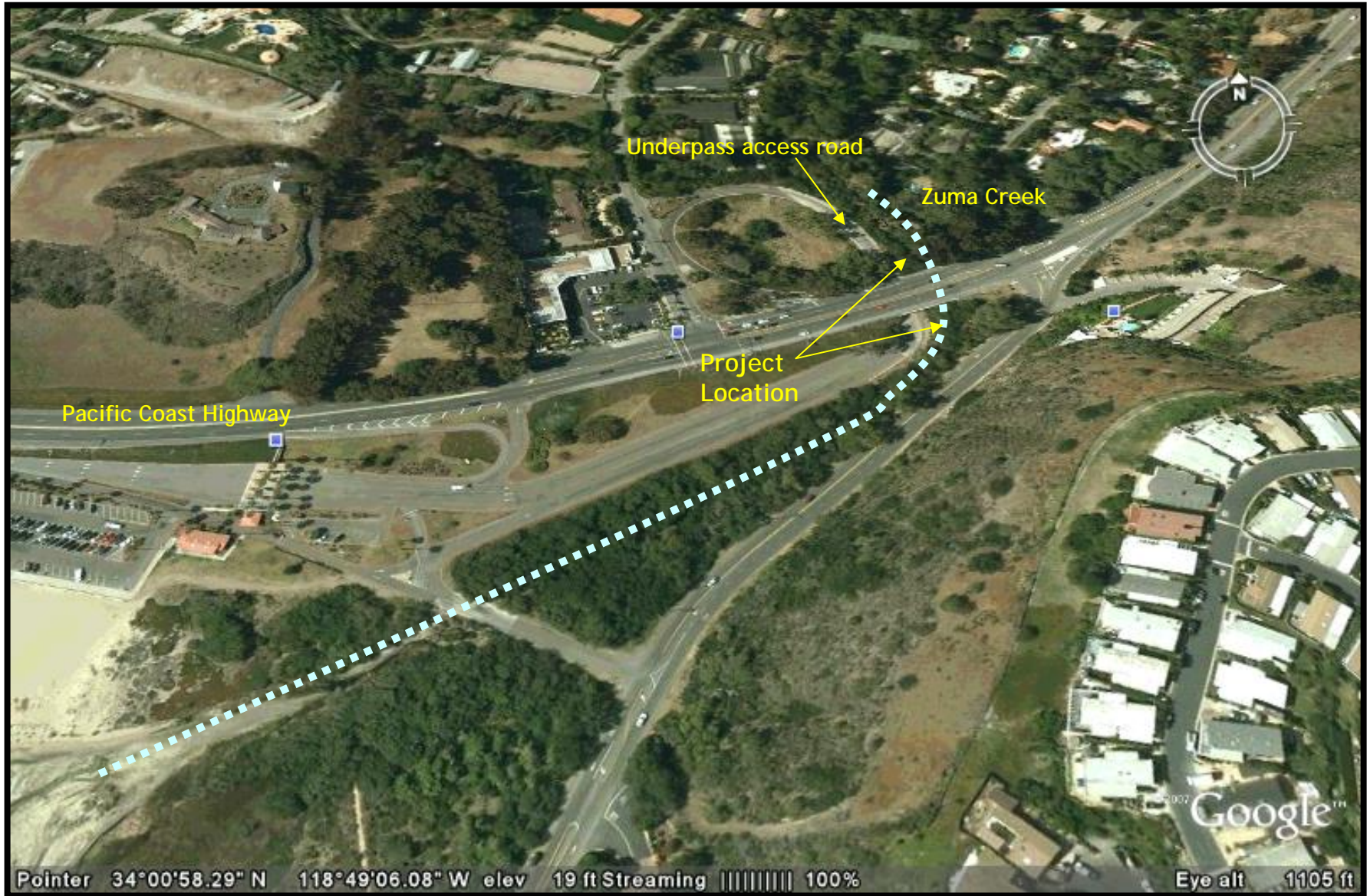


Exhibit 4
A-4-MAL-08-074
Aerial View

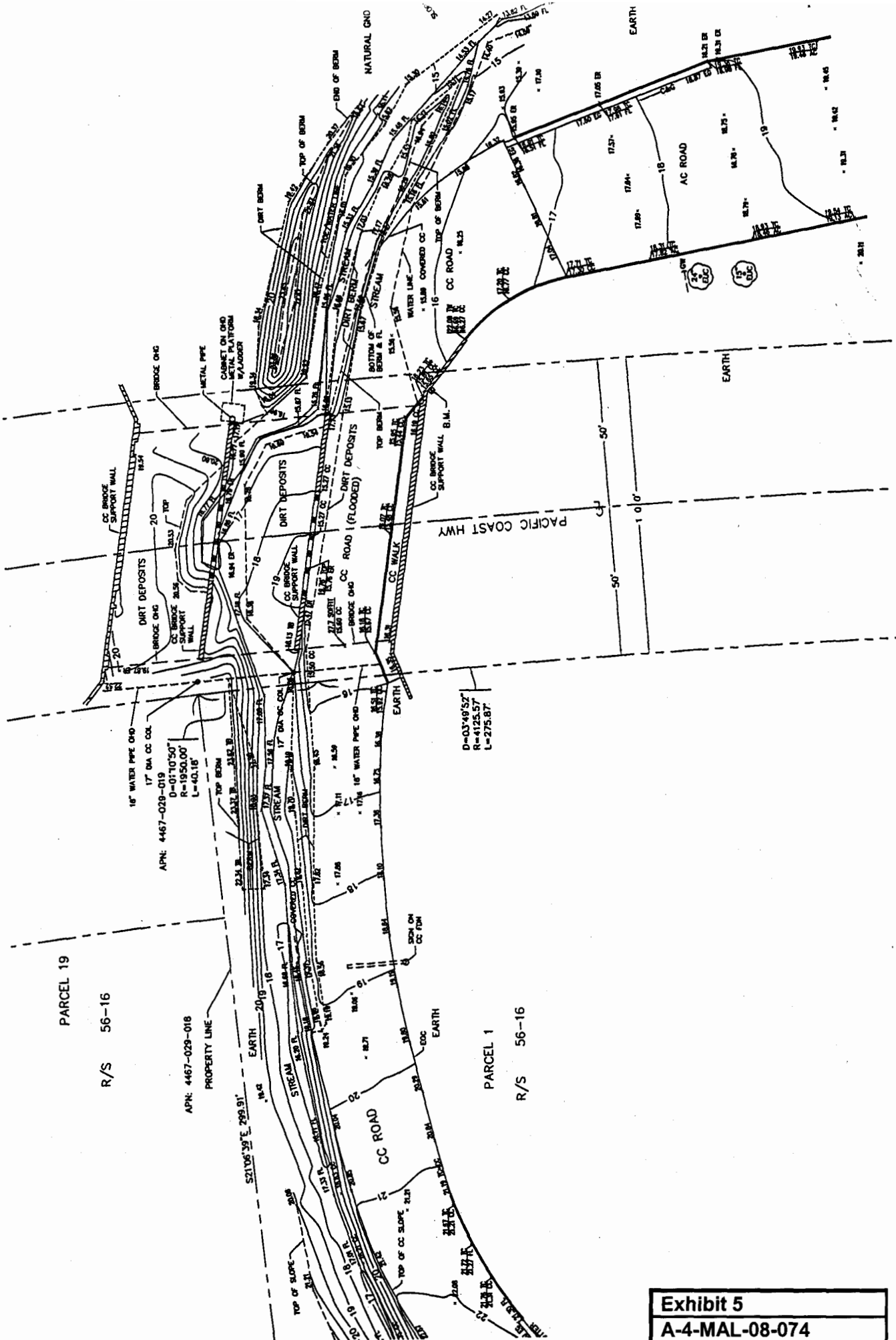


Exhibit 5
 A-4-MAL-08-074
 Topo Survey Map

DESCRIPTION OF WORK:
 THIS PROJECT REQUIRES THE REMOVAL OF RIVER-RUN SEDIMENT DEPOSITS FROM THE ACCESS ROAD TO ZUMA BEACH, AND THE REMOVAL OF SEDIMENT BUILD-UP ALONG ZUMA CREEK IN ORDER TO REESTABLISH CREEK CHANNELS AND RESTORE NATURAL FLOW PATTERNS. TO PREVENT MODERATE FLOW CONDITIONS, THE WORK NECESSARY TO ACCOMPLISH THIS PROJECT SHALL BE LIMITED TO THE REMOVAL OF EXCESSIVE DEPOSITS ALONG THE CREEK CHANNEL, DISPOSAL OF CUT MATERIAL, DEMARKING DOWN STREAM RECHARGE, AND IMPLEMENTATION OF BIOLOGICAL MITIGATION MEASURES.

GENERAL NOTES:

1. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS, LATEST EDITION, AS SUPPLEMENTED BY THE COUNTY ENGINEER'S ORDINANCES AND ANY OTHER ORDINANCES IN THE PRESENCE OF THE COUNTY ENGINEER.
2. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS AND SHALL NOTIFY THE COUNTY ENGINEER OF ANY DISCREPANCIES.
3. CONTRACTOR SHALL "PROTECT IN PLACE" ALL UTILITY LINES ADJACENT TO OR UNDER EXISTING PAVEMENT. ANY DAMAGE TO THESE LINES SHALL BE REPAIRED OR REPLACED AS NECESSARY BY THE CONTRACTOR.
4. REPAIR TO EXISTING MARGINS DAMAGED BY RESUAL WORK. ALL REPAIR WORK NECESSARY SHALL BE AS APPROVED AND AT CONTRACTOR'S EXPENSE.
5. THE CONTRACTOR SHALL NOTIFY SAM SHADAB, PROJECT MANAGER (310) 454-7852 AT LEAST 72 HOURS BEFORE STARTING ANY WORK UNDER THIS CONTRACT.
6. THE CONTRACTOR'S ATTENTION IS DIRECTED TO SECTION 7-10.4.1 OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORK CONSTRUCTION IN REGARD TO SAFETY DEVICES.

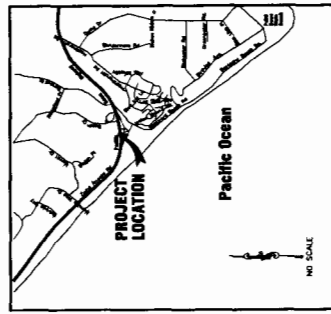
TRAFFIC CONTROL:

1. THE CONTRACTOR SHALL PROVIDE TRAFFIC CONTROL MEASURES TO CLOSE DOWN THE ACCESS ROAD DURING HIS WORK TO PUBLIC TRAFFIC TO AND FROM BUSCH DRIVE AND ALONG ZUMA BEACH DRIVE. THE CONTRACTOR SHALL CONSULT THE CURRENT CALIFORNIA MANUAL OF TRAFFIC CONTROL FOR CONSTRUCTION AND MAINTENANCE WORK ZONES.

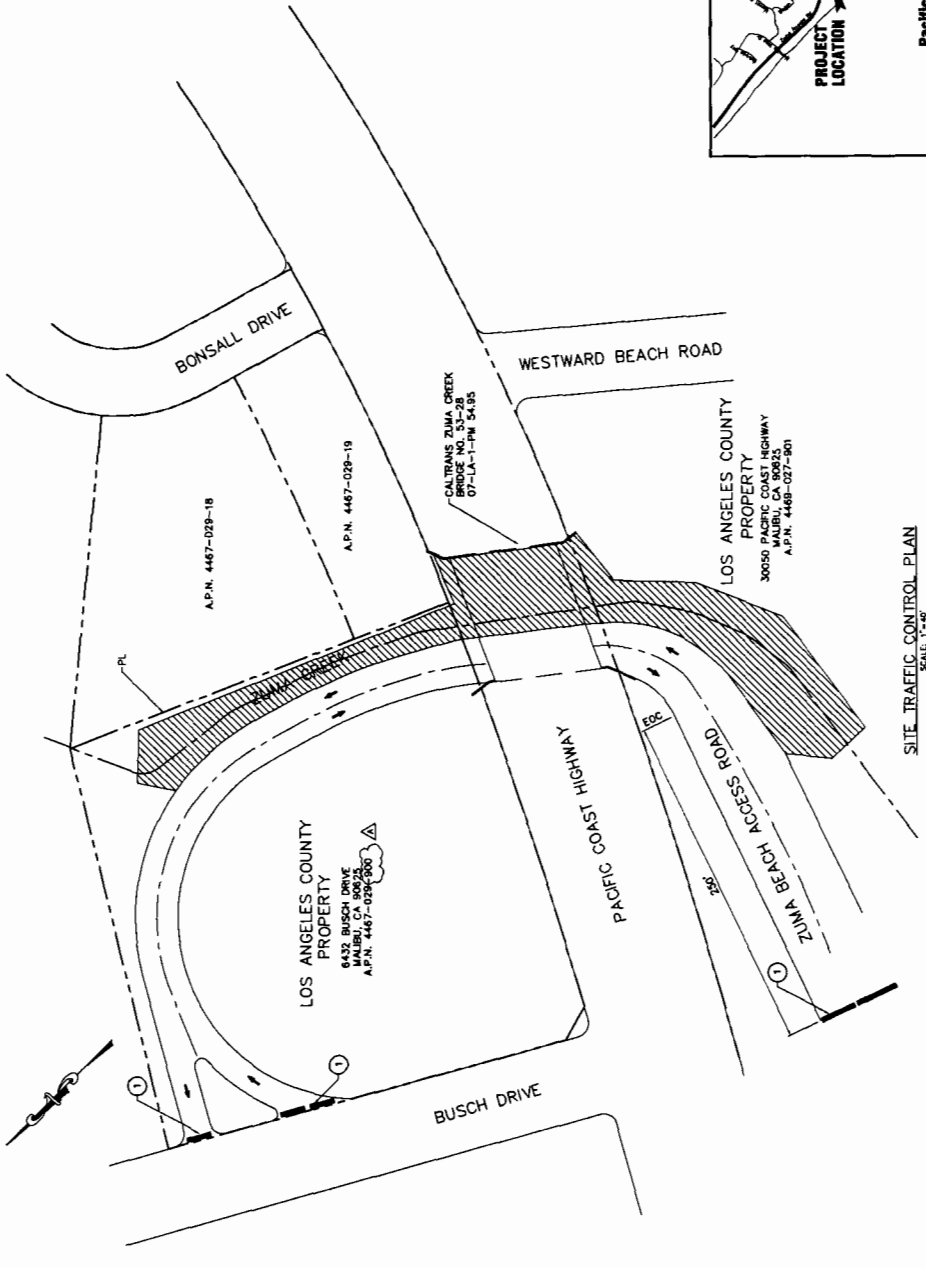
LEGEND:
 WORK AREA LIMITS
 AREA TO BE CLEARED AND GRADED (SEE DWG C-1, C-2)
 PROPERTY LINE

SHEET INDEX

SHT. NO.	DRAW. NO.	DESCRIPTION
1	G-1	SITE PLAN AND TRAFFIC CONTROL
2	G-2	PROFILES, SYMBOLS, AND ABBREVIATIONS
3	C-1	GRADING PLAN
4	C-2	GRADING PLAN
5	C-3	CREEK PROFILE
6	C-4	CREEK PROFILE
7	C-5	SECTION STA 2+20 TO 3+90
8	C-6	SECTION STA 4+00 TO 4+90



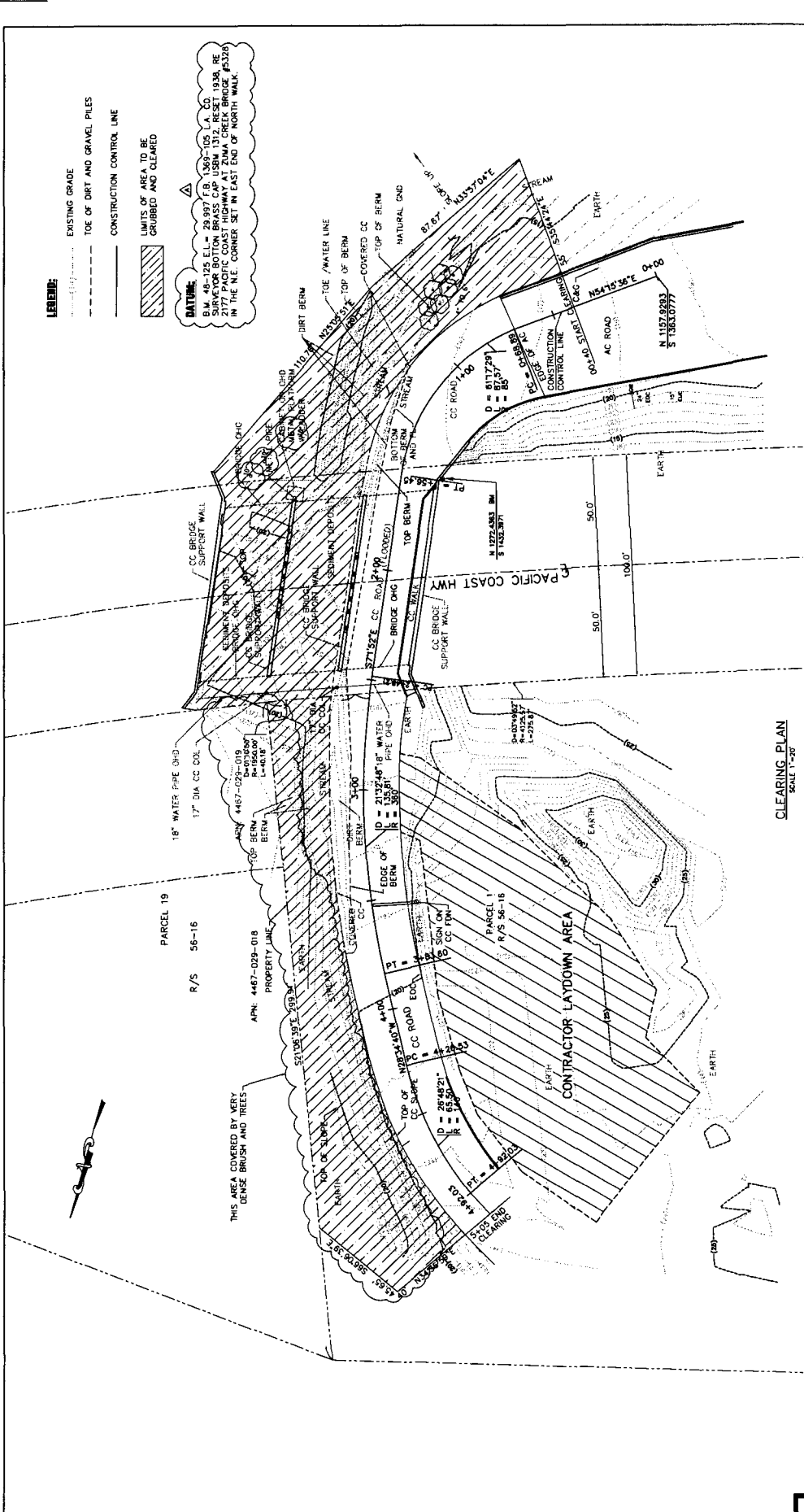
GRAPHIC SCALES
 CHECK BEFORE USE
 1" = 40' HORIZONTAL
 1" = 10' VERTICAL
 1" = 1" AS SHOWN



DESCRIPTION	DATE	BY	NO.	DATE	BY	NO.
RESPONSE TO LAYOUT PLAN CHECK	9/7/08	gpc				

DESIGNED BY A. SOKOLOV	DRAWN BY A. SOKOLOV	CHECKED BY A. SOKOLOV	PROJECT NUMBER A-4-MAL-08-074
COUNTY OF LOS ANGELES DEPARTMENT OF BEACHES AND HARBORS 13837 FLY WAY MARINA DEL REY, CALIFORNIA 90252 TEL (310) 871-7856 FAX (310) 871-7856			
			
 6700 E. PACIFIC COAST HIGHWAY SUITE 100 BEACH, CALIFORNIA 90683 TEL (562) 493-8300			
ZUMA CREEK RESTORATION			
SITE PLAN			DRAWING NO. G-1

Exhibit 6
A-4-MAL-08-074
Site Plan



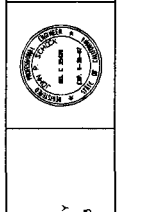
GRAPHIC SCALES
CHECK BEFORE USE
 1" = 20' (1" = 20' 00" 00")
 1" = 50' (1" = 50' 00" 00")

LEGEND:
 --- EXISTING GRADE
 --- TOE OF DIRT AND GRAVEL PILES
 --- CONSTRUCTION CONTROL LINE
 ▨ LIMITS OF AREA TO BE GRUBBED AND CLEARED

DATE: 11/17/00
 B.M. 46-124 E.L. = 20.897' F.S. 1362-056 A.C. 05
 SURVEYOR BOTTOM BRASS CAP USEM 1312, RESET 1938, RE
 2177 PACIFIC COAST HIGHWAY AT ZUMA CREEK BRIDGE #5328
 IN THE N.E. CORNER SET IN EAST END OF NORTH WALK.

PROJECT NO.	1362-056
DATE	10/17/00
SCALE	AS SHOWN
PROJECT NAME	ZUMA CREEK RESTORATION
DRAWING NO.	C-1

DESIGNED BY	K. LE
DRAWN BY	K. LE
CHECKED BY	
PROJECT ENGINEER	
COUNTY OF LOS ANGELES DEPARTMENT OF BEACHES AND HARBORS	13837 FIJI WAY MARINA DEL REY, CALIFORNIA 90292 FAX (310) 803-7855



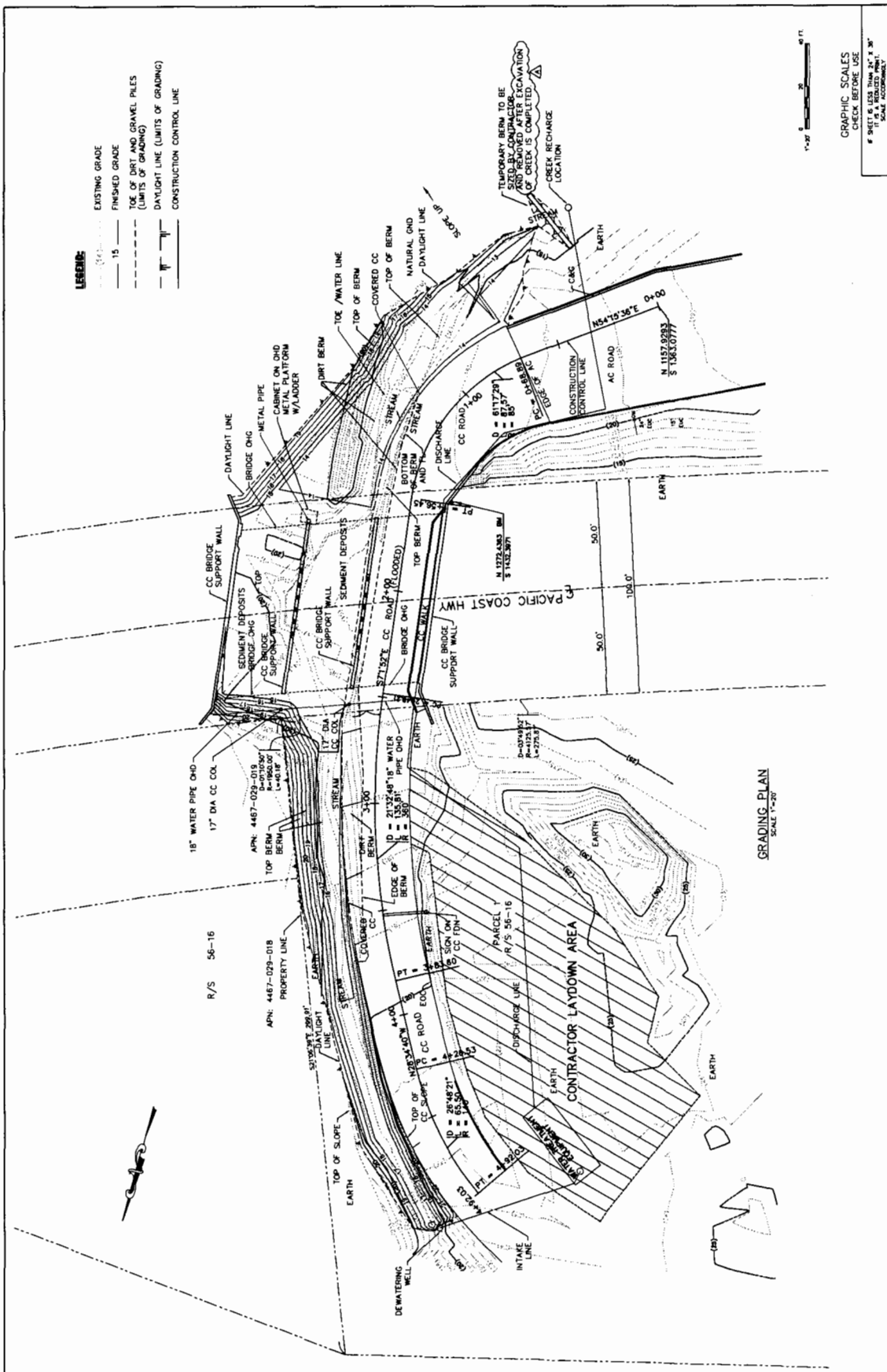
IIPA
 6700 E. PACIFIC COAST HIGHWAY
 SUITE 180, CHICO, CALIFORNIA 95926
 TEL (530) 433-8300

DESCRIPTION	DATE	BY
RESPONSE TO LAYDOWN PLAN CHECK	8/7/00	AS

Exhibit 7
A-4-MAL-08-074
Clearing Plan

LEGEND

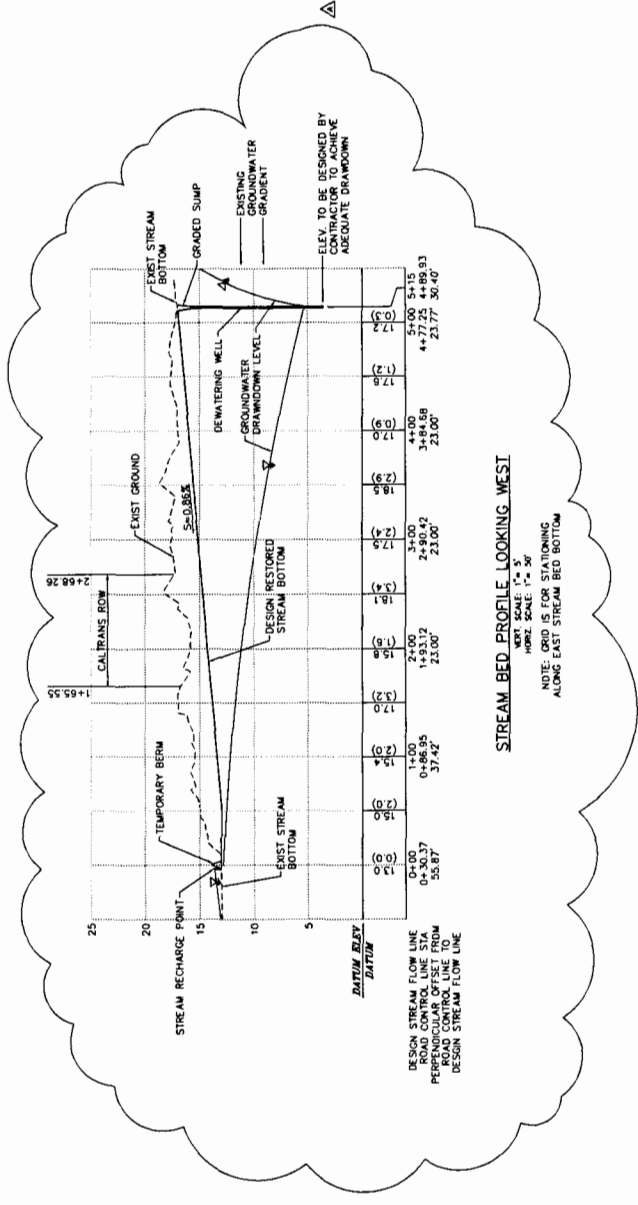
- EXISTING GRADE
- FINISHED GRADE
- 15 --- TOE OF DIRT AND GRAVEL PILES (LIMITS OF GRADING)
- DAYLIGHT LINE (LIMITS OF GRADING)
- CONSTRUCTION CONTROL LINE



GRADING PLAN
SCALE 1"=20'

DESCRIPTION	DATE	BY	DATE	BY
USE TO LAYOUT PLAN CHECK	8/7/07	JCS		
<p>COUNTY OF LOS ANGELES DEPARTMENT OF BEACHES AND HARBORS</p>				
<p>13837 F.L. WAY MARINA DEL MAR, CALIFORNIA 90292 FAX (310) 821-7856</p>				
<p>IPA 6700 E. PACIFIC COAST HIGHWAY SUITE 180 MARINA DEL MAR, CALIFORNIA 90803 TEL (562) 433-8300</p>				
<p>ZUMA CREEK RESTORATION</p>				
DESIGNED BY A. L. C.			PROJECT NUMBER	
DRAWN BY A. L. C.			DRAWING NO. C-2	
CHECKED BY A. L. C.			SCALE ACCURACY	
DATE 10/2/06				

Exhibit 8
A-4-MAL-08-074
Grading Plan with
cross-sections



STREAM BED PROFILE LOOKING WEST

NOTE: GRID IS FOR STATIONING ALONG EAST STREAM BED BOTTOM

HORIZ. SCALE: 1" = 30'

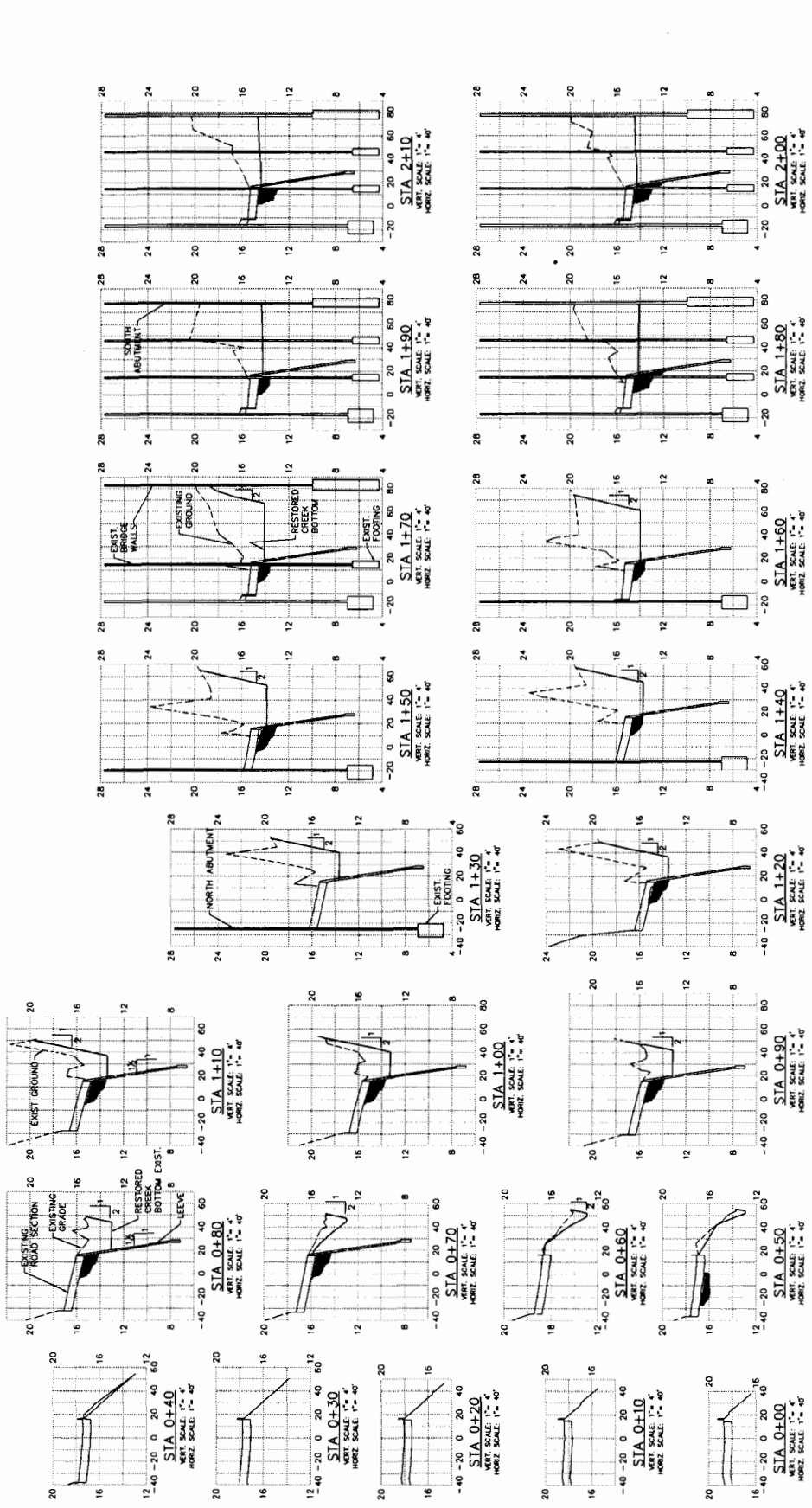


GRAPHIC SCALES CHECK BEFORE USE
 * SHALL BE USED IN CONJUNCTION WITH SCALE ACCURACY

NO.	REVISIONS	DESCRIPTION	DATE	BY	DATE	DESCRIPTION
A		RESPONSE TO LADDER PUMP CHECK	8/7/07	MS		

DESIGNED BY	DATE	REGION
DRAWN BY	11/07	
CHECKED BY		
PROJECT ENGR		

COUNTY OF LOS ANGELES		ZUMA CREEK RESTORATION
DEPARTMENT OF BEACHES AND HARBORS		
13837 FLEW WAY MARINA DEL MAR, CALIFORNIA 90252 TEL. (310) 307-6500 FAX (310) 871-7858		DRAWING NO. C-3
IPA 6700 E. PACIFIC COAST HIGHWAY SUITE 200 SAN JUAN CAPITAN, CALIFORNIA 90803 TEL. (562) 431-8300		CREEK PROFILE



NOTES:

1. GRADED SLOPE ALONG CREEK NOT TO EXCEED 2:1 (HORIZONTAL TO VERTICAL)
2. UNDER NO CIRCUMSTANCE GRADE PAST PROPERTY LINE
3. NO COMPACTION OF CUT SLOPES OR SURFACES IS REQUIRED. NO FILL CONDITIONS EXIST.

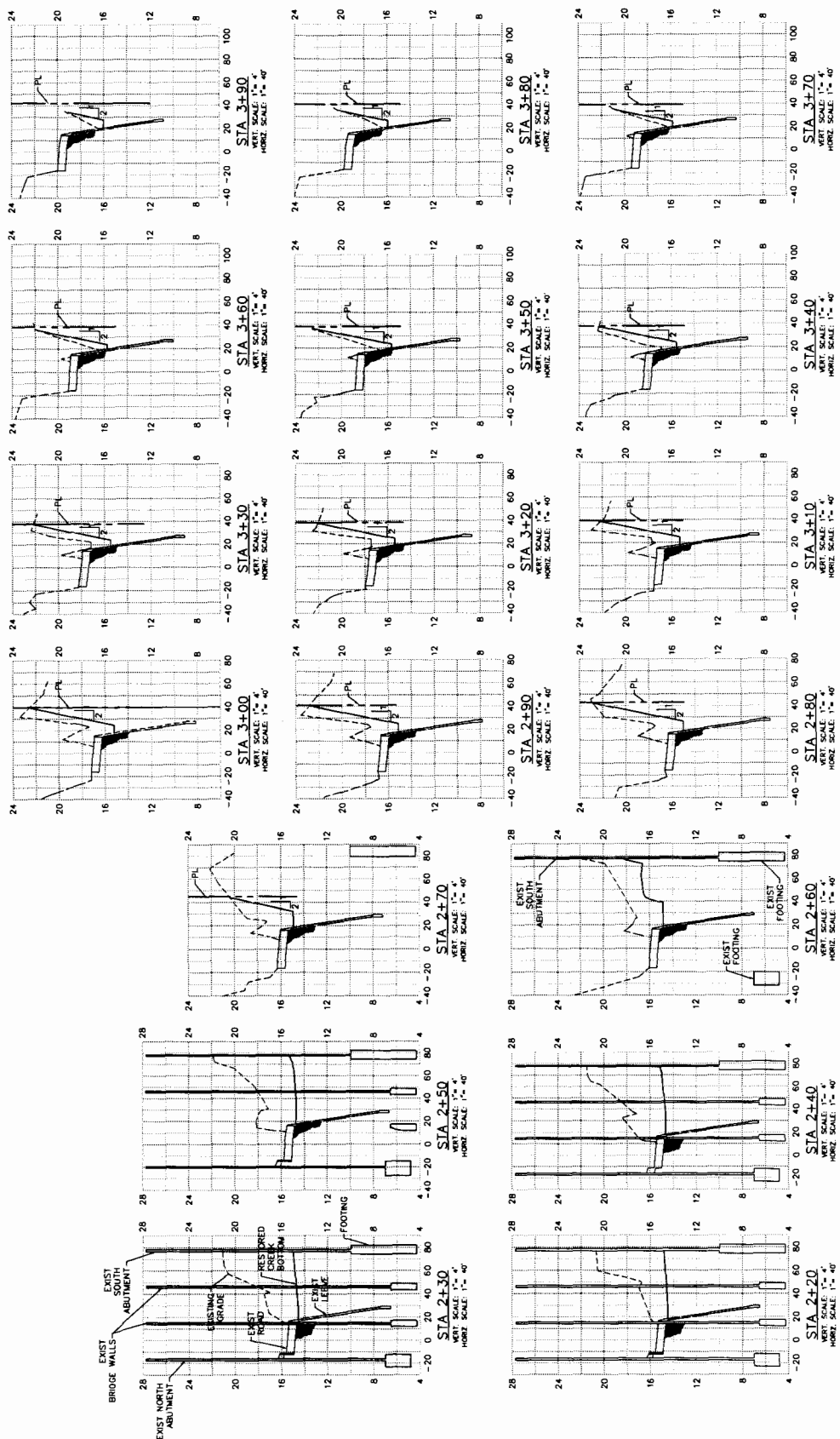
GRAPHIC SCALES
CHECK BEFORE USE
SHEET 1 OF 20 DRAWING # 307
SCALE ACCURACY

REVISIONS	DATE	DESCRIPTION	DATE	BY
1	8/7/07	RESPONSE TO LADDER PLANS CHECK		MS

DESIGNED BY	DATE	AT SCALE	REVISION
DRAWN BY	9/2/08		
CHECKED BY			
PROJECT ENGINEER			

ZUMA CREEK RESTORATION		DRAWING NO. C-4
COUNTY OF LOS ANGELES DEPARTMENT OF BEACHES AND HARBORS		SECTIONS STA 0+00-2+10

	<p>IPA 6700 E. PACIFIC COAST HIGHWAY SUNSET BEACH, CALIFORNIA 90803 TEL (562) 493-8300</p>
<p>13837 FLJ WAY MARINA DEL MAR, CALIFORNIA 90292 FAX (310) 821-7856</p>	



NOTES:

1. GRADED SLOPE ALONG CREEK NOT TO EXCEED 2:1 (HORIZONTAL TO VERTICAL).

2. UNDER NO CIRCUMSTANCE GRADE FAST PROPERTY LINE

3. NO COMPACTION OF DIRT SLOPES OR SURFACES IS REQUIRED. NO FILL CONDITIONS EXIST.



IPA
 6700 E. PACIFIC COAST HIGHWAY
 SUITE 180
 PALM BEACH, CALIFORNIA 90603
 TEL: (562) 493-8300

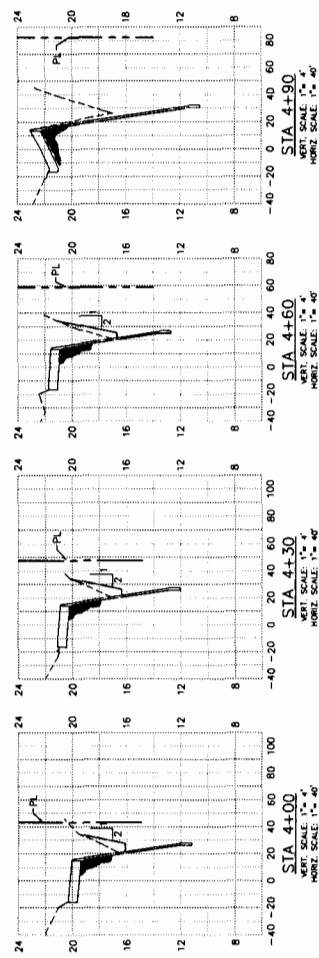
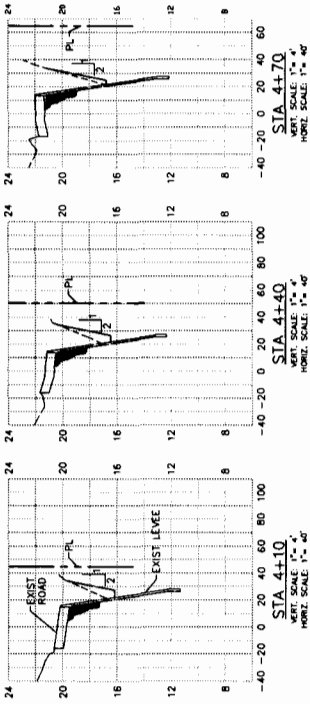
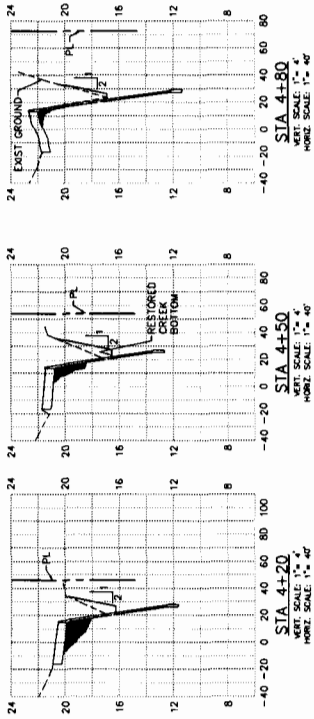
COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS
 13837 FLJ WAY
 MARINA DEL MAR, CALIFORNIA 90292
 FAX (310) 821-7856

ZUMA CREEK RESTORATION
 SECTIONS
 STA 2+20-3+90

NO.	DESCRIPTION	DATE	BY	REVISIONS

GRAPHIC SCALES
 CHECK BEFORE USE
 IF SHIP IS A REVISION PRINT, 30" SCALE ACCURACIES

REVISION NO.	DATE	BY	AS NOTED
C-5 <td> </td> <td> </td> <td> </td>			



NOTES:

1. GRADED SLOPE ALONG CREEK NOT TO EXCEED 2:1 (HORIZONTAL TO VERTICAL).
2. UNDER NO CIRCUMSTANCE GRADE PAST PROPERTY LINE.
3. NO COMPACTION OF CUT SLOPES OR SURFACES IS REQUIRED. NO FILL CONDITIONS EXIST. A

GRAPHIC SCALES
 CHECK BEFORE USE
 1" = 40'
 1" = 80'
 1" = 160'

NO.	DESCRIPTION	DATE	BY	DATE	BY
1	RESPONSE TO LACONTE PLAN CHECK	8/7/07	AS		
REVISIONS					
IPCA					
6700 E. PACIFIC COAST HIGHWAY SUITE 300 SAN DIEGO, CALIFORNIA 92161 TEL: (619) 493-8300					
					
COUNTY OF LOS ANGELES DEPARTMENT OF BEACHES AND HARBORS 13837 71st WAY MARINA DEL REYES CALIFORNIA 90292 TEL: (310) 837-7855 FAX: (310) 837-7856					
ZUMA CREEK RESTORATION				DRAWN BY: _____ CHECKED BY: _____ PROJECT ENGINEER: _____	
SECTIONS STA 4+00-4+90				DRAWING NO. C-6	



Wednesday, September 10, 2008

Jack Ainsworth
California Coastal Commission
South Central Coast Area Office
89 South California St., Suite 200
Ventura, CA 93001

Re: Review of proposed Zuma Creek "Restoration" Project CDP # 07-130
Property Owner LA County Beaches and Harbors

Dear Mr. Ainsworth,

Santa Monica Baykeeper has reviewed Coastal Development Permit No. 07-130 and believes that the project fails to meet the necessary requirements and intent of the City of Malibu's Local Coastal Program (LCP), Local Implementation Plan (LIP) and violates the Coastal Act. We urge the Coastal Commission to require a thorough environmental review of this project that evaluates real environmentally superior alternatives and impacts. We believe this is necessary to meet the requirements and intent of the LCP, LIP and Coastal Act.

Project Description

Los Angeles County Department of Beaches and Harbors proposes to grade Zuma Creek and remove approximately 2,000 cubic yards, from the creek bed and ESHA buffer to be disposed of at an approved disposal site. The project will impact approximately 500 linear feet of the creek to reduce the maintenance associated with this ill conceived and implemented access road. The project will impact native riparian vegetation, the stream channel, stream banks and ESHA buffer. The creek bed will be graded to restore the profile established when the levee was constructed following winter storms in 1983-1984. The creek bank on the east side will be graded to a slope not exceeding 2 to 1. The existing levee on the west side of the creek will not be altered. A portion of the project area is located between the first public road and the sea within the jurisdiction and appealable zone of the Coastal Commission.

When the access road was created, Zuma Creek was moved to its current alignment against Westward Beach Road. The alignment of the existing access road is the former alignment of Zuma Creek. Zuma Creek will continue to utilize this same path with or without the project. If the County does grade the creek, to its previous grade, it will be just a matter of time before the creek aggrades (deposits sediments) and returns to the current situation. This area is an extremely low gradient flood plain (delta) with an approximately 60 degree bend (due to the current alignment) and is too flat to generate the velocity or force to effectively transport sediments, which is why it continually deposits sediments on the floodplain. As currently configured the road functions as the floodplain and will continue to have sediment and other debris accrete.

The County and the City of Malibu failed to engage any of the environmental groups or resource agencies that have conducted research, proposed recommendations, and invested significant public funds to restore Zuma Creek and Lagoon. In 2003 Heal the Bay, California Trout, the Resource Conservation of the Santa Monica Mountains, the State Coastal Conservancy, California Department of Fish and Game, and the Santa Monica Bay Restoration Commission evaluated 13 watersheds in the Santa Monica Mountains to determine the feasibility of

Exhibit 9
A-4-MAL-08-074
Correspondence

restoring steelhead trout. The project team produced and widely distributed the *Santa Monica Mountains Steelhead Habitat Assessment Report* and recommendations to all public agencies, especially those that own or maintain existing barriers. The project team surveyed all potential barriers and the quality and quantity of steelhead habitat gained by removing or fixing said barriers. Three streams in the Santa Monica Mountains currently have steelhead trout populations. Those three streams aside Zuma Creek ranked at the top for its potential to support steelhead trout. The Zuma Beach Access Road structure is considered the highest priority (keystone barrier) on Zuma Creek and it was recommended that access road be removed and the stream channel and alignment restored.

Santa Monica Baykeeper has reviewed Coastal Development Permit No. 07-130 and believes that the project fails to meet the necessary requirements and intent of the City of Malibu's Local Coastal Program, Local Implementation Plan and violates the Coastal Act.

- The CDP did not adequately analyze or address a myriad of existing and future environmental impacts caused by the Access Road and current creek alignment.
- Impacts were not adequately analyzed by the project proponent or the City of Malibu.
- The project was improperly considered categorically exempt as it was improperly categorized as a "Stream Restoration".
- The project was not vetted through the City of Malibu's Environmental Review Board and therefore creates unacceptable environmental impacts that have not been analyzed and will not be mitigated.
- The project failed to consider and analyze viable and environmentally superior options including those recommended by previous studies conducted on this precise location.
- The City of Malibu and Los Angeles County Beaches and Harbors has incorrectly stated or deliberately misstated various facts regarding the project.
- The project does not adequately pursue restoration or retrofit to improve water quality and stream function as intended in the LCP.

The project does not address existing and future environmental impacts and was improperly considered categorically exempt:

This project is proposed by the County of Los Angeles and the County is the lead agency under the California Environmental Quality Act (CEQA). Pursuant to the authority and criteria contained in CEQA, the County has analyzed the project and found that it is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. Based on CEQA Guidelines Section 15333(b) and (c) - Small Habitat Restoration, Projects and Section 15269 - Emergency Projects, the county has issued a categorical exemption for the project. The proposed project will not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no further feasible alternatives that would further reduce any impacts on the environment.

This project proposes to grade and dispose of offsite 2,000 cubic yards of sediment from the stream channel, stream banks, ESHA and ESHA buffer area and is not restoring either the structure or function of Zuma Creek. The channel is not being moved to a hydraulically or environmentally preferred location, native vegetation will be removed, the creek will be maintained in a degraded plan form, no armoring will be removed, no restoration of floodplain functions are planned, no creation of in-channel habitat, no improvements for fish or wildlife



migration, and no benefits to water quality will occur as a result of this project. To characterize this project a stream restoration is a blatant attempt to circumvent CEQA, the City of Malibu's LCP and LIP and the Coastal Act. The project is likely to increase sedimentation into recently restored Zuma Lagoon, will remove native riparian habitat, ESHA, and ESHA buffer. These impacts have not been analyzed or mitigated.

The project was not vetted through the City of Malibu's Environmental Review Board (ERB).

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

The only element of restoration involved with this project is increasing channel capacity by dredging the stream and thereby minimizing maintenance costs and activity for County Beaches and Harbors. Additionally, the project intentionally avoided the ERB as sanctioned by the City of Malibu and the City "biologist". These projects are specifically intended to be reviewed by the ERB so as to insure that sensitive resources such as streams, ESHA, and ESHA buffers are protected to the maximum extent feasible and that development projects do not detract from long-term restoration planning.

The project failed to consider and analyze viable and environmentally superior options including those recommended by previous studies conducted on this precise location.

According to findings A3 and D3 the project, as proposed or as conditioned, is the least environmentally damaging alternative. Finding D4 There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

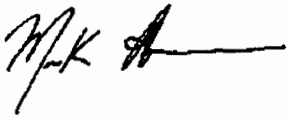
Several viable and relatively cost effective alternatives are available and would substantially lessen environmental, visual, and scenic impacts. A short term solution would be to remove the sediment spoils from the East side of the Creek. This could be removed by hand and would allow low stream flows to remain in the channel. No trees or grading would need to be removed. The left hand turn lane option is a far superior environmental alternative. It would allow for removing the access road, provide a substantial increase in flood plain and flood protection, require no maintenance, and allow Zuma Creek to occupy a preferred stream channel geometry. This alternative would also alleviate the impacts of Zuma Creek on Westward Beach Road caused by the current unnatural alignment.

The CDP approved by the City of Malibu for this project must be reviewed. Substantially better projects which would actually restore Zuma Creek's structure and function, accomplish increased flood protection, while eliminating maintenance should be evaluated. Additionally, the environmental impacts to resources such as the newly restored Lagoon should be carefully evaluated and if necessary mitigated. The County and City of Malibu have attempted to slide this project through in the most egregious way to the detriment of substantial public investment and ecological resources. This project has the opportunity to remove stream armoring (banks and access road), reestablish a natural and more desirable channel geometry, enhance water quality by reducing pollutant impacts from the access road, and removing the keystone barrier on an historic steelhead trout stream in

the Santa Monica Mountains. As a high priority steelhead stream numerous agencies would make funding available to assist with this endeavor. We urge the Commission to require a thorough evaluation of this project and insure it meets the requirements and intent of Malibu's LCP, LIP and the Coastal Act.

We appreciate the opportunity to comment.

Sincerely,



Mark Abramson
Director of Watershed Programs
Santa Monica Baykeeper