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STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-01-180

APPLICANTS: Dana Zappala

PROJECT LOCATION: 20782 Rockpoint Road, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a one-story, 18 foot high, 2,321 sq. ft. single family residence, with attached two-car garage, septic system, swimming pool, entry gate, widened driveway, and 79 cu. yds. of grading (55 cu. yds. cut, 24 cu. yds. fill).

Lot area:	32,670 square feet
Building coverage:	2,321 square feet
Pavement coverage:	5,810 square feet
Landscape coverage:	11,352 square feet
Unimproved:	13,187 square feet

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department, Approval in Concept, February 4, 2003; County of Los Angeles Fire Department (Access), Approval in Concept, October 12, 2000; City of Malibu Environmental Health, Approval in Concept, July 31, 2001; City of Malibu Biology Review, Approval in Concept, November 28, 2000; City of Malibu Geology Review, Approval in Concept, June 8, 2001; County of Los Angeles Fire Department, Fuel Modification Plan, Preliminary Approval, January 29, 2002.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu Local Coastal Program; "Geologic/Geotechnical Engineering Report, Proposed New Single Family Residence (Fire Restoration Classification 4), 20782 Rockpoint Way, Malibu, Calif." by Gold Coast Geoservices, Inc., July 15, 1999; "Updated Geologic/Geotechnical Engineering Report, Proposed Single Family Residence, 20782 Rockpoint Way, City of Malibu," by Gold Coast Geoservices, Inc., October 12, 2000; "Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002, dated November 3, 2000," by Gold Coast Geoservices, Inc., March 26, 2001; "Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002, dated May 1, 2001," by Gold Coast Geoservices, Inc., May 17, 2001; "Geologic Report on Existing Seepage Pits for Planned Residence Rebuild Project, 20782 Rockpoint Way, City of Malibu," by Gold Coast Geoservices, Inc., June 26, 2001; "Geologic conditions at and adjacent to 20782 Rockpoint Way, Malibu," by Gold Coast Geoservices, Inc., November 11, 2002; "Response to letters by Donald B. Kowalewsky regarding planned construction of a new residence at 20782 Rockpoint Way, Malibu," by Gold Coast Geoservices,

Inc., January 7, 2003; Pre-Escrow Geologic Site Inspection / Geologic Data Sheet for 20782 Rockpoint Way, by Donald B. Kowalewsky, April 7, 1997; "Geologic review of geotechnical documents for 20782 Rockpoint Way, Malibu, CA," by Donald B. Kowalewsky, October 30, 2002; "Report of Engineering Geologic Investigation, Distressed Residential Improvements, Monge Residence, 20790 Rockpoint Road, Malibu, CA," by Keith W. Ehlert, January 25, 2000; "Engineering geologic memorandum concerning landslide movement and associated Los Angeles County water main break at 20790 Rockpoint Road, Malibu, California," 14, 1999; "Boring logs and seepage pit data from 2001 observations at 20790 Rockpoint Way, Malibu," by Donald B. Kowalewsky, December 18, 2002; "Inclinometer Casing Surveys; 20790 Rockpointe Drive, Malibu, California," by Southwestern Engineering Geology, November 13, 2001; Additional geologic comments regarding 20782 Rockpoint Way, Malibu, California," by Donald B. Kowalewsky, December 4, 2002.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with twelve (12) special conditions regarding conformance with geologic recommendations; erosion control, drainage and polluted runoff control plans; landscaping plans; pool and spa drainage and maintenance; on-site wastewater treatment system requirements; disposal of excavated material; assumption of risk; future development restriction; structural appearance; lighting restriction; deed restriction, and revised pool and spa plans.

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-01-180 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, although not in conformity with the provisions of the City of Malibu certified Local Coastal Program, can be approved to avoid an impermissible taking of private property. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 permittees 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **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.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Plans Conforming to Geologic Recommendations

All recommendations contained in the submitted geologic reports ("Geologic/Geotechnical Engineering Report, Proposed New Single Family Residence (Fire Restoration Classification 4), 20782 Rockpoint Way, Malibu, Calif." by Gold Coast Geoservices, Inc., July 15, 1999; "Updated Geologic/Geotechnical Engineering Report, Proposed Single Family Residence, 20782 Rockpoint Way, City of Malibu," by Gold Coast Geoservices, Inc., October 12, 2000; "Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002, dated November 3, 2000," by Gold Coast Geoservices, Inc., March 26, 2001; "Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002, dated May 1, 2001," by Gold Coast Geoservices, Inc., May 17, 2001; "Geologic Report on Existing Seepage Pits for Planned Residence Rebuild Project, 20782 Rockpoint Way, City of Malibu," by Gold Coast Geoservices, Inc., June 26, 2001) shall be incorporated into all final design and construction including foundations, construction, grading, sewage disposal, and drainage. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to foundations, construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission that may be

required by the consultant shall require an amendment to the permit or a new Coastal Development Permit.

2. Erosion Control, Drainage and Polluted Runoff Control Plans

Prior to issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director; a) ***a Local Storm Water Pollution Prevention Plan (SWPPP)*** to control erosion and contain polluted runoff during the construction phase of the project; and b) ***a Water Quality Mitigation Plan (WQMP)*** for the management and treatment of post-construction storm water and polluted runoff. The plans shall be certified by a California Registered Civil Engineer or Licensed Architect and approved by the City's Department of Public Works, and include the information and measures outlined below.

a) ***Local Storm Water Pollution Prevention Plan***, for the construction phase of the project shall include at a minimum the following:

- Property limits, prior-to-grading contours, and details of terrain and area drainage
- Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations
- Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)
- Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed
- Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction.
- Details pertaining to the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.
- Information on potential flow paths where erosion may occur during construction
- Proposed erosion and sediment prevention and control BMPs, both structural and non-structural, for implementation during construction, such as:
  - Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
  - Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.
  - Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
  - Prevent blowing dust from exposed soils.
- Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:

- Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials.
- Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies.
- Provide sanitary facilities for construction workers.
- Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.

b) ***Water Quality Management Plan***, for the management and treatment of post construction storm water and polluted runoff shall at a minimum include the following:

- Site design, source control and treatment control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
- Pre-development peak runoff rate and average volume
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Expected post-development peak runoff rate and average volume from the site with all proposed non-structural and structural BMPs
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Measures to treat, infiltrate, or filter runoff from impervious surfaces (e.g., roads, driveways, parking structures, building pads, roofs, patios, etc.) on the subject parcel(s) and to discharge the runoff in a manner that avoids erosion, gullying on or downslope of the subject parcel, ponding on building pads, discharge of pollutants (e.g., oil, heavy metals, toxics) to coastal waters, or other potentially adverse impacts. Such measures may include, but are not limited to, the use of structures (alone or in combination) such as on-site desilting basins, detention ponds, dry wells, biofilters, etc.
- A long-term plan and schedule for the monitoring and maintenance of all drainage-control devices. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.
- Post-construction Treatment Control BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs.

3. **Landscaping and Fuel Modification Plans**

Prior to issuance of a coastal development permit, the applicants shall submit two sets of landscaping and fuel modification plans, prepared by a licensed landscape architect or a

qualified resource specialist, for review and approval by the Executive Director. The landscaping plans shall be reviewed and approved by the geotechnical engineering and geologic consultant to ensure that the plans are in conformance with the consultant's recommendations. Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated. The plans shall incorporate the following criteria:

A. Plant Species

1. Plantings shall be native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site, except as noted in (A)(3) below. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.

2. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu's Invasive Exotic Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.

3. Non-invasive ornamental plants may be permitted in combination with native, drought-tolerant species within Zone A, required for fuel modification nearest approved residential structures.

B. Timing of Landscaping

1. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.

2. The building pad and all other graded or disturbed areas on the subject site shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence.

C. Landscaping Coverage Standards.

Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.

D. Fuel Modification

The final landscaping and fuel modification plan shall use no permanent irrigation systems and shall minimize the removal of native vegetation while providing for fire

safety and shall be reviewed and approved by the Forestry Division of the County of Los Angeles Fire Department.

4. Pool and Spa Drainage and Maintenance

Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval of the Executive Director, a written pool and spa maintenance plan, that contains an agreement to install and use a no chlorine or low chlorine purification system. The plan shall identify methods of pool and spa maintenance that will ensure that any runoff or drainage from the pool and spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area. In addition, the plan shall, at a minimum prohibit discharge of chlorinated or non-chlorinated pool and spa water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters. The Permittees shall undertake development and maintenance in compliance with this pool and spa maintenance agreement and program approved by the Executive Director. No changes shall be made to the agreement or plan unless they are approved by the Executive Director.

5. On-Site Wastewater Treatment System Requirements

A. Prior to issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director a report and plans verifying that the proposed OSTS, to the maximum extent feasible, complies with the siting, design, installation, operation and maintenance requirements for OSTSs set forth in sections 18.4, 18.7 and 18.9 of the Malibu LIP.

B. Prior to the receipt of the certificate of occupancy for the residence, the applicant shall submit for the review and approval of the Executive Director verification that they have obtained a valid Standard Operating Permit from the City for the proposed OSTS. This permit shall comply with all of the operation, maintenance and monitoring provisions applicable to OSTSs contained in the Malibu LCP.

6. Disposal of Excavated Material

Prior to issuance of a coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.

7. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers,

agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. Future Development Restriction

This permit is only for the development described in coastal development permit 4-01-180. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit 4-01-180. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit 4-01-180 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. Structural Appearance

The color of the structure and roof permitted hereby shall be restricted to a color compatible with the surrounding environment (white tones shall not be acceptable). All windows shall be comprised of non-glare glass.

10. Lighting Restriction

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

(1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.

(2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

(3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

11. Deed Restriction

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

12. Revised Swimming Pool and Spa Plans

Prior to the issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director, revised plans for the swimming pool that illustrate a double wall pool shell design with drains and a leak detection system.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicants are proposing to construct a one-story, 18 foot high, 2,321 sq. ft. single family residence, with attached two-car garage, septic system, swimming pool, entry gate, widened driveway, and 79 cu. yds. of grading (55 cu. yds. cut, 24 cu. yds. fill). **(Exhibits 4-7)**. The proposed project is located on the site of a residence destroyed by wildfire in 1993.

Section 30610(g) of the Coastal Act authorizes the replacement, without a permit, of structures destroyed by disaster. Section 30610(g) further states that the floor area of the replacement structure shall not exceed that of the destroyed structure by more than 10%. The proposed residence exceeds the floor area of the former residence by approximately 17.8% and is thus not in conformance with the requirements of Section 30610(g). Therefore, a coastal development permit is required for the proposed residence.

The approximately .75 acre project site is located in the Big Rock area in the eastern portion of the City of Malibu, Los Angeles County **(Exhibit 1)**. The narrow hillside lot is located on a south facing hillside overlooking Pacific Coast Highway and the Pacific Ocean. The near rectangular lot parallels the slope and contains an existing driveway, retaining wall, approximately 4,000 sq. ft. building pad and foundations from the destroyed residence. Slopes descend south from the pad at gradients of approximately 1.5:1, and north from the pad at similar gradients. A paved private road (Rockpoint Road), shared by adjacent residences, bisects the western half of the

lot. Beyond the Rockpoint Road, the westernmost approximately 100 feet of the property extends down the eastern slope of an unnamed canyon **(Exhibits 2** and **10)**.

The subject site contains sparse weedy and non-native vegetation, with the exception of the canyon slope, which, although annually cleared, contain some native coastal sage scrub vegetation. The proposed location of the residence will establish a 200-foot brush clearance radius that will extend down the hillside and the canyon slope. This radius is contained, however, entirely within the 200 foot radii of existing development **(Exhibit 3)**.

The proposed project will be visible from Pacific Coast Highway, a designated scenic highway in the City of Malibu LCP. The Cultural Resources Sensitivity Map indicates that the site has a very low potential for observing archaeological sites, and no need exists for further study.

Neighboring property owners of 20752 Rockpoint Road and 20790 Rockpoint Road have expressed opposition to the proposed project, based on concerns about the geologic safety of the residence. They also have stated that the site was not properly posted, and that the project was improperly approved in concept by the City of Malibu Planning Department without a variance for construction of pilings on a slope over 3:1. In response to the latter allegation, the City of Malibu Planning Department acknowledged that an error had been made in approving the project in concept without the required variance. Subsequently, the applicants redesigned their proposal to remove the pilings on the slope, and cantilever those portions of the residence that the pilings were intended to support. As revised, the proposed project required no discretionary approvals from the City of Malibu. The City issued an approval-in-concept for the revised design on February 4, 2003. In regard to posting of the site, the site was posted as of September 23, 2002, allowing adequate time for public comments to be made to the Commission. The geologic concerns presented by the neighboring property owners are discussed in Section B. below. Correspondence from the neighboring property owners is included in this staff report as **Exhibit 8**. Correspondence from the applicants in response is included as **Exhibit 9**.

On September 13, 2002, the Commission adopted the Malibu Local Coastal Program (LCP). The subject permit application was filed prior to the date the LCP was adopted and therefore remains under the jurisdiction of the Commission. Prior to the adoption of the LCP the standard of review for permit applications in Malibu were the chapter three policies Coastal Act. After the adoption of the LCP the standard of review for permit applications is the LCP.

B. Hazards and Geologic Stability

The proposed development is located on a hillside lot in Malibu, an area generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to Malibu include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards that are applicable to the proposed development:

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states in pertinent part that 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, 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.***

In addition, the following LUP policies are applicable in this case:

> **3.1** ***New development that requires a grading permit or Local SWPPP shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.50. Any landscaping that is required to control erosion shall use native or drought-tolerant non-invasive plants to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.***
>
> ***4.2.*** ***All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.***
>
> ***4.4.*** ***On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.***
>
> ***4.5.*** ***Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.***
>
> ***4.6.*** ***Grading and/or development-related vegetation clearance shall be prohibited where the slope exceeds 40 percent (2.5:1), except that driveways and/or utilities may be located on such slopes, where there is no less environmentally damaging feasible alternative means of providing access to a building site, provided that the building site is determined to be the preferred alternative and consistent with all other policies of the LCP.***
>
> ***4.10.*** ***New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.***
>
> ***4.15.*** ***Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired provided that such repair and maintenance do not increase the extent of nonconformity of the structure. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements comply with the current standards and policies of the LCP and do not increase the extent of nonconformity of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not***

be permitted unless such structures are brought into conformance with the policies and standards of the LCP.

4.45 ***New development shall minimize risks to life and property from fire hazard through:***

- ***Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;***
- ***Siting and designing development to avoid hazardous locations;***
- ***Incorporation of fuel modification and brush clearance techniques in accordance with applicable fire safety requirements and carried out in a manner which reduces impacts to environmentally sensitive habitat to the maximum feasible extent;***
- ***Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;***
- ***Use of fire-retardant, native plant species in landscaping.***

4.49. ***Applications for new development, which require fuel modification, shall include a fuel modification plan for the project, prepared by a landscape architect or resource specialist that incorporates measures to minimize removal of native vegetation and to minimize impacts to ESHA, while providing for fire safety, consistent with the requirements of the applicable fire safety regulations. Such plans shall be reviewed and approved by the Forestry Division.***

6.29 ***Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:***

- ***Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.***
- ***Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.***
- ***Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.***
- ***Lawn shall not be located on any geologically sensitive area such as coastal blufftop.***
- ***Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.***

The Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazard. In addition, the LCP requires a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard.

The applicant has submitted numerous geologic reports that discuss geologic hazards and site stability ("Geologic/Geotechnical Engineering Report, Proposed New Single Family Residence (Fire Restoration Classification 4), 20782 Rockpoint Way, Malibu, Calif." by Gold Coast Geoservices, Inc., July 15, 1999; "Updated Geologic/Geotechnical Engineering Report, Proposed Single Family Residence, 20782 Rockpoint Way, City of Malibu," by Gold Coast Geoservices, Inc., October 12, 2000; "Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002, dated November 3, 2000," by Gold Coast Geoservices, Inc., March 26, 2001; "Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002, dated May 1, 2001," by Gold Coast Geoservices, Inc., May 17, 2001; "Geologic Report on Existing Seepage Pits for Planned Residence Rebuild Project, 20782 Rockpoint Way, City of Malibu," by Gold Coast Geoservices, Inc., June 26, 2001; "Geologic conditions at and adjacent to 20782 Rockpoint Way, Malibu," by Gold Coast Geoservices, Inc., November 11, 2002; "Response to letters by Donald B. Kowalewsky regarding planned construction of a new residence at 20782 Rockpoint Way, Malibu," by Gold Coast Geoservices, Inc., January 7, 2003). The July 15, 1999 report by Gold Coast Geoservices, Inc. provides stability analyses of the subject property, including cross-sections illustrating the location of potential failure surfaces and the factor of safety against sliding on such surfaces. The cross sections and accompanying analysis indicate that the structure will be founded in a location that provides at least a 1.5 factor of safety.

The Gold Coast Geoservices, Inc. report dated July 15, 1999 concludes:

> ***It is the opinion of the undersigned that the proposed structure(s) will be safe against hazard from landslide, settlement, or slippage, and that the proposed construction will have no adverse geologic effect on offsite properties. Assumptions critical to our opinion are that the design recommendations will be properly implemented during the proposed construction, and that the property will be properly maintained to prevent excessive irrigation, blocked drainage devices, or other adverse conditions.***

In addition, the Gold Coast Geoservices, Inc. report dated March 26, 2001 concludes:

> ***It is the opinion of the undersigned that the proposed seepage pits will be safe against hazard from landslide, settlement, or slippage, and that the proposed construction will have no adverse geologic effect on offsite properties. Assumptions critical to our opinion are that the design recommendations will be properly implemented during the proposed construction, and that the property and adjacent properties will be properly maintained to prevent excessive irrigation, blocked drainage devices, or other adverse conditions that could adversely impact sustained usage of seepage pits.***

The July 15, 1999 report notes, however, that the hillside south of the proposed residence is underlain by uncompacted fill and is subject to soil creep and soil slippage. In addition, the slope north of the proposed pool area is jointed and "blocky" and subject to spalling or ravelling. The report recommends the implementation of erosion control measures, such as control of runoff and planting of deep-rooting, lightweight ground cover, in these areas.

Neighboring property owners have submitted several geologic reports prepared for the subject site and for adjacent properties by Donald B. Kowalewsky and other geologists (Pre-Escrow Geologic Site Inspection / Geologic Data Sheet for 20782 Rockpoint Way, by Donald B. Kowalewsky, April 7, 1997; "Geologic review of geotechnical documents for 20782 Rockpoint Way, Malibu, CA," by Donald B. Kowalewsky, October 30, 2002; "Report of Engineering Geologic Investigation, Distressed Residential Improvements, Monge Residence, 20790

Rockpoint Road, Malibu, CA," by Keith W. Ehlert, January 25, 2000; "Engineering geologic memorandum concerning landslide movement and associated Los Angeles County water main break at 20790 Rockpoint Road, Malibu, California," by Donald B. Kowalewsky, January 14, 1999; "Boring logs and seepage pit data from 2001 observations at 20790 Rockpoint Way, Malibu," by Donald B. Kowalewsky, December 18, 2002; "Inclinometer Casing Surveys; 20790 Rockpointe Drive, Malibu, California," by Southwestern Engineering Geology, November 13, 2001; Additional geologic comments regarding 20782 Rockpoint Way, Malibu, California," by Donald B. Kowalewsky, December 4, 2002.)

The reports by Donald Kowalewsky contend that a landslide underlies the eastern portion of the property, and that "the existing foundation crosses over the probably boundary between good bedrock and landslide debris." (Kowalewsky, 1997) The reports base this contention on borings performed on the property immediately below the subject site at 20790 Rockpoint Road. These borings found landslide debris to a depth of approximately 18 feet beneath the driveway, which is located at the base of the slope below the subject site. The reports further contend that the landslide was reactivated by a Los Angeles County water main break in the slope south of the site in 1998, as evidenced by cracking in the pool deck at 20790 Rockpoint Road and in a retaining wall that lies at the base of the slope below the subject site.

In his report dated October 30, 2002, Mr. Kowalewsky asserts the following:

3. ***....Construction of a deck and addition to the original structure over the descending slope may significantly increase the potential for additional landslide movement....***

4. ***....The grading and retaining wall (in the swimming pool area) are both within an area mapped by this office as a landlslide...It would be inappropriate to place a new swimming pool over a landslide which has recently been active....***

9. ***Disposal of sewage effluent on this property may increase the ground water levels, adversely affecting slope stability. No hydro-geologic investigation was performed to determine the effect of proposed sewage disposal on groundwater conditions.***

However, in a letter dated November 11, 2002, Gold Coast Geoservices, Inc. disputes the presence of a landslide beneath the subject site, based on review of previous reports for properties within 500 feet radius of the site, inspection of the site, and analysis of an 80 foot boring, logged just east of the existing foundations on the subject property and within the area indicated to be landslide in the Kowalewsky report, that showed no evidence of landslide debris. Gold Coast Services asserts:

> ***Based upon the findings from our investigation and from our review of all available data, there is no documentation of any landslides ever having occurred on any portion of the property at 20782 Rockpoint Way. Kowalewsky and Ehlert described ancient landslide debris to a depth of about 18 feet in a boring in the driveway on (20790 Rockpoint Way). Kowalewsky infers that (this) finding of landslide debris....also means that landslide debris must occur on the Zappala property, however this is an unsubstantiated assumption. In any event, the 1998 water main line break in Rockpoint Way did not cause landsliding to occur on the property at 20782 Rockpoint Way....***
>
> ***Furthermore, it must be stated that we do not agree....that it has ever been conclusively determined that a landslide actually occurred as a result of the water main line break in 1998. The localized nature of the pool cracks and the lack of more extensive cracking throughout the property are not consistent with the type and extent of ground cracks***

> ***that would occur if a large, deep-seated ancient landslide had become re-activated....Deep-seated landslide movement results in significant lateral and vertical cracking, ground subsidence, and ground bulging at the landslide toe, yet none of these features are evident anywhere on the property at 20790 Rockpoint or at 20782 Rockpoint....The nature of the pool cracks is much more indicative of the type of cracking that occurs from localized settlement of unconsolidated soil.***

The letter further contends that cracks in the retaining wall below the subject site is the result of the age (approximately 30 years) and inadequate construction of the wall for the site conditions.

The report by Keith Ehlert, while asserting that a landslide exists below 20790 Rockpoint Road, does discuss the possibility of soil settlement or creep as an alternative explanation for cracking on that property:

> ***It is my opinion that the distress is mainly a result of reactivation of the landslide. However, the possibility that some of the distress may be a result of local soil influences (i.e., settlement, creep) cannot be completely ruled out. If such local soil influences have occurred, it is my opinion that the water pipe leak triggered or contributed to the local soil influences.***

In regards to the septic system, the Gold Coast Services, Inc., report dated June 26, 2001 states:

> ***The depth of groundwater was determined to be about 79 feet in our exploratory boring B-1 at the same elevation as the seepage pits, so that it is our determination that the seepage pits have adequate vertical setback from high groundwater level. Due to the fact that our subsurface exploration was performed at the end of the "El Nino" year rainstorms when groundwater levels were high, it is our finding that the seepage pits will not be subject to groundwater intrusion and the seepage pit usage will not create groundwater mounding conditions to occur.***

In response to the Kowalewsky report dated October 30, 2002, Gold Coast Services, Inc. states, in a letter dated November 11, 2002:

> ***Kowalewsky now states that the seepage pit usage at 20782 Rockpoint "may increase the groundwater levels, adversely affecting slope stability." We note that this statement was not included in his pre-escrow geologic opinion report for this property....we do not see why he is now making this statement which is again unsubstantiated by any data. The planned seepage pit construction for this property has been reviewed and approved by this office, by the city's reviewing geologist, and by the city's sanitarian.***

In regard to Mr. Kowalewsky's statement concerning construction on the descending slope below the existing building pad, it is important to note that the applicants have recently revised their project plans to remove the pilings from the slope and employ a cantilevered support system for the proposed deck and kitchen area.

The City of Malibu geologist has evaluated all of the submitted reports and has approved the project in concept, under a Restoration Classification 3. This classification indicates that the project is near an area with a geologic hazard, but no geologic hazards exist on site. The classification requires the recording of a "slide waiver" through which the applicant assumes all risks of building on the property.

Commission geologist Mark Johnsson has also reviewed all of the submitted reports and inspected the subject site, and has found insufficient evidence to conclude that a landslide underlies the site, or that the proposed septic system will increase the instability of the slope. To ensure that new development will be stable and will not contribute to geologic instability of the site or surrounding areas, Policy 4.4 of the Malibu LCP requires all new development on ancient landslides, unstable slopes, and other geologic hazard areas be permitted only where an adequate factor of safety can be provided. Commission Staff Geologist Mark Johnsson has reviewed the slope stability analyses presented in the Gold Coast Geoservices, Inc. reports and concurs with the consulting geologists' determination that an adequate factor of safety exists for the proposed residence.

As noted above, the Gold Coast Geoservices reports dated July 15, 1999 and March 26, 2001 conclude that the proposed residence, associated improvements, and septic system

> ***....will be safe against hazard from landslide, settlement, or slippage, and that the proposed construction will have no adverse geologic effect on offsite properties.***

As such, the proposed project will serve to ensure general geologic and structural integrity on site at the present time. However, the submitted geologic reports include a number of recommendations to ensure the geologic stability and geotechnical safety of the site. To ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into all new development, **Special Condition One (1)** requires the applicant to submit project plans certified by the consulting geologist and geotechnical engineer as conforming to all geologic and geotechnical recommendations, as well as any new or additional recommendations by the consulting geologist and geotechnical engineer to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, sewage disposal and drainage. Any substantial changes to the proposed development approved by the Commission that may be recommended by the consultants shall require an amendment to the permit or a new coastal development permit.

The applicant's consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, as discussed above, the proposed development is located on a hillside parcel that is subject to soil creep and slippage, and is adjacent to an area that contains evidence of ancient landslides. Due to these geologic risks, and to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Seven (7)**. This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same. In addition, the Malibu LCP specifically requires that land owners of properties within or adjacent to areas subject to landslide, other high geologic hazards, or wildfire shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

It should be noted that an assumption of risk restriction for hazardous geologic conditions and danger from wildfire is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. The Commission has required such restrictions for other development throughout the Malibu/Santa Monica Mountains region.

The Commission also finds that the minimization of site erosion will add to the stability of the site. In addition, the Malibu LCP requires that graded and disturbed areas be revegetated to minimize erosion. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants compatible with the surrounding environment. In past permit actions, the Commission has found that invasive and non-native plant species are typically characterized as having a shallow root structure in comparison with their high surface/foliage weight and/or require a greater amount of irrigation and maintenance than native vegetation. The Commission notes that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize steep slopes and that such vegetation results in potential adverse effects to the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foliage weight but also by their low irrigation and maintenance requirements. Further, they can be maintained without the use of permanent irrigation systems, which can cause excessive infiltration of water into the hillside, potentially leading to slope failures. Within Zone A, as designated on the fuel modification plan, non-invasive ornamental plants are acceptable. Therefore, in order to ensure the stability and geotechnical safety of the site, **Special Condition Three (3)** requires that all proposed disturbed and graded areas on subject site are stabilized with native and limited non-invasive ornamental vegetation.

The proposed location of the residence will establish a 200-foot brush clearance radius that will extend down the hillside and the eastern slope of an adjacent canyon. This radius is contained entirely within the 200 foot radii of existing development **(Exhibit 3)**. Brush clearance on the subject property will be governed by the fuel modification plan.

The applicants have submitted a preliminary fuel modification plan that has been approved in concept by the County of Los Angeles Fire Department. The plan indicates that Fuel Modification Zone A will extend 20 feet from the structure on the south side, and 20 feet from the developed pad area on the north side, and Zone B will extend 20 to 50 feet further to the north and east property lines. In the western portion of the property, adjacent to the access road, Zone C will extend approximately 20 feet from Zone A to the road, and approximately 20 feet to the north property line adjacent to the driveway. Zone A therefore includes a portion of the hillside both above and below the proposed residence; and Zone B includes additional hillside area beyond Zone A. Both Zone A and Zone B are irrigated zones requiring the use of vegetation with a high moisture content. Removal of existing drought-tolerant vegetation and increased water input may contribute to the destabilization of the steep hillside. Therefore, in order to minimize potential impacts to the stability of the surrounding hillside, **Special Condition Three (3)** also requires the applicants to submit a final long-term fuel modification plan, for the review and approval of the Executive Director, that prohibits use of a permanent irrigation system and minimizes removal of native plant species.

The project will increase the amount of impervious coverage on-site which may increase both the quantity and velocity of stormwater runoff. If not controlled and conveyed off-site in a non-

erosive manner, this runoff may result in increased erosion, affect site stability, and impact downslope water quality. The applicant's geologic / geotechnical consultant has recommended that site drainage be collected and distributed in a non-erosive manner. In addition, Malibu LCP policy 4.10 requires that "new development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams". Therefore, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by **Special Condition Two (2)**, to submit drainage and polluted runoff management plans for the construction and post-construction phases of development that are prepared by the consulting engineer. To ensure that the project's drainage structures will not contribute to further destabilization of the project site or surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, **Special Condition Two (2)** also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

As noted above, the proposed project also includes a swimming pool and spa. The Malibu LIP (Section 9.4.L) specifies that all swimming pools shall contain double wall construction with drains and leak detection systems. A double wall pool shell with drains and a leak detection system minimizes the potential that a pool leak will go undetected which could result in a slope failure or sliding. The double wall pool shell design will ensure any leaks in the primary pool shell will be captured by the second shell and properly drained away from the hillside. Therefore, the Commission finds that it is necessary to require the applicants to submit revised plans for the swimming pool and spa that incorporate a double wall shell design, with drains and a leak detection system as specified in **Special Condition Twelve (12)**.

To ensure excess excavated material is moved off site so as not to contribute to unnecessary landform alteration and to minimize erosion and sedimentation from stockpiled excavated soil, the Commission finds it necessary to require the applicant to dispose of the material at a appropriate disposal site or to a site that has been approved to accept fill material, as specified in **Special Condition Six (6).**

Finally, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes all terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, for the reasons discussed above, the Commission finds that the project, as conditioned, is consistent with the applicable policies and standards of the Malibu LCP.

C. Water Quality

The Malibu LCP provides for the protection of water quality. The policies require that new development protects, and where feasible, enhances and restores wetlands, streams, and groundwater recharge areas. The policies promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters through new construction and development regulation, including site planning, environmental review and mitigation, and project and permit conditions of approval. Additionally, the policies require the implementation

of Best Management Practices to limit water quality impacts from existing development, including septic system maintenance and City services.

Section 30231 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

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

In addition, the following water quality LCP policies are applicable in this case:

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

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

3.3 ***New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.***

3.4 ***Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern[1] that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.***

3.5 ***Post-development peak stormwater runoff discharge rates shall not exceed the estimated pre-development rate. Dry weather runoff from new development must not exceed the pre-development baseline flow rate to receiving waterbodies.***

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[1] Pollutants of concern are defined in the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County as consisting " of any pollutants that exhibit one or more of the following characteristics: current loadings or historic deposits of the pollutant are impacting the beneficial uses of a receiving water , elevated levels of the pollutant are found in sediments of a receiving water and/or have the potential to bioaccumulate in organisms therein, or the detectable inputs of the pollutant are at a concentrations or loads considered potentially toxic to humans and/or flora or fauna".

3.6 *New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.*

3.7 *Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.*

3.8 *New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.*

3.9 *New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.*

3.10 *Permits for new development shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required BMPS. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility.*

3.11 *The City, property owners, or homeowners associations, as applicable, shall be required to maintain any drainage device to insure it functions as designed and intended. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.*

3.12 *Some BMPs for reducing the impacts of non-point source pollution may not be appropriate for development on steep slopes, on sites with low permeability soil conditions, or areas where saturated soils can lead to geologic instability. New development in these areas should incorporate BMPs that do not increase the degree of geologic instability.*

3.13 *New development that requires a grading permit or Local SWPPP shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.50. Any landscaping that is required to control erosion shall use native or drought-tolerant non-invasive plants to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.*

3.14 *New development shall protect the absorption, purifying, and retentive functions of natural systems that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner. Disturbed or degraded natural*

drainage systems shall be restored, where feasible, except where there are geologic or public safety concerns.

3.15 *Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.*

3.16 *Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.*

3.17 *OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.*

3.18 *New development shall be sited and designed to provide an area for a backup soil absorption field in the event of failure of the first field.*

3.19 *Soils should not be compacted in the soil absorption field areas during construction. No vehicles should be parked over the soil absorption field or driven over the inlet and outlet pipes to the septic tank.*

3.20 *Subsurface sewage effluent dispersal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath nonporous paving or surface covering.*

3.21 *New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and should avoid the use of garbage disposals to minimize hydraulic and/or organic overloading of the OSTS.*

3.22 *New development may include a separate greywater dispersal system where approved by the Building Safety Department.*

3.23 *New development shall include protective setbacks from surface waters, wetlands and floodplains for conventional or alternative OSTSs, as well as separation distances between OSTS system components, building components, property lines, and groundwater. Under no conditions shall the bottom of the effluent dispersal system be within five feet of groundwater.*

3.24 *The construction of private sewage treatment systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage treatment system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.*

3.25 *Applications for new development relying on an OSTS shall include a soils analysis and or percolation test report. Soils analysis shall be conducted by a California Registered Geotechnical Engineer or a California Registered Civil Engineer in the environmental/geotechnical field and the results expressed in United States Department of Agriculture classification terminology. Percolation tests shall be conducted by a California Registered Geologist, a California registered Geotechnical Engineer, a California Registered Civil Engineer, or a California Registered Environmental Health Specialist. The*

OSTS shall be designed, sited, installed, operated, and maintained in full compliance with the building and plumbing codes and the requirements of the LA RWQCB.

3.26 ***New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems.***

3.27 ***Applications for a coastal development permit for OSTS installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTS on groundwater level, quality of nearby surface drainages, and slope stability. Where it is shown that the OSTS will negatively impact groundwater, nearby surface waters, or slope stability, the OSTS shall not be allowed.***

As described in detail above, the proposed project includes construction of a one-story, 18 foot high, 2,321 sq. ft. single family residence, with attached two-car garage, septic system, swimming pool, entry gate, widened driveway, and 79 cu. yds. of grading (55 cu. yds. cut, 24 cu. yds. fill).

As such, the proposed project will result in an increase of impervious surface on site, which in turn decreases the infiltrative function and capacity of existing permeable land on project sites. The Commission notes that this reduction in permeable surface leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak stream discharge is increased and the peak occurs much sooner after precipitation events. Changes in the stream flow result in modification to stream morphology. Additionally, grading, excavations and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion of disturbed soils and in sedimentation of nearby coastal stream and waters.

In addition, pollutants commonly found in runoff associated with new development include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter; fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use; nutrients from wastewater discharge, animal waste and crop residue; and bacteria and pathogens from wastewater discharge and animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation which provides food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the preparation of a Storm Water Management Plan (SWMP) for all projects that require a coastal development permit or a Water Quality Mitigation Plan (WQMP) for redevelopment projects that result in the creation, addition, or replacement of 5,000 square feet of impervious surface area on an already developed site. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to minimize or prevent adverse effects of the project on water quality. A WQMP requires treatment control (or structural) BMPs, in addition to site design and source control BMPs that are required for a SWMP, to minimize or prevent the discharge of polluted runoff from a project site. The proposed redevelopment project will result in the creation or replacement of over 5,000 square feet of impervious surface area. Therefore, pursuant to the requirements of the Malibu LCP, and to ensure the proposed project will not adversely impact water quality or coastal resources, the Commission finds it necessary to require the preparation of a WQMP for the subject site, that utilizes site design, source control and treatment control BMPs, as specified in **Special Condition Two (2).**

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from runoff during construction. The Malibu LCP requires that a Local Storm Water Pollution Prevention Plan (SWPPP) be prepared for all development that requires a Coastal Development Permit and a grading or building permit, and it shall apply to the construction phase of the project. The SWPPP includes measures and BMPs to prevent erosion, sedimentation and pollution of surface and ocean waters from construction and grading activities. In this case, the proposed project does involve grading and construction that requires grading and building permits. Therefore, pursuant to the Malibu LCP and to ensure the proposed development does not adversely impact water quality or coastal resources during the construction phase of the project, the Commission finds it necessary to require the applicant to submit a Local SWPPP for the subject site, consistent with the requirements specified in **Special Condition Two (2).**

Finally, the proposed development includes the installation of an on site wastewater treatment system (OSTS) to serve the residence. The applicant is proposing to install a new 2,000 gallon tank with an effluent filter, and to utilize three existing seepage pits. The Malibu LCP includes a number of policies and standards relative to the design, siting, installation, operation and maintenance of OSTSs to ensure these systems do not adversely impact coastal waters. The proposed OSTS was reviewed and approved in concept by the City of Malibu Environmental Health Department on July 31, 2001, determining that the system meets the requirements of the plumbing code.

However, with the recent adoption of the Malibu LIP, new more stringent standards regarding the siting, design, installation, operation and maintenance of OSTSs have been established. For instance, the Malibu LIP requires seepage pits to be used only where the distances between the bottom of the pit and groundwater is equal to or greater than 20 feet (for gravels with few fines) and 10 feet for other soil materials. (Section 18.7.H.) The proposed seepage pits are located in sandstone bedrock and extend from three feet to twenty feet underground. A boring performed on the site found groundwater at a depth of 79 feet. Therefore, the distance between the proposed seepage pits and groundwater is approximately 59 feet, well above the required distance provided in the Malibu LIP.

During an investigation performed on the neighboring property at 20790 Rockpoint Road, geologist Donald B. Kowalewsky observed groundwater flowing into the seepage pit on the property. His report on the incident, dated December 18, 2002, states:

> ***During our investigation of the site the existing seepage pit was opened and found to be filled with water. As a consequence, the pit was pumped and water was observed to be flowing into the pit. The septic tank was effectively disconnected from the pit but water continue to flow into the pit for several weeks, refilling the pit. This indicates that the pit is filling from an external groundwater source....This anomalous groundwater condition was not considered by the consultants for 20782 Rockpoint Way when they provided recommendations for a seepage pit 50 feet to the north.***

Without further information on the location and depth of the seepage pit, the source of the groundwater encountered, and its relationship to the broken water main underlying the site, it is impossible to define the relationship between the groundwater encountered on 20790 Rockpoint Road and the proposed seepage pits at 20782 Rockpoint Road. In addition, the property at 20790 Rockpoint Road is located approximately 30 feet below the subject site and therefore subject to groundwater intrusion from depths at least 10 feet below the bottom of the proposed seepage pits at the subject site.

Although the proposed septic system appears to be in conformance with Section 18.7.H of the Malibu LIP, a more thorough review is necessary to ensure that the proposed OSTS meets all required standards provided in the Malibu LIP. Therefore, the Commission finds that it is necessary to require the applicant to submit a report and plans prepared by a qualified professional, that have been reviewed and approved by the City of Malibu Environmental Health Department, verifying the proposed septic system complies with the siting, design, installation, operation and maintenance requirements specified in **Special Condition Five (5).**

In addition, in order to ensure the OSTS is maintained and monitored in the future to prevent system failures or inadequate system performance, the Malibu LCP includes policies and standards requiring the regular maintenance and monitoring of the OSTS. Therefore, the Commission finds that it is necessary to require the applicant to submit verification that they have obtained a monitoring, operation and maintenance permit from the City, as outlined in **Special Condition Five (5).**

As stated previously, the proposed project includes a pool and spa. Malibu LUP policies 3.95 and 3.96 require that new development shall be sited and designed to protect water quality and not result in the degradation of surface waters, including the ocean, coastal streams or wetlands. There is the potential for pools and spas to have deleterious effects on aquatic habitat if not properly maintained and drained. In addition, chlorine and other chemicals are commonly added to pools and spas to maintain water clarity, quality, and pH levels. Further, both leakage and periodic maintenance of the proposed pool and spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing instability of the site and adjacent properties and may result in the transport of chemicals, such as chlorine, into coastal waters, adversely impacting sensitive riparian, wetland and marine habitats. Therefore, in order to minimize potential adverse impacts from the proposed pool and spa, the Commission finds it is necessary to require the applicant to submit a spa drainage and maintenance plan, as detailed in **Special Condition Four (4).**

To further minimize the potential for pool leakage, Malibu LIP (Section 9.4.L) specifies that all swimming pools shall contain double wall construction with drains and leak detection systems.

A leak detection system minimizes the potential that a pool leak will go unnoticed. The double wall pool shell design ensures that any leaks in the primary pool shell will be captured by the second shell and properly drained away from the hillside. Therefore, it is necessary to require the applicants to submit revised plans for the swimming pool and spa that incorporate a double wall shell design, with drains and a leak detection system as specified in **Special Condition Twelve (12)**.

In addition, **Special Condition Eight (8)** addresses future development by ensuring that all future development proposals for the site, which might otherwise be exempt from review, would require prior review so that potential impacts to water quality may adequately be considered. Finally, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission finds that based on the above findings the proposed project, as conditioned, will not result in adverse impacts to water quality and is consistent with the Malibu LCP.

D. Visual Resources

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality, which provide striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures.

Section 30251 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

> ***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 subordinated to the character of its setting.***

In addition, the following LCP policies are applicable in this case:

> 6.1 ***The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.***
>
> 6.2 ***Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are***

shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.

6.3 *Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:*

- *Pacific Coast Highway*
- *Decker Canyon Road*
- *Encinal Canyon Road*
- *Kanan Dume Road*
- *Latigo Canyon Road*
- *Corral Canyon Road*
- *Malibu Canyon Road*
- *Tuna Canyon Road*

6.4 *Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.*

6.5 *New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.*

6.6 *Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.*

6.7 *The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is*

lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.

6.9 All new development shall be sited and designed to minimize alteration of natural landforms by:

- *Conforming to the natural topography.*
- *Preventing substantial grading or reconfiguration of the project site.*
- *Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.*
- *Requiring that man-made contours mimic the natural contours.*
- *Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.*
- *Minimizing grading permitted outside of the building footprint.*
- *Clustering structures to minimize site disturbance and to minimize development area.*
- *Minimizing height and length of cut and fill slopes.*
- *Minimizing the height and length of retaining walls.*
- *Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.*

6.10 New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.

6.12 All new structures shall be sited and designed to minimize impacts to visual resources by:

- *Ensuring visual compatibility with the character of surrounding areas.*
- *Avoiding large cantilevers or understories.*
- *Setting back higher elements of the structure toward the center or uphill portion of the building.*

6.13 New development in areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.

6.14 The height of permitted retaining walls shall not exceed six feet. Stepped or terraced retaining walls up to twelve feet in height, with planting in between, may be permitted. Where feasible, long continuous walls shall be broken into sections or shall include undulations to provide visual relief. Where feasible, retaining walls supporting a structure should be incorporated into the foundation system in a stepped or split level design. Retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.

6.23 Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.

6.29 Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:

- ***Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.***
- ***Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.***
- ***Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.***
- ***Lawn shall not be located on any geologically sensitive area such as coastal blufftop.***
- ***Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.***

The project site is located on a hillside overlooking Pacific Coast Highway in western Malibu. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. In addition, Pacific Coast Highway is an LCP designated Scenic Road.

The proposed residence will be visible from Pacific Coast Highway, located approximately 350 feet south of the subject site. Because it is visible from a designated Scenic Road in an area that affords hillside and canyon vistas, the site conforms to the definition, under Malibu LCP Policy 6.4, of a Scenic Area. Therefore, this site is governed by LCP Policy 6.5, which requires that development minimize adverse impacts on scenic areas that are visible from scenic roads.

The Malibu LCP requires new development to be sited and designed to minimize adverse impacts on scenic areas. Where no alternative siting exists, as in the subject case, impacts must be minimized through such measures as reducing the size and height of structures, minimizing grading, utilizing colors and exterior materials compatible with the surrounding environment, minimizing exterior lighting, and revegetating disturbed areas with a native plant palette that blends with natural habitats on site.

The height of the proposed one-story residence structure is 18 feet. Therefore, reduction in the height of the residence is not feasible. The proposed structure is 2,321 sq. ft. in size. Reduction in the size of the residence would not significantly reduce impacts on public views. The applicant proposes a minor amount of grading (55 cu. yds. cut, 24 cu. yds. fill) for excavation of the pool and widening of the existing driveway. The proposed project is therefore consistent with the LCP policies cited above relative to landform alteration and grading, retaining wall heights and height of structures above natural grade.

The Commission has found that in highly scenic areas, the color of a structure can adversely impact a viewshed if the color is not consistent with the surrounding environment. For example, white structures are highly visible from long distances and can adversely impact the visual resources from scenic highways, trails, and public view areas. Structures that have exterior colors and materials that are compatible with the surrounding environment are less visually

obtrusive. Policy 6.13 of the Malibu LCP requires new development in areas visible from public viewing areas to incorporate colors and exterior materials compatible with the surrounding landscape, and prohibits the use of highly reflective materials. Therefore, **Special Condition Nine (9)** restricts the color of the residence to those compatible with the surrounding environment and requires the use of non-glare glass.

The Commission has also found that night lighting of areas in the Malibu / Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. Policy 6.23 of the Malibu LCP specifically requires exterior lighting to be concealed so that no light source is directly visible from public viewing areas. Therefore, **Special Condition Ten (10)** restricts the use of exterior lighting on the subject property to the minimum necessary for safety purposes.

In addition, future construction on the property has the potential to negatively affect the visual character of the area as seen from Pacific Coast Highway. To insure that no additions or improvements are made to the property that may affect visual resources on-site without due consideration of the potential cumulative impacts, the Commission finds it necessary to require the applicant to record a future development deed restriction, which will require the applicant to obtain an amended or new coastal permit if additions or improvements to the site are proposed in the future, as required by **Special Condition Eight (8).**

Finally, **Special Condition Eleven (11)** requires the applicants to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In summary, the proposed project, as conditioned, will not result in a significant adverse impact to scenic public views or the character of the surrounding area in this portion of Malibu. In addition, there are no alternatives that would lessen any significant adverse impact on scenic and visual resources. Thus, the Commission finds that the proposed project is consistent, as conditioned, with applicable policies of the Malibu LCP.

E. 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 Environmentally Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

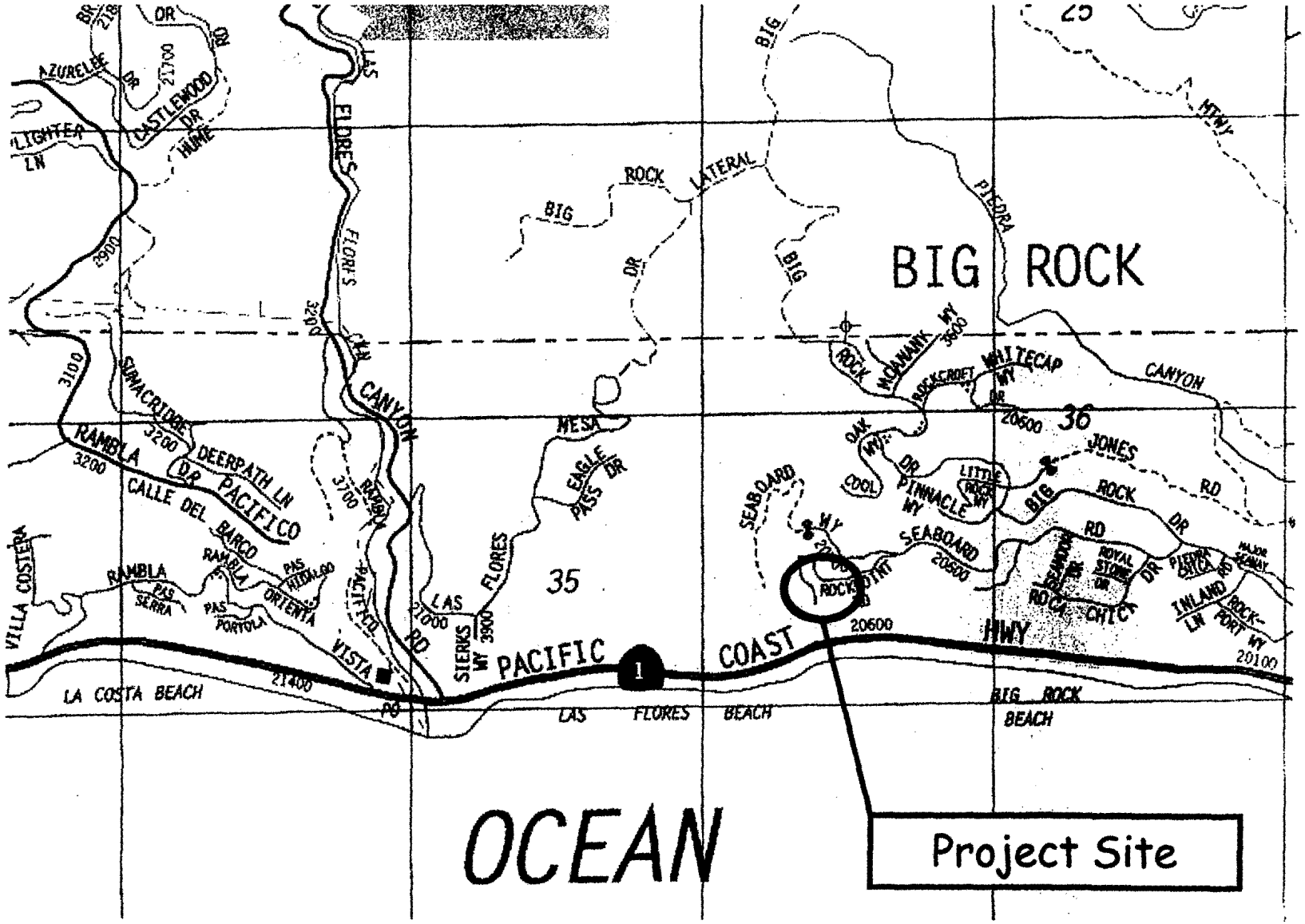


EXHIBIT NO. 1
APPLICATION NO.
4-01-180
VICINITY MAP

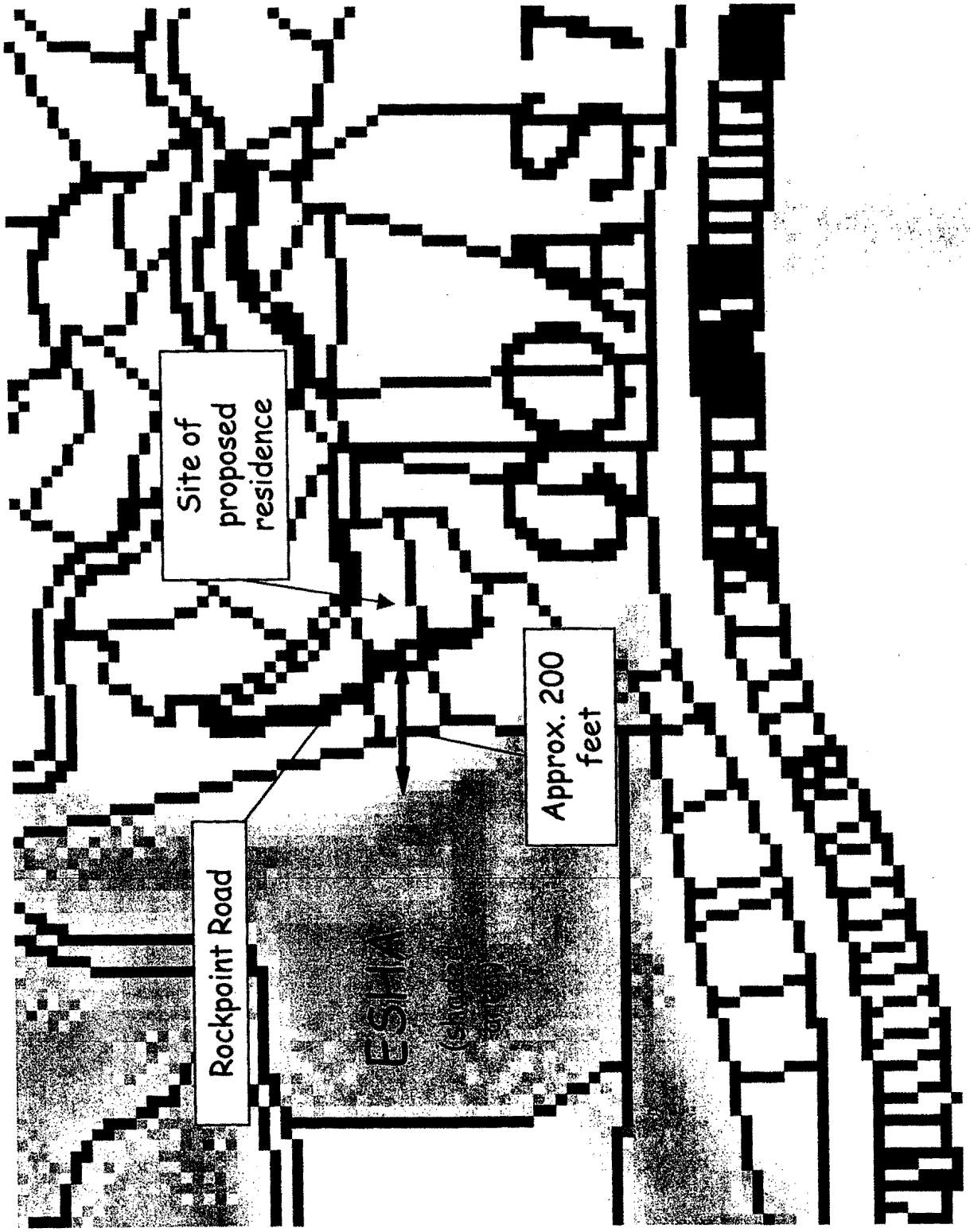


EXHIBIT NO. 2
APPLICATION NO.
4-01-180
COASTAL RESOURCES

Approximate 200 foot brush clearance radii for proposed project (in black) and adjacent residences (in white).

EXHIBIT NO. 3
APPLICATION NO.
4-01-180
BRUSH CLEARANCE

EXHIBIT NO. 4

APPLICATION NO.

4-01-180

SITE PLAN

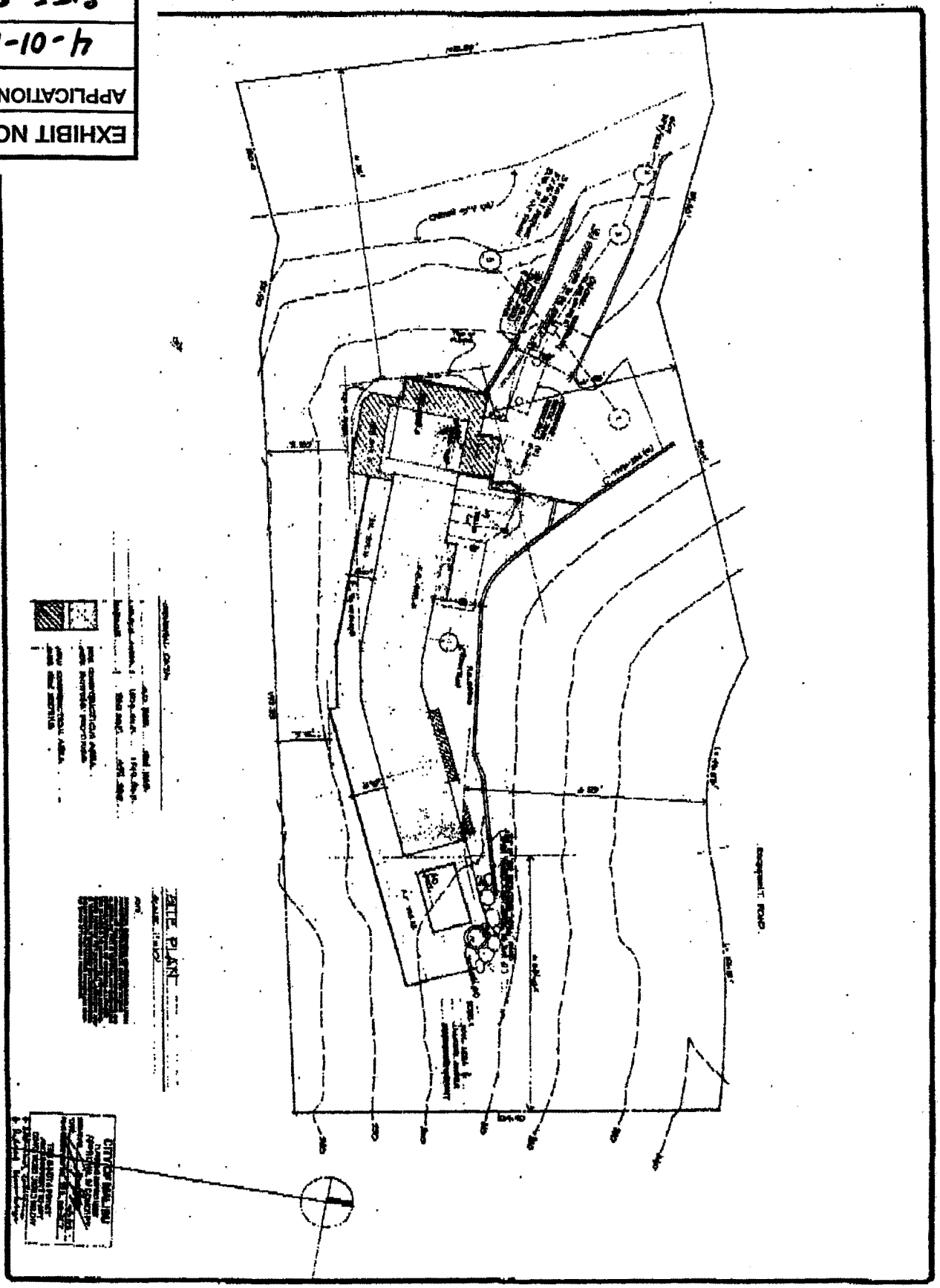
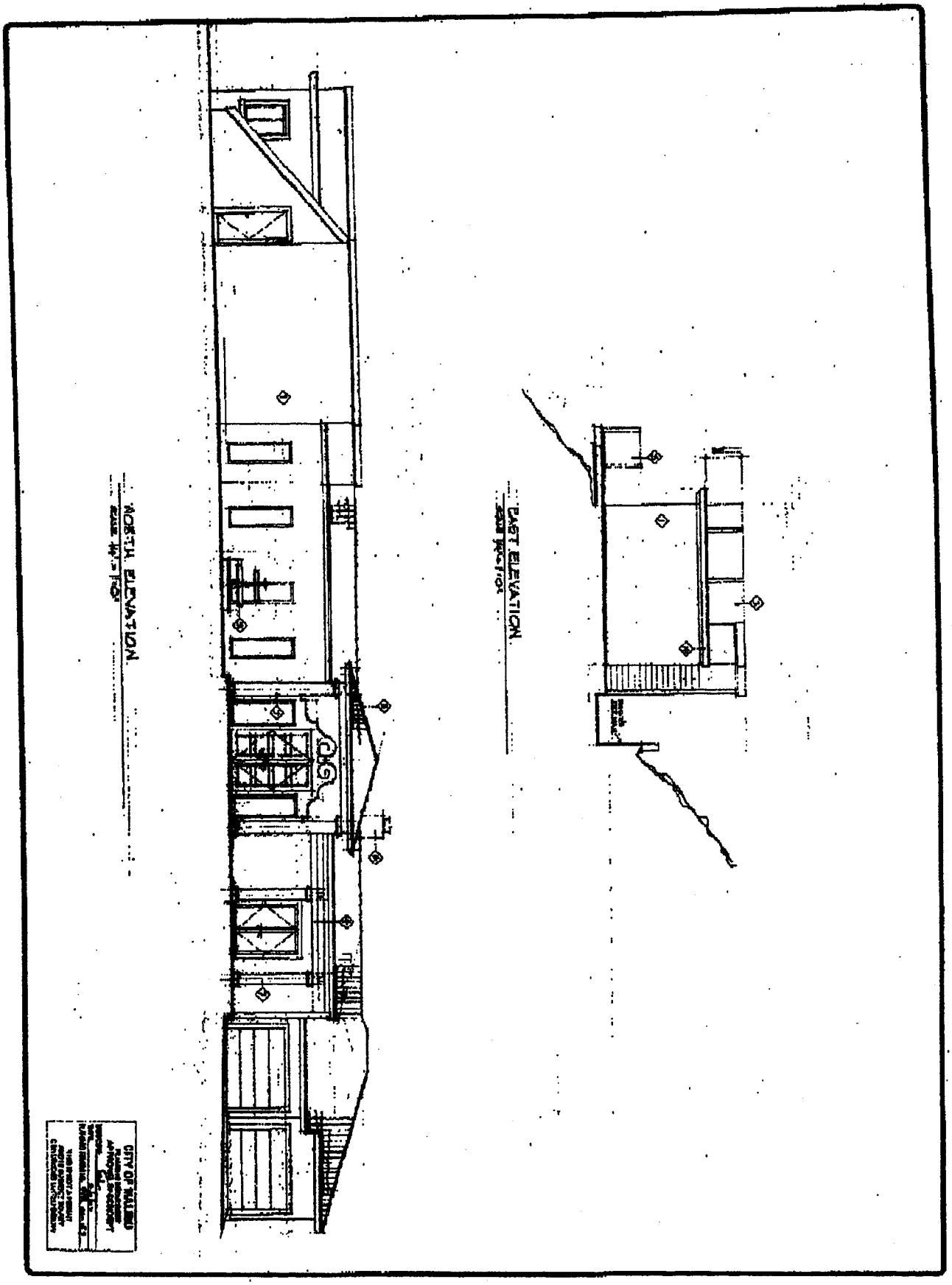
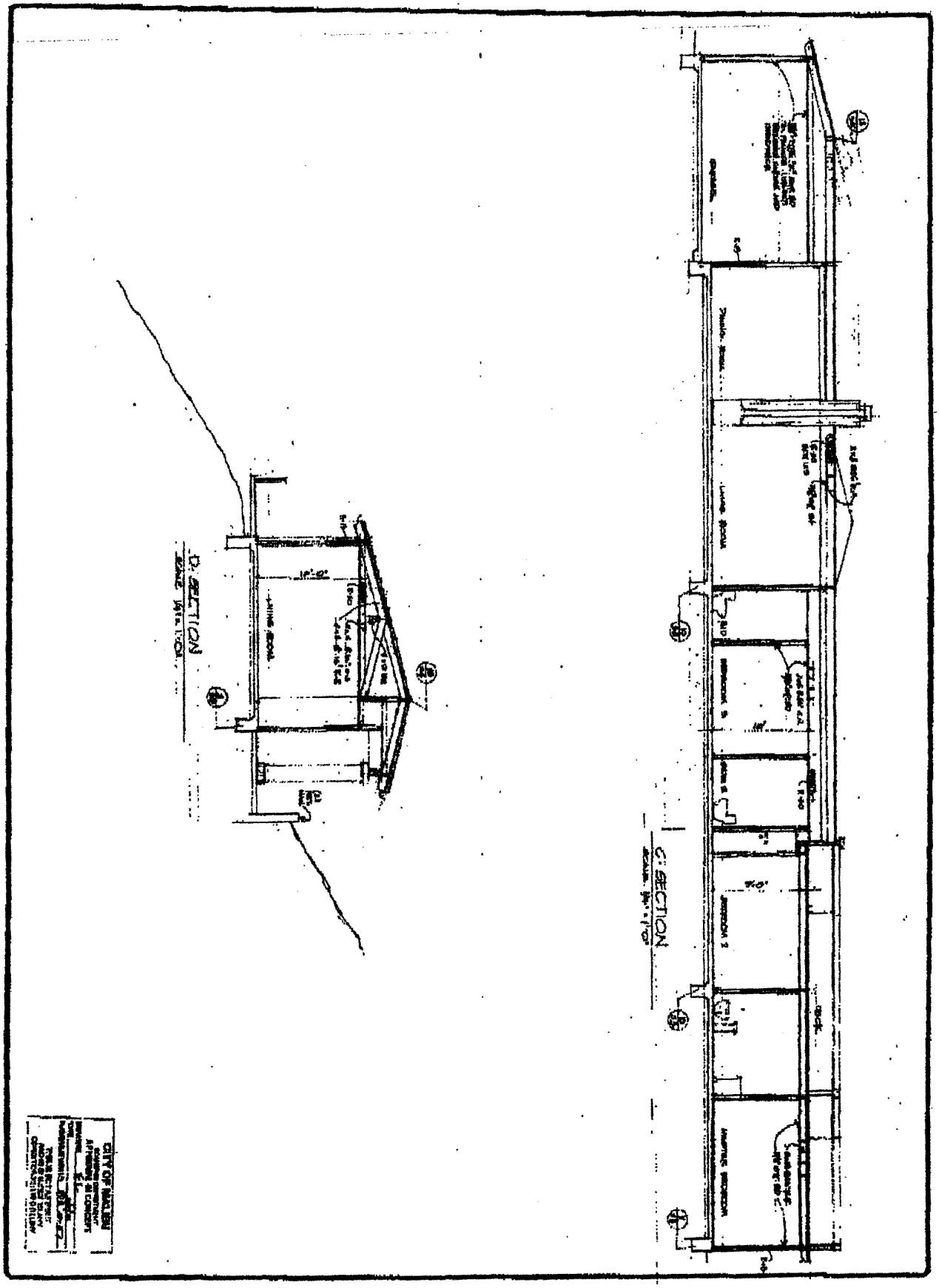


EXHIBIT NO. 5
APPLICATION NO.
4-01-180
FLOOR PLAN

EXHIBIT NO. 6
APPLICATION NO.
4-01-180
ELEVATIONS (2pp)



RESIDENCE
for
Mr. and Mrs. Carlo Zappala
28742 Rockpoint Way
Malibu, California 90265



RESIDENCE
for
Mr. and Mrs. Carlo Zappala
Malibu, California

CORRESPONDENCE FROM NEIGHBORING PROPERTY OWNERS

Correspondence from:

Janet Fulk and Peter Monge, 20790 Rockpoint Way
Louise Ann Fernandez and John Morris, 20762 Rockpoint Way

Dated:

November 1, 2002
December 5, 2002
December 19, 2002
December 23, 2002

Reports from Donald Kowalewsky, Certified Engineering Geologist, dated:

April 4, 1997
January 14, 1999
October 30, 2002
December 4, 2002
December 18, 2002

Report from Keith Ehlert, Licensed Engineering Geologist, dated:

January 25, 2000

Report from Southwestern Engineering Geology dated:

November 13, 2001

EXHIBIT NO. 8
APPLICATION NO.
4-01-180
CORRESPONDENCE

Janet Fulk and Peter Monge
20790 Rockpoint Way
Malibu, CA 90265
(310) 456-3235

Louise Ann Fernandez and John Morris
20762 Rockpoint Way
Malibu, CA 90265
(310) 456-2120

November 1, 2002

Ms. Lillian Ford
Coastal Analyst
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001-2801

Re: Application No. 4-01-180
Applicants: Dana and Carlo Zappala
Subject Property: 20782 Rockpoint Way, Malibu, California

Dear Ms. Ford:

We write concerning the application for a building permit for 20782 Rockpoint Way in Malibu (the Property). Our homes are immediately adjacent to the Property. Janet Fulk and Peter Monge own the home located at 20790 Rockpoint Way, immediately to the south of the Property. Louise Ann Fernandez owns the home located at 20762 Rockpoint Way, immediately to the north of the Property, where John Morris also resides.

The Application involves the proposed construction of a new single family residence with attached garage, swimming pool, deck, septic system, and widened driveway (the "Project"). The Project was approved "in concept" by the City of Malibu in August of 2001. However, at no time did we or any other neighbors receive any notice of the Project from the City of Malibu (the "City"). Thus, we had no knowledge of the scope or status of the Project until late September of 2002 when the "Notice of Pending Permit" was posted on the Property, nor did we see plans for the Project until we subsequently reviewed the public records.

The purpose of this letter is to convey our grave concerns regarding the Project. We are not opposed to construction of a residence on the Property. However, we are concerned that the residence as proposed is neither safe nor in compliance with all applicable policies and regulations. Generally, our concerns fall into three major categories. First, information contained in the attachments (and summarized below) demonstrate that the stability and structural integrity of the Project have not been adequately assured, and that the Project may create or contribute significantly to erosion, geologic instability, and potential damage to improvements on adjoining properties (Pub.

Res. Code § 30253). Second, we believe that adequate public notice has not been given, and that some information in the Application is inaccurate or false. Third, we believe that the application is incomplete.

The Property is Geologically Unstable

In 1999 the Fulk/Monge property sustained significant damage due to movement of a landslide that underlies the slope on both the 20782 and 20790 lots. We are extremely concerned that no further damage occur. The trigger for this slide, a water main break underground in an aging and faulty water system, is still a significant hazard, as are other sources of additional water into the slope, such as additional sewage effluent. As described below, geological instability is a significant concern.

1997 Kowalewsky Report. In April 1997, John Morris retained Donald B. Kowalewsky, a Certified Engineering Geologist, to conduct a pre-escrow geologic site inspection of the Property, then owned by Norris Goodwin. After inspecting the Property and reviewing the available records, Mr. Kowalewsky summarized his findings in a report dated April 4, 1997 (the "1997 Kowalewsky Report"). The 1997 Kowalewsky Report notes that the Property is partially underlain by a landslide that "has not been stabilized." The report goes on to state that "the potential for earthquake induced landslide movement is considered high," and that "earthquake related landslide movement could cause ground cracks, fissures and ground displacement." The report also identified landslide, shallow slump, and soil creep as potential "future failures that will affect the site."

In late 1997 or early 1998 shortly after the Applicants purchased the Property, John Morris gave a copy of the 1997 Kowalewsky Report to Carlo Zappala. Notably, the 1997 Kowalewsky Report is not referenced in any of the geotechnical reports submitted by the Applicants to the City or to the California Coastal Commission ("Commission"). Furthermore, in response to Question 8 in the Application, where asked to "list any geologic or other technical reports of which you are aware that apply to this property," the Applicants state: "NONE." This response is contradicted by the fact that the Applicants had knowledge and possession of the 1997 Kowalewsky Report at that time, which they recently reaffirmed in a meeting with us on October 27, 2002. In addition, the Applicants failed to disclose their knowledge of three subsequent water main breaks in 1998 and 1999 both on their property and at 20790 Rockpoint Way that resulted in significant landslide movement on both properties, discussed below. The application that they signed states that:

> "...failure to provide any requested information or any misstatements submitted in support of the application shall be grounds for either refusing to accept this application, for denying the permit, for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the Commission."

It appears that relevant information was not provided which precluded a full and fair disclosure of the numerous safety risks associated with the Project. We believe the Coastal Commission should evaluate whether these omissions warrant denial of the present permit or other appropriate relief in accordance with the terms of the Application.

2000 Ehlert Report and 2002 Kowalewsky Report. In light of the 1997 report and the omissions described above, we found it necessary to retain Mr. Kowalewsky to review the geotechnical reports submitted by the Applicants and to update and supplement his prior report. A copy of Mr. Kowalewsky's supplemental report dated October 30, 2002 (the "2002 Kowalewsky Report") is attached. The 2002 Kowalewsky Report reaffirms the basic conclusions of the 1997 Kowalewsky Report and identifies serious errors and omissions in the geotechnical reports submitted by the Applicants. In particular, the 2002 Kowalewsky Report notes that the geotechnical reports submitted by the Applicants "failed to consider recent (1998-2000) landslide movement that has affected the subject property [20782] and the immediately adjacent property to the south [20790]," which "was triggered by a County water main break in 1998." As noted in the 2002 Kowalewsky Report, this recent landslide movement was documented by Keith W. Ehlert, Certified Engineering Geologist, in a report dated January 25, 2000 (the "Ehlert Report"), a copy of which is attached. The Ehlert Report concludes, among other things, that the water main rupture caused landslide movement that damaged the slope shared by the Property and the Fulk/Monge home.

The conclusions of the Ehlert Report were based, in part, on two exploratory borings on the slope. These borings confirmed the existence of a landslide that extends beneath the Property and 20790 Rockpoint Way:

> "I observed what in my opinion is landslide debris in Borings 1 and 2. Logs of the borings are included in the Appendix of this report. The landslide debris observed in Boring 2 is about 18.5 feet thick, consistent with the findings of Kowalewsky. I interpret the landslide debris observed in Boring 1 to be about 56 feet thick. Kowalewsky projected the landslide slip surface downslope from Boring 1 without the benefit of an additional boring downslope. His projection is remarkably close to the depth of the slide plane I observed in Boring 1." (Ehlert Report, p. 9.)

In fact, the perimeter of the landslide plane cuts directly through the proposed residence on the Property (Ehlert Report, figure 1).

Significantly, Boring 2 was drilled in close proximity to the south property line of the Property. Boring 2 was drilled at the toe of the steep slope that descends from the existing building pad on the Property to a retaining wall on the Fulk/Monge Property. A photograph showing the rigging used to drill this boring and its proximity to the slope is attached.

As noted in the 2002 Kowalewsky Report and the Ehlert Report, the 1998 water main break caused landslide movement that resulted in substantial damage to the neighboring properties. Among other things, major cracks appeared in retaining walls supporting the slope of the Property, the concrete decking around the 20790 residence, and the swimming pool. The Applicants visited the residence, observed and discussed the damage and its cause with the owners. Photographs of damage caused by the water main break and resulting ground movement are attached.

The 2002 Kowalewsky Report indicates that the Project could adversely affect the stability of the slope located between the Property and 20790 Rockpoint Way. Among other things, the 2002 Kowalewsky Report states in paragraph 3 that "[c]onstruction of a deck and addition to the original structure over the descending slope may significantly increase the potential for additional landslide movement . . ." (emphasis added). Kowalewsky also observes in paragraph 9 that the disposal of sewage effluent on the Property "may increase the ground water levels, adversely affecting slope stability." In addition, the proposed pool is directly below both a steep slope and the Rockpoint Way roadway. To the extent that any slope failure occurred in the area of the proposed pool, such a failure could damage the Rockpoint Way roadway above the Property that currently provides the sole means of access to five separate lots. Thus, it seems apparent that the Applicants have not demonstrated that the "stability and structural integrity" of the proposed development have been adequately assured as required by Pub. Res. Code § 30253.

In light of the nondisclosure and, more importantly, the evidence of geologic instability, we respectfully request that the Application for a permit be denied. At a minimum, if the Application is not denied or determined to be premature or incomplete, we request that all of the geotechnical reports, this letter, and the attached exhibits be referred to the Commission's geologists and engineering staff for complete review and consideration.

Inadequate Public Notice

We question whether there has been proper public notice and posting concerning the Application. The Application dated October 20, 2001, requires that a Notice of Pending Permit Card be posted within three days of submission. (Application, page 8) No notice was posted until September 23, 2002. We understand that on July 30, 2002 the Applicants were also sent notices to post. However, no notice was posted until almost two months later. Had the notice been posted in August 2002, we would have had more opportunity to present our concerns.

The "Notice of Pending Permit" that was posted on September 23, 2002 states that the Project will involve "no grading." However, we have learned that the Project will indeed involve some amount of grading. Although the amount of grading that will be required is unclear, our review of the Project plans indicates that the amount

of grading necessary to install piles, new retaining walls and swimming pool may be substantial. In any event, the statement in the "Notice of Pending Permit" that "no grading" will be involved is inaccurate. We believe that the fact that grading is required should be described in the public notice.

The Application states in response to Question 10 that the structure will not be visible from Pacific Coast Highway. This is untrue. All or part of the built structure will be clearly visible from homes and business establishments on State Highway 1 over approximately ¾ of a mile. These properties are between 19950 and 20534 Highway 1 to the south and 20748 and 20770 to the north. The house will also be visible from the beaches along the coast as well as by some northbound traffic.

This is further evidence of inaccurate information provided to the Commission. In light of this, we respectfully request that the Commission review whether the Application should be denied or whether other relief is appropriate.

The Application May Be Incomplete

It is our understanding that an application for a permit may not be accepted for filing unless an applicant obtains all necessary discretionary approvals from local governmental agencies, including but not limited to "[a]ll required variances . . . ." (Cal. Code of Reg., Title 14, § 13052). Here, the City's "approval in concept" was apparently based on "plot plan review" by the City's Planning Director, with no public hearing or other meaningful opportunity for public input as required by Malibu Municipal Code § 17.62.030. The plot plan review procedures are only authorized in cases where the project does not require any other discretionary approvals.

We have sent a separate letter addressing these issues to the City of Malibu, which is also attached, and we have requested a meeting with the Malibu Planning Director to discuss the City's development regulations as they relate to the Project. Preliminarily, however, it appears that additional discretionary approvals by the City may be required. For example, the Project may require either a variance or site plan review, as indicated in Malibu Municipal Code § 17.62.040(A)(4), because of the addition a rooms and decks outside the existing footprint over a downhill slope containing an existing slide plane. Additionally, we note that the proposed pool was not included in the application filed with the City, and it is unclear whether the pool was properly included within the City's "approval in concept." To the extent that it is determined that the Project did not receive the required discretionary approvals from the City, the Application should be deemed incomplete. Finally, the City also was not provided with the full geologic information including the 1997 Kowalewsky report and the effects of the 1998-1999 water main breaks. Thus, we believe that under Cal. Code of Reg., Title 14 § 13052 Coastal Commission review is premature and the Application should be denied and returned to the City for appropriate and full review.

Hearing Schedule

Based on the information we have provided, we believe that the Application should be denied or at a minimum deemed to be premature or incomplete. However, if staff decides to keep this application of the Commission's agenda, we request a full hearing before the Commission. We understand that the Application is tentatively scheduled to be considered by the Commission during its meeting in December in San Francisco. Obviously, it would be inconvenient for interested parties to travel to San Francisco to express their concerns to the Commission. For this reason, and because there is a need to carefully evaluate the serious issues discussed above, we respectfully request that any consideration of this matter by the Commission be scheduled for a later hearing date at a location within Southern California.

Thank you for your consideration of this letter and accompanying information. Please feel free to contact us if you have any questions or if you require additional information. We also welcome an opportunity to meet with you to express our concerns, as appropriate.

Cordially,

Janet Fulk

Peter Monge

Louise Ann Fernandez

John Morris

Attachments:

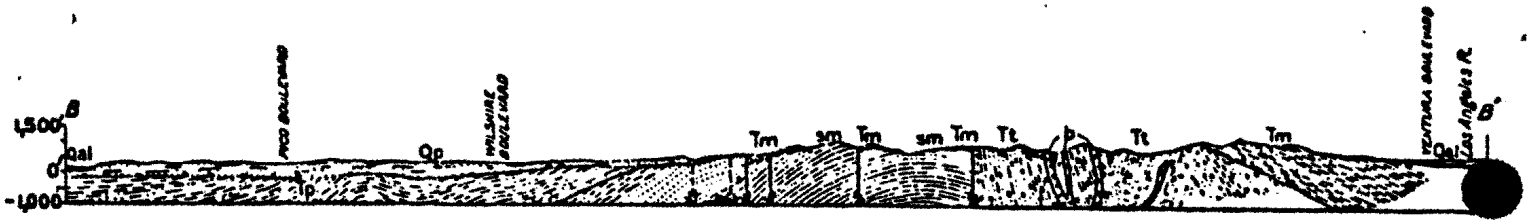
1997 Kowalewsky Report
2002 Kowalewsky Report
Ehlert Report
Photographs
Letter to City of Malibu dated November 1, 2002

cc: Coastal Commission Office, for inclusion in public record and distribution to the Coastal Commissioners (w/enclosures)
Sara Wan, Chair, California Coastal Commission (w/enclosures)
Drew Purvis, Planning Director, City of Malibu (w/enclosures)
Christopher Dean, Malibu City Geologist
Dana and Carlo Zappala (w/enclosures)
Donald Kowalewsky (w/enclosures)

CC:

Richard Carrigan, Chair, Malibu Planning Commission
Katie Lichtig, Malibu City Manager
Christi Hogan, Malibu City Attorney
Don Kowalewsky, Geologist
Carlo and Dana Zappala
Neighbors with contiguous properties on Rockpoint: Broussard, Melnick, Ramey

1997 KOWALEWSKY REPORT



Donald B. Kowalewsky

ENVIRONMENTAL &
ENGINEERING GEOLOGY

April 4, 1997
Job No. 96629H6.002

John Morris
20762 Rockpoint Way
Malibu, California 90265

Per your authorization, a pre-escrow geologic site inspection was performed at 20782 Rockpoint Way, Malibu on 10-30-96. The results of that investigation are included in the attached geologic data sheet. If you have any questions regarding the site inspection please feel free to call me.

PLEASE NOTE: This review of the property has been done at your request in an expeditious manner. It is a visual inspection of the site and immediately surrounding area, inspection of available records in the governing jurisdiction's files, and review of available aerial photographs. No subsurface exploration was performed to verify conclusions. **This report was not prepared for development nor is it intended to be submitted to governmental agencies for permits.** If a comprehensive report based on subsurface information is required, I will be happy to perform that investigation following a written authorization.

This property review was performed solely for John Morris and should not be used by other buyers without being updated. Part of this review involved a site inspection with the buyer including extensive verbal discussions. Consequently, use of this review by subsequent buyers without an update may not reflect site conditions at that time and a complete understanding of the site may not be achieved.

The property is currently vacant with the exception of the foundation remains of a house destroyed by the 1993 Topanga-Malibu wildfire and a retaining wall supporting the base of the ascending slope. The property was graded for original development resulting in creation of a narrow building pad by excavating into the ascending slope and filling over portions of the descending slope. Subsequent to initial site development, a landslide mapped by the U. S. Geological Survey in 1971 (Figure 1) and Dibblee (Figure 2) (which underlies a portion of the building pad as shown on Figure 3) underwent minor movement (approximately 1") probably in 1980 to 1983. For additional comments, please refer to the attached Geologic Data Sheet.

Donald B. Kowalewsky
Certified Engineering Geologist 1025

101 Old Chimney Road
libu, California 90265

(310) 457-2456
: (310) 457-4721

GEOLOGIC DATA SHEET

Prepared for: John Morris **on** 10-30-96 **Job #** 96629H6.002

LOCATION OF PROPERTY

Street Address: 20782 Rockpoint Way
City: Malibu
County: Los Angeles

NATURE OF SITE

Building area: Natural Graded X

Slopes: Natural X Cut X Fill X

Date of Development: 197?

Does development meet current slope setback codes? No X

Geologic or soils consultants for development: E.D. Michaels (geology); Kovacs-Byer (soils).

Date of geologic/soils report: 6-11-64 (Michaels); 2-21-74 (KB).

Was fill material placed? Yes X

Were the slopes benched and were all unsuitable and/or surficial materials removed prior to placement of fill? No X (Test pits by Kovacs-Byer indicated up to 6 feet of loose fill exists on the south side of the building pad. That fill was cast over topsoil).

Other pertinent data concerning development including dates and types of subsequent building permits. It appears that the original house was under construction for several years. A building permit was canceled in 1974 apparently after some construction had occurred. A building permit stating that it was for addition of 4' X 16' to a house under construction expired in 1971. A building permit for a 1300 square foot single family residence received final approval on 8-31-78. A 4' X 115' retaining wall permit received final approval on 8-31-78. No other permits were in City files. Five Los Angeles County Geologic Review Sheets were prepared for this property between 1-4-74 and 11-3-76. Some of the earlier reviews approved the project but the 11-3-1976 review did not approve the project and required additional data. No subsequent approvals were in the City file.

GEOLOGIC PROPERTIES

Bedrock:

Formation name: Sespe Formation, volcanic intrusives, and landslide debris
Rock type: Sandstone, basalt and clayey sands

Geologic Structure:

Nature and orientation of bedding: Northeast dipping at variable angles from 40° to 50° (per Michaels) .
Nature of fracturing: moderate to severe.
Comments on relationship to site: bedding is generally favorable but the fracturing and the contact with intrusive rocks are dipping in a downslope direction.
Faults within or adjacent to site? Yes X
Fault activity: **Active** **Alquist Priolo Zone**
Potentially active **Inactive** X
Fault position and orientation with respect to site: The U. S. Geological Survey mapped the inactive Malibu Bowl Thrust fault along the slope just below the house (Figure 1 and Figure 3). Other geologists mapped faults in somewhat different locations. Dibblee indicates the closest fault is the active Malibu Coast fault 1400 feet south (Figure 2). Bing Yen mapped several faults in the area with the Malibu Coast fault 800 feet south (Figure 4). Michaels in his report for this property indicated a fault across the slope above the building pad. That fault may in fact represent the landslide boundary.

Comments on the effect of faults on site. [Please note this refers to local faults and not the effect of regional earthquake faults. All of Southern California is subject to severe seismic shaking. The extent of the effects of seismic shaking on this site is beyond the intended scope of this data sheet]: Because no active faults underlie the building site, future potential for ground surface fault rupture beneath the structure is remote. The Malibu Bowl fault is not considered active but may be responsible for the sheared and fractured nature of the rocks in the vicinity of the house. Although the potential for ground surface fault rupture is low, the potential for earthquake induced landslide movement is considered high. Future earthquake related landslide movement could cause ground cracks, fissures and ground displacement.

Mass Wasting:

Previous failures within the site? Yes X.
Were failures repaired? No X. Some remedial measures have been taken but the landslide has not been stabilized.
If so, by whom? Dennis Evans for Los Angeles County Improvement District 2629R, and Bing Yen & Associates.
Method of repair: Dewatering.
Dates of reports for repair: 1984 (Evans); 1992 (BYA).

SHALLOW SLUMP AND DEBRIS FLOW: Because the angles of both ascending and descending slopes are steep, there is a potential for shallow slumping involving the outer several feet of the slope face. Slumping is probable in the area underlain by loose fill and landslide debris. Slumping can accelerate on slopes steeper than 26° and transform into a viscous debris flow. Michaels documented past slumping in the loose fill below the building pad in 1964.

ROCKFALL: Isolated blocks of rock within the landslide debris could become dislodged and slide, roll or bounce down the slope. Rockfalls are associated with saturation, dislodgment by roots, rodents or changes in moisture content in clays around the rocks. Earthquakes could also trigger rockfall.

SOIL CREEP: Soil creep is a general term for the gradual migration of topsoil and highly weathered bedrock downslope under the influence of gravity. Typically, creep results in the tilting of trees and other objects (such as fence poles) founded in the creep prone materials. Other effects of creep can be the apparent downslope movement and/or cracking of decks, walkways, stairs, gunnite drainage swales, and pipes resting on or adjacent to a slope. Creep potential was recognized by Kovacs-Byer and they provided a recommendation that all foundations extend a minimum of 12" into sandstone bedrock. They also provided design recommendations for caissons. No plans were available to determine actual foundation depth or design.

Drainage:

Are existing drainage devices adequate to control runoff? No X

Condition of drainage devices: No site drainage systems were observed

Comments: It is advisable that you have a landscape architect or civil engineer develop a drainage plan for the site. In general, that plan should provide for interception of roof runoff and yard drainage and conduct the water to the natural drainage course to the west of the access road. All water should be carried in non-erosive devices. No drainage should be allowed to pond within the site, flow adjacent to foundations or flow uncontrolled down the slope.

Sewage disposal Method:

Sewer

Seepage pit ?

Leach field

[Location of septic tank, seepage pit, and/or leach field shown on plot plan if known or shown on permits.] Sewage disposal plans were not in the City files. Septic tanks should be pumped at least once every 5 years and preferable every 2 years as part of normal maintenance.

GENERAL COMMENTS ON SITE STABILITY:

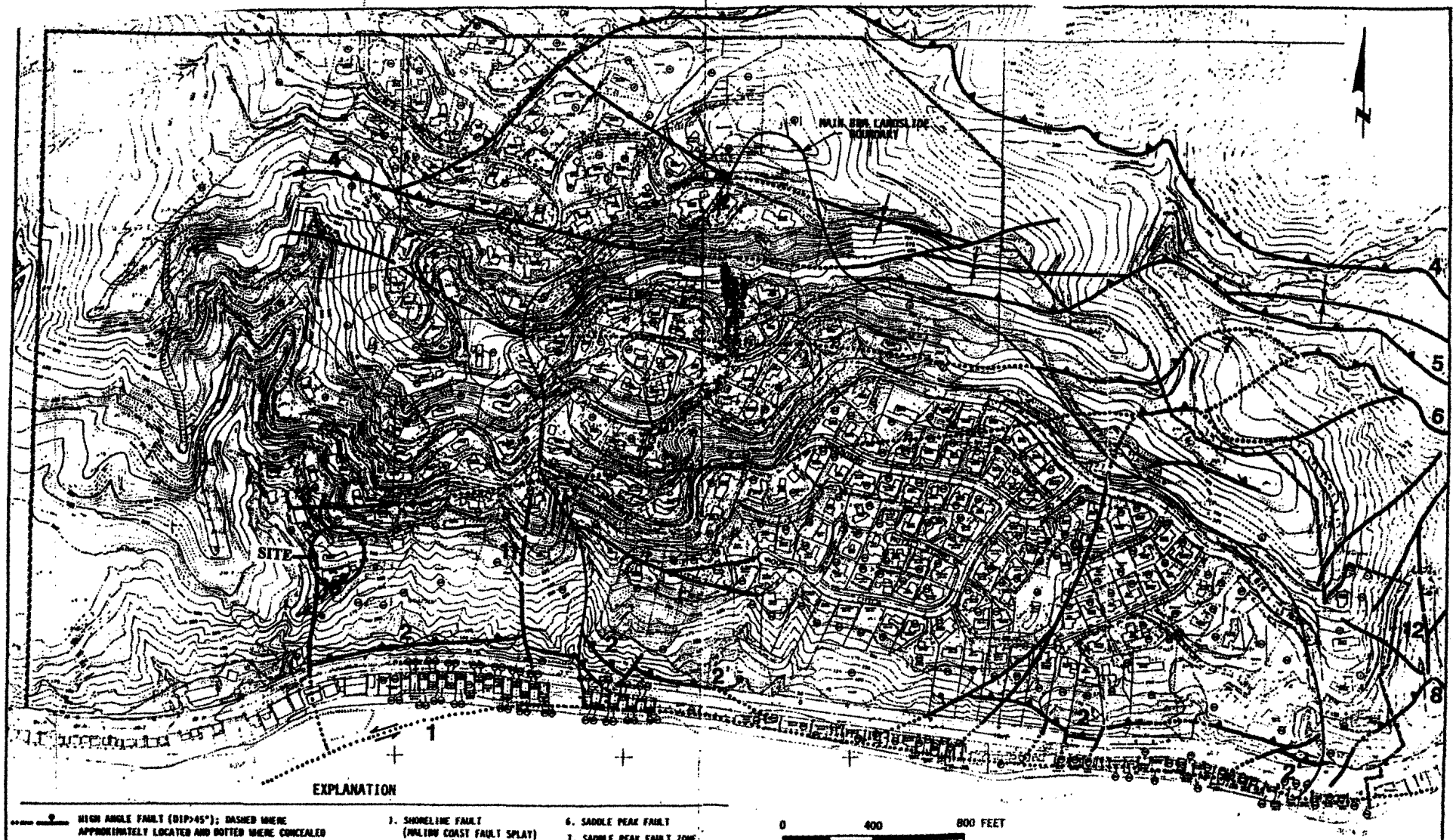
1. The existing foundation crosses over the probable boundary between good bedrock and landslide debris. Reconstruction of the house should be done on the western portion of the property, west of the landslide to minimize future risk. It may be feasible to encroach onto the landslide provided foundations extend into good bedrock and are designed for loads from the landslide debris that they penetrate. Based on data from a boring excavated by this office on the property below, foundations may have to be deepened a minimum of 1 foot for each foot of encroachment. Actual design should be based on a detailed subsurface geotechnical investigation.

2. Because this property is in close proximity to an active landslide, it would fall under Restoration Classification 4 as defined by the City of Malibu. A copy of that classification and the requirements for obtaining a permit are appended. Signing and recordation of an "Assumption of Risk and Release" will be required unless sufficient stabilization work is performed to bring the site into a safe condition.

Figure 1
U. S.Geological Survey, 1973)
Scale 1"=500'

Figure 2
(Dibblee, 1992)
Scale 1" = 1000'


BRM-130
BRM-131
Landslide
BRM-133
BRM-132
Qls (LOVE SLIDE)
1978
(per Don Michael)
Landslide
SITE
B-1
Fault
Ts
Qls
Landslide
HD-5
HD-23
Tsp
Open fractures in fault zone
fractures beginning to open
CRACKS SAME AS IN JANUARY (1979/80)
Figure 3
REGIONAL GEOLOGIC MAP
DONALD B. KOWALEWSKY
ENVIRONMENTAL AND ENGINEERING GEOLOGY
LEGEND
N



EXPLANATION

- HIGH ANGLE FAULT (DIP>45°); DASHED WHERE APPROXIMATELY LOCATED AND DOTTED WHERE CONCEALED
- STRIKE-SLIP; INCLUDES BOTH DIPPING AND VERTICAL FAULTS; ARROWS SHOW DIRECTION OF RELATIVE MOTION
- LOW-ANGLE AND REVERSE FAULT, SAWTEETH ON UPPER PLATE; DASHED WHERE APPROXIMATELY LOCATED AND DOTTED WHERE CONCEALED
- FOLDS; SYNCLINE, APPROXIMATELY LOCATED SHOWING TROUGHLINE AND ITS DIRECTION OF PLUNGE

1. SHORELINE FAULT (MALIBU COAST FAULT SPLAT)
2. SEACLIFF FAULT
2'. BLUFF FAULT ZONE
3. SEAWARD FAULT
4. LAS FLORES FAULT
5. NORTH FAULT
6. SADDLE PEAK FAULT
7. SADDLE PEAK FAULT ZONE
8. BIG ROCK DRIVE FAULT
9. INLAND LANE FAULT
10. ROCK POINT FAULT
11. LOVE FAULT
12. PIEDRA GORDA FAULT

0 400 800 FEET

BING YEN & ASSOCIATES

BIG ROCK MESA GEOTECHNICAL ENGINEERING EVALUATION

PROJECT NO.: 49-970 | DATE: DECEMBER 1991

TECTONIC MAP

Figure 4

2002 KOWALEWSKY REPORT

Donald B. Kowalewsky

**ENVIRONMENTAL &
ENGINEERING GEOLOGY**

October 30, 2002

Peter Monge & Janet Fulk
20790 Rockpoint Way
Malibu, CA 90265

SUBJECT: Geologic review of geotechnical documents for 20782 Rockpoint Way, Malibu, CA

References:

1. City of Malibu Geology and Geotechnical Engineering Review Sheet dated 11-3-00.
2. City of Malibu Geology and Geotechnical Engineering Review Sheet dated 5-1-01.
3. City of Malibu Geology and Geotechnical Engineering Review Sheet dated 6-8-01.
4. Gold Coast GeoServices, Inc., 7-15-99, Geologic/geotechnical engineering report, proposed new single family residence (Fire restoration classification 4) 20782 Rockpoint Way, Malibu, Calif.
5. Gold Coast GeoServices, Inc., 10-12-00, Updated geologic/geotechnical engineering report, proposed single family residence, 20782 Rockpoint Way, City of Malibu.
6. Gold Coast GeoServices, Inc., 3-26-01, Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002 dated November 3, 2001.
7. Gold Coast GeoServices, Inc., 5-17-01, Response to Geologic and Geotechnical Engineering Review Sheet for 20782 Rockpoint Way, City of Malibu, BYA Project No. 49.17691.0002 dated May 1, 2001.

At your request and the request of John Morris and Louise Ann Fernandez (owners of 20762 Rockpoint Way), this office reviewed the above referenced documents and re-reviewed our files concerning the area. The following is a list of several items that should be considered regarding the proposed project.

1. This office prepared a pre-escrow geologic data sheet for the subject property on April 4, 1997. That document referenced two regional geologic maps showing this property within a landslide and recent movement of that landslide. The 4-4-97 document was not referenced by Gold Coast and the data was not considered.

2. Review of the above referenced documents found that the project consultant failed to consider recent (1998-2000) landslide movement that has affected the subject property and the immediately adjacent property to the south at 20790 Rockpoint Way. That

**Old Chimney Road
, California 90265**

**310) 457-2456
310) 457-4721**

landslide was triggered by a County water main break in 1998. Movement and geometry of that landslide was documented by this office, the offices of Keith Ehlert, Coastline Geotechnical Consultants, Inc., Southwestern Engineering Geology, Los Angeles County geologists and various geotechnical firms contracted by the County. A report by Kieth Ehlert dated 1-25-00 includes data from a boring excavated very close to the property line between 20790 and 20782 Rockpoint Way. That boring encountered the active slide plane at a depth of 18 feet where the slide plane was described as a 1 to 3 inch thick plastic clay. The failure of Gold Coast GeoServices to consider the recent landslide movement resulted in an erroneous determination of the Safety Factor for the subject property.

3. Construction of a deck and addition to the original structure over the descending slope may significantly increase the potential for additional landslide movement. One of the primary criteria in the Building Code is that no work shall adversely affect offsite properties.

4. Because recent landslide movement data was not used by Gold Coast, they failed to evaluate the potential effects of construction on the slope. Gold Coast performed no stability analyses of the entire slope (their cross-section A-A') only the slopes immediately adjacent to the building site. It would be appropriate to evaluate the slope from top to toe as required by City guidelines. In addition, they failed to properly evaluate the slope's stability because the soil/rock strengths utilized in their stability analyses were based on good quality bedrock, not the existing slide plane. (Substantially weaker strengths were determined by Coastline during their evaluation of the landslide). It is unreasonable to determine that the site's safety factor is over 2.0 when a portion of the property and the immediately adjacent property to the south have had recent landslide movement indicating a safety factor less than 1.0.

5. Gold Coast GeoServices, Inc assigned a fire "Restoration Classification 4" to the project in the title of their original (7-15-99) report. Without apparent justification, the fire rebuild classification was modified to a 3 in their 3-26-01 report. Both classifications require recordation of a landslide hazard waiver, "Assumption of Risk and Release." Two portions of the restoration classification definition require comment.

A. The first sentence states "The proposed construction involves restoration that will cause no significant change in the geological character of the site or the local environment from that existing prior to the loss." The proposed new construction on the descending slope will definitely change the local environment and has a high probability of changing the geological character of the site since that construction appears to be partially on the active landslide. Insufficient field exploration was performed by Gold Coast to define the limits of active landslide movement.

B. The definition of "Restoration Classification 4" appears to be more appropriate. "There is evidence of movement due to the landslide, localized effects of fill settlement, or failure due to existing structural elements, either in the site or nearby, likely to cause at least minor structural distress, but based on historic performance, no likelihood of catastrophic movement or other geological hazard that is life-threatening." The applicable

items are: there is clear evidence of landslide movement nearby; there is clear evidence of fill settlement (or landslide movement) at the southwest corner of the old garage where a concrete foundation has separated from the main house foundation.

6. Proposed work includes construction of a swimming pool in an area that will require grading and the relocation of a retaining wall. The grading and retaining wall relocation are both within an area mapped by this office as a landslide and by Gold Coast as a "shallow surficial slump". In either case, grading and retaining wall alteration could adversely affect the slope's stability. Gold Coast assumes that the failure is shallow, however, they performed no subsurface exploration in the vicinity of that acknowledged slope failure to determine depth of movement or geometry of the failure surface. Therefore, insufficient information exists to provide appropriate recommendations.

7. The above mentioned slope failure has been interpreted by this office to be the extension of the large landslide complex affecting the area. Gold Coast did not investigate the nature of the contact between the apparently good quality bedrock and the obviously different, highly broken rock debris exposed on the slope. They simply interpreted that debris to represent a shallow slump. Unless demonstrated otherwise with good quality data, a more reasonable interpretation of that poor quality rock debris would be, as previously provided by this office, a portion of the large landslide mass. It would be inappropriate to place a new swimming pool over a landslide which has been recently active.

8. This office and other geologists investigating the recently active landslide on the property to the south found the landslide to be moving along a very clayey shear zone that forms the contact between the sandstone and volcanic rock. Although this office interpreted the contact between the volcanic rock and sandstone rock to be different from that interpreted by Gold Coast, either interpretation would place proposed site improvements over that contact. Since the contact was the failure surface for recent landslide movement, the proposed new construction is at risk from additional landslide movement and that construction places additional loads on the landslide, thereby increasing risk of additional landslide movement that will affect offsite properties. None of the Gold Coast test pits, nor the boring, exposed the contact between sandstone and volcanic rock. Therefore all of Gold Coast's interpretations regarding the nature of that contact and the soil/rock strengths along that contact are assumed and may not be valid.

9. Disposal of sewage effluent on this property may increase the ground water levels, adversely affecting slope stability. No hydro-geologic investigation was performed to determine the effect of proposed sewage disposal on groundwater conditions.

Donald B. Kowalewsky
Certified Engineering Geologist 1023

2000 EHLERT REPORT

KEITH W. EHLERT
Consulting Engineering Geologist

January 25, 2000 Project No. 4570-99

Mr. Rich Martin
Coastline Geotechnical
1446 W. 178th Street
Gardena, CA 90248

SUBJECT: REPORT OF ENGINEERING GEOLOGIC INVESTIGATION
Distressed Residential Improvements
MONGE RESIDENCE
20790 Rockpoint Road
Malibu, CA

Pursuant to your request, the accompanying report has been prepared for the purpose of providing geologic information pertaining to a distressed residential structure and appurtenances located at 20790 Rockpoint Road.

If you have any questions regarding the information presented in this report, please contact our office.

Respectfully Submitted,

Keith W. Ehlert
C.E.G. 1242

LICENSED ENGINEERING GEOLOGIST KEITH W. EHLERT NO. 1242 STATE OF CALIFORNIA

27520 Hawthorne Blvd., #220 • Rolling Hills Estates, CA 90274
(310) 544-7686 • Fax (310) 544-9332

P.N. 4570-99

TABLE OF CONTENTS

INTRODUCTION

PURPOSE OF INVESTIGATION

The purpose of this investigation is to evaluate geologic conditions within the site area with regard to on-going distress that is occurring to the existing house and appurtenances. As discussed in this report, a water pipe leak has resulted in activation of an older landslide. Based on information obtained during this investigation, the landslide has slightly moved, affecting a swimming pool, concrete decking, and the easterly portion of the house.

SCOPE OF WORK

The scope of work performed for this investigation included the following items:

- Gathering and review of published and unpublished reports and maps pertaining to geologic conditions on the site and in the surrounding area.
- Detailed mapping and evaluation of features observed in the site area.
- Subsurface exploration consisting of two 24 inch diameter exploratory borings. The borings were downhole logged.
- Geologic analyses and evaluation.
- Preparation of this report with maps and other graphics to present the findings and recommendations.

REFERENCES

The items utilized during this review included:

- Geology of Southern California: California Division of Mines and Geology Bulletin 170, 1954.
- Geologic Map of the Point Dume Quadrangle, Los Angeles and Ventura Counties, California, prepared by Thomas W. Dibblee, dated 1993.
- Landslide Map Showing Field Classification, Point Dume Quadrangle, U.S.G.S. Map MF-1167, prepared by Russell H. Campbell, dated 1980.
- Preliminary Geologic Map of the Point Dume Quadrangle, Los Angeles County, California, U.S.G.S. OFR 70-53, prepared by Campbell et. al., dated 1970.
- Engineering Geologic Report and Geotechnical Report for Proposed New Residence and Guest House, to Replace Previous Residence Destroyed by Fire at 20790 Rockpoint Road, Malibu, California, consulting report prepared by Donald B. Kowalewsky, Engineering Geologist, May 27, 1994.
- Engineering Geologic Memorandum Concerning Landslide Movement and Associated Los Angeles County Water Main Break at 20790 Rockpoint Road, Malibu, California, prepared by Donald B. Kowalewsky, January 14, 1999.

GENERAL DESCRIPTION OF SITE AND SITE HISTORY

The site is located at 20790 Rockpoint Road in the City of Malibu, County of Los Angeles, California. The site is located on a southerly trending ridge that has been modified by grading. Grading at the site has included construction of a level house pad.

Improvements on the site include a single family dwelling (main house), guest house, and appurtenances, including a swimming pool with concrete decking. The main house, guest house and swimming pool are located on a relatively level pad. A slope ascends from the northerly margin of the pad to neighboring properties above. A retaining wall estimated to be about 5 feet high is located along the base of the northerly ascending slope. A relatively high and steep slope descends from the southerly margin of the pad to Pacific Coast Highway below.

Based on topographic considerations and information obtained from the referenced report by Kowalewsky, it appears that the rear (easterly) portion of the pad is underlain by fill. The uppermost portion of the southerly descending slope (the slope that descends from the southerly margin of the pad) appears to be a fill slope. It appears that the swimming pool and associated decking are founded in the fill or partially in fill.

Based on information obtained from the owner of the property and referenced reports by Mr. Don Kowalewsky, it is understood that the existing house was constructed in about 1994 after a previous house on the site was burned down during the 1993 Malibu fires. Prior to construction of the existing house, an engineering geologic and geotechnical investigation was performed by Donald B. Kowalewsky's company (Kowalewsky report). The Kowalewsky report indicates that the easterly portion of the site is underlain by a portion of a relatively large landslide. Figure 1 is a map modified from the referenced report by Kowalewsky which shows the site and known landslides in the area. As shown, the easterly portion of the site is located along the westerly margin of a relatively large landslide. Figures 2 and 3 are cross-sections that were prepared by Kowalewsky and have been modified based on information I obtained during this investigation.

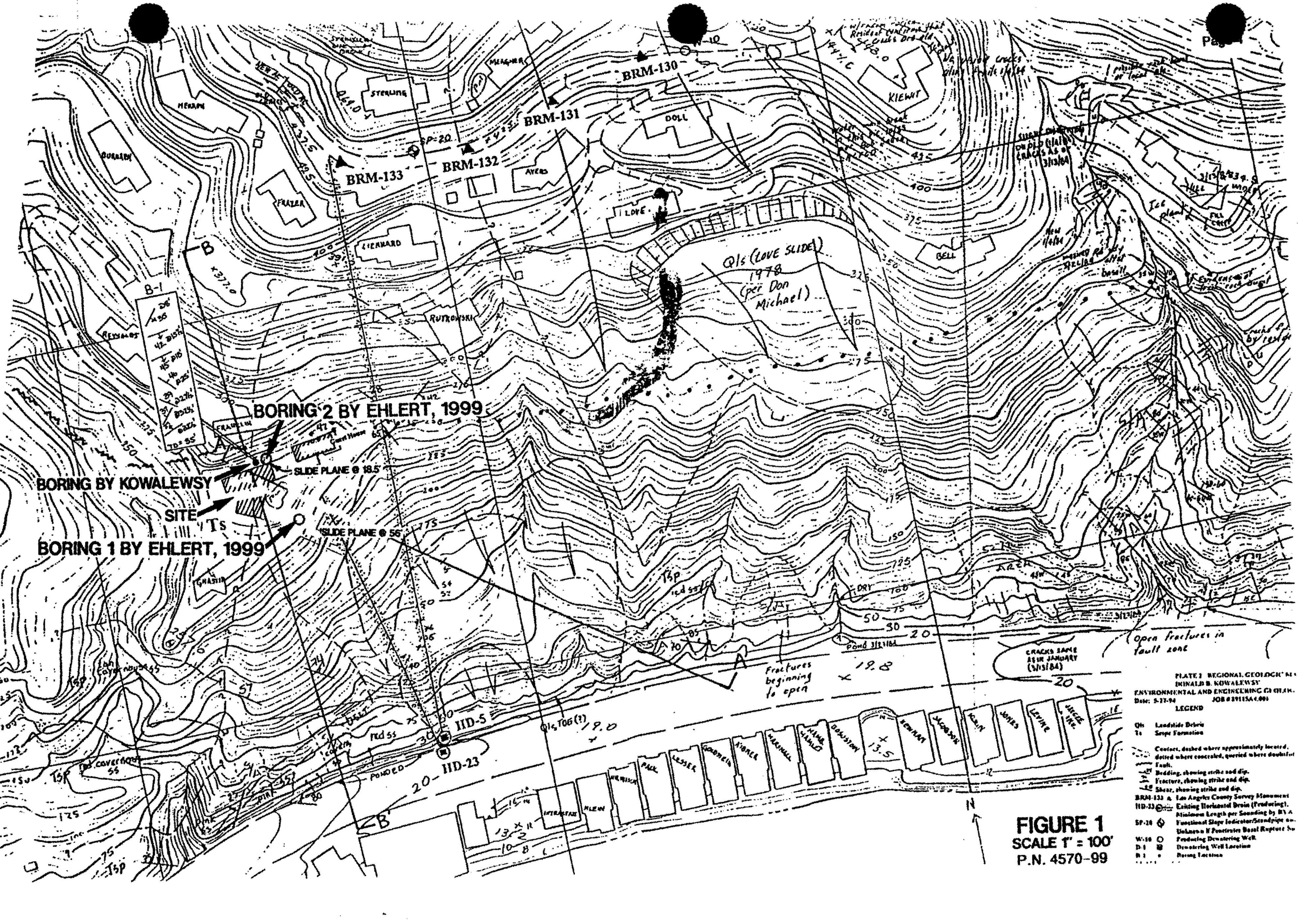
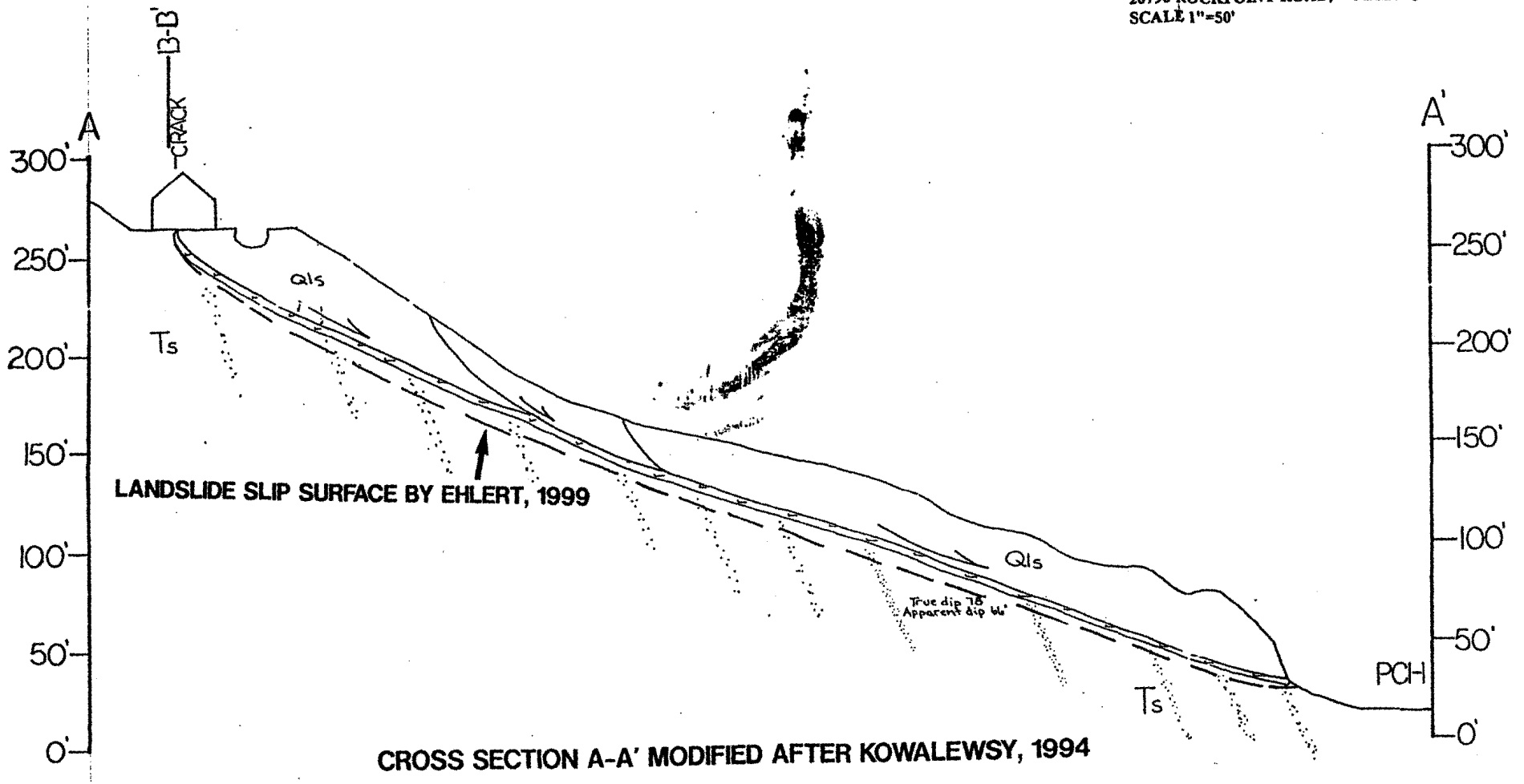


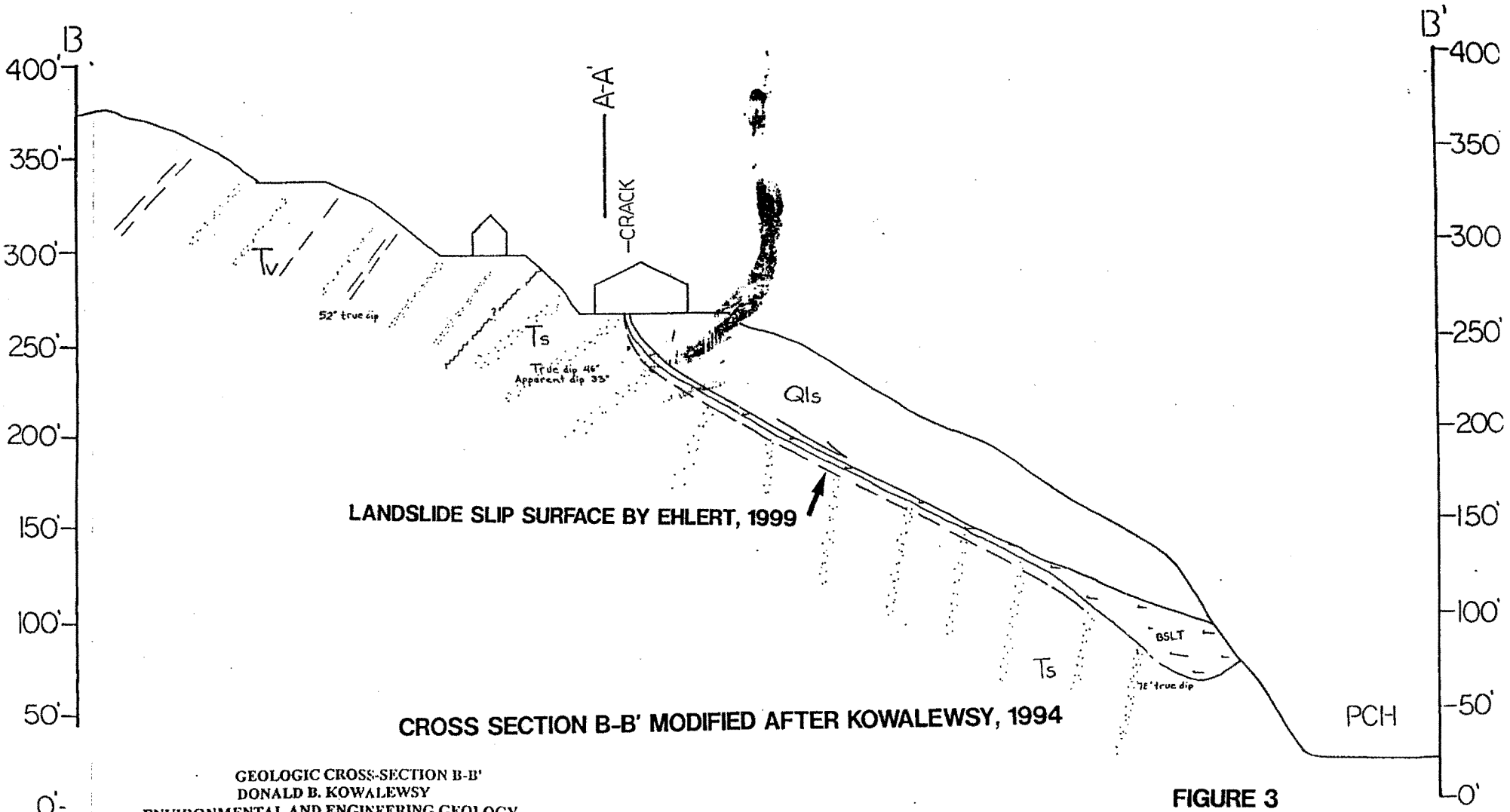
FIGURE 1
SCALE 1" = 100'
P.N. 4570-99

GEOLOGIC CROSS-SECTION A-A'
DONALD B. KOWALEWSY
ENVIRONMENTAL AND ENGINEERING GEOLOGY
Date: 5-27-94 JOB # 89115A4.001
20790 ROCKPOINT ROAD, MALIBU
SCALE 1"=50'



CROSS SECTION A-A' MODIFIED AFTER KOWALEWSY, 1994

FIGURE 2
SCALE 1" = 50'
P.N. 4570-99



CROSS SECTION B-B' MODIFIED AFTER KOWALEWSY, 1994

GEOLOGIC CROSS-SECTION B-B'
DONALD B. KOWALEWSY
ENVIRONMENTAL AND ENGINEERING GEOLOGY
Date: 5-27-94 JOB # 89115A4.001
20790 ROCKPOINT ROAD, MALIBU
SCALE 1"=50'

FIGURE 3
SCALE 1" = 50'
P.N. 4570-99

Kowalewsky indicates that at the time of his investigation in 1994, a northerly-southerly trending ground crack was observed as trending through the site.

Kowalewsky drilled an exploratory boring on the site east of the ground crack and found a landslide slip surface at a depth of about 18 feet in the boring. It appears that the ground crack was a result of landsliding.

Based on recommendations presented in the 1994 report by Kowalewsky, the burned house was replaced with a new house. The main house was constructed on caissons that penetrate below the landslide slip surface and are designed to resist movement from the existing landslide. A guest house was constructed east of the main house. It is understood that the guest house is not constructed on caissons.

Based on discussions with the owner of the site (Mr. Monge), it is understood that a water pipe leak occurred in about September of 1998. The first indication of a water leak was the sound of running water in the piping system (heard in September of 1998). Although Mr. Monge felt that the sound was unusual, he did not observe any water leaks and attributed the noise to normal water use, possibly coming from circulation within the hot water system. About two months later, Mr. Monge observed cracks starting to form in the house, swimming pool decking and driveway. At that time, Mr. Monge contacted Mr. Kowalewsky. Mr. Kowalewsky shut off the water valve at the meter and still heard significant water flow. Waterworks personnel were immediately contacted. They came out and found that the water main was leaking. The crew subsequently repaired a significant pipe rupture in the roadway in front of the site. Coincident with the leak, a significant increase in hydrauger production was noted (as described in the 1999 memo by Kowalewsky). The hydraugers are located down slope from the site. The memorandum prepared by Kowalewsky is included in the Appendix of this report.

I visited the site in December of 1999 and down hole logged two exploratory borings. At the time of my site visit, I observed cracks in the swimming pool and noticeable cracks in the concrete decking, and an approximately 1.5 inch separation between the pool decking and the house.

I crawled under the house and reviewed portions of the foundations. I did not observe any features under the house that in my opinion indicate the foundations are cracking as a result of the slope movement.

GEOLOGY

Information obtained from the referenced documents and from exploratory borings indicates that the site is underlain by bedrock of the Sespe Formation locally mantled by landslide debris and fill.

Information I obtained from the borings and reconnaissance mapping indicates that bedrock underlying the site essentially consists of pervasively jointed fine to coarse grained sandstone and volcanic rock. This is consistent with information presented in the referenced report by Kowalewsky.

I observed what in my opinion is landslide debris in Borings 1 and 2. Logs of the borings are included in the Appendix of this report. The landslide debris observed in Boring 2 is about 18.5 feet thick, consistent with the findings of Kowalewsky. I interpret the landslide debris observed in Boring 1 to be about 56 feet thick. Kowalewsky projected the landslide slip surface downslope from Boring 1 without the benefit of an additional boring downslope. His projection is remarkably close to the depth of the slide plane I observed in Boring 1. Based on information obtained from the borings, it appears that the slide plane is a few feet deeper than projected by Kowalewsky.

The landslide debris I observed in Boring 1 to a depth of about 17 feet consists of very loose breccia consisting of cobble to boulder size angular rock fragments in a loose silty sandy matrix. The breccia could be easily raveled with a rock pick. The slide debris below the breccia consists of firmer sandstone and clayey sandstone. Basaltic bedrock was observed in the boring below the slide plane. The slide plane occurs at a contact between overlying sedimentary materials and volcanic rock below. The slide surface appeared somewhat irregular and was measured to be dipping southerly.

The landslide debris I observed in Boring 2 generally consists of sandstone and clayey sandstone materials. The landslide slip surface generally consists of a one to three inch thick gray green clay gouge resting directly above what appeared to be basalt. The landslide slip surface was measured to be dipping southerly.

CONCLUSIONS

GENERAL

It is my opinion that the recent landslide movement was caused by the reported pipe leak. The pipe leak allowed water to directly enter the landslide mass. Information I obtained from the exploratory borings indicates that the landslide debris is generally relatively loose and would allow for easy migration of water. Since no water was observed at the surface at the time of the pipe leak, the water must have been directly entering the ground and migrating downslope toward the slide mass. I agree with the Kowalewsky memo that the pipe leak caused the slope to begin failing downslope.

DISTRESS TO EXISTING IMPROVEMENTS

As previously discussed, existing improvements (including the rear portion of the house, concrete decking around the pool and the swimming pool) are experiencing distress in the form of cracking, separations, etc. It is my opinion that the distress is mainly a result of reactivation of the landslide. However, the possibility that some of the distress may be a result of local soil influences (i.e., settlement, creep) cannot be completely ruled out. If such local soil influences have occurred, it is my opinion the water pipe leak triggered or contributed to the local soil influences.

If the landslide is retained by a soldier pile system or by other methods, the possibility of additional distress occurring to the improvements due to local soil influences such as settlement, etc. (as opposed to landslide movement) cannot be ruled out. The project team should consider this issue. It has been my experience that once fill and surficial materials are affected by landslide movement, they may continue to move and settle for a considerable period of time. One option would be to support the existing pool and pool decking on caissons that extend below the slide debris.

ADDITIONAL CONSULTING

Any additional consulting, such as for plan and foundation reviews, grading reviews, meetings, response to review sheets, etc., will be performed on a time and expense basis.

COMMENTS

The conclusions and recommendations presented in this report are based on research, site observations and limited subsurface information. The conclusions and recommendations presented are based on the supposition that subsurface conditions do not vary significantly from those indicated. Although no significant variations in subsurface conditions are anticipated, the possibility of significant variations cannot be ruled out. If such conditions are encountered, this consultant should be contacted immediately to consider the need for modification of this project.

This report is subject to review by regulatory agencies and these agencies may require their approval before the project can proceed. No guarantee that the regulatory public agency or agencies will approve the project is intended, expressed or implied.

One of the purposes of this report is to provide the client with advice regarding geologic conditions on the site. It is important to recognize that other consultants could arrive at different conclusions and recommendations. No warranties of future site performance are intended, expressed or implied.

APPENDIX

LOG OF EXPLORATORY BORING #1, 20790 ROCKPOINT ROAD, MALIBU, CALIFORNIA
PROJECT NO. 4570-99, LOGGED BY KEITH EHLERT
24 INCH DIAMETER BUCKET AUGER

DEPTH	DESCRIPTION
0-2.0 FEET	FILL: Brown sandy clay, loose, scattered rock fragments.
2.0-3.5 FEET	NATURAL SOIL: Dark brown silty clay, stiff.
3.5-56.0 FEET	LANDSLIDE DEBRIS: From **3.5 to 17 feet** landslide debris essentially consists of loose breccia consisting of cobble and boulder size angular rock fragments in a loose sandy matrix. Easterly-westerly trending fissure about 3 inches wide observed from top of landslide debris to a depth of about 16 feet. Clasts are caliche stained. Abundant roots and rootlets. Material easily ravels. some belling of hole due to caving. From **17 to 56 feet** landslide debris essentially consists of sandstone and clayey sandstone materials. No bedding observed. Locally loose. Locally sheared. Abundant roots to about 22 feet, scattered rootlets below that depth. Gray brown, maroon and light gray. **Base of landslide** consists of gray green plastic clay resting on volcanic basaltic rock. Contact if very irregular. Generally dipping southerly. Approximate orientation of slip surface N68E 29S, highly variable.
56.0-70.0 FEET	BEDROCK: Basaltic rock, dark brown and orange rust brown, very hard, jointed. No voids or fissures.

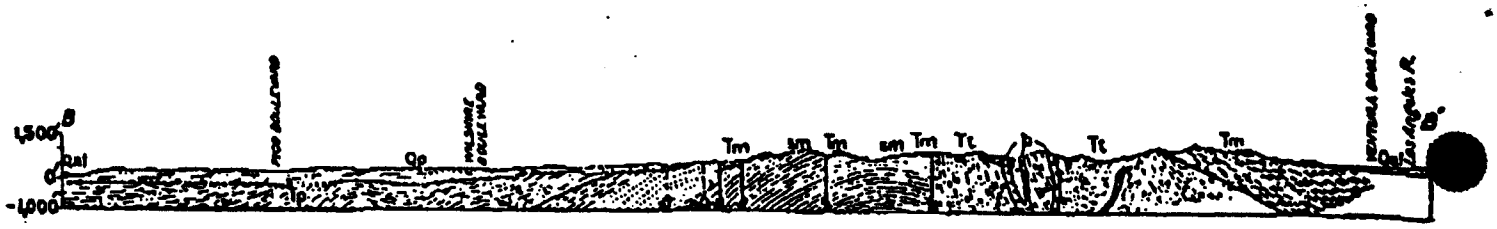
TOTAL DEPTH 70 FEET
NO GROUNDWATER, NO CAVING

LOG OF EXPLORATORY BORING #2, 20790 ROCKPOINT ROAD, MALIBU, CALIFORNIA
PROJECT NO. 4570-99, LOGGED BY KEITH EHLERT
24 INCH DIAMETER BUCKET AUGER

DEPTH	DESCRIPTION
0-18.5 FEET	LANDSLIDE DEBRIS: Maroon, gray and brown sandstone, pebbly sandstone and clayey sandstone. Generally loose, scattered minor open fissures to estimated 1/4 inch wide. **Base of landslide** consists of approximately 1 to 3 inch thick plastic clay with approximate orientation of N88E40-46S, variable. Roots smeared along slip surface.
18.5-20.0 FEET	BASALTIC DIKE: Brown and orange rust brown, highly jointed.
20.0-50.0 FEET	BEDROCK: Maroon, brown and gray brown sandstone, pebbly sandstone, minor claystone. Approximate orientation of bedding at about 32 feet N62W 49N. No open voids or fissures observed. Tight.

TOTAL DEPTH 50 FEET
NO GROUNDWATER, NO CAVING

KOWALEWSKY MEMO dated January 14, 1999



Donald B. Kowalewsky

ENVIRONMENTAL &
ENGINEERING GEOLOGY

January 14, 1999
Job No. 89115A4.001

Zev Yaroslavsky
500 West Temple Ave. Room 821
Los Angeles, California 90012

SUBJECT: Engineering geologic memorandum concerning landslide movement and associated Los Angeles County water main break at 20790 Rockpoint Road, Malibu, California.

At the request of my clients, Peter Monge and Janet Fulk, I have observed their property at 20790 Rockpoint Road, Malibu and the surrounding slopes descending to Pacific Coast Highway. They contacted me on December 31, 1998 because they were concerned about cracks that are developing in their house, retaining walls, pool deck and driveway. The pattern and essentially continuous nature of cracking suggests movement of a portion of their building pad and the descending slope. On January 6, 1999 the site was revisited along with an architect and structural engineer. At that time, additional cracking was evident. I subsequently performed a brief field reconnaissance of the descending slope with emphasis on the bluff immediately adjacent to Pacific Coast Highway. Substantial water seepage is occurring from the bluff face onto Pacific Coast Highway. The City of Malibu and Caltrans personnel were contacted, both of which acknowledged the increase in seepage from the bluff face. The City provided records of hydrauger monitoring that is being performed as part of the Big Rock landslide assessment district. Their records indicate a significant increase in the discharge of HD 5 and HD 6 beginning in October. That increase over what had been previously measured was as much as 1000 gallons per day for HD 6 and 400 gallons per day for HD 5. (Copy of hydrauger production appended).

Water line noises were heard by my clients several months ago. That the noise was attributed to normal water consumption within the property. As a consequence, the noise was ignored until land movement was noted. When I observed the noisy pipe on January 8th, I shut off the valve at the meter and could still hear a significant flow of water. Waterworks personnel were immediately contacted via their emergency number. Two workmen met the undersigned at the

27101 Old Chimney Road
Malibu, California 90265

(818) 457-6173

end of Rockpoint Road at about 3:00 in the afternoon. They concurred that the water main was leaking. I was subsequently informed by my client that a County work crew repaired a significant pipe rupture under the roadway.

It is my opinion that the water main has been leaking for an extended period of time. This leakage is directly responsible for the increase in hydrauger production during a time when no rainfall occurred. Increase in groundwater levels resulting from that leak have caused the slope to begin failing and associated cracking in improvements at the top of that slope.

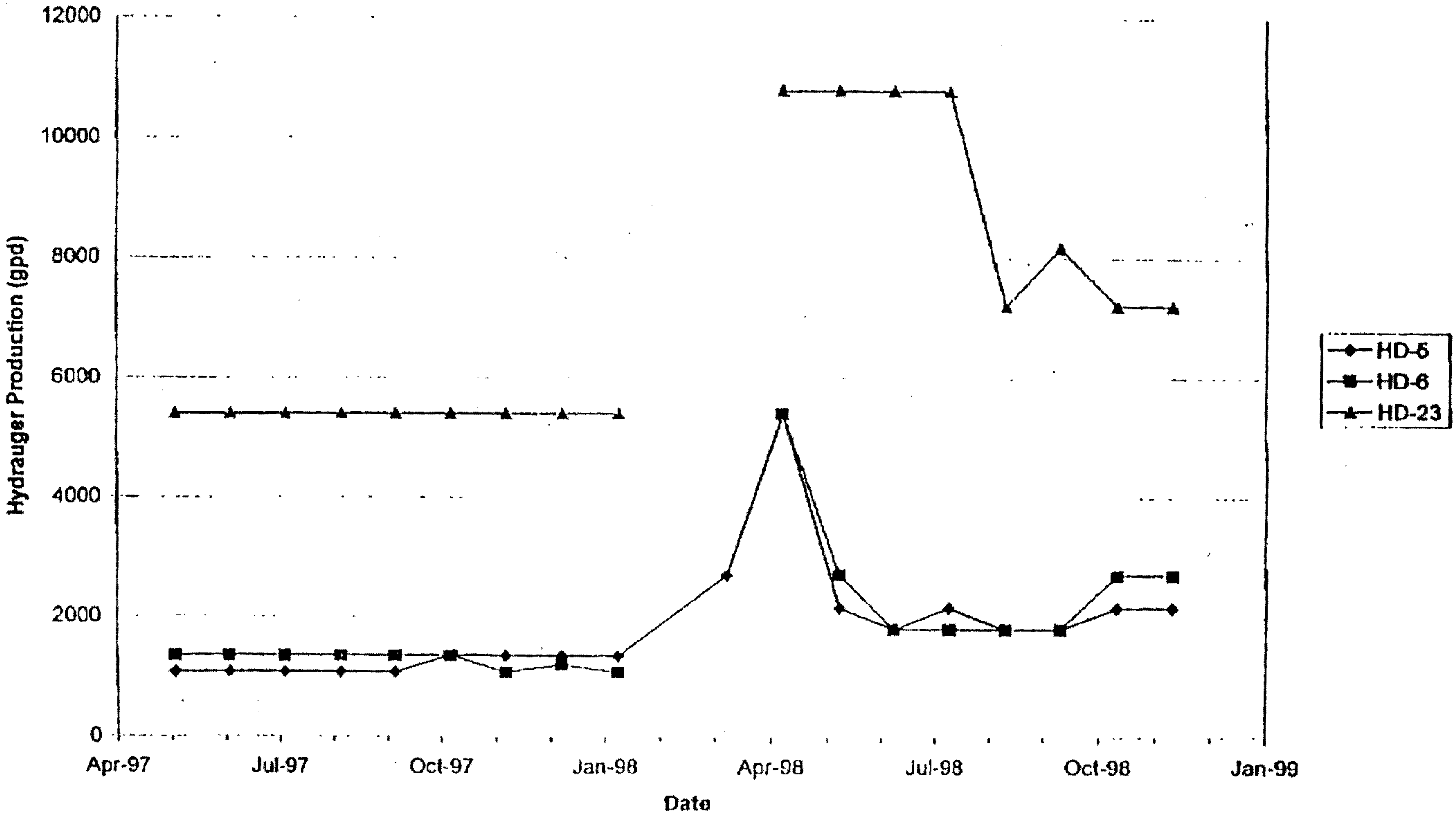
It is requested that the County investigate this condition and immediately take measures to remove groundwater and stabilize my clients property. I have taken it upon myself to: contact a company to drill additional hydraugers into the slope; contact Caltrans for a permit to work within their right-of-way for excavation of hydraugers; and request that the City install additional hydraugers as part of the assessment district. It is my belief that measures must be taken this coming week to minimize loss to my clients property. If these measures are not taken by public agencies, my client must pay for installation of hydraugers and vertical dewatering wells. It is requested that the County take what ever emergency measures are necessary to remove the water that leaked from that water main and is now destabilizing the slope.

Thank you for your immediate attention to this matter.

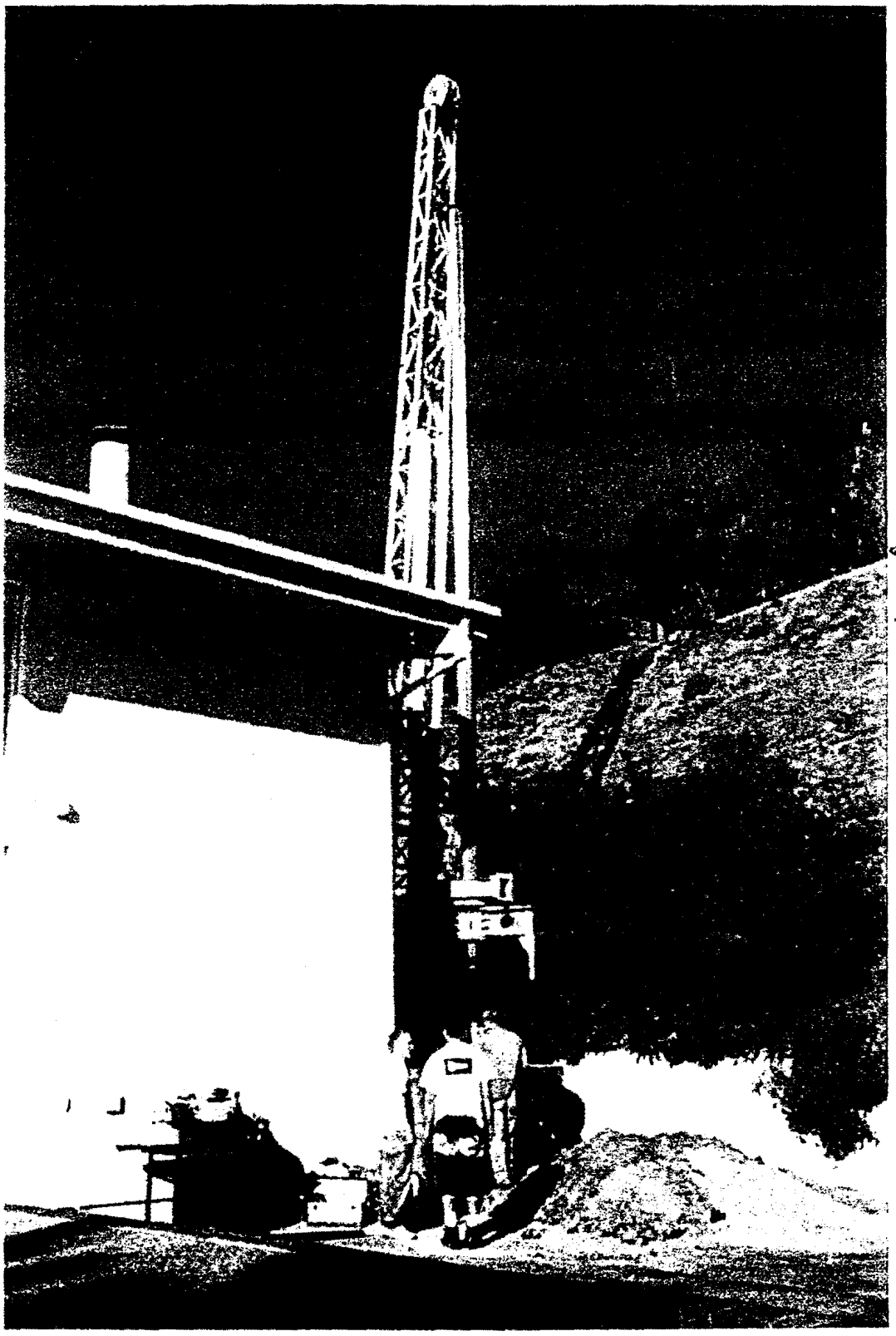
Donald B. Kowalewsky
Certified Engineering Geologist 1025

cc: Susan Neissman
Mike Montgomery, Dept. Public Works
Peter Monge & Janet Fulk

Big Rock Mesa Landslide Assessment District
Western Mesa Hydrauger Production

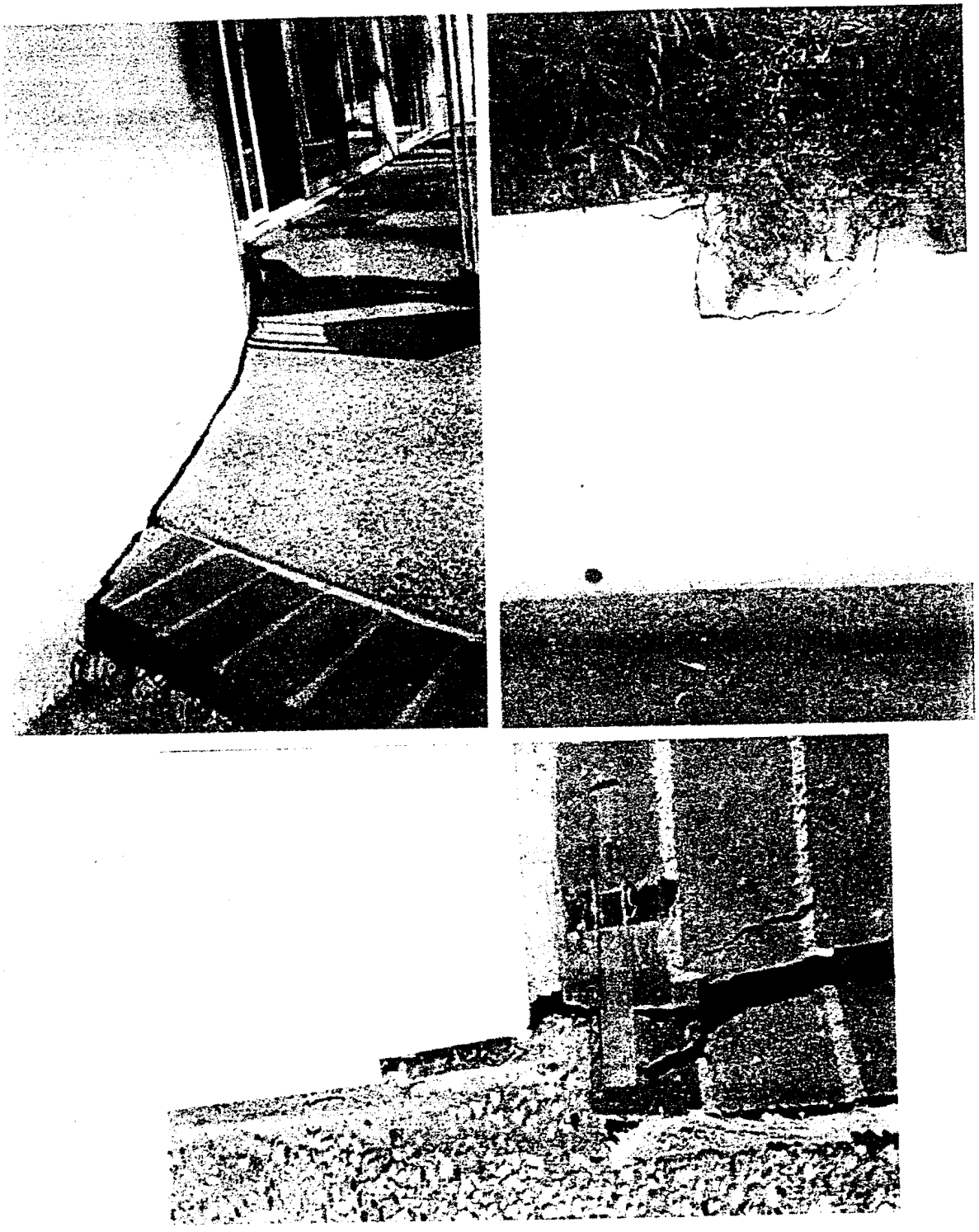


PHOTOGRAPHS

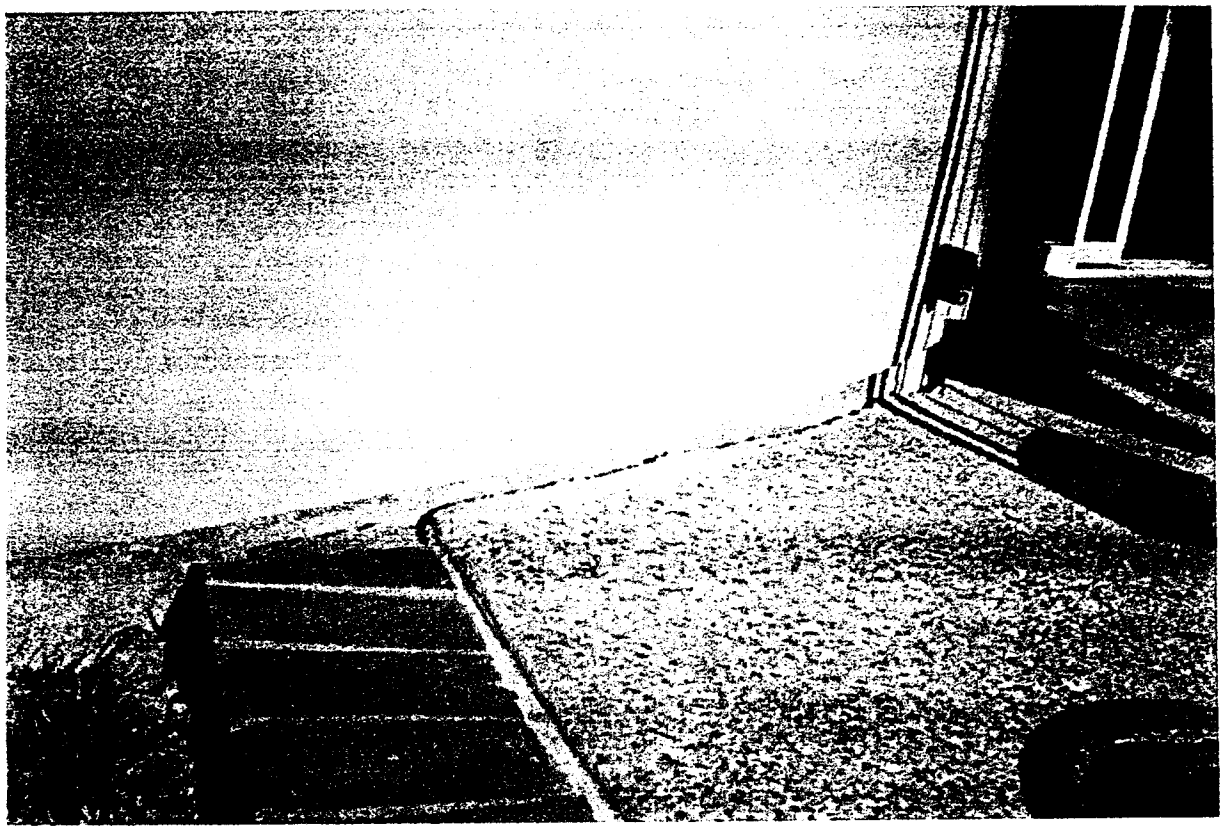


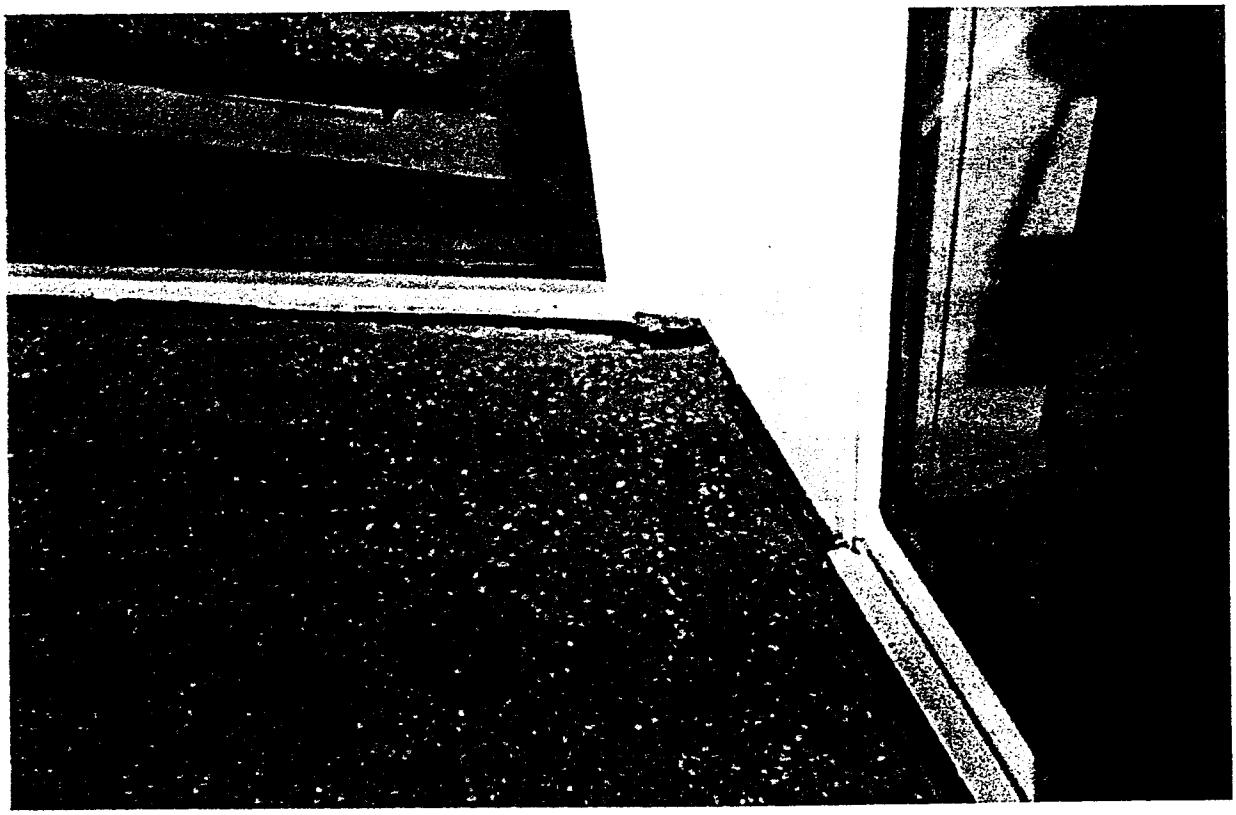
Boring 2

Retaining Wall Supporting
the Downslope from the
Applicants' Property

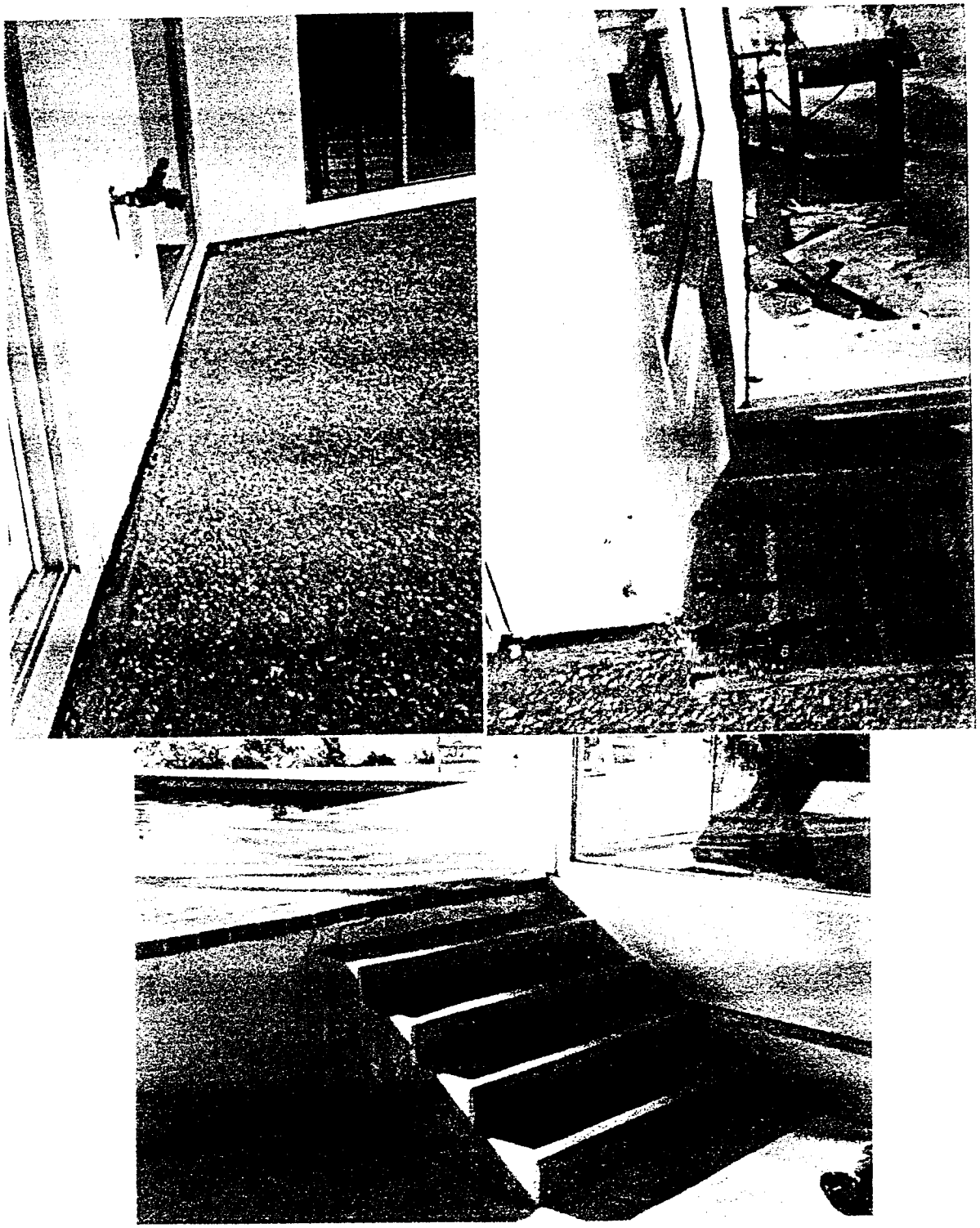


Property Damage Caused
by 1998-2000 Landslide Activity

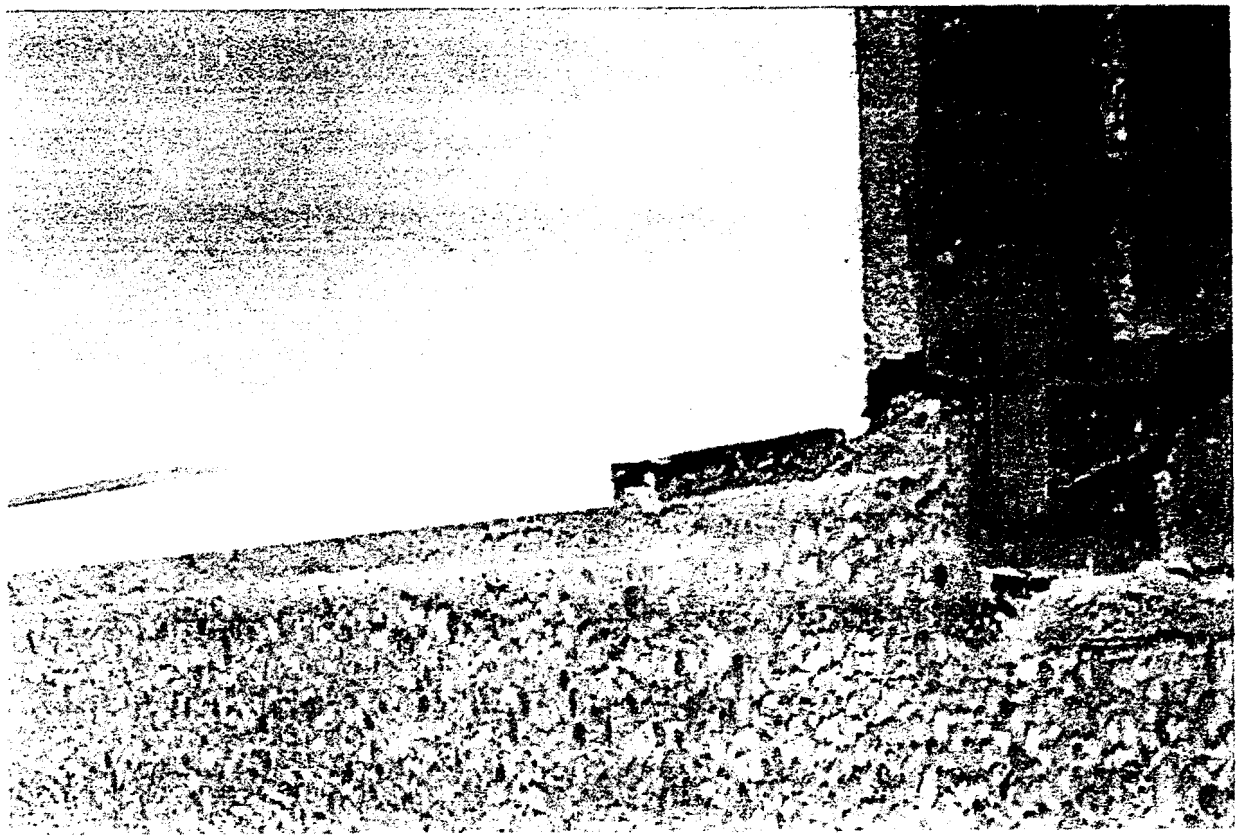




Property Damage Caused
by 1998-2000 Landslide Activity



Property Damage Caused
by 1998-2000 Landslide Activity



Property Damage Caused
by 1998-2000 Landslide Activity

LETTER TO CITY OF MALIBU

Janet Fulk & Peter Monge
20790 Rockpoint Way
Malibu, CA 90265
(310) 456-3235

Louise Ann Fernandez & John Morris
20762 Rockpoint Way
Malibu, CA 90265
(310) 456-2120

November 1, 2002

Drew D. Purvis, Director
Planning Department
Chris Dean
City Geologist
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265

Dear Mr. Purvis and Mr. Dean:

We write concerning the application of Mr. and Mrs. Carlo Zappala for a building permit on property at 20782 Rockpoint Way. We own the two homes immediately adjacent to this property. We believe the City has received incomplete information that has resulted in omissions and possible errors in the planning process for the proposed project. Accordingly, the considerable geological risks the project poses for the 20782 and adjoining properties have not been adequately considered. The purpose of this letter is twofold. The first is to provide crucial information that has not been considered in the planning process. The second is to request that the City withdraw the approval in concept and initiate a full review process, which includes consideration of the new information we present and which provides appropriate notification to all affected parties.

On September 23, 2002 a "Notice of Pending Permit" for the California Coastal Commission was posted on 20782 Rockpoint Way property. As a result we learned that the City had given "approval in concept" to the building plans for the site and that permit approval was pending at the Coastal Commission. Prior to this we had no information regarding the proposed building plans. We believed that the nature of the work on this building project would require public notification, which would afford neighbors the opportunity to express their concerns and comment on proposed plans during the planning process. For reasons that are not clear to us, it appears that the City reviewed the proposed development under plot plan rather than site plan or variance requirements, thus precluding any input from us. However, because the proposed building plans indicate the addition of new rooms and several decks outside the existing footprint and, more importantly, over the south-facing slope, it appears to us that a site plan or variance process rather than plot plan review process should have been required. As we indicate below, construction over this slope as proposed puts all of us at considerable risk.

We have obtained and reviewed the public records for this property from the City of Malibu and the California Coastal Commission. We were distressed to discover that this property is a Fire Restoration Classification 3 rebuild (originally classified by their

geologists as a Class 4 property, See Gold Coast Geoservices, Inc. "Geologic/Geotechnical Engineering Report," July 15, 1999) that will require a signed slide waiver. We believe that the decision to permit a rebuild that does not meet minimum safety factors has major implications for us as immediately adjacent neighbors. This is particularly true in view of the geological events that have occurred on the slope that our properties share with 20782 and the plans to build the structure beyond the existing foundation and onto the slope.

In examining these public documents it became apparent that considerable crucial information pertaining to geological activity on that slope in the past three years has not been considered. First, it was clear that an unfavorable geological report on the 20782 property was not disclosed and is not a part of the public record. That report was prepared for Fernandez-Morris by Donald Kowalewsky in 1997 prior to the sale of that property and provided by Fernandez-Morris to the applicants shortly after they purchased the property in 1997. We provide you a copy of this report with this letter. Second, no information was provided to the City in connection with this application regarding the several water main breaks that occurred on the 20782 and 20790 properties in 1998-1999 and the subsequent slide activity. The water main breaks themselves are well-known to the City of Malibu as it has been involved in efforts to mitigate the slide movement by repairing and extending hydraugers on Pacific Coast Highway (Nos. 23 and 5) that go immediately under the three properties being discussed here (Bing Yen Annual Report, Big Rock Mesa Landslide Assessment District, 1999, 2000.). We have additional geotechnical reports by several different consultants that we will make available to the City, which include four additional geological borings (some of which were immediately adjacent to the 20782 property line) as well as analysis of slide movement. Third, no mention is made of the visits that the Zappalas made to the 20790 property to examine the slide damage between 1999 and 2001, nor the conversations we had with them about our efforts to work with the City of Malibu and Los Angeles County to mitigate the land movement.

Consequently, we asked geologist Don Kowalewsky to review the geology and geotechnical information provided in the public records. Mr. Kowalewsky is particularly qualified to perform this review because he served as the geological consultant during the local slide activities of the past four years. A copy of his 2002 report is enclosed with this letter. His report makes clear that there are serious problems with the geotechincal analysis provided by Gold Coast Geoservices, Inc., and that rebuilding the proposed house under their analysis presents considerable risk to neighbors. These include (1) building rooms and decks outside the historical footprint and on the downhill slope over the location of a known slide plane, (2) adding a pool in known landslide debris, and (3) inadequate boring, data collection, and analysis to determine the stability and safety factors of the property. Of particular concern is the effect of building on the downhill slope, which would add additional mass directly over the slide plane and increase the likelihood of additional sliding. Despite the seriousness of these geological issues, we believe that after proper notice, review, and consultation it will be possible to modify the existing plans to address each of them, thus enabling the applicants to build a structure

that meets appropriate safety factors and does not endanger adjacent properties nor require signing a slide waiver. We believe this, in part, because the main house at 20790 was rebuilt to a safety factor that did not require signing a slide waiver.

There appear to be important inconsistencies in the stated scope of the project. The application and planning documents indicate that the Zappalas are rebuilding under the fire rebuild provisions of the code. It is our understanding that the rebuild provisions permit rebuilding on the same footprint with a maximum increase of 10%. The Zappala's file indicates that the rebuild plans exceed the original dimensions of the house by 17%. Thus, as described, it appears to us that it would require a variance or discretionary approval. Further, plans indicate the existence of a swimming pool. No swimming pool existed in the original residence prior to the burnout; hence this part of their plans is not grandfathered under the Malibu rebuild code. In addition, the pool clearly requires grading, contrary to the application. Also, the plans indicate relocation of the retaining wall further into the hillside adjacent to the pool, which will also require grading. Based on these facts it appears to us that the proposed plans would require a full site plan review or variances. Also, it is unclear as to whether the proposed structure meets setback requirements.

The problems we have identified in this letter and the supporting geotechincal reports from Don Kowalewsky indicate that the present plans pose considerable risk to neighbors. The missing information about geological activity on the slope that joins the 20782 and 20790 properties, the faulty and incomplete geotechincal analysis by Gold Coast Geotechincal Services identified by Don Kowalewsky, and the misinformation on the plans regarding the building all require careful consideration. We therefore respectfully request that the Planning Department withdraw its "Approval in Concept" and proceed with a full review, including proper notice to all neighbors (not just us).

After the "Notice of Pending Permit" for the California Coastal Commission was posted in late September we contacted the Zappalas to determine what was happening. We also collected the public records indicated above. We requested a meeting with them, which occurred at the Fulk/Monge residence on Sunday, October 27. In that meeting we expressed our concerns over the safety factor of the proposed structure and the fact that they would have to sign a slide waiver. At first, they claimed that the City would not require them to sign a slide waiver. When we showed them the public documents stating that the rebuild was assigned "to Restoration Classification 3. Recordation of an 'Assumption of Risk and Release' will be required prior to permit issuance" they claimed that they did not know of this before and that they would never sign a slide waiver. We discussed things they could do to meet the level of safety that would remove this requirement. They agreed to meet with us, the City planners, and geologists to see what changes could be made to meet the requirements. Dana Zappala agreed to arrange a meeting on their property that week with city staff and us at any of several times that we indicated we could be available. She subsequently informed us that staff did not want to visit the site and that none were available to meet with us until November 7. Thus, we have not been able to personally present this information to City staff with the Zappalas

in an attempt to address these concerns cooperatively with them prior to the November 5 deadline we were given to submit information to Coastal Commission staff. Therefore, we are presenting this information and our request to you in writing with the accompanying documentation.

One complication we face is the fact that the California Coastal Commission is tentatively scheduled to review the Zappala's permit application in their December meeting, which led to the November 5 deadline for input to Coastal staff. Because, we have only recently been notified of this hearing, we find it necessary to work in parallel with the City and Coastal Commission. Hence, we are copying them on this letter and will copy to you what we present to them.

In summary, we have grave concerns about the planning process with regard to this property, and in particular about the fact that crucial geological and technical information was not presented to the city. This information includes technical reports provided to the applicants and information about recent slide activity, which resulted in significant damage to the slope as well as adjacent property. Because we did not receive any notification from the City we were unable to provide staff with crucial information and express our issues and concerns about the proposed structure prior to now. Thus, we believe the approval in concept is at a minimum premature. Consequently, we respectfully request that the City withdraw the approval in concept and initiate a full review of the building plans for the 20782 property, giving full consideration to the new information we have presented and appropriate notification to all affected homeowners.

Thank you for taking the time to consider this letter and supporting documents. We are happy to provide any additional information you need, including the extensive geological documentation and reports mentioned above. We request the opportunity to meet with you as soon as possible to discuss these important matters, but at the latest by November 14, 2002.

Cordially,

Enclosures:

Kowalewsky report for Fernandez and Morris, dated April 4, 1997
Kowalewsky report for Fernandez, Morris, Fulk & Monge, dated October 31, 2002

Louise Anne Fernandez & John Morris
20762 Rockpoint Way
Malibu, CA 90265
(310) 456-2120

Janet Fulk & Peter Monge
20790 Rockpoint Way
Malibu, CA 90265
(310) 456-3235

December 5, 2002

Ms. Lillian Ford
Coastal Analyst
California Coastal Commission
89 S. California Street. Suite 200
Ventura, CA 93001-2801

Dear Ms. Ford:

We write in response to the letter from Carlo and Dana Zappala to you, dated November 8, 2002. We begin with a summary and then provide the details.

But first, we want to unequivocally state that at no time have we attempted to obstruct the Zappalas from building a house on their property. Our only request is that they build a house that is safe and in compliance with all applicable laws and regulations.

Summary

This letter addresses the following issues:

1. Safety is the fundamental issue about which we raise concerns, safety to our adjacent properties and to the Zappalas' property as well.
2. The City of Malibu and the California Coastal Commission have statutory obligations to protect neighboring properties from potentially dangerous and unsafe development. The City of Malibu has sidestepped the safety issue by requiring the Zappalas to sign a slide waiver, thus indemnifying it from future liability. The Coastal Commission should address this safety issue.
3. An active landslide was triggered by broken water mains on the Fulk/Monge and Zappala properties in 1999. The slide plane runs through the heart of the Zappala property and the central part of the foundation of the proposed house. We provide with this document a new report from Geologist Donald Kowalewsky summarizing the results of the three new borings drilled on adjacent properties within the last two years. This slide plane has also been documented by Geologist Keith Elhert, Coastal Geotechnical Engineering, geologists for the City of Malibu, and most recently, geologists for Los Angeles County.
4. In summer 2001 Los Angeles County installed an inclinometer on the 20790 property to monitor landslide activity. We notify the City of Malibu and the Coastal Commission that this measuring instrument is available to assist in determining the rate of landslide movement on the 20790 and 20782 properties.

5. Once a landslide is triggered, it will slide more easily under subsequent conditions. The Zappalas' claim that the aging water works system is not subject to failure is shown to be irrelevant and false as any new source of water such as sewage effluent or heavy El Nino rains are likely to increase the rate of movement of the landslide.
6. The argument is made that the Zappalas' property needs to be engineered to account for the recent landslide movement. By discounting the recent landslide activity on the 20790 property as "fill settlement," Gold Coast GeoServices places the Zappalas and their neighbors at considerable risk of further landslide damage.
7. The reason that Gold Coast GeoServices did not find the slide plane is that they choose a site to drill that was as far away as possible from the location predicted by the Kowalewsky 1994 drilling which has subsequently been confirmed by the Elhert 1999 boring and three subsequent 2001 borings by Los Angeles County.
8. The Coastal Commission should not approve a development that the City of Malibu has classified as unsafe by requiring the owners to sign a slide waiver that indemnifies the City. Not only does this put neighbors at risk in case of slide movement, but the Coastal Commission as well, because it will have approved a project the city considered unsafe.
9. We refute the Zappalas' claim that neighbors were notified by mail regarding their building plans. In fact, no one on Rockpoint Road received notification.
10. We document the basis for our claim that the Zappalas failed to disclose existing reports in response to the Coastal Commission Application question regarding other technical documents they knew of that pertained to their property. They consistently refer to a 1994 Donald Kowalewsky report and consistently omit his 1997 "pre-escrow" report, which Zappalas have had in their possession since 1997 and which recommends against purchase of the property because of geological problems.
11. We refute the Zappalas' claim that they are not building part of the house out over the existing footprint and over a descending slope.
12. We enclose a copy of a picture of the view of Highway 1 taken from the footprint of the Zappalas' property, which shows PCH residences and businesses, north and southbound traffic, and the beach. This picture counters the Zappalas' claim that the proposed structure will not be visible from Pacific Coast Highway, including residential, business, and beach areas.
13. We close the letter where we began, by asserting that these issues all pertain to the safety of the neighbors and the Zappalas themselves and ask the Coastal Commission to require that the house be designed to meet current safety standards, thus removing the necessity for signing a slide waiver.

Details and Supporting Evidence

1. Safety is the fundamental issue at the heart of our concerns regarding the building of the Zappala home, irrespective of any claims the Zappalas make to the contrary. We were shocked to discover after the October posting of the notice of hearing before the

California Coastal Commission that the Zappalas' building plans did not meet current safety standards and that they were being required by the City of Malibu to sign a slide waiver. It was when we learned of this aspect of their building plans that we became extremely concerned. It was then that we requested a meeting with the Zappalas and asked about this aspect of their building plans. At first they denied that any such "slide waiver" requirement existed from the City of Malibu. When we showed them the city "Approvals in Concept" from the public files they expressed complete surprise and then claimed "they would not ever sign a slide waiver." What they said or didn't say to us is not the issue. The facts are that the house design does not meet current City of Malibu code requirements and, if approved by the Coastal Commission, the Zappalas are required by the City of Malibu to sign the waiver.

2. The City of Malibu and the California Coastal Commission have statutory obligations to protect neighboring properties from potentially dangerous and unsafe development. The current Zappala buildings plans, which do not meet landslide safety factors and which require signature of a slide waiver, pose particularly serious risk to our adjacent properties and to the Zappalas' proposed structure as well. There is a history here on these adjacent properties that simply cannot be ignored and that makes the probability of further landslide considerably greater than it might be elsewhere. There is a known landslide that runs under the 20790 house, up the slope over which the Zappalas wish to build, and through the center of the foundation of their proposed new home. When the Fulk/Monge home was rebuilt after it was destroyed in the 1993 firestorm, it was designed with a structural foundation that met landslide safety factors to deal with this specific landslide, which removed the requirement to sign a slide waiver on the house. We are not asking the Zappalas to do anything that we ourselves have not done, nor anything that we would expect of good neighbors, specifically, to design and engineer their house to current safety standards and thus minimize risk to adjacent properties.

3. Four documented water main breaks occurred on the Zappala and the 20790 properties in 1999-2000 (two on each). Of particular importance is the fact that one of these breaks reactivated the landslide that runs through the 20790 and 20782 properties. This has been documented by site inspection from City of Malibu geologists and by a directive from the Malibu City Council to the Public Works Director to assist in resolving the problem (See Malibu City Council Agenda Report Executive Summary, 12/22/99). It has further been documented by geologist Donald Kowalewsky, by Geologist Keith Ehlert, by Coastline Geotechnical Engineering, and by the County of Los Angeles. During the exploration into the causes of the landslide, Geologist Donald Kowalewsky logged each of the four additional borings drilled by the County of Los Angeles. We have asked Mr. Kowalewsky to provide an additional report to the City of Malibu and the Coastal Commission to summarize that information. It is attached to this letter. There are now a total of six borings done by three different independent entities that consistently document the existence of the landslide. Two of these borings were done within five feet of the property line between 20790 and 20782 Rockpoint. The slide does not stop at the property line, as it can be accurately projected from the existing borings.

4. As a part of the geological exploration following the landslide movement on the 20790/82 properties, Los Angeles County installed an inclinometer on the 20790 Rockpoint property. It is on the road beneath the pool in roughly the same slide plane as the two Kowalewsky and Elhert borings (The County had tried to drill one about fifteen feet to the west, but that boring collapsed). They encountered the slide plane at about forty-five feet, just where it would be expected by the projections from the Kowalewsky and Ehlert borings (The surface of the drilling was 10-15 feet lower than the surface of the other two). We do not have the data from the County's investigations, but we are willing to make the inclinometer available to the City of Malibu and the Coastal Commission's geologists. It could provide useful additional information about the rate of movement of the slide.

5. It is extremely important in the present context to remember that once a landslide is triggered, it will slide more easily under subsequent conditions. One analogy often used to describe this situation is that a frozen screw can only be initially cracked loose with a great force required to break the high initial friction. Lubrication, such as water from a broken water main, lowers the coefficient of friction and triggers movement that otherwise would not have happened. Additional movement then becomes much easier and more likely. The Zappalas' claim that "there is no evidence that the existing LA Water system on this property is any more aged or faulty than of any other property" (Zappala letter, 11/8/02, P. 2) misses the point entirely. Heavy rainfall such as in El Nino years, other sources of water such as the influx of ground water from their proposed septic tank, and other breaks in this aged water system could all trigger further sliding, and this time much more easily than the first time. The Coastal Commission should be interested to know that as a part of the settlement of the lawsuit filed by Fulk/Monge against Los Angeles County, the County required that the water meter for 20790 Rockpoint be moved from the street in front of 20790 to the street in front of 20782, so in reality the Zappalas are now much more at risk than before. The Los Angeles County Board of Supervisors approved this action and the water meter was moved last summer. The bottom line here is that <u>any</u> major new source of underground water is highly likely to reactivate the landslide. This potential danger to adjacent properties was not adequately considered by the Zappalas' geotechnical experts nor by the City of Malibu in their review of the relevant materials, nor was their house designed to deal with these contingencies.

6. Given the documented existence of landslide activity on the 20790 property, there is another important issue which has not been adequately considered. Specifically, the design of the Zappala home failed to acknowledge the existence of the 20790 slide, dismissing it as "localized soil settlement" (Gold Coast GeoServices, November 11, 2002, page 2). Consequently, the proposed design fails to account for the likelihood of additional movement on the 20790 property which could adversely affect the Zappalas' home. An analysis that aimed to protect the proposed Zappala home would seriously consider well-documented geological activity on adjacent properties and design a foundation and other structural features to take account of these likely problems.

7. If all this is true, why did the Zappalas' geologists, Gold Coast GeoServices, fail to find evidence of a landslide during their geological exploration? While we leave the final conclusion to the geotechincal experts, we believe the answer lies a least partially in the choice of location of their boring. Gold Coast GeoServices ignored the implications of the 1994 Kowalewsky report and drilled their test boring at the east side of the property just beyond the eastern foundation of the proposed building, the location least likely to reveal the landslide. Had they drilled the same boring forty to fifty feet to the west as projected by the Kowalewsky report and in the middle of the proposed foundation, they would have encountered the landslide plane. The Ehlert report now at their disposal confirms the location of the Kowalewsky projection. The additional loggings of the County boring provided by Donald Kowalewsky in the report attached to this letter adds further confirming evidence. This raises the question, never answered by Gold Coast GeoServices, as to why they chose to drill their test boring where they did? If they believed the evidence in the Kowalewsky report and wanted to prove or disprove its existence, then the logical choice would be to select a drill site most likely to reveal or disprove the existence of the slide plane. Instead, they chose a site far away from the Kowalewsky projected slide plane. It is not surprising that they did not find it, as projections from the 1994 Kowalewsky report, the 1999 Ehlert report, and the additional borings from the County provided by the accompanying Donald Kowalewsky report suggest that they would not find it at that distance from the plane and at the depth they drilled. Despite the Gold Coast GeoServices conclusion that no slide exists, the slide plane projected by these other sources goes through the center of the proposed house, and thus poses a serious risk to the Zappalas' new home and to adjacent properties. The Gold Coast conclusions are in error because they chose to drill in a location that would not enable them to discover the slide.

8. There is another important issue for the Commission to consider here. Suppose that the Coastal Commission approves the Zappalas' request to build the proposed structure that does not meet existing safety requirements. Imagine that our assertions of an existing slide plane on the 20782 property are correct and that conditions such as heavy El Nino rains trigger further land slides on the 20782 property causing damage to one or both of the two adjacent properties. Then the Coastal Commission will have approved building a property that the City has already declared unsafe by requiring a slide waiver. The city will not be liable for damages because the Zappalas will have signed a waiver indemnifying the City. But the Coastal Commission will not have required such a waiver as a condition of building and will become liable for damages, both by the Zappalas and by any other affected properties. The clear conclusion here is that the Coastal Commission should require the Zappalas to build to safety standards that remove or at least minimize the liability of the Commission.

9. While the above safety and related issues are paramount, we wish to correct several errors in the Zappala letter. In the fourth paragraph the Zappalas state that "some, if not all, of the four signatories to the letter were informed in writing" about their building plans. This statement is simply false, as all four of us would gladly testify under oath. Further, we have talked with most of our neighbors on Rockpoint, and none of them can

recall being notified in writing either. Whatever Zappalas intended to have happen, or whatever they think might have happened, people on Rockpoint and surrounding streets were not notified of their plans to rebuild. All of this could be no fault of the Zappalas. Irrespective of the cause, there was a major breakdown in the process designed to notify neighbors and to provide them the opportunity to comment on the Zappalas' plans.

10. On page 2 of the Zappala letter they make reference to a report by geologist Scott Hogrefe in which:

> "...there is reference to a Donald Kowalewsky report. At the time of our submission of the application, other than our geological report of July 15, 1999, October 12, 2000, March 26, 2001, and June 26, 2001 (some of which referenced a Kowalewsky report, as well as city of Malibu geological requests for additional data), there were no other geological or technical reports of which we were aware that affected this property. Thus, we stated none.

Please note that there are two Kowalewsky reports not one, an important fact the Zappala letter ignores. The first report, dated 1994, which contains boring data collected within five feet of their property line on the 20790 property is referenced in the July 19, 1999 Geological/Geotechnical Engineering Report prepared by Gold Coast GeoServices, and referred to in subsequent correspondence with the City of Malibu geologists listed in the quote above. The second report, a "pre-escrow report" prepared in 1997 by Don Kowalewsky for Luzann Fernandez and John Morris recommended against purchase of the property because of adverse geological conditions, including the existence of a landslide. Fernandez-Morris gave this 1997 report to the Zappalas shortly after they purchased the property in 1997 because the Zappalas claimed that the seller did not disclose the existence of a landslide to them. It is this second Kowalewsky report dated 1997 that the Zappalas failed to reveal when they stated "None" in their response to the Coastal Commission Application for Coastal Development Permit Question 8: "Please list any geologic or other technical reports of which you are aware that apply to this property." It is knowledge of this report that the Zappalas still deny in their present letter dated November 8, 2002. And it is this 1997 report that is not referenced in any of the reports listed in the quote above from the Zappala letter. When the Zappalas met with us on October 26, 2002, we asked if they remembered the 1997 Kowalewsky report which Fernandez-Morris had given them. They indicated to all four of us that they did. Moreover, on page 2, the recent report from Gold Coast GeoServices dated November 11, 2002, states: "You (Zappalas) provided us with a copy of the "pre-escrow" geologic evaluation report that had been prepared for your property (20782 Rockpoint) by Kowalewsky" (emphasis added). Thus, there is no question that the Zappalas' response to Question No. 8 on the application is not accurate.

11. The Zappalas claim that: "Mr. Kowalewsky's 2002 report is in error in that there is not going to be an addition to the original structure over the descending slope. There is decking planned, but that has been taken into consideration by both our geologic report, as well as the geological report of the City of Malibu" (page 3). According to the plans

filed with the Coastal Commission, the Zappalas' statement is false. Kowalewsky's 2002 report on this matter is correct. The plans show that a kitchen is designed for the west side of the house that projects out over the preexisting foundation and over the descending slope. It sits in the same plane and adjacent to the proposed deck, which also projects out over the descending slope. The proposed kitchen, however, is an enclosed part of the house, not decking. Please see the pertinent page of the plans attached hereto.

12. The Zappala application claimed that the proposed structure would not be visible from Highway 1, as does the Zappala 11/8/02 letter (Page 4). Though a site line at the 18 foot proposed height of the structure was never created to examine this claim, the enclosed photograph makes it apparent that the home will be quite visible from a lengthy stretch of Pacific Coast Highway, including residences, businesses, traffic, and the beach. The picture was taken from within the existing footprint and at a height of about 8 or 9 feet, roughly half the height of the proposed structure, so it is a conservative image of how visible the finished structure will be.

13. We close this letter where we began. To us, as it should be to the Coastal Commission, safety is the paramount issue. In previous and the present correspondence we have provided overwhelming evidence that the proposed plans for building the Zappalas' house are not designed to current safety standards. This is confirmed by the fact that the City of Malibu is requiring a slide waiver as a condition to build. If the proposed structure met existing geological and building safety requirements, the need for a hazard waiver would not be imposed. There are special conditions on our adjoining properties that make it imperative that the Zappalas' house be built to existing safety standards. One of the most important is the recent triggering of landslide activity by a broken Los Angeles County water main, which has lowered the stability of the slope on the 20782 property and increased the likelihood of future movement. These potential movements threaten the adjoining 20790 and 20762 properties. It is of utmost importance that all buildings on the Zappalas' property be designed to safety standards that minimize the likelihood of future landslide and damage to all three homes.

Cordially,

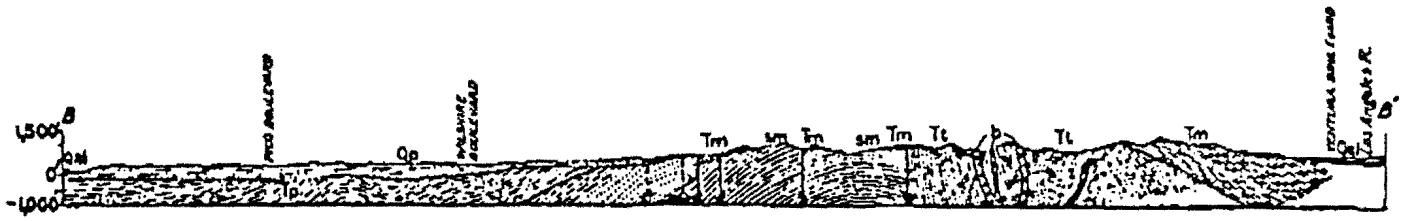
Fernandez/Morris

Fulk/Monge

Encl: Report from Don Kowalewsky, dated 12/5/2002
Photograph of Highway 1, residences, businesses, traffic and beaches visible from the proposed Zappala structure.
Plans showing building over downhill slope

CC: City of Malibu: city geologist, city planning, city attorney, city manager, planning commission
California Coastal Commission: geologists, staff, commissioners.
Carlo and Dana Zappala

KOWALEWSKY REPORT



Donald B. Kowalewsky

ENVIRONMENTAL &
ENGINEERING GEOLOGY

December 4, 2002
Job # 02629H6.004

Peter Monge & Janet Fulk
c/o Louise Ann Fernandez
1900 Avenue of the Stars 7th Floor
Los Angeles, CA 90067-4308

SUBJECT: Additional geologic comments regarding 20782 Rockpoint Way, Malibu, California

On October 30, I prepared a geologic review of geotechnical documents prepared by Gold Coast GeoServices for a proposed house at 20782 Rockpoint Way, Malibu. Subsequent to preparation of that report, the property owners, Carlo and Dana Zappala, and Gold Coast have prepared written comments regarding my letter. Unfortunately a number of their comments are erroneous and this letter is intended to clarify issues.

It is interesting that the Zappala's state "There has been no discernible movement on the property for many years, other than that caused by the breaking of a water main". This comment appears to admit to movement as a result of the water main break. It is a recognized fact that once landslide movement begins, the conditions (i.e. groundwater quantities and levels, intensity of earthquake shaking, alteration of the ground surface through construction and grading) required for additional or future movement are less than required to initiation of movement. This fact alone requires greater care in development within or near a recently active landslide, because that development can add water to the ground (through sewage disposal, landscape irrigation, and change of the terrain increasing infiltration rainwater), increase the weight on the ground surface, and modify topographic conditions.

Even though both the Zappalas and Gold Coast indicate that onsite sewage disposal will meet "building guidelines" no evaluation was performed by Gold Coast of the hydrogeologic conditions within the area and the effect on those conditions through sewage disposal. The City approved the septic design because it replaced a system utilized prior to the fire and City guidelines allow for replacement following a loss due to fire, even when such replacement may aggravate groundwater conditions. Although the City fire rebuild guidelines were honorable because they intended to help the fire victims, the fact is that development of this site will add water into the ground where conditions since the fire have been degraded by a water main break and landslide reactivation.

27101 Old Chimney Road
Malibu, California 90265

The Zappalas suggest that there was no evidence not provided to the Coastal Commission that should be considered. This is false. Included in this document are logs of deep borings logged by the undersigned engineering geologist and Keith Ehlert, engineering geologist, both of which show a landslide immediately adjacent to the Zappala's property and provide sufficient data to project that landslide into the area of proposed construction. Gold Coast suggested that this office made an "unsubstantiated assumption" that landslide debris is on the Zappala's property. Our conclusions were not assumed, they were based on well established engineering geologic practice which allows for the projection of geologic conditions based on rock quality and geologic structure. Specifically, a landslide failure plane (slide plane) was encountered in two borings (logs provided) at a depth which precludes the slide plane from not being under the immediately adjacent Zappala property. It is Gold Coast who failed to utilize available data to provide an appropriate interpretation of subsurface geologic conditions. In fact, Gold Coast has developed a data set which would provide the most favorable geologic interpretation of the Zappala property when in fact they should have been looking for the most unfavorable conditions so that appropriate recommendations could have been provided to assure a safe site, as required by the City's guidelines for preparation of geotechnical reports. Specifically, Gold Coast failed to excavate any exploratory trenches or borings across the contact between the acknowledged poor quality earth materials where they abut the hard sandstone. They failed to examine the sheared contact between hard sandstone and the highly weathered volcanic rock, which formed the slide plane observed in the exploratory borings excavated by this office and Keith Ehlert. As a consequence, their analyses of slope stability used rock strengths significantly higher then the weakest materials underlying the property.

Gold Coast stated that none of the features of deep seated landslide are evident anywhere on the property at 20790 or 20782 Rockpoint Way. Apparently they were not evident to their geologist because he has not seen the two properties except during his sort period of involvement with this area, or he wished to interpret the signs otherwise. I have seen an essentially continuous, linear ground crack within the 20790 Rockpoint Way property since 1989. Reconstruction of the residence on that property, following destruction by fire, considered the ground crack and the deeper slide plane observed in the exploratory boring. Subsequent drill holes, excavated to install the caissons required to eliminate risks to the house from future landslide movement, also exposed the slide plane. In 1998 and 1999 following a County water main break, the previously observed ground crack began to widen, the retaining wall along the north side of the driveway (at the toe of the slope descending from the Zappala property) developed a crack that continued to increase in size over the same period of time. The accompanying geologic map shows the location of the 1989 ground crack and location of our exploratory boring. Even a lay person should find no difficulty in projecting that crack into the Zappala property.

Gold Coast tries very hard to interpret adverse conditions in the most favorable manner for their clients. They suggested that pool distress on the 20790 property is the result of fill settlement rather than landslide movement. They suggest that cracking of the retaining wall is due to poor wall design and that the wall should be reconstructed. But they fail to consider that the pool and most of the deck, especially that portion where cracks developed overly native rock materials, not

fill. They fail to consider that the retaining wall is cracked, exactly in line with the ground cracks that point at the Zappala property. Gold Coast's geologist appear's to repeatedly made poor interpretations from his observations and the data he has acquired. This document is intended to provided data and a 14 year history in order to allow Gold Coast and the Coastal Commission to understand the data base upon which this office has made our interpretations.

Gold Coast suggested that it was inappropriate for the undersigned engineering geologist to comment on their stability analyses. In fact, it is the requirement of an engineering geologist to provide the geologic conditions and topographic/geologic cross-sections to the engineer from which appropriate stability analyses can be prepared. I questioned their analyses because they failed to consider the entire slope, failed to utilize to weakest earth materials in their analyses and failed to recognize the very low safety factors that were calculated by other engineers on the immediately adjacent property.

Finally, the Zappalas suggest that there will be no grading. I suggest that they contact the City to determine if the City will require a grading permit. My involvement with the City, since its inception, leads me to believe that a grading permit will be required. Therefore, they should have indicated in their Coastal Commission application that some grading is to be performed.

Donald B. Kowalewsky
Certified Engineering Geologist 1025

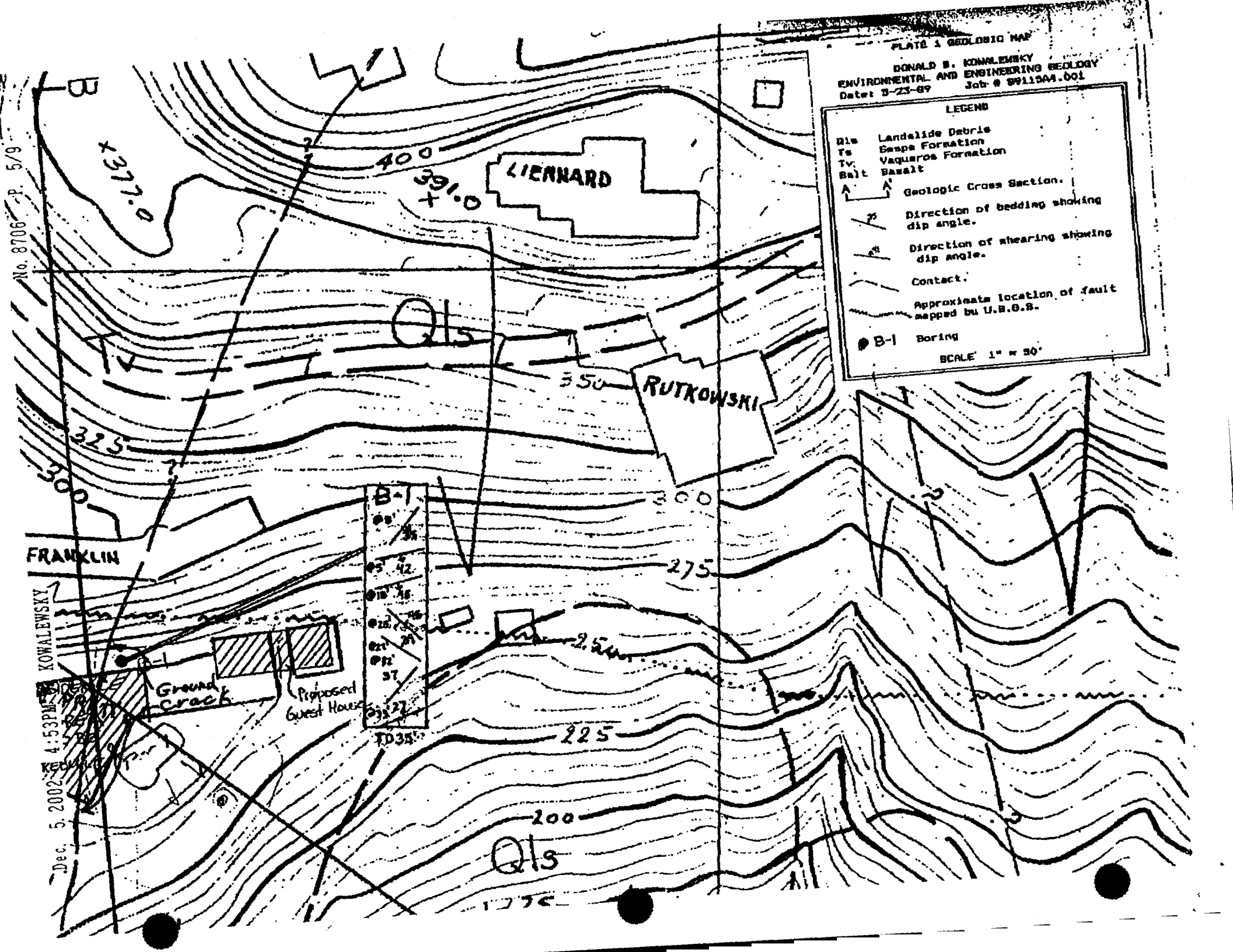


PLATE 1 GEOLOGIC MAP
DONALD B. KOWALEWSKY
ENVIRONMENTAL AND ENGINEERING GEOLOGY
Date: 5-23-89 Job # 8911544.001
LEGEND
Qls Landslide Debris
Ts Basps Formation
Tv Vaqueros Formation
Balt Basalt
Geologic Cross Section.
Direction of bedding showing dip angle.
Direction of shearing showing dip angle.
Contact.
Approximate location of fault mapped by U.S.G.S.
B-1 Boring
SCALE 1" = 50'
LIENNARD
RUTKOWSKI
FRANKLIN
KOWALEWSKY
Ground Crack
Proposed Guest House
B-1
TD 35'
Qls
Tv
Ts
400
391.0
377.0
350
325
300
275
250
225
200
B
B'
Dec. 5. 2002 4:53PM No. 8706 P. 5/9

DATE: May 11, 1989 BORING NO. 1

DONALD B. KOWALEWSKY ENVIRONMENTAL & ENGINEERING GEOLOGY
GEOLOGY BORING LOG

Sheet 1 of 2 Sheets

Job Description: 20790 Rockpoint Road
Job No. B9115A4.001 Logged By: D.B.K. Client: Monge and Fulk
Elevation: 268' Boring Location: Driveway
Drilled By: Pacific Rig: 24" bucket auger Sampling Equip. split tube bulk

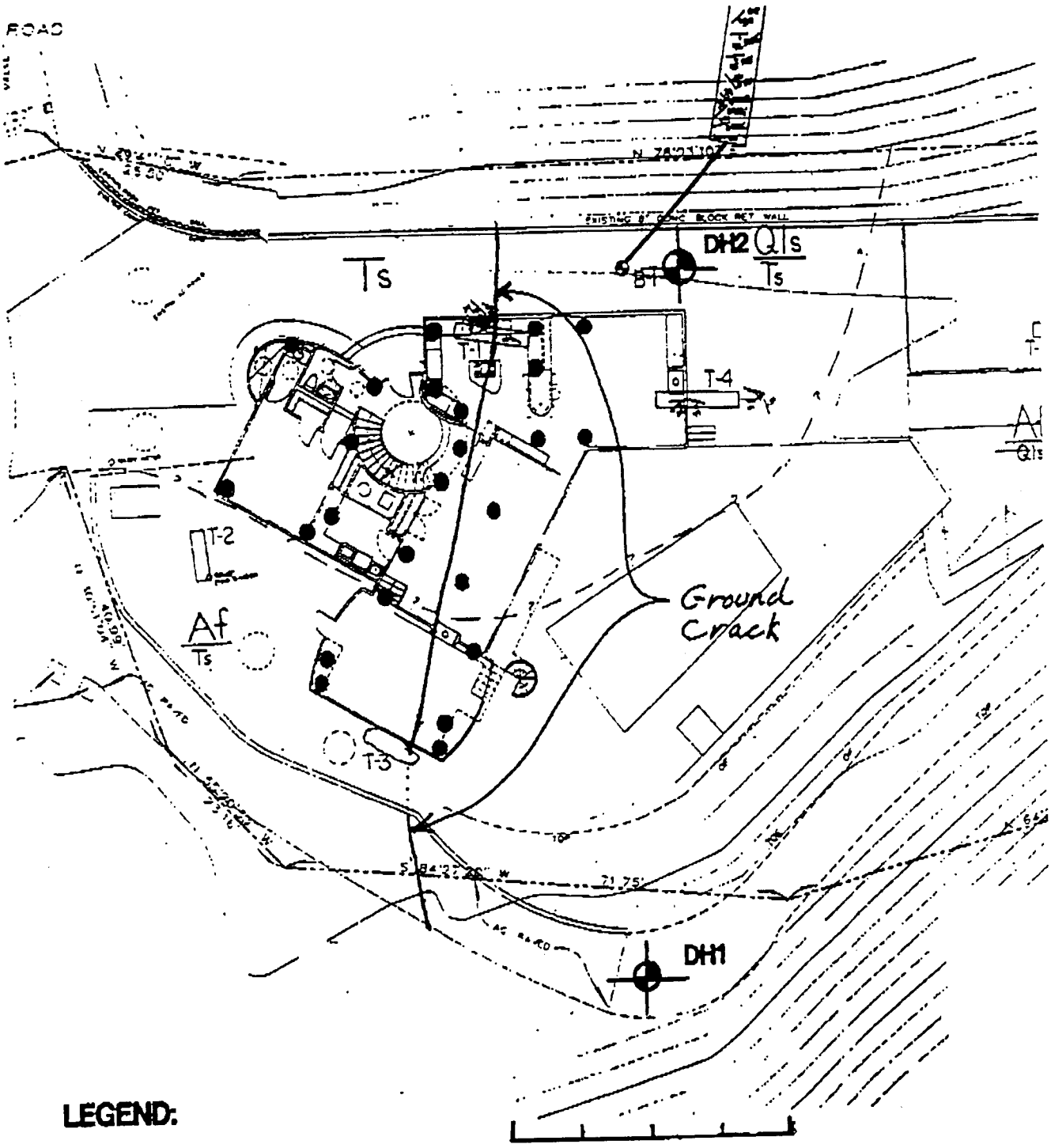
LITHOLOGIC DESCRIPTION

DEPTH	LOG	
		No topsoil due to grading.
		0-18' Landslide Debris.
		18'-35' Sespe Formation.
		Medium brown pebbly sandstone. Fine to medium grained, open voids to 1/8".
5		@5' Irregular clayey contact.
		Maroon sandstone.
		@8' N37E 35SE Sheared contact. Contact is white caliche with medium grey clay and roots.
10		Buff to rusty brown sandstone. Friable, voids, cracks.
15		@15 1/2' N78E 42SE Caliche lined clay zone.
		@18' N74E 45SE Shear zone. Basal contact between sandstone and volcanic intrusion.
20		Contact is soft wet clay zone, root lined, striae downdip, 1" thick.
		Basaltic dike. Highly fractured, abundant slickensides.
		@21' Intrusive contact.
		Coarse grained maroon sandstone.
25		@21 1/2'- 23 1/2' Gradational contact.
		Conglomerate to conglomeratic sandstone.
		@25' N47W 46NE Bedding. Top of maroon sandstone within conglomerate
		@27 1/2' N57W 39NE Trend of gradational contact.

DATE May 5, 1989 LOGGED BY D.B.K.

Boring No. 1 JOB # 89115A4.001

DEPTH	LOG	LITHOLOGIC DESCRIPTION
		Grey sandstone with cobbles 3"-6" across. Coarse grained.
		@29 1/2' Gradational contact.
		Maroon sandstone, coarse grained.
		@32 1/2' N40E 37NW Bedding. 1/8" brown clayey sand layer.
		@33 1/2' N67E 27NW Shearing. Undulatory clay zone. Maroon-grey with streaks of grey.
35		@32 1/2'- 33 1/2' Yellow-brown, coarse grained pebbly sandstone.
		Maroon to maroon-grey sandstone.
40		TOTAL DEPTH= 35 FEET
		No groundwater
		No caving
		Client backfilled hole
45		No percolation testing
		Drilling Time= approx. 8 hrs.
50		
55		
60		
65		



LEGEND:

- • — EXISTING PILES
- B-1 — BORING BY KOWALEWESKY,1989
- T-1 — TEST TRENCH BY KOWALEWSKY,1994
- DH-1 — BORING BY COASTLINE-EHLERT,1999

LOG OF EXPLORATORY BORING #2, 20790 ROCKPOINT ROAD, MALIBU, CALIFORNIA
PROJECT NO. 4570-99, LOGGED BY KEITH EHLERT
24 INCH DIAMETER BUCKET AUGER

DEPTH	DESCRIPTION
0-18.5 FEET	LANDSLIDE DEBRIS: Maroon, gray and brown sandstone, pebbly sandstone and clayey sandstone. Generally loose, scattered minor open fissures to estimated 1/4 inch wide. **Base of landslide** consists of approximately 1 to 3 inch thick plastic clay with approximate orientation of N88E40-46S, variable. Roots smeared along slip surface.
18.5-20.0 FEET	BASALTIC DIKE: Brown and orange rust brown, highly jointed.
20.0-50.0 FEET	BEDROCK: Maroon, brown and gray brown sandstone, pebbly sandstone, minor claystone. Approximate orientation of bedding at about 32 feet N62W 49N. No open voids or fissures observed. Tight.

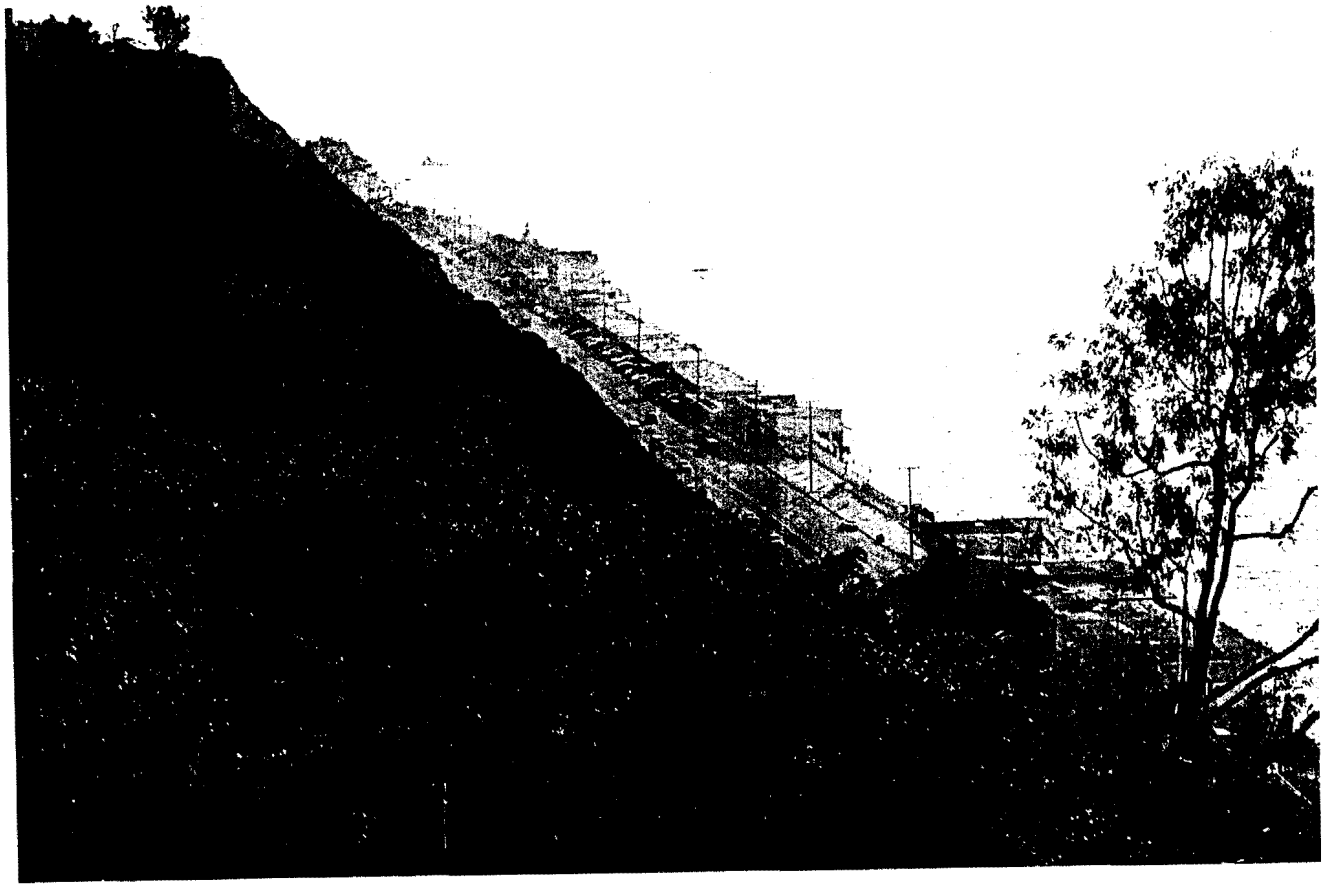
TOTAL DEPTH 50 FEET
NO GROUNDWATER, NO CAVING

WEST ELEVATION

A6

RESIDENCE
for
Mr. and Mrs. Carlo Zappala
20282 Rockpoint Way
Malibu, California 90265

VIEW OF HIGHWAY 1
(Photo taken from the footprint of the Zappalas' property)



Louise Anne Fernandez & John Morris
20762 Rockpoint Way
Malibu, CA 90265
(310) 456-2120

Janet Fulk & Peter Monge
20790 Rockpoint Way
Malibu, CA 90265
(310) 456-3235

December 19, 2002

Ms. Lillian Ford
Coastal Analyst
California Coastal Commission
89 S. California Street. Suite 200
Ventura, CA 93001-2801

RE: Application No. 4-01-180
Applicants: Dana and Carlo Zappala
Subject Property: 20782 Rockpoint Way, Malibu, CA

Dear Ms. Ford:

We write to provide the Coastal Commission with a new report from Geologist Donald Kowalewsky, dated December 18, 2002, that is highly germane to the Zappala application. This report provides the downhole logging data with Kowalewsky's interpretation for three borings drilled by the County of Los Angeles on the adjacent property, 20790 Rockpoint Way, during summer 2001. These data supply additional independent evidence of recent landslide activity on the 20782 property, especially when combined with previous data we have supplied to the Coastal Commission.

Kowalewsky's report also describes an underground water source that was not accounted for by the Zappala's geotechnical consultants in their location of the Zappala seepage pit. This water saturated the seepage pits on the 20790 property adjacent to the Zappala property, forcing it to be abandoned. This underground water source needs to be identified and incorporated in decisions regarding location of the Zappala seepage pit.

It is imperative that these issues be considered by the Coastal Commission geology staff as a part of their review of the Zappala application.

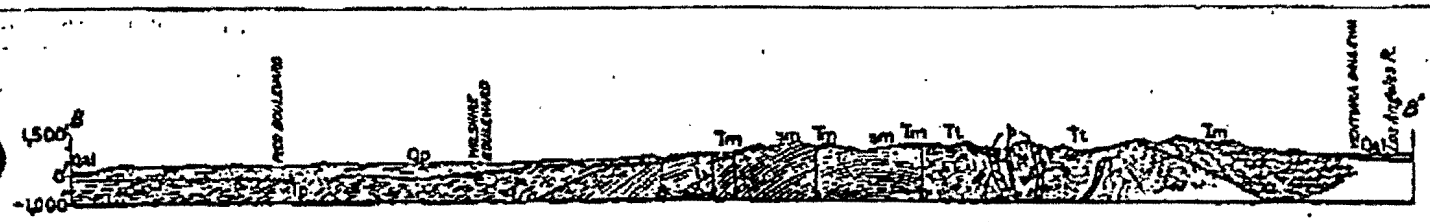
Cordially,

Fernandez/Morris

Fulk/Monge

Encl: Report from Don Kowalewsky, dated 12/18/2002

CC: City of Malibu: city geologist, city planning, city attorney, city manager, planning commission
California Coastal Commission: geologists, staff, commissioners.
Carlo and Dana Zappala



Donald B. Kowalewsky

ENVIRONMENTAL & ENGINEERING GEOLOGY

December 18, 2002
Job # 02629H6.004

Peter Monge & Janet Fulk
20790 Rockpoint Way
Malibu, California 90265

SUBJECT: Boring logs and seepage pit data from 2001 observations at 20790 Rockpoint Way, Malibu, California.

This document has been prepared to provide data and observations made during my investigation performed following the rupture of a County water main and subsequent excavation of a landslide under the properties at 20790 and 20782 Rockpoint Way, Malibu.

Following excavation of exploratory borings by Coastline Geotechnical and Keith Ehlert, the County retained an expert to excavated three additional borings. Two were excavated southerly of the swimming pool and one in the access roadway just south of the driveway. All three boring was also logged by the undersigned engineering geologist (logs attached). The first boring could not be downhole logged deeper than 11 feet due to caving potential. Therefore, the drill rig was moved to the street to drill boring #2 and a different drill rig, which could install steel casing, excavated boring #3 approximately 10 feet east of boring #1. Landslide debris and a slide plane was encountered in boring #3 to a depth of 45+ feet. Sheared, relatively poor quality rock was observed below 45 feet to the total depth. A slope inclinometer casing was installed prior to backfilling that boring by the County's consultant. Some readings of that inclinometer were taken by Chris Sexton (letter attached).

Broken and sheared rock was also encountered in boring #2. It is questionable if landslide movement or fault movement cause the shearing. A low angle adversely oriented sheared clay was observed at a depth of 11 feet.

During our investigation of the site the existing seepage pit was opened and found to be filled with water. As a consequence, the pit was pumped and water was observed to be flowing into the pit. The septic tank was effectively disconnected from the pit but water continued to flow into

27101 Old Chimney Road
Malibu, California 90265

(310) 457-2456
Fax: (310) 457-1725

the pit for several weeks, refilling the pit. This indicates that the pit is filling from an external groundwater source. As a consequence, the septic system for 20790 was relocated approximately 100 feet southwest. Although the relocation allows the system to function, it did not resolve the cause of the groundwater. This anomalous groundwater condition was not considered by the consultants for 20782 Rockpoint Way when they provided recommendations for a seepage pit 50 feet to the north. They provided no testing to verify suitability of their proposed seepage pit location.

Donald B. Kowalewsky
Certified Engineering Geologist 1025

DONALD B. KOWALEWSKY
ENVIRONMENTAL & ENGINEERING GEOLOGY

Boring # 1
Sheet 1 of 1

Job Description: 20790 Rockpoint Road, Malibu
Client: Monge-Fulk Job #89115A4.001 Logged By: DBK
Elevation: Drill Rig: Bucket Auger

Date: 6-14-01

LITHOLOGIC DESCRIPTION

DEPTH	LOG		ATTITUDES
0		0-5' Casing	
		5' Sheared striated siltstone	
5		5½' Slickensided shear surface	N40W 70NE
		5½'-7' Shear zone Shear zone places siltstone over sandstone. Sandstone ranges from brown course grained to maroon fine grained.	N20E 62SE
		6'-7½' Shear zone truncated by shear zone below.	N60E 65NW
		7'-9' Caliche lined shear zone, this zone truncated on the high side by shear	N62E 41SE
10		zone @5½-7'. Medium grained maroon sandstone below shear.	
		8'-11' Shear zone in highly fractured sandstone.	N43E 81NW
		Truncated by shear zone above. Highly fractured sandstone caving below 9'.	
15		NOTES:	
		1. Boring could not be safely logged below 11 feet due to extensive caving.	
		2. Groundwater seepage at approximately 44'. Water level on 6-15-01, 46.5'	
		3. Water samples taken and delivered to Del Mar Laboratories.	
		4. Hole left open and covered by steel plate. To be filled with a gunnite	
20		slurry by others.	
		5. Total depth 60'.	
25			
30			
35			
40			

DONALD B. KOWALEWSKY
ENVIRONMENTAL & ENGINEERING GEOLOGY

Boring # 2
Sheet 1 of 2

Job Description: 20790 Rockpoint Road, Malibu
Client: Monge-Fulk Job #89115A4.001 Logged By: DBK
Elevation: Drill Rig: Bucket Auger

Date: 6-15-01

LITHOLOGIC DESCRIPTION

DEPTH		ATTITUDES
0		N70W 59NE
		N75W 80 SW
	3' Three joint sets in sandstone	N35E 60SE
		N85E 57NW
5	5'-7' Zone of crushed rock. Three joint sets	N10 E 54NW
		N62E 50SE
	7' Four joint sets some open up to ¼".	N5E 70W
		N26E 62W
	9' Two joints: one caliche filled N60W 75NE,	N72W 50NE
10	the other open ¼" N53E 70NW	N40E 84SE
	10'7"- 11' very soft, maroon clay with minor seepage from fractured volcanic rocks above. Clay is continuous around hole. Bottom of clay zone ranges from 10' 9"on high side to 11' 1" on low side.	N70E 8 SE.
	14' A 1" thick clay zone, extremely fractured volcanic rock above and Sespe formation (clayey sandstone) below. 14' high side of hole, 14' 9" low side of hole.	N30W 25NE.
15		
	17' high side, 17' 6" low side, clay seam. Below clay seam is a soft pebbly to cobbly sandstone.	N37W 21NE
	19' 3" Contact of brown sandstone over maroon clayey sandstone. Contact surface is offset by several micro faults (less than one inch of offset).	EW 53N
20		
	22' Irregular clay layer in sandstone. 22' high side, 24' low side.	N78W 20N
25		
30	31' Sandstone is becoming significantly firmer	
35		
	36' Interbed of fine grained maroon clayey sandstone in a buff to brown medium grained sandstone with cobbles. Micro faults offset bed.	N70W 53NE
40	40' high side, 42' low side of boring: irregular maroon sandy clay pod in sandstone. Sheared Slickensided contact	N50W 40NE

DONALD B. KOWALEWSKY
ENVIRONMENTAL & ENGINEERING GEOLOGY

Boring # 2

Sheet 2 of 2

Job Description: 20790 Rockpoint Road, Malibu

LITHOLOGIC DESCRIPTION

DEPTH		ATTITUDES
40	42½' Multiple irregular clay pods	
	44' clay seam, within hard sandstone	N2E 80W
45	44' top, 45' bottom of joint set	N40W 67SW
	45' 9" high side, 48' low side: Turquoise and brown siltstone bed in sandstone. Approximately ½" thick.	N70E 50SE
50	51' 5" Slightly clayey siltstone bed, ¼" thick	N20W 56SW
	Hard sandstone continues to bottom of boring.	
55		
60	NOTES: 1. No caving. 2. Water seepage at 10' 7". 3. Hole backfilled and tamped by driller. Upper 5' to be refilled with concrete by others. 4. Total depth 60'.	
65		
70		
75		
80		

DONALD B. KOWALEWSKY
ENVIRONMENTAL & ENGINEERING GEOLOGY

Boring # 3

Job Description: 20790 Rockpoint Road, Malibu
Client: Monge-Fulk Job #89115A4.001 Logged By: DBK
Elevation: Drill Rig: Bucket auger

Sheet 1 of 2

Date: 6-26/27-01

LITHOLOGIC DESCRIPTION

DEPTH	LOG		ATTITUDES
0		0-14½' Casing (note, this portion of boring should be similar to log of B-1)	
5			
10			
15		@14½ Highly fractured volcanic rocks. Jointed in multiple directions Shear zone	N80E 26½°W (s)
20		@17' Shear zone contact volcanics over sandstone. Slickensided and striated. Stria are nearly parallel with strike. 17' to 20' pebbly sandstone. @20' very sheared volcanic rock. Contact 20' (hs) 28' (ls) Clay seam along sheared contact is damp. Volcanic rock is intensely fractured and has open voids ranging from ⅛ to ¼".	N50W 36SW (s) N80W 64S (s) N87W 70S (s)
25			
30		@30' Fractured conglomeratic sandstone intruded by internally sheared volcanic rock. Open voids ⅛ to ¼". Volcanic rocks exposed on only one side of boring to a depth of 32'4". Sandstone below volcanics appears to have been baked. Contact.	N40W 25SW (c)
35		Sandstone to 40' is very friable, fine to medium grained slightly clayey and fractured with open voids ⅛ to ¼".	
40		@40' fine to medium gained sandstone with numerous tight shears	

DONALD B. KOWALEWSKY
ENVIRONMENTAL & ENGINEERING GEOLOGY

Boring # 3

Sheet 2 of 2

Job Description: 20790 Rockpoint Road, Malibu

LITHOLOGIC DESCRIPTION

DEPTH	LOG		ATTITUDES
40		@41'8" Contact with soft clayey sandstone	N80E 57S
		@42½' Sandstone, medium to coarse grained with pebbles and small cobbles.	
		@43½' Seepage from ⅛" open joint.	N20E 32SE (j)
		@44 5" grey brown clay layer at base of hard sandstone. ½" thick immediately below grey brown clay is a 2" to 4" thick maroon sandy clay.	N22E 33NW
45		@45'2" (hs) 45' 6" (ls) soft, fat, brown clay ¾" to 1" thick within a 6" to 7" thick, soft clay mass. (This appears to be a dominant slide plane. A block sample was taken and delivered to the lab for testing).	N62E 21SE (sp)
50		@46' 1" to 48' 6" Soft turquoise sandstone. This maroon clay running through sandstone. Irregular thickness 47'6" (hs) 48' (ls)	N45W 27SW
		@ 48'6"(hs) 51½' (ls) contact with maroon clayey sandstone. Clay seam at contact. At 50' a shear zone is truncated by the clay seam.	N30E 48SE (c) N30W 48NE (s)
55		@50½' soft clay layer ⅛ to ¼" thick. Terminates at high angle shear zone. Shear zone continues down boring to 59'	N55E 41SE
		@53' Pod of maroon clay on northeast side of boring. Slight seepage. Well defined shear zone in clay.	N62W 83NE (s)
60		@ 57' to 59' two high angle clay lined shear zones which join at 52½'.	N80W 59N (s) N80E 82S (s)
		@60' (hs) 61½' (ls) shear zone multiple ¼" thick layers. Tight.	N80E 53SE
65		@64' Bedding within medium to coarse grained sandstone with pebbles and cobbles. Slightly clayey.	N50W 14NE (b)
		@69' contact grey sandstone over maroon sandstone. Apparent strike of contact is east-west with a northerly dip. Contact is too deep in boring to measure attitude but dip appears to be approximately 10°	
70		TOTAL DEPTH 70'	
		Boring utilized for slope inclinometer/piesometer installed by others.	
75			
80			

Job Number: 12-8/553-2001

November 13, 2001

Donald B. Kowalewsky
Environmental and Engineering Geology
27101 Old Chimney Road
Malibu, California 90265

Attention: Mr. Don Kowalewsky

SUBJECT: **Inclinometer Casing Surveys; 20790 Rockpointe Drive, Malibu, California**

Dear Don:

In accordance with your request, surveys were completed in a single inclinometer casing installed below the Monge residence at 20790 Rockpointe Drive in Malibu, California. This installation is designated "SI-1". Casing installation was completed by others. I do not know the date of installation and I have not had access to data from surveys by others. It is my understanding that the inclinometer casing was installed in a large-diameter (24") drillhole using pea-gravel as a backfill material.

Surveys were completed on August 19, 27, and 30, 2001. My initial attempt to survey the casing indicated restrictions were present at several depths, but were particularly severe at [redacted] to 49 feet. Plots of cumulative deviation (how far the casing "deviates" from perfectly vertical) in the B-axis indicates a fairly tight radius of curvature in the casing at this location. Based on this information, I expect the restrictions are due to binding as the probe rubs against the casing wall in the area of tight curvature. This curvature could be the result of a "kink" at a casing joint. Regardless of the cause, I understand that the restriction was recognized in the first attempts to survey the casing and are assumed to be a manifestation of the installation rather than indicative of movement.

My initial surveys were completed on August 19, 2001. Three two-pass surveys of the casing were completed in order to establish an acceptable baseline reading. Comparisons of the results of the these first surveys indicated difficulties in getting reliable data from the casing installation. Casing difficulties notwithstanding, two subsequent efforts were made to recover meaningful data from installation. Readings were completed on August 27 and August 30, 2001.

Attached are plots of cumulative and incremental displacement along the A and B axes for both surveys (August 27, and 30). Plots are corrected for "zero-shift" offset where appropriate. These plots are designed to show how far the casing is "displaced" from the initial installed configuration or shape.

The plots are difficult to interpret with confidence. Unless a landslide is moving at a fairly good rate, it is unlikely that much displacement would accumulate over the ten days or so represented by the measurement window to which we were limited in this case. Difficulties in getting reliable data from this particular casing further complicate interpretations.

Plots of cumulative displacement show irregularities in both the A and B axes between 46 and 48 feet. This is approximately at the depth where the restriction was noted. Displacement in the A Axis looks suspiciously like offset in the casing due to ground movement across a narrow shear zone at the 46 to 48 foot depth. The plot might be interpreted to suggest about 1/10 inch displacement over a period of about eight days (August 19 to August 27). The plot based on the survey completed about three days later shows a signature (at that depth) nearly identical to the August 27th plot. Since landslide movement is unlikely to behave in this fashion, my opinion is that the signature at 48 feet is most likely related to casing irregularities known to have been present at that depth immediately following the installation. Additional casing surveys would be necessary to provide a greater level of confidence in this interpretation. It is not certain, however, that such surveys remain physically possible (i.e. whether the probe can still pass the full length of the casing installation) or if they would yield reliable data.

At this time I have no plans to complete any further surveys in this casing. I appreciate the opportunity to provide you with this service. If you have any questions, please give me a call.

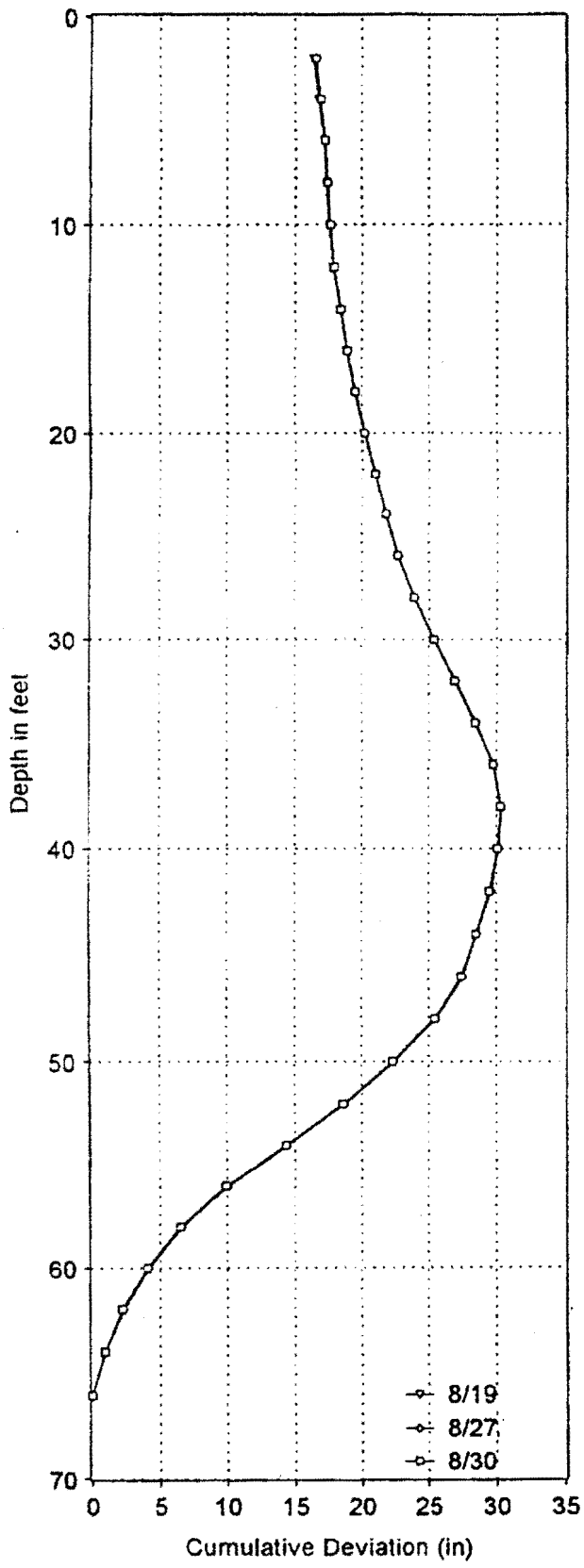
Best regards,

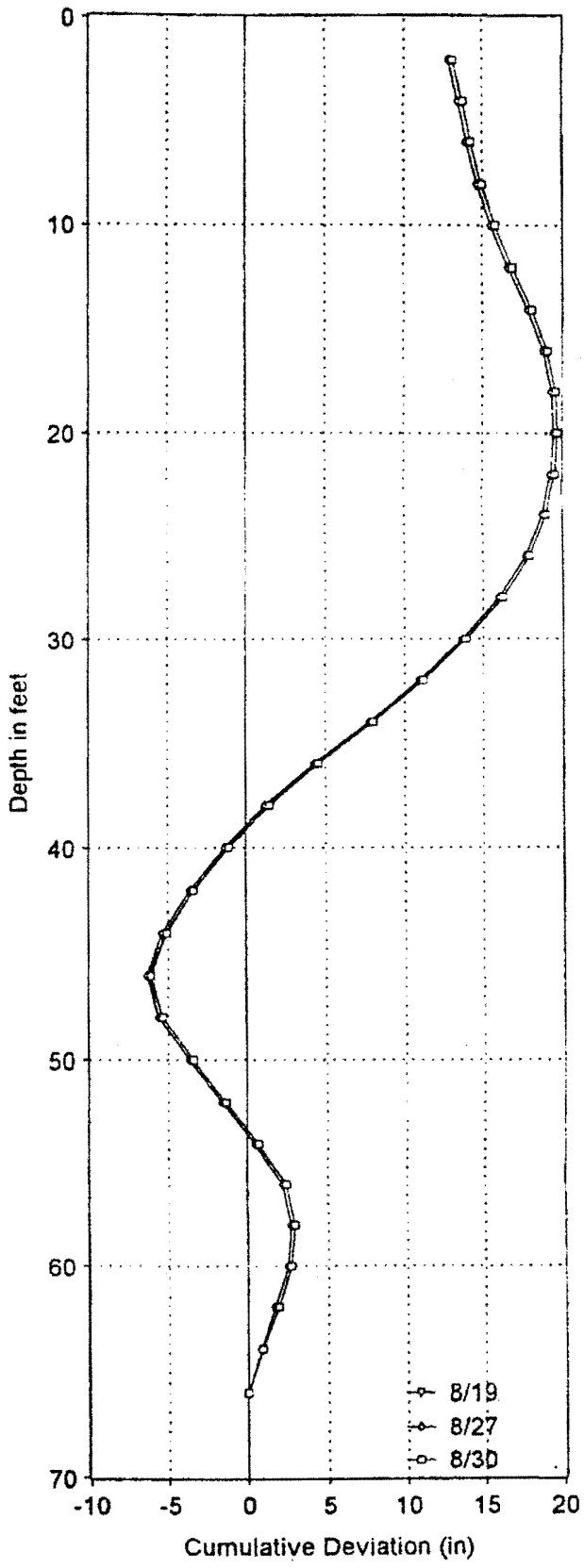
Christopher J. Sexton
Certified Engineering Geologist CEG 1441

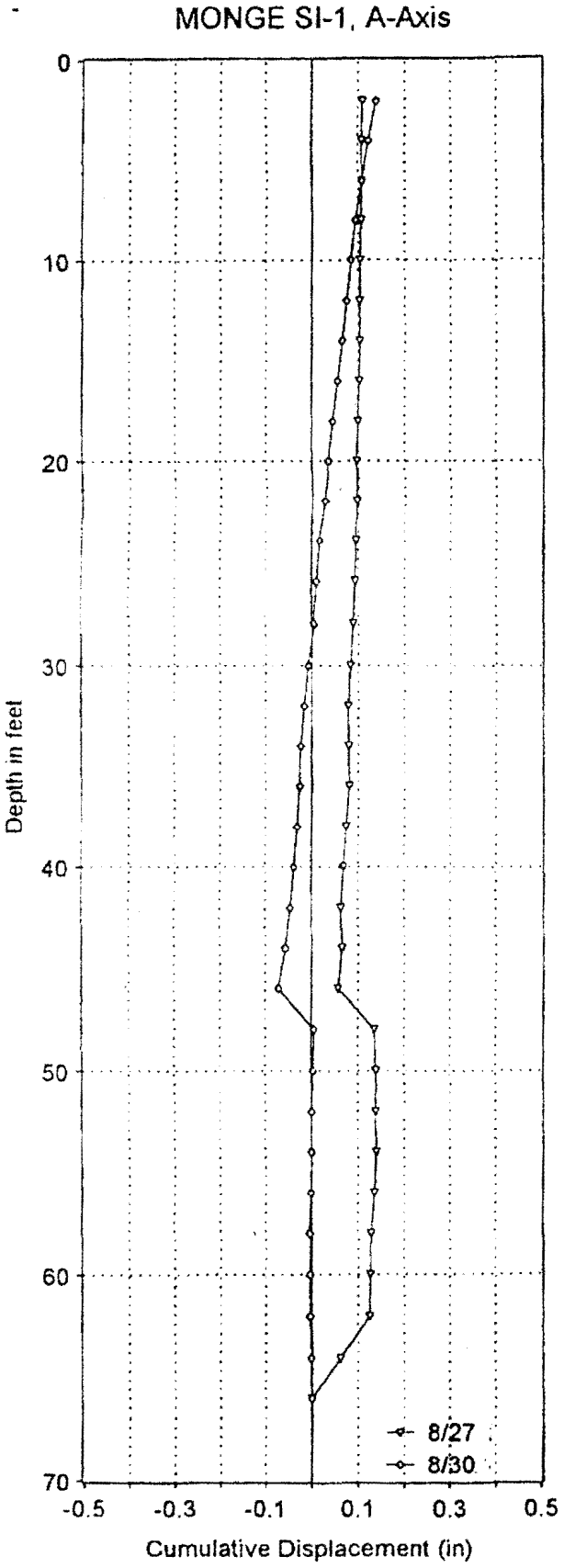
REGISTERED GEOLOGIST
CHRISTOPHER J. SEXTON
NO. 1441
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

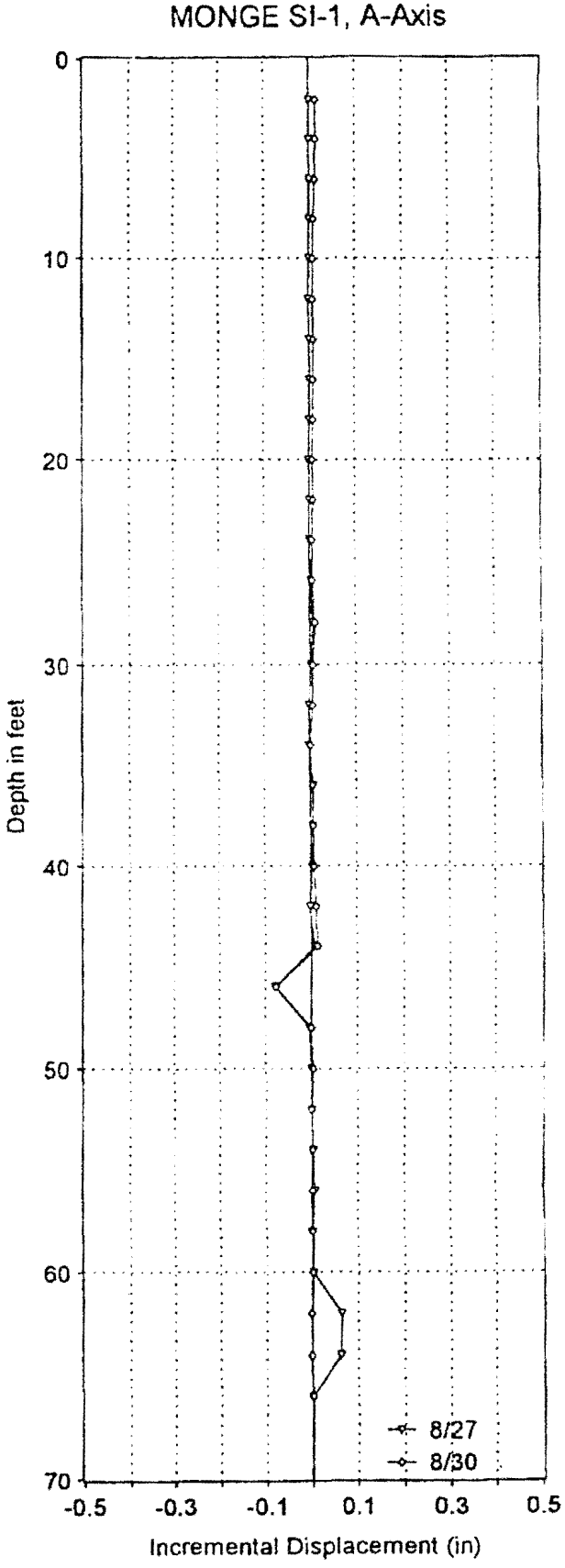
Attachments: Plots of Cumulative and Incremental Displacement for A and B Axes
Plots of Cumulative Deviation for A and B Axes

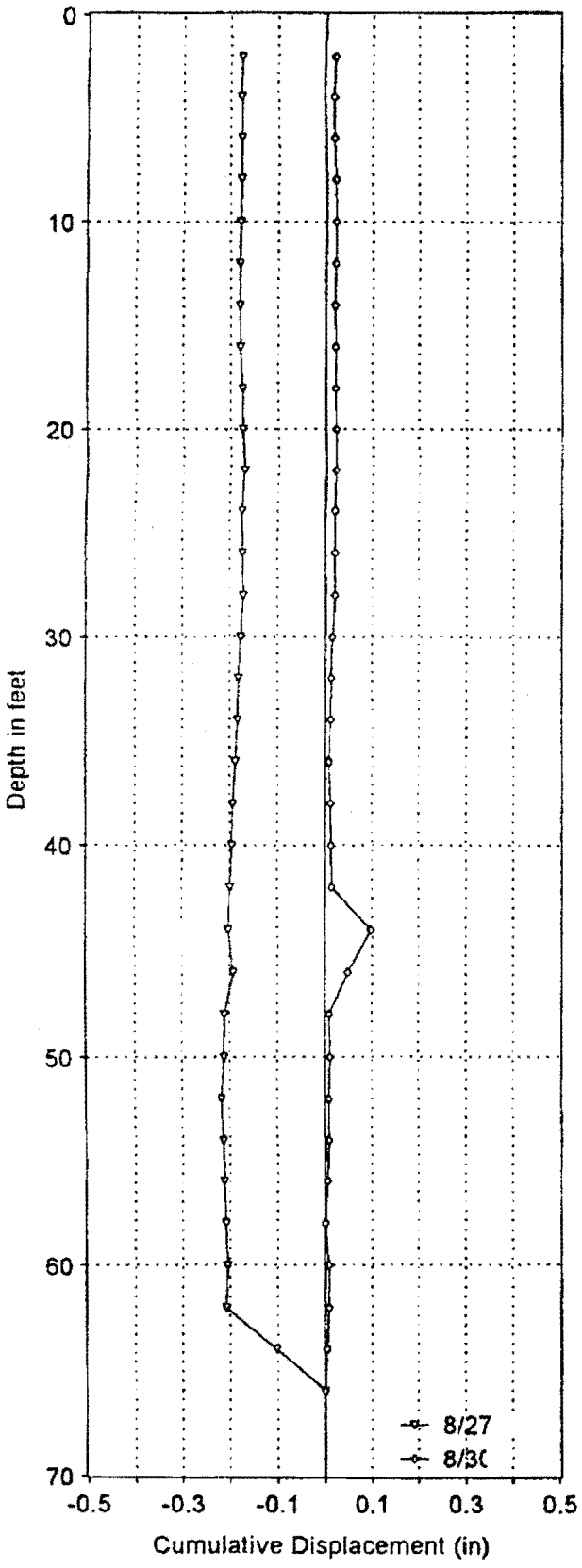
Distribution: Donald B. Kowalewsky (2)

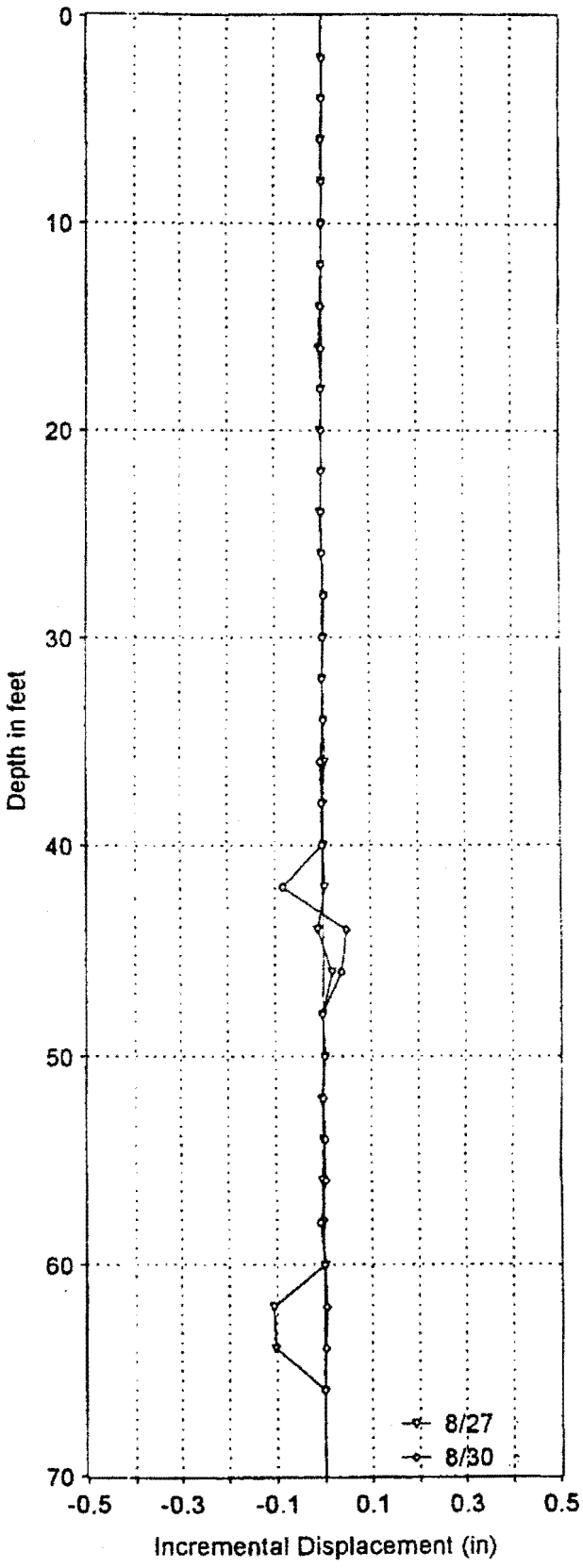

MONGE SI-1, A-Axis
Depth in feet
0
10
20
30
40
50
60
70
0
5
10
15
20
25
30
35
Cumulative Deviation (in)
8/19
8/27
8/30


MONGE SI-1, B-Axis
Depth in feet
0
10
20
30
40
50
60
70
-10
-5
0
5
10
15
20
Cumulative Deviation (in)
8/19
8/27
8/30


MONGE SI-1, A-Axis
Depth in feet
0
10
20
30
40
50
60
70
-0.5
-0.3
-0.1
0.1
0.3
0.5
Cumulative Displacement (in)
8/27
8/30


MONGE SI-1, A-Axis
Depth in feet
0
10
20
30
40
50
60
70
-0.5
-0.3
-0.1
0.1
0.3
0.5
Incremental Displacement (in)
8/27
8/30


MONGE SI-1, B-Axis
Depth in feet
0
10
20
30
40
50
60
70
-0.5
-0.3
-0.1
0.1
0.3
0.5
Cumulative Displacement (in)
8/27
8/30


MONGE SI-1, B-Axis
Depth in feet
0
10
20
30
40
50
60
70
-0.5
-0.3
-0.1
0.1
0.3
0.5
Incremental Displacement (in)
8/27
8/30

Louise Anne Fernandez & John Morris
20762 Rockpoint Way
Malibu, CA 90265
(310) 456-2120

Janet Fulk & Peter Monge
20790 Rockpoint Way
Malibu, CA 90265
(310) 456-3235

December 23, 2002

Ms. Lillian Ford
Coastal Analyst
California Coastal Commission
89 S. California Street. Suite 200
Ventura, CA 93001-2801

RE: Application No. 4-01-180
Applicants: Dana and Carlo Zappala
Subject Property: 20782 Rockpoint Way, Malibu, CA

Dear Ms. Ford:

As we have discussed, we have been concerned regarding the approval process by the City of Malibu with regard to the subject property. It has now been confirmed that there was an error in the approval process. In a meeting on December 18, 2002 at the subject property Eric Lopez and Scott Albright of the Malibu City Planning Department (neither of whom was involved in the original approval) confirmed that the approval in concept issued by the City was issued in error. Furthermore, the City confirmed that it will require a slide waiver for the property. Thus, we also remain concerned as to whether the standard of stability required by the Coastal Commission under § 30253 of Public Resources Code has been met with regard to this property.

In light of the above, we believe the Coastal Commission lacks jurisdiction over the subject application pursuant to applicable regulations and should defer all processing of the application until a valid approval is issued and the stability standards have been addressed.

We believe that a deferral on this application will allow the City of Malibu an opportunity to consider the application and the safety concerns raised by the adjacent property owners. Further it will permit the Coastal Commission the opportunity to fully and fairly consider an application which has been properly approved.

Very truly yours,

J Morris Louise Ann Fernandez Janet Fulk Peter Monge

Fernandez/Morris Fulk/Monge

CC: City of Malibu staff for distribution to:
Christi Hogin, City Attorney,
Katie Lichtig, City Manager,
Richard Carrigan, Chair, Planning Commission
Drew Purvis, Planning Director
Eric Lopez, Scott Albright, Planning Department
Chris Dean, City Geologist
California Coastal Commission staff for distribution to:
CCC geologists,
commissioners
Carlo and Dana Zappala

CORRESPONDENCE FROM APPLICANTS

Letter dated:

November 8, 2002

Reports from Gold Coast Geoservices, Inc. dated:

November 11, 2002
January 7, 2003

EXHIBIT NO. 9
APPLICATION NO.
4-01-180
CORRESPONDENCE

Carlo and Dana Zappala
3947 Sumac Drive
Sherman Oaks, CA 91403
(818) 906-7460
Fax (818) 784-6367

November 8, 2002

Lillian Ford
Coastal Analyst
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001-2801

RE: Application No. 4-01-180
Applicants: Dana and Carlo Zappala
Subject Property: 20782 Rockpoint Way, Malibu, CA

Dear Ms. Ford;

We are in receipt of a letter to you dated November 1, 2002 ("letter") from Janet Fulk, Peter Monge, Louise Ann Fernandez, and John Morris. Although we believe that a review of our application and supporting documentation thereto, together with your site visit, adequately addresses the points raised in that letter, we do believe the following response is in order.

As you know, we are seeking approval to build a one-story residence on the property located at 20782 Rockpoint Way, Malibu, California (hereinafter "property"). Our residence is to replace a prior home that was destroyed in the Malibu fire. As can be seen by a review of the plans, the footprint of the destroyed prior residence.

Since we purchased the lot in 1997, our neighbors who wrote the letter have attempted to obstruct or stop our efforts to build.

Despite the statements se forth in the letter as early as May 2001, some, if not all, of the four signatories to the letter were informed in writing, as well as orally, that we had submitted plans and specifications to the City of Malibu to obtain a building permit, as well as to the State.

As stated above, this letter is offered as an addendum to our application, geological reports and other written records previously submitted to your office.

The Property is Geologically Stable

There has been no discernible movement at the property for many years, other than that caused by the breaking of a water main. It is our understanding that the Fulk/Monge property was damaged as a result of the negligence of the Los Angeles County Waterworks ("LA Water"), through improper design and/or maintenance of water lines. We believe that that damage was the subject of a lawsuit filed by the Fulk/Monges against the LA Water which resulted in a settlement. To our knowledge, there is no evidence that the existing LA Water waster system on this property is any more aged or faulty than of any other property. The reports that have been generated for the City review show that the septic system to be installed on the property will meet or exceed building guidelines. In November, 2001, we submitted geological reports of Scott Hogrefe, a certified geologist. In his report, which was submitted together with our application to your organization, there is reference to a Donald Kowalewsky report. At the time of our submission of the application to your office, other than our geological reports of July 15, 1999, October 12, 2000, March 26, 2001, and June 26, 2001 (some of which referenced a Kowlalwesky report, as well as City of Malibu geological requests for additional data), there were no other geological or technical report of which we were aware that affected this property. Thus, we stated none.

Until the receipt of the letter, we were not aware of any water main leaks which may have damaged our property. As noted above, Mr. Monge, when we paid him a social visit sometime in the past, did refer to the LA Water main breaking and apparently running unabated for three months under his home. We do not have any evidence that that occurrence resulted in any damage to our property.

There have been no misrepresentations or failures to provide information congent to this process. Your office, as well a s the City of Malibu, were provided with our geological reports in November of 2001, which reference Mr. Kowalewsky's report, together with others. As noted above, we were not aware of the 2000 Ehlert report which was apparently generated by Fulk/Monge in their litigation against the LA Water, of which we were not a part. To our knowledge, there is no relevant evidence that has not been provided to your office which would not allow the Commission to evaluate all necessary data in making its determination.

At the time of this letter, neither we nor our geologist have had sufficient time to evaluate the 2002 Kowalewsky report in that we have just received it. As noted above,

we have just received the Ehlert 2000 report as well, and have had insufficient time to analyze and comment on it. We had no knowledge of this report until receipt of the letter and, in fact, had no knowledge that there had been exploratory borings on the slope by Mr. Ehlert.

We were not involved in that litigation. Other than Mr. Monge's problem from the LA Water line leak, we are unaware of any other neighboring properties to the residence which were damage as a result of landslide movements as set forth in the letter.

In response to the 2002 Kowalewesky report, as noted in the quoted sentence in our neighbors' letter, his opinion is that the construction of a deck and additions to the original structure may significantly increase the potential for additional landslide movement. (emphasis added) His use of the word "may" as opposed to the use of the word "will" is telling. This same comment can be made for Mr. Kowalewesky's opinion as to sewage effluent, where again he uses the word may discussing increasing the groundwater levels. As can be seen in Mr. Hogrefe's March 26, 2001, report in reply to the City of Malibu's request, there is no problem. Further, Mr. Kowalewsky's 2002 report is in error in that there is not going to be an addition to the original structure over the descending slope. There is a decking planned, but that has been taken into consideration by both our geologic report, as well as the geological report of the City of Malibu.

In fact, we have demonstated that the proposed residence will be both stable and have structural integrity, to the satisfaction of the City of Malibu's geologist and staff members. Mr. Kowalewsky's report was made available to the City and is discussed in the same, the City reports and our geologic reports.

There has been complete and full disclosure of all facts that impact the proposed residence as noted above, and the planned development from a geological point has been reviewed and approved by the City of Malibu. Obviously, as far back as 1997, Mr. Kowalewsky was retained for the purpose of preventing and/or obstructing construction on the property. Mr. Ehlert was retained to support Monge's position that his structure had been damaged as a result of the LA Water's negligence for litigation purposes.

Public Notice Was Made According to Law

All required notices have been given pursuant to law. Additionally, in an effort to address the letter's authors, we have privately met with them and showed them the plans. Initially, our application for Commission approval was submitted in late 2001. It was sent back to us in November of 2001 for purposes of further documentation and was not finally accepted as filed by the State until July 30, 2001. As part of the package submitted to the State, we enclosed addressed, stamped envelopes to be sent by the State to the authors of the letter as well as other neighbors. We believe the State did comply with the notice requirements prescribed by law.

Furthermore, in May of 2001, the City of Malibu mailed notices of the project to all residents within a 500 foot radius of the proposed residence, as required by the City of Malibu. Once again, all the authors of the letter were sent notice by the City of Malibu of the proposed residence.

In August of 2002, we received the yellow Notice of Pending Permit card. On or about September 4, 2002, I posted the notice at the mailbox to the property which is located at the driveway at the street level. The notice is conspicuous. As set forth in the letter we received from the Commission, notice was to be posted at least eight days prior to the initial hearing. In fact, it was posted more than 60 days prior to the initial hearing, and more than two and one-half months prior to the present hearing date. As stated above, it has always been our intent to give full and open notice of the proposed residence to all of the neighbors in accordance with both the City and State law.

After discussion with the State, including yourself, it was determined that the cubic yardage of soil being removed on the project would not be classified as grading, thus the words "no grading" were used. Furthermore, the removal of soil to place the caissons and retaining wall cannot accurately be described as grading.

As to the visibility of the proposed residence from Pacific Coast Highway, we, as well as yourself, have viewed the site as a pedestrian and do not believe it will be visible.

The Application is Complete

As noted earlier, this is a replacement of a fire-damaged structure. There are no variances or discretionary approvals required by the City of Malibu. The letter misstates that there are going to be additional rooms built outside the existing footprint over a downhill slope. As noted earlier, the only area outside the footprint, other than the deck, is an expanded kitchen which exceeds the existing footprint by approximately sit to eight feet and is not going to be built over a downhill slope. The existence of the pool was part of the plans and specifications and was included within the City's approval.

Hearing Schedule

Although this application has been continued once before, we are happy to have this date continued again if the Commission, in its discretion, believes that additional time is needed for its review.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

Carlo Zappala

Dana Zappala

GOLD COAST GEOSERVICES, INC.
Engineering Geologic and Geotechnical Consultants

November 11, 2002
File No. GC98-101143

CARLO AND DANA ZAPPALA
3947 Sumac Lane
Sherman Oaks, CA

re: Geologic conditions at and adjacent to 20782 Rockpoint Way, Malibu.

REF.:
1) Letter from Janet Fulk and Peter Monge to Ms. Lillian Ford, California Coastal Commission, dated 11-1-02.
2) Letter from Janet Fulk and Peter Monge to Mr. Drew D. Purvis and Chris Dean, City of Malibu, dated 11-1-02.
3) Geologic Review of Geotechnical Documents by Donald B. Kowalewsky, dated 10-30-02.
4) Gold Coast GeoServices, Inc., Response to Geologic and Geotechnical Engineering Review Sheet, dated 5-17-01.
5) Gold Coast GeoServices, Inc., Response to Geologic and Geotechnical Engineering Review Sheet, dated 11-3-01.
6) City of Malibu Geology and Geotechnical Engineering Review Sheet, dated 6-8-01.
7) City of Malibu Geology and Geotechnical Engineering Review Sheet, dated 5-1-01.
8) City of Malibu Geology and Geotechnical Engineering Review Sheet, dated 11-3-00.
9) Gold Coast GeoServices, Inc., Updated Geologic/Geotechnical Engineering Report, dated 10-12-00.
10) Keith W. Ehlert, Consulting Engineering Geologist, Report of Engineering Geologic Investigation, dated 01-25-00.
11) Gold Coast GeoServices, Inc., Geologic/Geotechnical Engineering Report (Fire Restoration Classification 4), dated 7-15-99.
12) Donald B. Kowalewsky, Engineering Geologic Memorandum Concerning Landslide Movement and Associated Los Angeles County Water Main Break, dated 1-14-99.

5217 Verdugo Way, Suite B • Camarillo, CA 93010 • (805) 484-5070 • Fax (805) 484-4295

ZAPPALA **FILE NO. GC98-101143**

Dear Mr. and Mrs. Zappala:

In accordance with your request, we have reviewed the letters prepared by your neighbors and by Donald Kowalewsky regarding the geologic conditions at and adjacent to your property at 20782 Rockpoint Drive in Malibu. As requested, this letter provides our responses to the issues of concern as stated in the letters by the homeowners of the properties adjoining yours, and by Donald Kowalewsky.

The letters by the neighboring homeowners and by Kowalewsky make many allegations that we did not consider all available geologic information in our assessment of the site for consideration of your planned new construction, and that we provided recommendations for your planned construction that will cause landsliding to occur on and adjacent to your property. Both of these accusations are of course unfounded and untrue. When you first asked us to visit the property to evaluate the site geology with you in September of 1998, you informed us of the water main line break that had occurred on the neighboring property at 20790 Rockpoint Way. You provided us with a copy of the "pre-escrow" geologic evaluation report that had been prepared for your property (20782 Rockpoint) by Kowalewsky. We then went to the property at 20790 Rockpoint and [redacted] property owner, Peter Monge, if we could see the areas of damages that we were told had occurred as a result of a water main line break. After we viewed the property, we noted that the cracks in the pool deck were probably a result of localized soil settlement in the pool deck area. Because Mr. Monge told us that his geologist, Kowalewsky, believed that the cracks had occurred because of landslide movement, we told Mr. Monge that we would be performing subsurface exploration on the property at 20782 Rockpoint, and that because of his concerns about the local geologic conditions, we would invite their geologist, Kowalewsky, to observe and log the borings that we were planning to drill on the Zappala property, and to discuss our planned field investigation, so that he could evaluate the subsurface geologic information along with us and so that we could make mutually agreeable findings regarding the geologic safety and stability of both properties. We then called Mr.Kowalewsky to discuss the geologic conditions from his work, and to invite him to come observe our field investigation and to log the borings. Mr. Kowalewsky never responded to the voice mail

message we left on his phone recorder. Mr. Kowalewsky and Mr. Monge have never contacted our office at any time to discuss any of our findings with us. Had Mr. Kowalewsky contacted us at any time, or had the Monges contacted us to see what we were finding and what Mr.Kowalewsky's findings were, we would have gladly provided our findings to them and we would have discussed any items with them that they liked.

Because Kowalewsky did not perform any subsurface geologic exploration on the property at 20782 Rockpoint, and because his report simply provided his own opinions and no factual geologic data for our use in our study, we did not reference his "pre-escrow" geologic opinion report in our report. The city of Malibu requires that we review all geologic reports for surrounding properties within 500 feet of the subject property- we did that and we did evaluate all of the information provided in all of the reports that are on file at the city office. We also contacted the city geologist and discussed the water main line break and geologic conditions at this site for consideration in our evaluation of the site geology. We were then asked by the reviewing geologist for the city of Malibu (Bing Yen and Associates, Inc.) to address Kowalewsky's geologic mapping of the area during a review of our report. We responded to the city's review, and our responses regarding Kowalewsky's opinions were found to be acceptable by the city's reviewing geologist.

Based upon our observations made in 1998 at the property at 20790 Rockpoint, it is apparent that the damages that reportedly occurred following the September, 1998 water main line break are located only in the concrete pool deck area on that property. It was our opinion based upon our observation of the cracks in the pool deck that the cracks most likely have occurred as a result of localized settlement of soil and/or old artificial fill materials that reportedly underlie the pool deck area. **No ground cracks or damages have ever occurred on the property at 20782 Rockpoint Way as a result of the 1998 water line break.** The letters by your neighbors indicate that water lines have broken on more than one occasion, however we are only aware of the 1998 water main line break and the localized damages at 20790 Rockpoint that resulted from that water line break.

The retaining wall at the toe of slope along the north side of 20790 Rockpoint Way exhibits out-of-levelness and cracks that are, in our opinion, the result of inadequate construction for the site conditions. It is our understanding that the wall was not replaced when the residence was rebuilt, so that the wall is probably at least 30 years old. The wall is structurally unsound and should be removed and replaced with a wall that is designed and constructed for the site conditions and in conformance with current codes. The planned construction at 20782 Rockpoint Way will not adversely impact the toe of slope wall in any way, because all foundations will be constructed into underlying bedrock and no foundations are planned near the existing wall.

Based upon the findings from our investigation and from our review of all available data, there is no documentation of any landslides ever having occurred on any portion of the property at 20782 Rockpoint Way. Kowalewsky and Ehlert described ancient landslide debris to a depth of about 18 feet in a boring in the driveway on Mr. Monge's property. Kowalewsky infers that his finding of landslide debris on the Monge property also means that landslide debris must occur on the Zappala property, however this is an unsubstantiated assumption. In any event, the 1998 water main line break in Rockpoint Way did not cause landsliding to occur on the property at 20782 Rockpoint Way, contrary to the statements made in the letters by the neighboring homeowners. Furthermore, it must be stated that we do not agree with Kowalewsky or with the letters by the neighbors that it has ever been conclusively determined that a landslide actually occurred as a result of the water main line break in 1998. The localized nature of the pool deck cracks and the lack of more extensive cracking throughout the property are not consistent with the type and extent of ground cracks that would occur if a large, deep-seated ancient landslide had become re-activated.

We were not provided with a copy of the January 2000 report by Keith Ehlert until this week. The Ehlert report is addressed to Richard Martin and Coastline Geotechnical in Gardena (Kowalewsky refers to a report by Coastline in his letter, however we have not been provided with any report by Coastline). In the report by Ehlert, he states: "...the possibility that some of the distress may be a result of local soil influences (i.e. settlement, creep) cannot be completely ruled out. If such local

soil influences have occurred, it is my opinion that the water pipe leak triggered or contributed to the local soil influences." This statement by Ehlert also points to localized soil movement as a possible cause of the damages to the pool deck, and not necessarily to deep-seated landsliding. In fact, the nature and extent of the localized cracks are not in and of themselves sufficient evidence that a landslide actually occurred at all. Deep-seated landslide movement results in significant lateral and vertical ground cracking, ground subsidence, and ground bulging at the landslide toe, yet none of these features are evident anywhere on the property at 20790 Rockpoint or at 20782 Rockpoint, to indicate that definite landslide movement occurred. The nature of the pool cracks is much more indicative of the type of cracking that occurs from localized settlement of unconsolidated soil, as pointed out by Ehlert.

Kowalewsky has made many assumptions regarding the geologic conditions on the property at 20782 Rockpoint, despite the fact that he has never performed any subsurface exploration whatsoever on that property. Kowalewsky criticized the slope stability analysis performed by this office, however Mr. Kowalewsky is not a geotechnical engineer and has no licensing to perform or criticize geotechnical engineering analysis performed by licensed geotechnical engineers. The slope stability analysis performed by this office was reviewed and found acceptable by the reviewing geotechnical engineer for the city of Malibu (Bing Yen and Associates). Kowalewsky is wrong in stating that we did not consider the data in his geologic evaluation report, however we performed our own, independent geologic study in full conformance with the guidelines for the city of Malibu, which included subsurface geologic exploration and site geologic mapping by our geologist. Simply because Kowalewsky expressed his opinions in a "pre-escrow" evaluation type report does not mean his opinions are valid or correct. In fact, we find that the subsurface exploration that has actually been performed by Kowalewsky on the Monge property is in our opinion insufficient to even serve as the basis for his formulation of his opinions regarding landsliding on that property, let alone for the property at 20782 Rockpoint Way.

Regarding the issue of our assignment of a fire "Restoration Classification", this issue is a non-issue, because the city of Malibu no longer uses this obsolete classification system. However, our classification was correct in any event.

Kowalewsky provides no data to substantiate his unfounded assertion that the planned construction of a cantilevered deck "has a high probability of changing the geological character of the site since that construction appears to be partially on an active landslide". Based upon our site observations and on our subsurface exploration on the slope in the area of the planned deck, there is no evidence whatsoever to indicate that an active landslide underlies this property. As recommended in our report, the deck will be supported by pile foundations that will be constructed with adequate embedment into underlying dense bedrock, below any loose surface soils that might be subject to soil creep, so that the deck foundation will not be supported by any type of landslide material whatsoever. However, as we said earlier in this letter, the retaining wall on the Monge property at the toe of slope is already damaged from long-term effects of soil creep, and Kowalewsky should recommend that this wall be replaced with a properly engineered wall. Alternatively, the safety and stability of the retaining wall should be evaluated by an engineering geologist, a geotechnical engineer, and a structural engineer to verify that the wall is safe and that any further movement of the wall will not adversely impact the safety and stability of the property at 20782 Rockpoint Way.

Kowalewsky now asserts that the seepage pit usage at 20783 Rockpoint "may increase the groundwater levels, adversely affecting slope stability". We note that this statement was **not** included in his pre-escrow geologic opinion report for this property in 1999, we do not see why he is now making this statement which is again unsubstantiated by any data whatsoever. The planned seepage pit construction for this property has been reviewed and approved by this office, by the city's reviewing geologist, and by the city's sanitarian.

Regarding the slope in the area of the planned swimming pool at 20782 Rockpoint, our analysis of the slope area was made by drilling an 80-foot deep exploratory boring, and by mapping of exposed in-place bedrock in existing cut embankments adjacent to the planned pool area. We recommended

construction of a retaining wall in this area that will be designed and constructed for the site conditions and that will provide adequate safety for the planned construction. Our report and recommendations for this construction was reviewed and approved by the reviewing geologist and geotechnical engineer for the city of Malibu.

Our report and recommendations for your planned development of a new residence in the same place as the former residence remain unchanged. As discussed in our report, all site preparations, foundation construction, and septic system construction shall be observed and approved by the project geologist and geotechnical engineer.

Please call this office at (805) 484-5070 if you have any questions regarding this letter.

Very truly yours,

GOLD COAST GEOSERVICES, INC.

REGISTERED GEOLOGIST SCOTT J. HOGREFE No. 1516 CERTIFIED ENGINEERING GEOLOGIST Exp. 10-31-04 STATE OF CALIFORNIA

Scott J. Hogrefe, CEG 1516

cc: City of Malibu (attn.: Chris Dean)

GOLD COAST GEOSERVICES, INC.
Engineering Geologic and Geotechnical Consultants

January 7, 2003
File No. GC98-101143

re: Response to letters by Donald B. Kowalewsky regarding planned construction of a new residence at 20782 Rockpoint Way, Malibu.

Dear Mr. and Mrs. Zappala:

In accordance with your request, this office has reviewed three new letters provided to us by you, prepared by a Donald B. Kowalewsky, a geologist hired by your neighbors at 20762 and 20790 Rockpoint Way. The new letters are dated December 4 and December 19, 2002. We also reviewed new letters by your neighbors dated December 5, December 19, and December 23, 2002.

It is our finding from reviewing the new letters from your neighbors and from Kowalewsky that there is no new information in those letters that causes us to believe that any of the information provided in our reports and recommendations for the planned re-construction of a residence in the same location as the former residence that was destroyed by the 1993 Malibu firestorm is now invalid. The planned construction as evaluated by this office and as approved" in-concept" by the city of Malibu will be safe as proposed.

We must first say that we found it sadly amusing that the December 5 letter from your neighbors begins by saying that "at no time have we attempted to obstruct the Zappalas from building a house on their property." The letter then goes to very great, exaggerated lengths to paint a very grim picture of the instability of their properties and the neighborhood in

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general. One can't help but come to the conclusion from reading the December 5 letter and the previous letters that the neighbors are indeed going to extraordinary lengths in attempt to obstruct the Zappalas from building a house on their property.

Mr. Kowalewsky also goes to great lengths to paint his bleak picture regarding the safety and stability not only of the Zappala property, but of the entire neighborhood as well, including the properties owned and occupied by Mr. Kowalewsky's clients, the Monges and Ms. Fernandez. Upon reading the letters by Mr. Kowalewsky, we can't help but wonder why Mr. Kowalewsky puts such great effort into painting such a bleak picture of the geologic conditions at YOUR property, and how unsafe the entire area will be if YOU build a new house in the exact same location as the residence that existed prior to the 1993 Malibu fire, yet he never offers recommendations to his own clients for methods of mitigation that they apparently should be doing to protect their own properties, if they are indeed situated within such a disastrous geologic setting, as Kowalewsky says they are ...

On a personal level, based upon our very considerable years of education, training, and combined experiences of many decades working as consultants and experts on several thousands of projects in southern California and the Malibu area, we can unequivocably say that we have never experienced such ludicrous, slanderous accusations from a supposedly learned colleague.

Mr. Kowalewsky lacks ability of good communication skills that are normally used for supposedly learned professionals to openly share useful information. The best form of good communication is to meet face to face to share information and to discuss facts in an open forum among professionals. The telephone is another good method of open communication,

and we do know that Mr. Kowalewsky is not a deaf mute and that his fingers are not broken. However since Mr. Kowalewsky never returned our phone call to his office when we started this project, when we attempted to contact him to invite him to the property to discuss this project with him, we can not be certain even of that.

As we pointed out in our last letter responding to Mr Kowalewsky's first letter regarding this matter, we did contact Mr. Kowalewsky when we started this project in 1999, and here we are, three years later, and we have still never received the courtesy of even one telephone call from Mr. Kowalewsky! Now we get these nasty letters accusing US of poor geologic reasoning, wherein Mr. Kowalewsky goes to great lengths to write down his thoughts on why rebuilding a house on the Zappala property will be unsafe (based upon his own opinions) and will cause the Monge property and apparently all of Rockpoint Way to experience landsliding....

Upon reading Kowalewsky's ramblings, we can't help but think: why didn't Mr. Kowalewsky ever indicate in the reports that he prepared to assist the Monges to rebuild their house in 1995, that if anyone ever does rebuild the house that also burnt down at 20782 Rockpoint Way, then the Monge property and the other property at 20762 will be unsafe and doomed to landslide damages? Why try so hard to point this out now, if you so firmly believe it to be true, Mr. Kowalewsky?

Regarding the neighboring property at 20762 Rockpoint Way, one of the first things that we noted to the Zappalas when we first reviewed their property, is that the owners of that property (Fernandez and Morris) have their rear pool deck and fence area encroaching into the Zappala property! It is ironic to us at this time that when Mr. Zappala told us that he

ZAPPALA **FILE NO. GC98-101143**
20782 ROCKPOINT WAY

noticed the encroachment and intrusion from his neighbors builiding into his property, but that he didn't want to make an issue of it, because he wanted to be a good new neighbor.... we now find this to be very ironic, indeed.

Essentially the entire content of Kowalewsky's letter dated December 4, 2002 is contrived and slanderous. For example, Kowalewsky states on page 2, first paragraph, "It is Gold Coast who failed to utilize available data to provide an appropriate interpretation of subsurface geologic conditions. In fact, Gold Coast has developed a data set which would provide the most favorable geologic interpretation of the Zappala property when in fact they should have been looking for the most unfavorable conditions so that appropriate recommendations could have been provided to assure a safe site, as required by the city's guidelines for preparation of geotechnical reports." Kowalewsky obviously has no trust in the abilities and considerable expertise of the professionals at either this office, or at the offices of the city's geologic and geotechnical consultants who reviewed our reports and found that they were in fact prepared in conformance with the city's geotechnical (and geologic, we might add) guidelines. Kowalewsky's obvious lack in trust in the abilities of other professionals has been evident to the undersigned from our past experiences with Mr. Kowalewsky when he formerly served as a reviewer for the city of Malibu and for the city of Calabasas. We found Mr. Kowalewsky's reviews then to be mean-spirited and entirely one-sided (his point of view, period), and apparently he has not changed with age.... And apparently he has forgotten that he is NOT the city's reviewing geologist and so he should not go about passing his own overly opinionated judgements about other professionals work...

It is noted that Mr. Kowalewsky's interprerations of the geology and landslide history of this

area are his and his alone. No published geologic map of this area shows the landslide interpretation of Kowalewsky. As Keith Ehlert pointed out in his report, localized soil settlement is a possible cause of the damage to the Monge property "that cannot be ruled out", however Kowalewsky has not ever addressed that possibility. The old tried and true scientific doctrine of "multiple working hypotheses" apparently is not in Mr. Kowalewsky's techniques.

The letter by Kowalewsky dated December 18, 2002, and the report of inclinometer readings from Southwestern Engineering Geology, is useless and inconclusive information. The logged "attitudes" on Kowalewsky's Boring Logs are not designated as to what type of structural feature they might be (bedding plane, jointing plane, fault plane, etc). The report does not state where specifically each boring was located on the Monge property. The boring logs do not specifically locate bedrock formation names, landslide features, and other important geologic data is lacking. The report of inclinometer readings from Southwestern Engineering Geology indicates that "the plots are difficult to interpret with confidence", and "Difficulties in getting reliable data from this particular casing further complicate interpretations." Regarding Kowalewsky's information about the seepage pit issue at 20790 Rockpoint Way, again Kowalewsky does not provide complete data and jumps to unsubstantiated conclusions regarding the old seepage pit issue. First, no information is given regarding where the old seepage pit was located, and whether or not the broken water line may have been a factor. Regarding the seepage pit at 20782 Rockpoint Way, no additional testing was required by the city's health specialist, or by the city's geologist. The seepage pit location will remain the same as that used for the property prior to the Malibu firestorm.

We were unable to find any information whatsoever from Kowalewsky regarding geologic data from the many borings that were drilled to construct the pile foundations during the rebuilding of the home on the Monge property. If Mr. Kowalewsky actually believes that the foundation for the Monge house could actually "eliminate risks to the house from future landslide movement" extending to a depth of 45 feet, the depth of slide that Kowalewsky now says he found, then he is seriously mistaken, because it is simply not true that the foundation supporting the Monge house is designed or constructed to resist movement at a depth of 45 feet... Mr. Kowalewsky should provide geotechnical engineering and structural engineering design analysis to substantiate his statement that the "caisson" foundations supporting the Monge house actually "eliminate risks to the house from future landslide movement".

There are many other aspects of the comments and accusations in the letters from Ms. Fernandez and from Kowalewsky that we could address, but [redacted] get the clear picture of what's going on here, and frankly, enough is enough for us... It is painfully obvious that the Monges and Ms. Fernandez do not want the Zappalas to build on their property, period. If the neighbors were truly concerned with safety at and adjacent to their properties, then they should authorize Mr. Kowalewsky, and a very good geotechnical engineer, to perform adequate studies to determine and implement methods of mitigation to protect their own properties from the very problems they envision affecting the Zappalas.

ZAPPALA **FILE NO. GC98-101143**
20782 ROCKPOINT WAY

Please call this office at (805) 484-5070 if you have any questions or comments regarding this letter-report.

Very truly yours,

GOLD COAST GEOSERVICES, INC.

Scott J. Hogrefe, CEG 1516

REGISTERED GEOLOGIST
SCOTT J HOGREFE
No. EG1516
CERTIFIED
ENGINEERING
GEOLOGIST
Exp.10-31-04
STATE OF CALIFORNIA

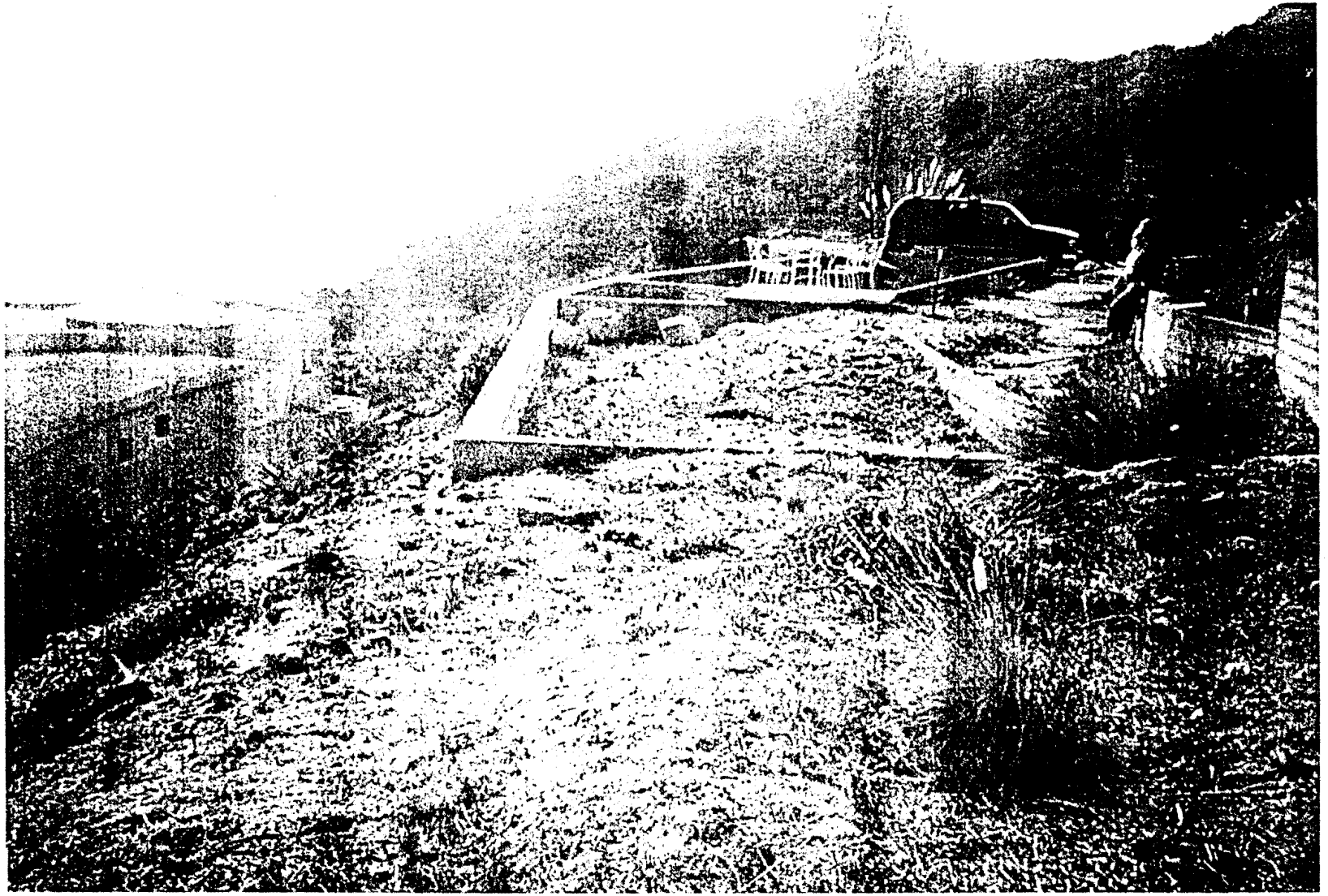

Photo1: Proposed building site. Proposed swimming pool site is in foreground. 20790 Rockpoint Road is on the left. View is to the southwest.

EXHIBIT NO. 10
APPLICATION NO.
4-01-180
PHOTOS (5 pp.)

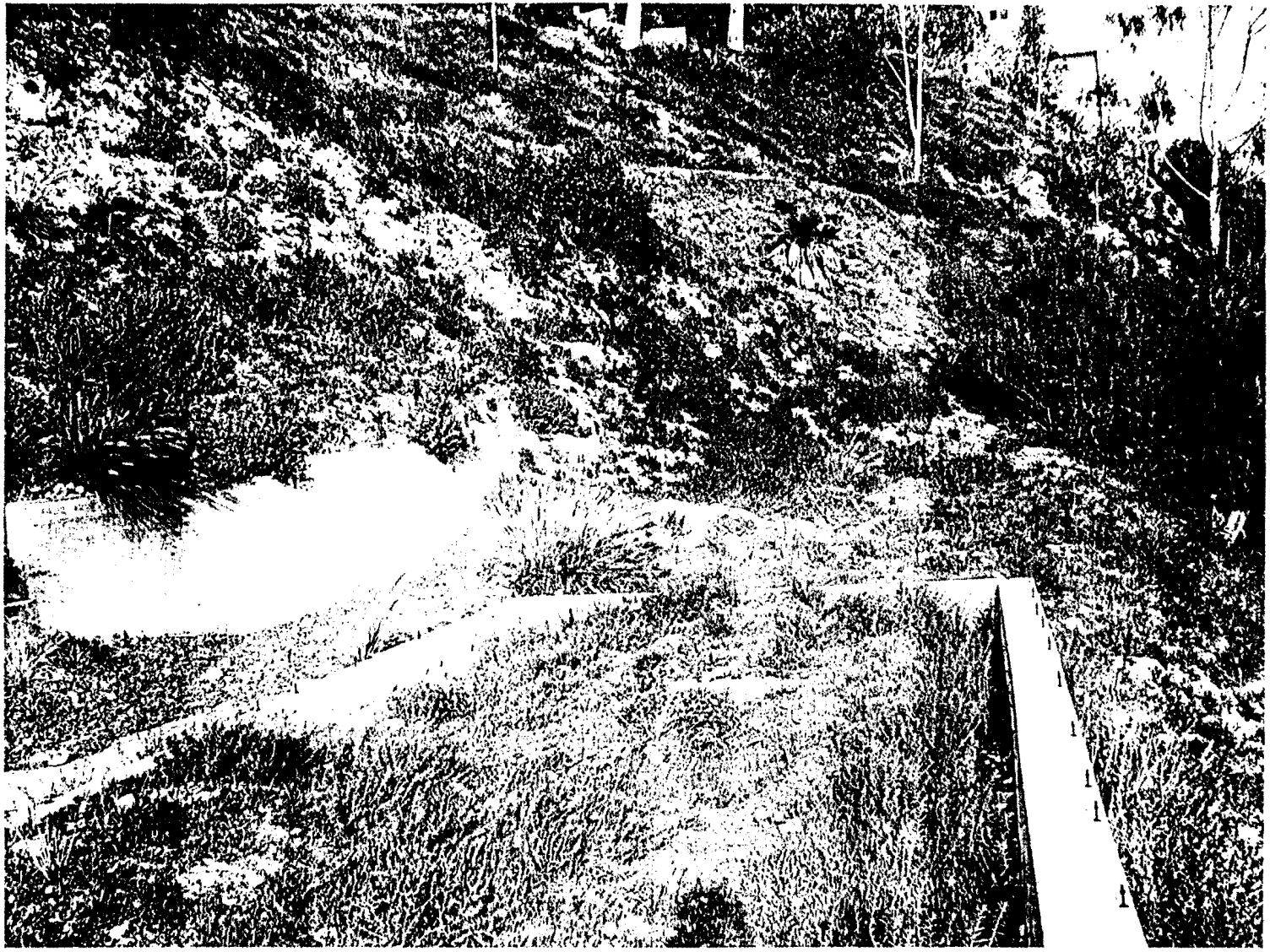

Photo 2: East end of proposed building site. Swimming pool is proposed beyond existing foundations. View is to the east.

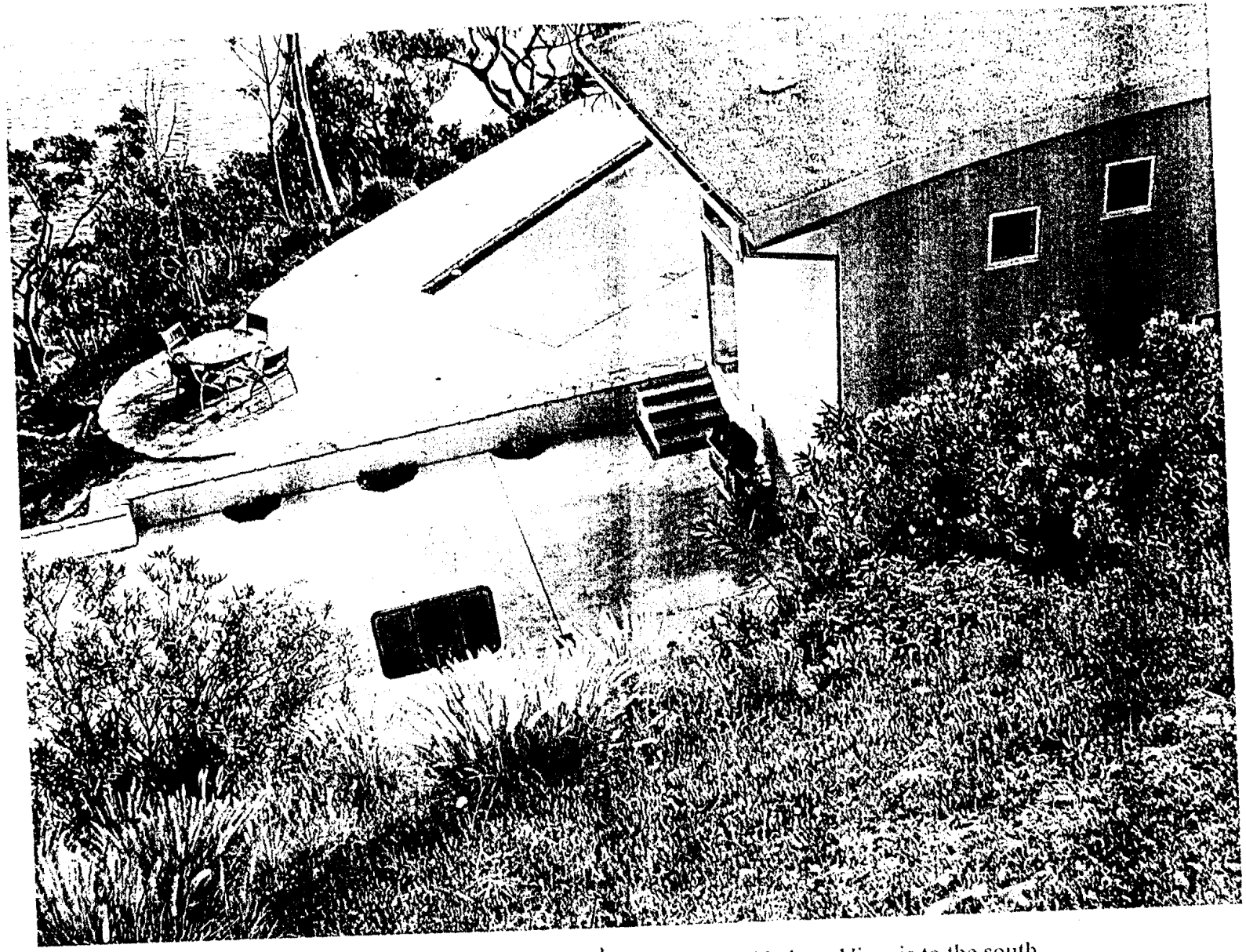

Photo 3: Slope below proposed residence, with 20790 Rockpoint Road below. View is to the south.

Photo 4: Rockpoint Road (right) and existing driveway. Canyon slope is to the right of photo. 20790 Rockpoint Way is in background. View is to the south.

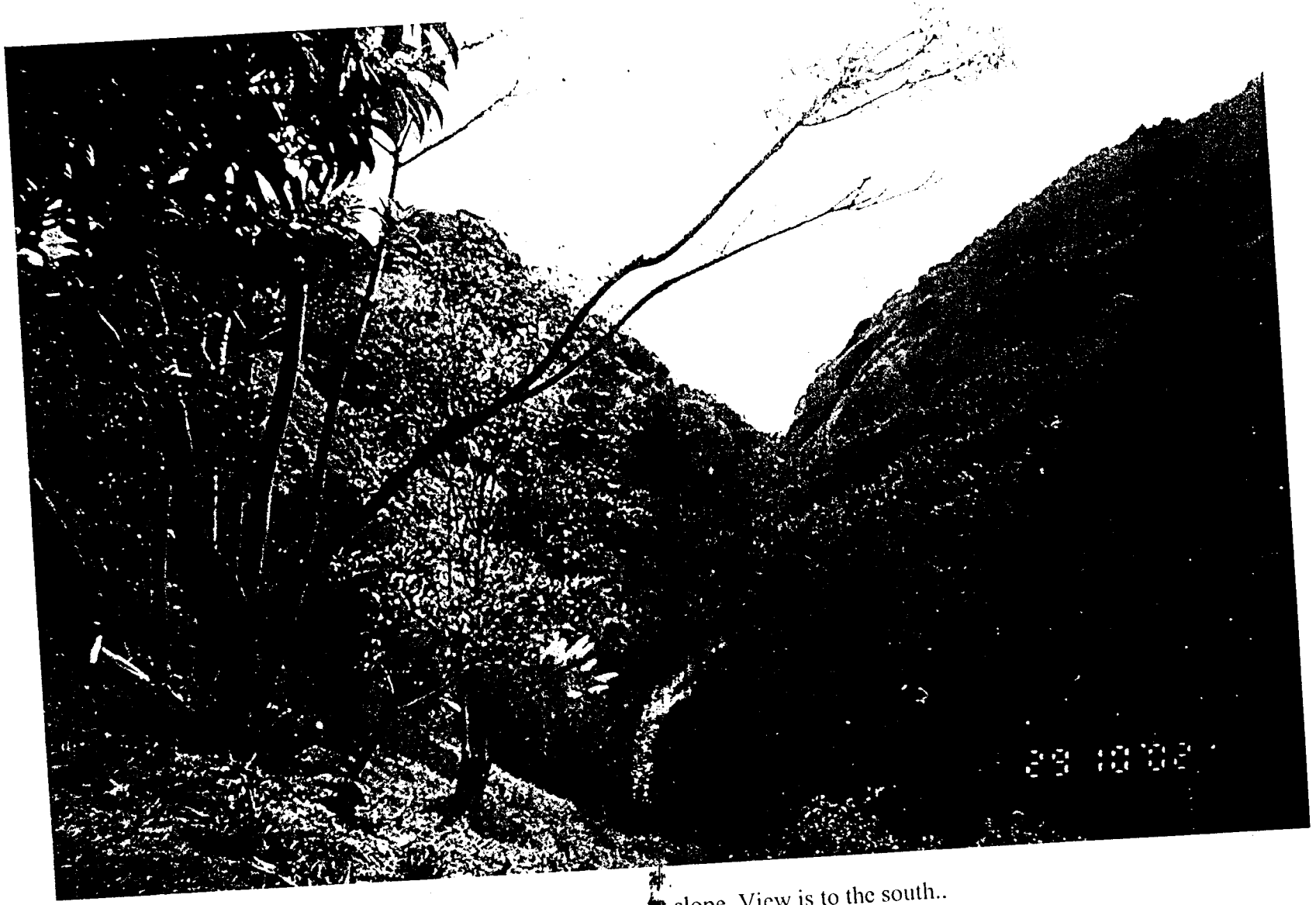

Photo 5: Canyon west of subject site. Note clearance on east slope. View is to the south..