

Item W 6a

CALIFORNIA COASTAL COMMISSION

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

Appeal Filed: 6/28/05
49th Day: waived
Staff: LF-V
Staff Report: 11/03/05
Hearing Date: 11/16/05



STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE AND DE NOVO COASTAL DEVELOPMENT PERMIT

LOCAL GOVERNMENT: City of Malibu
LOCAL DECISION: Approval with Conditions
APPEAL NO.: A-4-MAL-05-075
APPLICANT: Michael and Lisa Kamen
APPELLANTS: Commissioners Caldwell and Kruer
PROJECT LOCATION: 31634 Sea Level Drive, Malibu, Los Angeles County
PROJECT DESCRIPTION: Construction of a two-story, 3,035 sq.ft. single family residence with loft, 478 sq. ft. garage, decks, bulkhead, driveway, patios, and on-site wastewater system.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the public access and recreation policies of the certified Local Coastal Program (LCP). Staff further recommends that the Commission, at the **de novo** public hearing, **approve** the proposed project with **twelve (12) special conditions** regarding geologic and engineering recommendations; erosion control, drainage, and polluted runoff control plans, on-site wastewater treatment system, construction responsibilities and debris removal, lighting restrictions, sign restriction, structural appearance, offer to dedicate lateral public access easement, shoreline protective structures, assumption of risk, and deed restriction. The standard of review for the de novo review of the project is whether the proposed development is in conformity with the certified City of Malibu Local Coastal Program and the public access policies of the Coastal Act. During the De Novo hearing, testimony may be taken from all interested persons. Motions and resolutions can be found on **Page 2**.

**STAFF RECOMMENDATIONS FOR SUBSTANTIAL ISSUE AND DE
NOVO PERMIT**

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-MAL-05-075 raises **NO** substantial issue with respect to the grounds on which the appeals have been filed under §30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-MAL-05-075 presents a substantial issue with respect to the grounds on which the appeals have been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

B. MOTION AND RESOLUTION FOR DE NOVO PERMIT

MOTION: *I move that the Commission approve Coastal Development Permit No. A-4-MAL-05-075 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 on the ground that the development is located between the sea and the first public road nearest the shoreline and will conform with the policies of the certified Local Coastal Program for the City of Malibu and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act since feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

LIST OF EXHIBITS:

1. Appeal Form
2. City of Malibu Planning Commission Resolution No. 05-21
3. Letter from California State Lands Commission, October 28, 2004
4. Site Vicinity Map
5. Site Survey
6. Site Plan
7. Drainage/Grading Plan
8. First and Second Floor Plans
9. Loft and Foundation Plans
10. East and West Elevations
11. South and North Elevations
12. Building Section
13. Aerial View of Site
14. Aerial Close-up of Site
15. Map of Nearby Public Access Areas

SUBSTANTIVE FILE DOCUMENTS:

1. Staff Report for City of Malibu Coastal Development Permit No. 04-057
2. City of Malibu Planning Commission Resolution No. 05-21
3. "Wave Uprush Study," prepared by Pacific Engineering Group, dated April 30, 2001
4. "Coastal Engineering Review Response," prepared by Pacific Engineering Group, dated February 18, 2004
5. "Wave Uprush Study Addendum #1," prepared by Pacific Engineering Group, dated February 14, 2005
6. "Preliminary Geotechnical Engineering Report," prepared by Earth Systems Southern California (ESSC), dated September 10, 2003
7. "Addendum No. 1, Geotechnical Engineering Report," prepared by Earth Systems Southern California (ESSC), dated October 30, 2003

I. STANDARD CONDITIONS FOR DE NOVO PERMIT

1. **Notice of Receipt and Acknowledgment.** These permits are not valid and development shall not commence until copies of the permits, signed by the permittee or authorized agent, acknowledging receipt of the permits and acceptance of the terms and conditions, are returned to the Commission office.
2. **Expiration.** If development has not commenced, the permits will expire two years from the date on which the Commission voted on the de novo appeal of the permits. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application(s) for extension of the permit(s) must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permits may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permits.
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 permittee to bind all future owners and possessors of the subject properties to the terms and conditions.

II. SPECIAL CONDITIONS FOR DE NOVO PERMIT

1. **Plans Conforming to Geologic and Engineering Recommendations**

By acceptance of this permit, the applicants agree to comply with the recommendations contained in the submitted geologic and engineering reports ("Wave Uprush Study," prepared by Pacific Engineering Group, dated April 30, 2001; "Coastal Engineering Review Response," prepared by Pacific Engineering Group, dated February 18, 2004; "Wave Uprush Study Addendum #1," prepared by Pacific Engineering Group, dated February 14, 2005; "Preliminary Geotechnical Engineering Report," prepared by Earth Systems Southern California (ESSC), dated September 10, 2003; " Addendum No. 1, Geotechnical Engineering Report," prepared by Earth Systems Southern California (ESSC), dated October 30, 2003) shall be incorporated into all final design and construction, including recommendations concerning excavations, foundations, construction, retaining walls, and sewage disposal, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. Erosion Control, Drainage and Polluted Runoff Control Plans

Prior to the Issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director; a) a **Local Storm Water Pollution Prevention (SWPPP) Plan** to control erosion and contain polluted runoff during the construction phase of the project; and b) a **Storm Water Management Plan (SWMP)** for the management 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) **Storm Water Management Plan**, for the management of post construction storm water and polluted runoff shall at a minimum include the following:

- Site design and source control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development, including, but not limited to:
 - Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the 100 year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the Caltrans "Hydraulic Design and Procedures Manual"). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for 2-year, 10-year and 100-year flow rates, and the required storage volume of the basin/facility is to be based upon 1-inch of rainfall over the proposed impervious surfaces plus 1/2-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street &

- gutter, shall be sized to cumulatively convey a 100 year clear flow storm event to the detention facility, or;
- o Demonstrating by submission of hydrology/hydraulic report by a California Registered Civil Engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;
 - o Constructing necessary off-site storm drain improvements to satisfy b. above, or;
 - o Other measures accomplishing the goal of mitigating all offsite/downstream impacts

3. Spa Drainage and Maintenance

By acceptance of this permit, the applicants agree to install a no chlorine purification system and agree to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or offshore environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, beach, or other location where it could enter receiving waters.

4. On-Site Wastewater Treatment System

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 OSTs contained in policies 18.4 and 18.9 of the Malibu LIP.

5. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt shall occur on the beach; b) that all grading and excavation shall be properly covered and sand bags and/or ditches shall be used to prevent runoff and siltation; c) that measures to control erosion must be implemented at the end of each day's work; d) no machinery shall be allowed in the intertidal zone at any time; e) all construction debris shall be removed from the beach daily and at the completion of construction.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all debris/excavated material from the site. Should the disposal be located in the Coastal Zone, a Coastal Development Permit shall be required.

6. Lighting Restriction

By acceptance of this permit, the applicant acknowledges and agrees that the only exterior, night lighting that is allowed on the site is 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 are directed downward, and use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Executive Director.
- 2) Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.
- 3) The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

No light source will be directly visible from public viewing areas such as the beach and ocean area and no lighting around the perimeter of the site, the beach area, or for aesthetic purposes shall be allowed.

7. Sign Restriction

By acceptance of this permit, the applicants acknowledge and agree that no signs shall be posted on the project site unless authorized by a coastal development permit or an amendment to this coastal development permit. No signs that restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands and private property shall be permitted.

8. Structural Appearance

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. A-4-MAL-05-075. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. A-4-MAL-05-075 if such changes are specifically authorized by the Executive Director as complying with this special condition.

9. Offer to Dedicate Lateral Public Access Easement

In order to implement the applicants' proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the coastal development permit:

The landowners shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property (Assessor's Parcel No. 4470-001-005) from the ambulatory mean high tide line landward to the dripline of the proposed decks, as illustrated on the site plan prepared by David Lawrence Gray, received in the Commission office on September 19, 2005.

The document shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances that may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable. The recording document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of both the applicants' entire parcel and the easement area. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

10. Shoreline Protective Structure

By acceptance of this permit, the applicants acknowledge and agree to the following:

- A. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective structure approved pursuant to Coastal Development Permit No. A-4-MAL-05-075 shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. The

applicants expressly waive any rights to such activity that may exist under Public Resources Code Section 30235.

- B. The intended purpose of the shoreline protective device is solely to protect the onsite wastewater treatment system approved pursuant to Coastal Development Permit No. A-4-MAL-05-075, and any future development on the project site landward of the shoreline protection structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure. If off-site wastewater treatment is provided to this property in the future, the owner shall remove the shoreline protective device. The owner shall submit a plan for removal of the shoreline protective device for the review and approval of the Executive Director within 60 days of the installation of offsite wastewater treatment.

11. Assumption of Risk/Shoreline Protection

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
- (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
 - (2) The applicant acknowledges and agrees 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.
 - (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
 - (4) The applicant agrees 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.

12. 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 against the parcel(s) governed by this permit 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; and (2) imposing the 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 entire parcel or parcels governed by this permit. 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.

III. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION

The project site is a beachfront parcel on Lechuza Beach (Exhibits 4, 13, 14). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends to 300 feet from the beach, which extends inland of Pacific Coast Highway. The proposed project site is within this appeal area. As such, the City's coastal development permit for the subject project is appealable to the Commission.

B. APPEAL PROCEDURES

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

1. Appeal Areas

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

2. Grounds for Appeal

The grounds for appeal for development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[a][4])

3. Substantial Issue Determination

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

4. De Novo Permit Hearing

If a substantial issue is found to exist, the Commission will consider the application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

In this case, if the Commission finds substantial issue, the Commission may proceed to the de novo hearing on the merits of the project. The staff recommendation on de novo review of the project is on Page 2 of this report.

C. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On June 20, 2005, the City of Malibu Planning Commission approved Coastal Development Permit 04-019 and Variance 99-020 for the single family residence project. The Notice of Final Action for the project was received by Commission staff on July 5, 2005. A ten working day appeal period was set and notice provided beginning July 6, 2005, and extending to July 19, 2005.

An appeal of the County's action was filed by Commissioners Caldwell and Krueer on July 19, 2005, during the appeal period. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeals and requested that the City provide its administrative record for the permit. The administrative record was received on July 25, 2005.

D. PROJECT DESCRIPTION AND BACKGROUND

The City approved Coastal Development Permit 04-057 for the construction of two-story, 3,035 sq.ft. single family residence with loft, 478 sq. ft. garage, decks, bulkhead, driveway, patios, and on-site wastewater system on an approximately 0.15-acre beachfront parcel on Lechuza Beach (Exhibits 5 – 12).

The Coastal Development Permit was approved subject to 14 standard conditions and 18 special conditions (Exhibit 2). The special conditions include the following: landscaping, color restriction, lighting, geology, water quality (storm runoff), shoreline protection, and solid waste recycling. No previous Coastal Development Permits have been issued for the subject property.

E. APPELLANTS' CONTENTIONS

The City's action was appealed by Commissioners Caldwell and Krueer. This appeal is attached as Exhibit 1. The appeal contends that the approved project is not consistent with the policies of the certified LCP with regard to several of the public access, shoreline development, and water quality policies of the certified City of Malibu Local Coastal Program (LCP) and applicable policies of the Coastal Act as incorporated by reference into the certified LCP. The Commissioners' appeal alleges that the project is not consistent with Public Access Policy 2.64 of the Malibu LUP because an offer to dedicate lateral public access along the beach was not required. Additionally, the appeal contends that the proposed project extends beyond the structural stringline established for beachfront development by Policy 4.30 of the LUP and Section 3.6 of the LIP. Finally, the appeal contends that the approved project does not include special conditions ensuring that the on-site wastewater treatment system will be maintained, operated, and monitored in a manner consistent with the protection of water quality and marine resources, as required by Section 18.9 of the Malibu LIP.

F. ANALYSIS OF SUBSTANTIAL ISSUE

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

public access policies of the Coastal Act would be addressed in the de novo review of the project.

A substantial issue does exist with respect to the grounds on which the appeal has been filed. The approved project is inconsistent with policies of the City of Malibu Local Coastal Program for the specific reasons discussed below.

1. Public Access and Recreation

The appellants contend that the project is inconsistent with public access and recreation policies of the City of Malibu Local Coastal Program. The public possesses ownership interests in tidelands or those lands below the mean high tide line. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The protection of these public areas and the assurance of access to them lies at the heart of Coastal Act policies (which are incorporated by reference into the Malibu LCP) requiring both the implementation of a public access program and the minimization of impacts to access and the provision of access, where applicable, through the regulation of development.

The City of Malibu LUP contains several policies to insure the protection and provision of public access in new development along with the consideration of public safety needs, private property rights, and the protection of natural resources, where applicable. Several policies provide specifically for the requirement of an offer to dedicate a lateral or vertical public access easement as a special condition in new development projects where a nexus is demonstrated between the proposed development and its impact on public access. The appellants contend that the proposed development does not conform to LUP Policy 2.64. In addition, Policy 2.63 of the LUP is relevant to the discussion of Policy 2.64. Policy 2.63 and 2.64 state as follows:

2.63 *Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.*

2.64 *An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. Such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff.*

The approved project does not mitigate, through the provision of a lateral access offer to dedicate or other means, for project impacts to public access as required by Policies

2.63 and 2.64 of the Malibu LUP, as well as Chapter 12 of the Malibu LIP, which contains regulations that implement those policies. The approved project includes construction of a vertical bulkhead to protect the approved on-site wastewater system, which is located within the estimated wave uprush zone for the project site. Although it is not noted in the City's staff report, the wave uprush zone in the area of the project site is estimated to extend 32 feet landward of the Sea Level Drive right-of-way line along the entire parcel. The applicants have proposed the construction of a vertical bulkhead in order to protect the proposed on-site wastewater system from wave uprush. While the proposed bulkhead would be located beneath the residence, approximately 22 feet seaward of Sea Level Drive, it will be acted upon by waves periodically. Given the narrow width of Lechuza Beach, particularly coupled with projected sea level rise, it is likely that the proposed bulkhead will affect the beach profile (through accelerated erosion and scouring, increased steepness and/or inland migration of the MHTL) and thereby adversely impact the public's ability to gain access to and use state tidelands. (Adverse impacts of seawalls, bulkheads and other shoreline protection devices is discussed in more detail in the de novo review section of this report, and that discussion is incorporated herein). Therefore, in order to mitigate impacts to public access to and use of tidelands, it was appropriate in this case to require a lateral access easement inland of the MHTL to be provided across the project site, consistent with Policies 2.63 and 2.64 of the Malibu LUP, and Chapter 12 of the Malibu LIP.

The City of Malibu did not require the recordation of a lateral access offer to dedicate as a condition of approval of the coastal development permit. The staff report noted that: "Conditioning the project to provide a lateral public access would not provide additional access to coastal resources because adequate public access is located nearby," including on neighboring parcels and at El Matador State Beach approximately 3,000 feet west of the project site. The staff report concludes that "the public, through another reasonable means, can reach the same area of public tidelands as would be made accessible by an access way on the subject land."

The State of California owns tidelands, which, in areas where the shoreline has not been affected by fill or artificial accretion, are those lands located seaward of the mean high tide line as it exists from time to time. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply. The free

movement of sand on the beach is an integral part of this process, which is why the effects of structures constructed on the beach are of particular concern.

As noted above, the boundary between public tidelands and private property moves across the face of the beach as the beach changes in depth on a daily basis. In the absence of a lateral public access easement, the use of public tidelands is constrained by the difficulty in determining the boundary between public and private lands. The public must therefore guess the extent public tidelands, often conservatively following the line of wet sand to avoid perceived trespass. The adverse impacts on public access are compounded by illegal attempts to limit public access, through signs, security patrols, and other means, that have occurred on beachfront private properties in the Malibu area. Thus, the dedication of lateral public access easements allows access to areas of public tidelands that otherwise may be perceived as private lands, and ensures that public rights to walk on the wet or dry sandy beach below the mean high tide line, both now and in the future, are protected.

In summary, the Commission finds that this contention does raise substantial issue with respect to the allegations that the project, as approved by the City, is not consistent with the access policies of the LCP.

2. Shoreline Development / Stringline Policy.

The City of Malibu LUP contains several policies concerning shoreline development. LUP Policy 4.30 establishes a seaward limit for new development on beachfront infill lots such as the subject site. Policy 4.30 requires that new residential structures be located landward of a stringline drawn between the nearest adjacent corners of the nearest existing residential structures on either side of the subject lot. This requirement is reiterated in Section 3.6 of the LIP, which provides residential development standards. LUP Policy 4.30 states as follows:

- 4.30 *In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.*

Although not discussed in the staff report, the project plans show that the roof of the approved residence extends approximately 15 feet seaward of the structural stringline, inconsistent with LUP Policy 4.30 and Section 3.6 of the LIP. Thus the Commission finds that this contention does raise substantial issue with respect to the allegation that

the project, as approved by the City, is not consistent with the visual resource policies of the LCP.

3. Water Quality

Finally, the appeal contends that the approved project does not include special conditions ensuring that the on-site wastewater treatment system will be maintained, operated, and monitored in a manner necessary to insure they are functioning properly and will protect water quality and marine resources, as required by Section 18.9 of the Malibu LIP. This LIP provision requires that permit conditions be imposed to ensure that all new, expanded, or modified on-site treatment systems are maintained, operated and monitored in accordance with several requirements to ensure that the system operates properly and does not contribute to water pollution. No such special condition was imposed on the subject coastal development permit. The Commission finds that this contention does raise substantial issue with respect to the grounds that the project, as approved by the City, is not consistent with the Section 18.9 of the Malibu LIP.

Therefore, for the above reasons, the Commission finds that a substantial issue is raised with respect to the appellants' contentions that the project does not meet provisions of the certified Local Coastal Program.

G. CONCLUSIONS REGARDING SUBSTANTIAL ISSUE ANALYSIS

The purpose of the substantial issue determination is to review the administrative record and establish whether a substantial question is raised with respect to the appellants' assertions that the project does not conform to the certified LCP and public access policies of the Coastal Act. As described above, the Commission finds that the appellants' contentions do raise substantial issue with regard to the consistency of the approved project with the public access, shoreline development, and water quality standards of the adopted City of Malibu Local Coastal Program.

IV. DE NOVO PERMIT FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Standard of Review

The action currently before the Commission is the de novo review of a proposed project within the jurisdiction of the certified City of Malibu Local Coastal Program (LCP). The Commission's standard of review for the proposed development is the certified City of Malibu Local Coastal Program and the public access policies of the Coastal Act.

B. Incorporation of Substantial Issue Findings

The findings and declarations on substantial issue are hereby incorporated by reference.

C. Project Description and Background

The City approved Coastal Development Permit 04-057 for the construction of two-story, 3,035 sq.ft. single family residence with loft, 478 sq. ft. garage, decks, bulkhead, driveway, patios, and on-site wastewater system on an approximately 0.15-acre beachfront parcel on Lechuza Beach (Exhibits 5 – 12).

The Coastal Development Permit was approved subject to 14 standard conditions and 18 special conditions (Exhibit 2). The special conditions include the following: landscaping, color restriction, lighting, geology, water quality (storm runoff), shoreline protection, and solid waste recycling. No previous Coastal Development Permits have been issued for the subject property.

D. Shoreline Protective Devices

The proposed project includes the construction of a 30 foot long, 23 foot high, concrete bulkhead with two 23 foot long return walls. The proposed bulkhead will be located 23 feet seaward of the Sea Level Drive right-of-way/property line. The proposed bulkhead will be located entirely beneath the proposed structure (approximately 81 feet landward of the proposed deck dripline).

Past Commission review of shoreline residential projects in Malibu has shown that such development results in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to minimize such adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public), interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas, overcrowding or congestion of such tideland or beach areas, and visual or psychological interference with the public's access to and the ability to use public tideland areas. In order to accurately determine what adverse effects to coastal processes will result from the proposed project, it is necessary to analyze the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

As described in the discussion below, there is evidence that the proposed development along this section of Lechuza Beach will require a shoreline protective device and that such development has the potential to adversely impact natural shoreline processes. Therefore, it is necessary to review the proposed project for its consistency with Sections 30235, 30250(a), and 30253 of the Coastal Act and with past Commission action.

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states:

New development shall:

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

Section 30250(a) of the Coastal Act states, in part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

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

- 4.30 In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.**
- 4.31 "Infill Development" shall apply to a situation where construction of a single-family dwelling and/or a duplex in limited situations on a vacant lot or the demolition of an existing residential dwelling and construction of a new dwelling is proposed in an existing, geographically definable residential community which is largely developed or built out with similar structures. When applied to beachfront development this situation consists of an existing linear community of beach fronting residences where the vast majority of lots are developed with residential dwellings and relatively few**

vacant lots exist. Infill development can occur only in instances where roads and other services are already existing and available within the developed community or stretch of beach. Infill development shall not apply to the construction of a shoreline protection device.

- 4.33 All new beachfront and blufftop development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development.**
- 4.35 All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.**
- 4.36 New development on or along the shoreline or a coastal bluff shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.**
- 4.37 Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the LCP provided that the CDP did not contain a waiver of the right to a future shoreline or bluff protection structure and only when it can be demonstrated that said existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.**
- 4.39 All shoreline protection structures shall be sited as far landward as feasible regardless of the location of protective devices on adjacent lots. In no circumstance shall a shoreline protection structure be permitted to be located further seaward than a stringline drawn between the nearest adjacent corners of protection structures on adjacent lots. A stringline shall be utilized only when such development is found to be infill and when it is demonstrated that locating the shoreline protection structure further landward is not feasible.**
- 4.42 As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner 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.**
- 4.43 As a condition of approval of new development on a vacant beachfront or blufftop lot, or where demolition and rebuilding is proposed, where geologic or engineering**

evaluations conclude that the development can be sited and designed to not require a shoreline protection structure as part of the proposed development or at any time during the life of the development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235.

To accurately determine what adverse effects to coastal processes may result from the proposed project, it is necessary to analyze the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

1. Site Shoreline Characteristics

The proposed project site is located on Lechuza Beach in the City of Malibu, Los Angeles County. Lechuza Beach is characterized as a relatively narrow beach that has been developed with several single family residences to the east and west of the subject site. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers, dated April 1994, indicates that storm flooding and damages to low-lying structures west of Lechuza Point can be expected to occur. The "Wave Uprush Study," prepared by Pacific Engineering Group, dated April 30, 2001, states that the subject beach is an oscillating (equilibrium) beach that experiences seasonal erosion and recovery. The study also indicates that the width of the relatively narrow and sediment limited beach on the subject site changes seasonally and that this beach experiences a seasonal foreshore slope movement (oscillation) of as much as 80 feet.

2. Location of the Proposed Shoreline Protective Device in Relation to the Mean High Tide Line and Wave Action

The Commission notes that many studies performed on both equilibrium and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists. In order to determine the impacts of the proposed bulkhead on the shoreline, the location of the proposed protective device in relationship to the expected wave runup, as calculated by the location of the mean high tide line, must be analyzed.

a. Mean High Tide Line

The "Wave Uprush Study," prepared by Pacific Engineering Group, dated April 30, 2001, indicates that the most landward known measurement of the ambulatory mean high tide line on the project site is approximately 161 feet seaward of the Sea Level Drive right-of-way line, recorded in 1951. The seaward most extension of the proposed development (the dripline of the proposed decks) will be located approximately 102 feet seaward of the Sea Level Drive right-of-way line (approximately 59 feet landward of the 1951 mean high tide line). Based on the submitted information, the Commission notes that the proposed development will be located more than fifty feet landward of the most

landward recorded (1951) mean high tide line and should not extend onto public tidelands under normal conditions.

b. Wave Uprush

Although the proposed structure will be located landward of the 1951 mean high tide line, the "Wave Uprush Study," prepared by Pacific Engineering Group, dated April 30, 2001, indicates that the maximum wave uprush at the subject site will occur 32 feet landward of the Sea Level Drive right-of-way line (landward of the proposed residence). The applicants' coastal engineering consultant has indicated that although the proposed residence will be constructed seaward of the maximum wave uprush limit, the residence will be supported by a concrete friction pile and grade beam foundation system bearing into competent bedrock and will not require any form of shoreline protection to ensure structural stability. In addition, the proposed project includes the installation of a new alternative onsite wastewater treatment system. The Commission notes that the proposed on-site wastewater system is located as far landward as feasible. However, the seaward extent of the wastewater treatment system (with leachfield) (located approximately 23 feet seaward of the Sea Level Drive right-of-way line) will still be within the wave uprush limit and will require a shoreline protection device to ensure the stability of the system. The Commission notes that no portion of the subject site will be located landward of the maximum wave uprush limit and that, therefore, it is not possible to construct any type of wastewater treatment system that would not be subject to periodic wave action without the construction of some form of shoreline protection. Therefore, the Commission notes that the proposed bulkhead and two return walls are necessary to protect the proposed wastewater treatment system from wave uprush and erosion.

Based on the above discussion, the Commission finds that the proposed bulkhead is required to protect the wastewater treatment system that will service the proposed residential development. The Commission further finds that the proposed concrete bulkhead and return walls, which will be located as far landward as feasible, will be subject to wave action during storm and high tide events. Therefore, the following discussion is intended to evaluate the impacts of the proposed timber bulkhead and return walls on the beach, based on the above information which identified the specific structural design, location of the structure, and shoreline geomorphology.

3. Effects of the Shoreline Protective Device on the Beach

It is important to accurately calculate the potential of wave runup and wave energy to which the shoreline protection device will be subjected. Dr. Douglas Inman, renowned authority on Southern California beaches finds that "the likely detrimental effect of the seawall on the beach can usually be determined in advance by competent analysis." Dr. Inman further explains the importance of a seawall's design and location as it relates to predicting the degree of erosion that will be caused by the shoreline protection device. He states:

While natural sand beaches respond to wave forces by changing their configuration into a form that dissipates the energy of the waves forming them, seawalls are rigid and fixed, and at best can only be designed for a single wave condition. Thus, seawalls introduce a disequilibrium that usually results in the reflection of wave energy and increased erosion seaward of the wall. The degree of erosion caused by the seawall is mostly a function of its reflectivity, which depends upon its design and location.¹

In past permit actions, the Commission has found that one of the most critical factors controlling the impact of a shoreline protection device on the beach is its position on the beach profile relative to the surf zone. Generally, the further seaward that a shoreline protective device is located, the more frequently and more vigorously waves will interact with it. If a shoreline protective device is in fact necessary, the best location for it is at the back of the beach, where it may provide protection from the most severe storms. In contrast, a shoreline protective device constructed too close to the mean high tide line may constantly create problems related to frontal and end scour erosion, as well as upcoast sand impoundment.

Although the precise impacts of a structure located on the beach are a continual subject of debate within the discipline of coastal engineering, particularly between coastal engineers and marine geologists, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile, whether it is a vertical bulkhead or a rock revetment seawall. The main difference between a vertical bulkhead and rock revetment seawall is their relative physical encroachment onto the beach. It has been well documented by coastal engineers and coastal geologists that shoreline protective devices and structures, in the form of either a rock revetment or vertical bulkhead, will adversely impact the shoreline as a result of beach scour, end scour (the beach areas at the end of the seawall), retention of potential beach material behind the wall, fixing of the back beach, and interruption of alongshore processes. In the case of a vertical bulkhead, return walls are typically constructed in concert with the seawall, and, thus, wave energy is also directed to the return walls causing end erosion effects. In order to evaluate these potential impacts relative to the proposed structure and its location on Lechuza Beach, each of the identified effects will be evaluated below.

a. Beach Scour

Scour is the removal of beach material from the base of a cliff, seawall, or revetment due to wave action. The scouring of beaches as a result of seawalls is a frequently observed occurrence. When waves impact a hard surface such as a coastal bluff, rock revetment, or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. In the case of a vertical bulkhead, return walls are typically constructed in concert with the seawall, and, thus, wave energy is also directed to the return walls causing end erosion effects. This reflected wave energy in conjunction with incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure.

¹ Letter from Dr. Douglas Inman to California Coastal Commission staff member and senior engineer, Lesley Ewing, February 25, 1991.

This phenomenon has been recognized for many years and the literature on the subject acknowledges that seawalls affect the supply of beach sand.

The "Addendum Wave Uprush Study," prepared by Pacific Engineering Group, dated November 15, 2000, indicates that the proposed bulkhead and return walls will be located seaward of the maximum wave uprush limit and will, therefore, periodically be subject to wave action. In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering: "Seawalls usually cause accelerated erosion of the beaches fronting them and an increase in the transport rate of sand along them."² In addition, experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement regarding the adverse effects of shoreline protective devices:

These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.³

The above statement, which was made in 1981 and signed by 94 respected coastal geologists, indicates that sandy beach areas available for public use can be harmed through the introduction of seawalls. Thus, in evaluating an individual project, the Commission assumes that the principles reflected in that statement are applicable. To do otherwise would be inconsistent with the Commission's responsibilities under the Coastal Act to protect the public's interest in shoreline resources and to protect the public's access along the ocean and to the water.

The impact of seawalls as they relate to sand removal on the sandy beaches is further documented by the State of California, Department of Boating and Waterways, which stated:

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall, rapidly remove sand from the beach.⁴

Finally, this observation was underscored more recently in 1987 by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions:"

² "Saving the American Beach: A Position Paper by Concerned Coastal Geologists," Skidaway Institute of Oceanography, March 1981, page 4.

³ "Saving the American Beach: A Position Paper by Concerned Coastal Geologists," Skidaway Institute of Oceanography, March 1981, page 4.

⁴ "Shore Protection in California," State Department of Boating and Waterways (formerly Navigation and Ocean Development), 1976, page 30.

Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring . . . Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.⁵

Dr. Craig Everts found that on narrow beaches where the shoreline is not armored, the most important element of sustaining the beach width over a long period of time is the retreat of the back beach and of the beach itself. He concludes:

Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide enough sacrificial sand during storms to provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms.⁶

Dr. Everts further asserts that armoring in the form of a shoreline protection device interrupts the natural process of beach retreat during a storm event and that, "a beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat."

The Commission has observed this phenomenon up and down the California coast, where a shoreline protection devices have successfully halted the retreat of the shoreline, at the cost of usurping the beach. For example, at La Conchita Beach in Ventura County, placement of a rock revetment to protect an existing roadway has caused narrowing of the existing beach. Likewise, at beaches in the City of Encinitas in San Diego County, construction of vertical seawalls along the base of the bluffs to protect existing residential development at the top of the bluffs, has resulted in preventing the bluffs' contribution of sand to the beaches, resulting in a narrowing of those beaches.

As set forth previously, the subject site is located on Lechuza Beach, which is a narrow and oscillating beach. The applicants' coastal engineering consultant has indicated that the proposed bulkhead and return walls will be acted upon by waves during storm conditions. The applicants' consultant has also indicated that seasonal foreshore slope movement can be as much as 80 feet. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a bulkhead and return walls on the subject site, then the subject beach would also accrete at a slower rate. The Commission notes that many studies performed on both oscillating and eroding beaches have concluded that a loss of beach occurs on both types of beaches where a shoreline protective device exists. Therefore, the Commission notes that the proposed bulkhead and return walls, over time, will result in potential adverse effects to the beach

⁵ "Coastal Sediment Processes: Toward Engineering Solutions," Robert G. Dean, 1987.

⁶ Letter Report from Dr. Craig Everts, Moffatt and Nichol Engineers, to California Coastal Commission staff member and senior engineer, Lesley Ewing, March 14, 1994.

sand supply, resulting in increased seasonal erosion of the beach, and longer recovery periods.

In addition, the impacts of potential beach scour are important relative to beach use for two primary reasons. Public access is one major concern. The subject property is located approximately 800 feet west (downcoast) from a vertical public coastal accessway (Exhibit 15). If the beach scours at the base of the bulkhead, even minimal scouring in front of the 30 foot long bulkhead and two 23 foot long return walls will translate into a loss of beach sand available through erosion than would otherwise occur under a normal winter season if the beach were unaltered. The second impact relates to the potential turbulent ocean condition that may be created. Scour at the face of a seawall will result in greater interaction with the wall and, thus, make the ocean along Lechuza Beach more turbulent than it would be normally be along an unarmored beach area. Thus, Policy 4.39 of the Malibu LUP requires new shoreline protection devices to be located as far landward as possible in order to reduce adverse effects from scour and erosion. In the case of this project, the Commission notes that the proposed bulkhead and return walls will be located as far landward as feasible in order to provide protection for the proposed on-site wastewater system, which has also been located as far landward as feasible, in order to minimize adverse effects from scour and erosion.

As discussed above, the Commission notes that the new bulkhead and new alternative onsite wastewater treatment system will be located as far landward as possible. However, the Commission further notes that the purpose of the shoreline protective device authorized by this permit is solely to protect the wastewater treatment system on site and that no shoreline protective device is required to protect the residence authorized by this permit. If the on-site wastewater system approved under this permit were replaced or abandoned, however, then the bulkhead and return walls approved under this permit to protect the on-site wastewater system no longer are necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal. Additionally, any future improvements to the proposed seawall that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access.

Therefore, to ensure that the proposed project does not result in new future adverse effects on shoreline sand supply and public access and that future impacts are reduced or eliminated, **Special Condition Ten (10)** requires the applicants, by accepting this permit, to acknowledge that if the proposed wastewater treatment system is replaced or abandoned for any reason (including the installation of a sewer system along Sea Level Drive), then the shoreline protective device authorized by this permit shall be removed. Likewise, **Special Condition Ten (10)** prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device. **Special Condition Twelve (12)** 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.

LUP Policy 2.64 requires that all new oceanfronting development that causes or contributes to adverse public access impacts must provide an Offer to Dedicate (OTD) an easement for lateral public access. In this case, the Commission notes that the applicants are proposing to dedicate a lateral public access easement that would provide for public access along the entire beach under all tidal conditions, as measured seaward from the deck dripline. The Commission notes that the lateral public access easement, which the applicants have offered to dedicate as part of this project, will be consistent with other lateral public access easements that have been recorded on properties along Lechuza Beach and in the Malibu area and will mitigate adverse impacts on shoreline processes and/or public access from the bulkhead.

As such, **Special Condition Nine (9)** has been required in order to ensure that the applicants' offer to dedicate a lateral public access easement is recorded on the deed prior to the issuance of the coastal development permit.

b. End Effects

End scour effects involve the changes to the beach profile adjacent to the shoreline protection device at either end. One of the more common end effects comes from the reflection of waves off of the shoreline protection device in such a way that they add to the wave energy which is impacting the unprotected coastal areas on either end. In addition, the Commission notes that the literature on coastal engineering repeatedly warns that unprotected properties adjacent to any shoreline protective device may experience increased erosion. Field observations have verified this concern. Although it is difficult to quantify the exact loss of material due to end effects, in a paper written by Gerald G. Kuhn of the Scripps Institute of Oceanography, it is concluded that erosion on properties adjacent to a rock seawall is intensified when wave runup is high.⁷

An extensive literature search on the interaction of seawalls and beaches was performed by Nicholas Kraus in which he found that seawalls will have effects on narrow beaches or beaches eroded by storm activity. His research indicated that the form of the erosional response to storms that occurs on beaches without seawalls which are adjacent to beaches with seawalls is manifested as more localized toe scour, with end effects of flanking and impoundment at the seawall.⁸ Dr. Kraus' key conclusions were that seawalls could be accountable for retention of sediment, increased local erosion and increased end erosion. Kraus states:

At the present time, three mechanisms can be firmly identified by which seawalls may contribute to erosion at the coast. The most obvious is retention of sediment behind the wall which would otherwise be released to the littoral system. The second mechanism, which could increase local erosion on downdrift beaches, is for the updrift side of the

7 "Coastal Erosion along Oceanside Littoral Cell, San Diego County, California," Gerald G. Kuhn, Scripps Institute of Oceanography, 1981.

8 "Effects of Seawalls on the Beach," Nicholas Kraus, Ph.D., Journal of Coastal Research, Special Issue #4, 1988.

wall to act as a groin and impound sand. This effect appears to be primarily theoretical rather than actualized in the field, as a wall would probably fail if isolated in the surf zone. The third mechanism is flanking i.e. increased local erosion at the ends of walls.

In addition, preliminary results of researchers investigating the length of shoreline affected by heightened erosion adjacent to seawalls concluded that:

Results to date indicate that erosion at the ends of seawalls increases as the structure length increases. It was observed in both the experimental results and the field data of Walton and Sensabaugh (1978) that the depth of excess erosion is approximately 10% of the seawall length. The laboratory data also revealed that the along-coast length of excess erosion at each end of the structure is approximately 70% of the structure length.⁹

A more comprehensive study was performed over several years by Gary Griggs, which concluded that beach profiles at the end of a seawall are further landward than natural profiles.¹⁰ This effect appears to extend for a distance of about six-tenths of the length of the seawall and represents both a spatial and temporal loss of beach width directly attributable to seawall construction. These end effects would be expected only when the bulkhead was exposed to wave attack. Under equilibrium or accreting beach conditions, this scour will likely eventually disappear during post-storm recovery. The Commission notes that end effect erosion may be minimized by locating a proposed shoreline protection device as far landward as possible in order to reduce the frequency that the seawall is subject to wave action. In the case of this project, the Commission notes that the proposed timber bulkhead and return walls will be located as far landward as feasible in order to minimize adverse effects to shoreline sand supply from end effects.

c. Retention of Potential Beach Material

A shoreline protective device's retention of potential beach material inherently impacts shoreline processes. One of the main functions of a bulkhead or revetment is upland stabilization, protecting upland sediments from being carried to the beach by wave action, and prevention of bluff retreat. In the case of Big Rock Beach, which is located in the Santa Monica Cell, the back of the beach is fixed at Pacific Coast Highway. One of the main sources of sediment for beaches are the bluffs themselves, as well as the material that has eroded from inland sources and is carried to the beach by coastal streams. The National Academy of Sciences found that retention of material behind a shoreline protective device may be linked to increased loss of material in front of that device. The net effect is documented in "Responding to Changes in Sea Level, Engineering Implications," which provides:

A common result of sea wall and bulkhead placement along the open coastline is the loss of the beach fronting the structure. This phenomenon, however, is not well

⁹ "Laboratory and Field Investigations of the Impact of Shoreline Stabilization Structures on Adjacent Properties," W. G. McDougal, M. A. Sturtevant, and P. D. Komar, Coastal Sediments, 1987.

¹⁰ "The Interaction of Seawalls and Beaches: Seven Years of Field Monitoring, Monterey Bay, California," G. Griggs, J. Tait, and W. Corona, Shore and Beach, Vol. 62, No. 3, July 1994.

understood. It appears that during a storm the volume of sand eroded at the base of a sea wall is nearly equivalent to the volume of upland erosion prevented by the sea wall. Thus, the offshore profile has a certain "demand" for sand and this is "satisfied" by erosion of the upland on a natural beach or as close as possible to the natural area of erosion on an armored shoreline...11

As explained, the proposed bulkhead and return walls will protect the new alternative onsite wastewater treatment system from continued loss of sediment and wave uprush. However, the result of this protection, particularly on a narrow beach, is a loss of sediment on the sandy beach area that fronts the seawall. Furthermore, as explained previously, this loss of sediment from the active beach leads to a lower beach profile, seaward of the protective device, where the seawall will have greater exposure to wave attack.

LUP Policy 2.64 requires that all new oceanfronting development that causes or contributes to adverse public access impacts must provide an Offer to Dedicate (OTD) an easement for lateral public access. In this case, the applicants are proposing to dedicate a lateral public access easement that would provide for public access along the entire beach under all tidal conditions, as measured seaward from the deck dripline to the mean high tide line. The Commission notes that the lateral public access easement, which the applicants have offered to dedicate as part of this project, will be consistent with other lateral public access easements that have been recorded on properties along Lechuza Beach and in the Malibu area and will mitigate adverse impacts on shoreline processes and/or public access from the bulkhead. As such, **Special Condition Nine (9)** has been required in order to ensure that the applicants' offer to dedicate a lateral public access easement is recorded on the deed prior to the issuance of the coastal development permit.

4. Past Commission Actions on Residential Shoreline Development

Many portions of the Malibu coastline are intensely developed with single-family residences. The eastern portion of the Malibu coastline, including Las Tunas, Big Rock, La Costa, and Carbon beaches form an almost solid wall of residential development along a five mile stretch of the shoreline. This residential development extends over the sandy and rocky beach in many areas and most of the residences have shoreline protective devices such as rock revetments and concrete or timber seawalls. This residential development and their associated protective devices prevent access to the coast, obscure the views to the beach and water from Pacific Coast Highway, interrupt shoreline processes, and impact the fragile biological resources in these areas.

Given Malibu's close proximity to the Los Angeles metropolitan area, it is understandable why the Malibu coastline has experienced such intensive development of its coastline over the past 50 years. The vast majority of this development took place

11 "Responding to Changes in Sea Level: Engineering Implications," National Academy of Sciences, National Academy Press, Washington D.C., 1987, page 74.

prior to the passage of Proposition 20, which established the Coastal Commission and the Coastal Act of 1976. As stated previously, Section 30235 of the Coastal Act allows for the construction of protective devices only if the device serves to protect coastal dependent uses, or to protect existing structures or public beaches in danger from erosion. The construction of protective devices for new residential development is generally not allowed under this section of the Coastal Act. The majority of the residential development described above required some type of shoreline protective device in order to be developed, however. Therefore, it is safe to assume under this policy and the other resource protection policies of the Coastal Act, that this type of development along Malibu's coastline would either not have been approved or would be developed in a much different configuration or design than it is today.

a. Infill Development

The Commission has previously permitted a number of new residential developments with protective devices on the Malibu coast, but only when that development was considered infill development. The developed portions of the Malibu coastline include a number of vacant parcels between existing structures. Typically, there are no more than one to two vacant lots between existing structures.

The term "infill development," as defined by the Malibu LUP, refers to a situation where the construction of a single family residence (and in limited situations a duplex) on a vacant lot or the demolition of an existing residence and construction of a new residence is proposed in an existing geographically definable residential community which is already largely developed or built out with similar structures. When applied to beachfront development, this situation consists of an existing linear community of beachfront residences where the majority of lots are developed with residences and relatively few vacant lots exist. An infill development can occur only in instances where roads and other services are already existing and available within the developed community or stretch of beach. Infill development does not apply to the construction of a shoreline protection device.

The Commission notes that the area surrounding the subject site is characterized as a substantially developed beach. In the case of the proposed development, one single-family residence with a concrete bulkhead, return walls, and on-site wastewater system can be considered as infill development within an existing developed area.

b. Seaward Encroachment

As a means of controlling seaward encroachment of beachfront residential structures, LUP Policy 4.30 provides a stringline standard for the siting of infill development. Policy 4.30 states:

In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a

stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.

The intent of the stringline standard is to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach in order to ensure maximum public access, and minimize wave hazards and impacts to coastal processes, shoreline sand supply, and public views.

In the case of the proposed project, the City of Malibu approved plans that included a sunscreen that extended approximately 15 feet beyond the structural stringline and were thus inconsistent with LUP Policy 4.30. The applicants have subsequently submitted revised plans, received in the Commission offices on September 19, 2005, that show all proposed development located landward of the appropriate stringlines, as drawn from the corners of the adjacent structures and decks. Therefore, the Commission finds that the proposed development, relative to seaward encroachment, is consistent with the relevant sections of the Coastal Act.

5. Conclusion

The Malibu LUP allows construction of shoreline protection devices in conjunction with new development only when necessary to protect a on-site wastewater system and no feasible alternatives exist, and when the shoreline protection device is located as far landward as possible in order to minimize any adverse effects to shoreline sand supply and public access.

The applicants' engineering consultant has indicated that although the proposed residence will be constructed on a cast-in-place pile and grade beam foundation system bearing into competent bedrock and will not require a shoreline protection device to ensure stability, a shoreline protection device will be required to protect the proposed on-site wastewater system. The Commission notes that the proposed new alternative onsite wastewater treatment system has been designed to minimize both the size and seaward extent of the system. However, the seaward extent of the on-site wastewater system and leachfield, located approximately 23 feet seaward of the Sea Level Drive right-of-way line, will still be located within the wave uprush limit and will require a shoreline protection device to ensure the stability of the system. Further, the Commission notes that since no portion of the subject site will be located landward of the maximum wave uprush limit, it is, therefore, not possible to construct any type of wastewater treatment system that would not be subject to periodic wave action without the construction of some form of shoreline protection. Therefore, the Commission notes

that the proposed bulkhead and return walls are necessary to protect the proposed wastewater treatment system from wave uprush and erosion.

As discussed above, the Commission notes that the new bulkhead, return walls, and wastewater treatment system will be located as far landward as possible. However, the Commission further notes that the purpose of the shoreline protective device authorized by this permit is solely to protect the wastewater treatment system on the subject site and that no shoreline protective device is required to protect the residence authorized by this permit. If the on-site wastewater system approved under this permit were replaced or abandoned, then the bulkhead and return walls approved under this permit to protect the wastewater treatment system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating it further landward. Additionally, any future improvements to the proposed seawall that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access.

Therefore, to ensure that the proposed project does not result in new future adverse effects on shoreline sand supply and public access and that future impacts are reduced or eliminated, **Special Condition Ten (10)** requires the applicants, by accepting this permit, to acknowledge that a new coastal development permit for the shoreline protective device authorized this permit shall be required if the proposed wastewater treatment system is replaced or abandoned for any reason (including the installation of a sewer system along Pacific Coast Highway) and that if a new coastal development permit for the shoreline protective device is not obtained in the event of replacement or abandonment of the wastewater treatment system, then the shoreline protective device authorized by this permit shall be removed. Likewise, **Special Condition Ten (10)** prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device. **Special Condition Twelve (12)** 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.

LUP Policy 2.64 requires that all new oceanfronting development that causes or contributes to adverse public access impacts must provide an Offer to Dedicate (OTD) an easement for lateral public access. In this case, the applicants are proposing to dedicate a lateral public access easement that would provide for public access along the entire beach under all tidal conditions, as measured seaward from the deck dripline to the mean high tide line. The Commission notes that the lateral public access easement, which the applicants have offered to dedicate as part of this project, will be consistent with other lateral public access easements that have been recorded on properties along Lechuza Beach and in the Malibu area and will mitigate adverse impacts on shoreline processes and/or public access from the bulkhead. As such,

Special Condition Nine (9) has been required in order to ensure that the applicants' offer to dedicate a lateral public access easement is recorded on the deed prior to the issuance of the coastal development permit.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30235, 30250, and 30253 of the Coastal Act.

E. Hazards and Geologic Stability

The proposed development is located on a beachfront parcel in Malibu, an area generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the 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 and bluff top development 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 LCP policies are applicable in this case:

- 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.**

- 4.10. 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.**
- 4.11 New development involving a structure dependent on a wastewater disposal system shall utilize secondary treatment, at a minimum, and evapotranspiration waste disposal systems or other innovative measures, where feasible.**
- 4.22 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.**
- 4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.**
- 4.24 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.**
- 4.26 Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:**
- No stockpiling of dirt or construction materials shall occur on the beach;**
 - All grading shall be properly covered and sandbags and/or ditches shall be used to prevent runoff and siltation;**
 - Measures to control erosion shall be implemented at the end of each day's work;**
 - No machinery shall be allowed in the intertidal zone at any time to the extent feasible;**
 - All construction debris shall be removed from the beach.**

The proposed development is located in Malibu, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common in Malibu include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Even beachfront properties have been subject to wildfires. Finally, beachfront sites are subject to flooding and erosion from storm waves.

Section 30253 of the Coastal Act 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, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.**

The applicants have submitted two geotechnical reports that evaluate the geologic stability of the proposed development: "Preliminary Geotechnical Engineering Report," prepared by Earth Systems Southern California (ESSC), dated September 10, 2003, and "Addendum No. 1, Geotechnical Engineering Report," prepared by Earth Systems Southern California (ESSC), dated October 30, 2003. The reports incorporate numerous recommendations regarding construction, foundations, retaining walls and excavations. The September 10, 2003 report states:

Based on the findings summarized in this report, and provided the recommendations in this report are incorporated into site development, it is ESSC's opinion that the construction of the proposed improvements, including the proposed private sewage treatment system, will not be subject to geologic hazards from landslides or slippage. The proposed building structure supported by deep foundations embedded in bedrock will not be subject to erosion or settlement hazards. However, non-building structures, utilities, and or pavements supported by site soils may be subject to loss of support due to wave erosion. It is also ESSC's that the proposed improvements and anticipated site grading will not adversely affect the geologic stability fo the site or adjacent properties provided the recommendations herein are followed.

In addition, in their report dated September 10, 2003, ESSC makes specific recommendations regarding the foundation design of the proposed residence on the subject site. The report states:

The site soils consist primarily of sandy beach deposits that are subject to erosion due to wave action. Therefore, the proposed structure should be supported by deep foundations (i.e. piers or piles) embedded into competent bedrock beneath the soil.

Additionally, the "Wave Uprush Study," prepared by Pacific Engineering Group, dated April 30, 2001, states:

The entire residence including garage, decks, and stairs must be supported on a cast-in-place concrete friction pile and grade beam foundation.... (The new concrete) bulkhead is to be pile supported.

The April 30, 2001 report also states:

The minimum elevation of the lowest finish floor for the proposed residence shall not be lower than elevation +22.0 Ft. MSL-NGVD29. The bottom of the lowest horizontal structural member shall not be lower than elevation +17.5 Ft. MSL-NGVD29.

As stated previously, the referenced geotechnical and engineering reports prepared by ESSC dated September 10, 2003 and October 30, 2003 and Pacific Engineering Group, dated April 30, 2001, February 18, 2004, and February 14, 2005 include a number of

geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical and coastal engineering consultants have been incorporated into all proposed development, **Special Condition One (1)** requires the applicants to agree, by acceptance of this permit, to comply with the recommendations contained in the above referenced geotechnical and engineering reports, including recommendations concerning excavations, foundations, construction, retaining walls, and sewage disposal. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. 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 permit.

As discussed above, the Commission notes that the applicants' geotechnical engineering consultant has indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, in their report entitled "Wave Uprush Study," dated April 30, 2001, Pacific Engineering Group states:

The owner should realize that there will always be certain risks associated with building or living on the beach and assume such risks. Further the Engineer makes no warranty or guarantee that the structures outlined in this report will survive natural forces from any and all storm conditions. ...Because of the unpredictability of the ocean environment, the above design standards are meant to minimize storm wave damage and not eliminate it.

Thus, as stated above by the applicants' coastal engineering consultant, the proposed development is located on a beachfront lot in the City of Malibu and will be subject to some inherent potential hazards. The Commission notes that the Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences. The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges, and high tides.

Past occurrences have caused property damage resulting in public costs through emergency responses and low interest, publicly subsidized reconstruction loans. In the winter of 1977 to 1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damages of as much as almost five million dollars to private property alone. In addition, the El Nino storms recorded between 1982 and 1983 caused high tides of over seven feet, which combined with storm waves of up to 15 feet. The storms occurring between 1982 and 1983 caused over 12.8 million dollars in damage to structures in Los Angeles County, many of which were located in Malibu. The severity of the 1982 to 1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California and Malibu coast, in particular. The severe El Nino winter storms in 1998 also resulted in widespread damage to residences, public facilities, and infrastructure along the Malibu Coast, causing millions of dollars in damage in the Malibu area alone.

Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The proposed development will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting coastal engineer, may still involve the taking of some risk. Furthermore, Policy 4.42 of the City of Malibu LUP requires, as a condition of approval of development on a beach or shoreline that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach, that the property owner execute and record a deed restriction acknowledging and assuming such risks, and waiving any claim of liability against the permitting agency.

Therefore, due to the possibility of liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire on the subject site, the Commission finds that the applicants shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicants to waive any claim of liability against the Commission for damage to life or property that may occur as a result of the permitted development. By accepting this permit, the applicants' acknowledgement and assumption of risk, as required by **Special Condition Eleven (11)**, will show that the applicants are aware of and appreciate the nature of the hazards that exist on the site, and that may adversely affect the stability or safety of the proposed development. **Special Condition Twelve (12)** 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 addition, the Commission notes that the proposed development includes approximately 25 cubic yards of excavation. The Commission further notes that construction activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction site materials were discharged into the marine environment or left inappropriately or unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. Further, any excavated materials that are placed in stockpiles are subject to increased erosion. The Commission also notes that additional landform alteration would result if the excavated material were to be retained on site.

To ensure that landform alteration and adverse effects to the marine environment are minimized, **Special Condition Five (5)** requires the applicants to ensure that stockpiling of dirt or materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly

removed from the sandy beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

Therefore, the Commission finds, for the reasons set forth above, that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

F. Public Access

The Malibu Local Coastal Program (LCP) mandates the provision of maximum public access and recreational opportunities along the coast. The Malibu LCP incorporates Sections 30210, 30211, 30212, and 30220 of the Coastal Act applicable to new development along the beach.

Section 30210 of the Coastal Act states:

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

Coastal Act Section 30211 states:

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

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, when:

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

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

The Malibu LCP contains the following development policies related to public access and recreation that are applicable to the proposed development:

- 2.5 *New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.*
- 2.40 *For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement may be recorded instead of an offer to dedicate an easement, if a government agency or private association is willing to accept the grant of easement and is willing to operate and maintain the trail or public beach accessway.*
- 2.41 *For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a private association that seeks to accept the offer. Any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement. The City shall approve any private association that submits a management plan that indicates that the association will open, operate, and maintain the easement in accordance with terms of the recorded offer to dedicate the easement.*
- 2.63 *Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.*
- 2.64 *An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. Such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff.*

The Malibu LCP and Sections 30210 and 30211 of the Coastal Act mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches.

All projects subject to de novo review, as well as all projects requiring a coastal development permit seaward of the first public road parallel the sea, must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act in addition to the policies of the Malibu LCP. Based on the access, recreation and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required

design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. As stated previously, no shoreline protective device is required, or proposed, to protect the proposed residence. The proposed project is located on Lechuza Beach, approximately 800 feet east or downcoast of the nearest open public vertical coastal accessway along Sea Level Drive (Exhibit 15). Furthermore, there are several existing and potential lateral public access easements across several lots in the vicinity of the project site.

The State of California owns tidelands, which are those lands located seaward the mean high tide line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

Where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is in relation to the ordinary high water mark. In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

The Commission must consider a project's direct and indirect effect on public tidelands. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands. In the case of the proposed project, the State Lands Commission presently does not assert a claim that the project intrudes onto sovereign lands (Exhibit 3).

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. The applicants seek Commission approval to construct a new residence with a bulkhead among other improvements discussed above in detail. As previously discussed, although the proposed project will not include the construction of a shoreline protection device to protect the residence, the direct occupation of sandy area by the proposed residence will result in potential adverse effects to public access along the sandy beach.

The Commission notes that a shoreline protective device is proposed as a part of this project to protect the proposed on-site wastewater system. The Commission further notes that interference by a shoreline protective device has a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, which results from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect of this on the public is again a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of a public beach. Fourth, if not sited landward in a location that ensures that the bulkhead is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

Policy 4.39 of the Malibu LUP requires new shoreline protection devices to be located as far landward as possible in order to reduce adverse effects on sand supply and

public access from the development. In the case of this project, the Commission notes that the new seawall and on-site wastewater system will be located as far landward as possible. However, the Commission further notes that any future improvements to the proposed seawall that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access. Likewise, the Commission further notes that the purpose of the shoreline protective device authorized by this permit is solely to protect the on-site wastewater treatment system proposed as part of the project and that no shoreline protective device is required to protect the residence authorized by this permit. If the on-site wastewater treatment system approved under this permit were replaced or abandoned, then the bulkhead and return walls approved under this permit to protect the on-site wastewater treatment system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating it further landward.

LUP Policy 4.43 requires, as a condition of approval of a coastal development permit for a shoreline protective structure, property owners to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity that extends the seaward footprint of the shoreline protective structure shall be undertaken, that the subject structure is solely to protect the on-site wastewater treatment system, and must be removed if off-site waste water treatment is provided to the property.

Therefore, to ensure that the proposed project does not result in new future adverse effects to public access, **Special Condition Ten (10)** requires the applicants to acknowledge, by acceptance of the permit, that any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit will be prohibited if such activity extends the seaward footprint of the subject shoreline protective device. **Special Condition Ten (10)** also requires the applicant to acknowledge that the intended purpose of the shoreline protective device is solely to protect the proposed onsite wastewater treatment system, and that any future development on the project site landward of the shoreline protection structure shall require a new coastal development permit, consistent with LUP Policy 4.43. In addition, **Special Condition Twelve (12)** 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.

Furthermore, the Commission must also consider whether a project affects any public right to use shorelands that exist independently of the public's ownership of tidelands. In addition to a new development's effects on tidelands and on public rights which are protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of the ownership underlying the land on which the public use takes place. Generally, there are three additional types of public uses, which are identified as: (1) the public's

recreational rights in navigable waters guaranteed to the public under the California Constitution and State common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five year period, and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

These use rights are implicated when the public walks on the wet or dry sandy beach below the mean high tide line. This area of use, in turn, moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, which is why the effects of structures constructed on the beach are of particular concern.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly in the future. The public has a right to use the shoreline under the public trust doctrine, the California Constitution, and State common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. In the case of the proposed project, the potential for the permanent loss of sandy beach as a result of the change in the beach profile, steepening from potential scour effects, and presence of a residential structure out over the sandy beach do exist.

LUP Policy 2.64 requires that all new oceanfronting development that causes or contributes to adverse public access impacts must provide an Offer to Dedicate (OTD) an easement for lateral public access that extends landward from the mean high tide line (MHTL) to the most seaward extend of development. In this case, the applicants are proposing to dedicate a lateral public access easement that would provide for public access along the entire beach under all tidal conditions, as measured seaward from the deck dripline, consistent with LUP Policy 2.64.

The Commission notes that the applicants have proposed as part of the project an offer to dedicate a lateral public access easement along the entire southern portion of the lot, as measured from the dripline of the proposed decks, which will mitigate any adverse impacts to shoreline processes and public access from the bulkhead. As such, **Special Condition Nine (9)** has been required in order to ensure that the applicants' offer to dedicate a lateral public access easement is recorded on the deed prior to the issuance of the coastal development permit.

Chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. LUP Policy 2.81 prohibits the posting of signs on beachfront property unless authorized by a coastal development permit. The applicants have not proposed to post any signs. However, in order to ensure that no signs are posted without the coastal development permit required by LUP Policy 2.81, **Special Condition Seven (7)** requires the applicants to acknowledge and agree, by acceptance

of the permit, that no signs shall be posted on the project site without a coastal development permit, and that no signs shall be permitted that restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands and private property. The Commission finds that if implemented, **Special Condition Seven (7)** will protect the public's right of access to the sandy beach below the mean high tide line. **Special Condition Twelve (12)** 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.

For all of these reasons, therefore, the Commission finds that, as conditioned, the proposed project is consistent with the Malibu LCP and the public access and recreation policies of the Coastal.

G. 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, that contain 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. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act states:

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.

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

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.*
- 6.15 *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.*
- 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.*

The proposed project includes construction of a 28-foot high, two-story single-family residence on a vacant beachfront lot just west of Lechuza Point in Malibu. The surrounding area is largely built out with custom two-story residences, although a few vacant lots are present in the immediate vicinity, and a large tract of undeveloped publicly owned beach is located approximately 800 feet west of the site (Exhibit 15). The site is accessed by Sea Level Drive, a private road that contains a public pedestrian/all-ability access easement. The proposed project thus will not be visible from a public road; however, it will be visible from public viewing areas, including Lechuza Beach.

The proposed project involves minimal earthwork (approximately 25 cu. yds. of excavation) and therefore minimizes landform alteration consistent with LUP Policy 6.9. The proposed residence is consistent with the height requirements of LUP Policy 6.7, and is visually compatible with existing residences on either side of the subject lot and in the surrounding area, as required by LUP Policy 6.12.

As noted above, the proposed project will be visible from public viewing areas, including Lechuza Beach. In order to minimize impacts to public views to and along the ocean and scenic coastal areas, LUP Policy 6.13 requires new development in areas visible from public viewing areas to incorporate colors and exterior materials compatible with the surrounding landscape. LUP Policy 6.13 also prohibits the use of highly reflective materials. Therefore, in order to minimize the proposed project's impacts on public views consistent with LUP Policy 6.13, **Special Condition Eight (8)** requires the applicants to submit, for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the permit. **Special Condition Eight (8)** limits the allowable colors to earth tones and specifies that all windows shall be comprised of non-glare glass. **Special Condition**

Eight (8) further specifies that any changes to the exterior colors or materials must be authorized by the Executive Director.

Night lighting in the Malibu area also visually impacts nearby scenic beaches, scenic roads, parks, and trails. Policy 6.23 of the Malibu LUP requires exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as the beach and ocean area in order to eliminate the adverse individual and cumulative visual impacts associated with the lighting of such areas visible from public areas. Therefore, in order to minimize the visual impacts of the proposed project, **Special Condition Six (6)** requires that exterior lighting be minimized consistent with LUP Policy 6.23. **Special Condition Twelve (12)** 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. Thus, the Commission finds that the proposed project is consistent, as conditioned, with applicable policies of the Malibu LCP.

H. Water Quality

The Commission recognizes that new development in Malibu has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

The Malibu LCP incorporates Section 30231 of the Coastal Act, which states:

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 LCP policies are applicable in this case:

- 3.99 *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.*
- 3.100 *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.

- 3.102 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.**
- 3.110 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.**
- 3.111 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.**
- 3.115 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.**
- 3.116 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.**
- 3.118 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.**
- 3.119 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.**
- 3.120 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.**

- 3.125 *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.*
- 3.126 *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.*
- 3.127 *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.*
- 3.128 *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.*
- 3.130 *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.*
- 3.131 *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.*
- 3.132 *New development may include a separate greywater dispersal system where approved by the Building Safety Department.*
- 3.133 *New development shall include protective setbacks from surface waters, wetlands and floodplains for conventional or alternative OSTs, 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.*
- 3.134 *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.*
- 3.138 *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.*
- 3.139 *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.*

- 3.141 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.**

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 and sand on the project site. 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 water discharge is increased and the peak occurs much sooner after precipitation events. 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 the ocean.

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 new residential developments on beachfront parcels that result in the creation, addition or replacement of 2,500 sq. ft. or more of impervious surface. 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. In this case, the project involves the construction of less than 2,500 sq. ft. of impervious surface area on a vacant beachfront site. 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 SWMP for the subject site, that utilizes site design and source 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 construction of a new on site wastewater treatment system (OSTS) to serve the residence. The applicant is proposing to construct a new alternative OSTs that includes a 3,000 gallon tank with screened duplex pump. The Malibu LCP includes a number of policies and standards relative to the design, siting, installation, operation and maintenance of OSTs 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, determining that the system meets the requirements of the plumbing code.

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 Four (4)**.

Finally, the City of Malibu Environmental Health Department has given in-concept approval of the proposed on-site wastewater system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources.

As noted above, the proposed project includes a 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 degradation of surface waters, including the ocean. There is the potential for swimming 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 intertidal and marine habitats. In order to minimize impacts to water quality, Section 17.6.6 of the Malibu LIP requires specific design criteria for pools and spas, including the use of alternative sanitization methods such as low-chlorine and no chlorine systems. Section 17.6.6 also prohibits the discharge of chlorinated pool water, as well as the discharge of non-chlorinated pool water into any location where it could enter receiving waters.

Therefore, in order to minimize potential adverse impacts from the proposed spa, consistent with Policies 3.95 and 3.96 of the Malibu LUP, and Section 17.6.6 of the Malibu LIP, the Commission requires the applicant to install and use a no chlorine or low chlorine purification system, as detailed in **Special Condition Three (3)**. The condition also requires the applicant to ensure that any runoff or drainage from the spa will not include excessive amounts of chemicals that may adversely affect water quality and that will prohibit the discharge of any chlorinated water or prohibit the discharge of non-chlorinated pool water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters.

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 applicable policies of the Malibu LCP.

I. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 that 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.

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Chair Meg Caldwell, Vice-Chair Patrick Kruer, California Coastal Commission

Mailing Address: c/o California Coastal Commission, 89 S. California Street, Suite 200

City: Ventura, CA

Zip Code: 93001

Phone: (805) 585-1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Construction of a two-story, 3,035 sq.ft. single family residence with loft, 478 sq. ft. garage, decks, bulkhead, driveway, patios, and septic system.

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

31634 Sea Level Drive, City of Malibu, Los Angeles County. APN # 4470-001-005

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

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

RECEIVED

JUN 28 2005

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

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

APPEAL NO:	A-4-MAL-05-075
DATE FILED:	6/28/05
DISTRICT:	So Central Coast

EXHIBIT NO. /
APPLICATION NO.
A-4-MAL-05-075
APPEAL FORM

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

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

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

6. Date of local government's decision: May 31, 2005

7. Local government's file number (if any): Coastal Development Permit #04-057

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Michael and Lisa Kamen c/o David Gray Architects, 1548 Ninth Street, Suite 200, Santa Monica, CA 90401

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

(1) Malibu Encinal Homeowners Association, P.O. Box 4307, Malibu, CA 90264

(2) Michael and Lisa Kamen, 837 Traction Avenue, Unit 400, Los Angeles, CA 90013

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The approved project does not mitigate, through the provision of a lateral access offer to dedicate or other means, for projected impacts to public access as required by Policy 2.64 of the Malibu LUP. The approved project includes construction of a vertical bulkhead to protect the approved septic system, which is located within the estimated wave uprush zone for the project site. Given that the subject beach (Lechuza Beach) is an eroding beach, and particularly coupled with projected sea level rise, it is likely that the approved bulkhead will affect the beach profile and thereby impact the public's ability to gain access to state lands. Therefore, in order to mitigate impacts to public access, it was appropriate in this case to require lateral access to be provided across the project site, consistent with Policy 2.64 of the Malibu LUP. The City of Malibu did not require the recordation of a lateral access offer to dedicate as a condition of approval of the coastal development permit.

In addition, the plans approved by the City of Malibu show the roof of the residence extending approximately 15 feet seaward of the structural stringline, inconsistent with Policy 4.30 of the Malibu LUP and Section 3.6 of the Malibu LIP.

Also, the approved project does not include special conditions ensuring that the on-site wastewater treatment system will be maintained, operated, and monitored in a manner consistent with the protection of water quality and marine resources, as required by Section 18.9 of the Malibu LIP.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

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

SECTION V. Certification

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

Signed: Mig Caldwell
Appellant or Agent

Date: June 28, 2005

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

Signed: _____

Date: _____

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

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

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

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Appellant or Agent

Date: June 28, 2005

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

Signed: _____

Date: _____

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 05-21**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 04-057, TO ALLOW FOR THE CONSTRUCTION OF A NEW TWO-STORY PLUS LOFT, 3,035 SQUARE-FOOT SINGLE-FAMILY RESIDENCE NOT TO EXCEED 28 FEET IN HEIGHT AND ASSOCIATED DEVELOPMENT, INCLUDING A 478 SQUARE-FOOT GARAGE, DECKS, BULKHEAD, LANDSCAPE, HARDSCAPE AND A NEW ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM. THE PROPOSED PROJECT IS IN THE SINGLE-FAMILY RESIDENTIAL-MEDIUM (SF-M) ZONING DISTRICT LOCATED AT 31634 SEA LEVEL DRIVE (KAMEN)

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

Section 1. Recitals.

- A. On July 28, 2003, an application was submitted by David Gray on behalf of property owners Michael and Lisa Kamen [Plot Plan Review (PPR) No. 03-080] to the Planning Division for the construction of a new two-story plus loft, 3,035 square-foot single-family residence and associated development, including a garage, bulkhead, landscape, hardscape and a new alternative onsite wastewater treatment system.
- B. On July 22, 2004, the Planning Division approved in concept PPR No. 03-080.
- C. On December 2, 2004, an application for Coastal Development Permit (CDP) No. 04-057 was submitted to the Planning Division for processing.
- D. On April 7, 2005 a Notice of Coastal Development was posted on the subject property.
- E. On April 19, 2005, the CDP application was deemed complete for processing.
- F. On May 5, 2005, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on May 5, 2005 a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- G. On May 16, 2005, the Regular Planning Commission meeting was cancelled due to lack of quorum and the item was continued to May 31, 2005.
- H. On May 31, 2005, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

EXHIBIT NO. <u>2</u>
APPLICATION NO.
<u>A-4-MAL-05-075</u>
<u>RESOLUTION # 05-21</u>

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the Planning Commission has analyzed the proposal as described above. The Planning Commission has found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and therefore, exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION (Class 3) will be prepared and issued pursuant to CEQA Guidelines Section 15303(a) and (e) – New Construction. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B, 13.9 and 13.26.5 of the City Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the findings in the staff report, the findings of fact below, and approves Coastal Development Permit No. 04-057 for the construction of new single-family residence described herein.

The proposed project has been reviewed by the City Geologist, City Environmental Health Specialist, City Biologist, City Public Works Department, as well as the Los Angeles County Fire Department. According to the City's archaeological resource maps, the subject site has a low potential to contain archaeological resources. The project as proposed or conditioned is consistent with the LCP's zoning, grading, water quality, and onsite wastewater treatment requirements and all other applicable LCP codes, standards, goals, and policies.

A. General Coastal Development Permit (LIP Chapter 13)

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

The project has been reviewed for conformance with the LCP. As discussed herein, and as indicated in Table 2 of the associated staff report, the project, as proposed and/or conditioned, conforms to the certified City of Malibu LCP.

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

The project is located between the first public road and the sea. However, the project site is on a private street that does not accommodate public parking/access to the shoreline. A document for vertical access has been recorded on the property less than 1,000 feet to the west of the project site and lateral access is provided on adjacent properties to the east and west. In addition, El Matador State Beach is located less than 3,000 feet to the west and is accessible from Pacific Coast Highway. The location of the proposed project and related construction activities is not anticipated to interfere with the public's right to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

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

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project would result in less than significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements of the LCP and the M.M.C. and the proposed single-family residence is consistent with uses permitted in the Single-family Residential – Medium Zoning designation.

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

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

The subject parcel is not located in or adjacent to an ESHA, ESHA buffer zone or any streams as designated in the Malibu Local Coastal Program LIP and is not subject to review by the Environmental Review Board.

B. Environmentally Sensitive Habitat Area (LIP Chapter 4)

The subject parcel is not located in an ESHA and the project will not result in impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

C. Native Tree Protection Ordinance (LIP Chapter 5)

No trees exist on the subject property; therefore, according to LIP Section 5.7, the native tree findings are not applicable.

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

The Scenic, Visual and Hillside Resource Protection Ordinance governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The proposed project is a new single-family residence on a vacant lot, situated between two existing single-family residences of comparable size, mass and bulk. The proposed project is located along a private road on a 30-foot wide lot. An analysis of the project's visual impact from public viewing areas was conducted and is documented in the public record. As such the Planning Commission finds that the project does not have the potential to result in significant visual

impacts to public views relative to coastal resources. As proposed, the project will not interfere with views of the Santa Monica Mountains from the beach or other designated scenic areas, nor will the project obstruct views of the Pacific Ocean from Pacific Coast Highway or other designated scenic areas. The development site is not prominent when viewed from other LCP designated scenic areas or parkland and similar development exists on abutting property. No potentially significant impacts on scenic and/or visual resources are anticipated. Therefore, according to LIP Section 6.4, the scenic resource findings are not applicable.

E. Transfer Development Credits (LIP Chapter 7)

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

F. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood, and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project is located on a site or in an area where the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Therefore, the requirements of Chapter 9 of the LIP are applicable to the project and the required findings are made below.

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project was analyzed for the hazards listed in the LIP Section 9.2.A. (1-7). Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City Geologic Data maintained by the City; 2) Geotechnical Engineering reports prepared by Earth Systems Southern California dated September 10, 2003 and October 30, 2003; 3) Wave Uprush Study prepared by Pacific Engineering Group dated April 30, 2001 and addendum dated February 14, 2005.

It has been determined that:

1. The project site could be subject to hazards from liquefaction;
2. The highest point of the project site is located approximately 22 feet above sea-level and could be subject to hazards from wave action and tsunami hazard; and
3. The project site is in the vicinity of extreme fire hazard areas.

The City Geotechnical staff, City Public Works Department, City Environmental Health Specialist and the Los Angeles County Fire Department have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical and wave uprush reports are

incorporated into the project design.

Liquefaction Hazard

The site soils consist primarily of sandy beach deposits that are subject to liquefaction and erosion due to wave action. The project will incorporate the mitigation required for potential liquefaction hazards. Pile foundations meeting the specifications of the geotechnical engineer are required to stabilize the site to the required 1.5 factor of safety for slope stability and to mitigate hazards associated with liquefaction. The entire residence, including garage and decks must be supported on a cast-in-place concrete friction pile and grade beam foundation.

Wave Uprush/Tsunami Hazard

The wave uprush reports indicate that the maximum wave uprush at the subject site will occur approximately 32 feet landward of the Sea Level Drive right-of-way line at an elevation of 18.9 feet above sea level. The project will incorporate the mitigation required to protect the structure and abutting road from wave action. The minimum elevation of the lowest finished floor for the proposed residence shall not be lower than 22 feet above sea level and the lowest horizontal structural member shall not be lower than 17.5 feet above sea level. Since any proposed septic system and Sea Level Drive would be in the wave uprush zone, they must be protected from wave uprush and beach scour. The proposed location of the vertical bulkhead is 28 feet seaward of the Sea Level Drive right-of-way line. In order for the bulkhead to adequately protect the proposed septic system and road from wave action, the top of the vertical bulkhead surface should be at a minimum elevation of 21 feet above sea level and the bottom of the bulkhead should be at least 1.5 foot below sea level or down to bedrock, whichever is lower. The return walls along the property lines should extend from the bulkhead location landward to the Sea Level Drive right-of-way line.

An addendum to the wave uprush report was required from the applicant to address possible tsunami hazards. This report concludes that the subject property would be exposed to tsunami uprush and inundation; however, the uprush storm waves outlined in the original wave uprush report would exceed tsunami uprush based on the reports and models used in the addendum. The report concludes that, given the results of the storm wave analysis and tsunami models, it can be ascertained that the design criteria for the storm wave uprush and storm scour outlined in the original wave uprush report exceeds the design parameters of the tsunami models and thus govern the overall design for the subject property.

Flood/Fire Hazard

The proposed site was also evaluated for flood hazards and the project has been designed to meet the Federal Emergency Management Act's requirements for flood prone areas. In addition, the entire City of Malibu is located within the fire hazard zone so no other alternatives were considered.

The project will incorporate all recommendations contained in the above cited geotechnical and wave uprush reports; as such, the proposed project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, fire or any other hazards.

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in F. Hazards, Finding 1 above, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the Los Angeles County Fire Department, will not have any significant adverse impacts on the site stability or structural integrity.

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

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

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As stated in F. Hazards, Finding 1 above, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department and the Los Angeles County Fire Department, the project will not have any significant adverse impacts on the site stability or structural integrity.

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

As stated in F. Hazards, Finding 1 above, the proposed project, as designed, conditioned, and approved by the City Geologist, City Public Works Department and the Los Angeles County Fire Department, will not have any significant adverse impacts on the site stability or structural integrity. The sensitive resource protection policies contained in the LCP are not applicable to the proposed project.

G. Shoreline and Bluff Development (LIP Chapter 10)

The project does include development of a parcel located on or along the shoreline, a coastal bluff or bluff top fronting the shoreline as defined by the Malibu Local Coastal Program. Therefore, in accordance with Section 10.2 of the Local Implementation Plan, the requirements of Chapter 10 of the LIP are applicable to the project and the required findings are made below.

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

The Wave Uprush Study prepared by Pacific Engineering Group dated April 30, 2001, states that the bulkhead will be located under the residence and is proposed to be located on piles and therefore would not affect public access. Although, the project currently provides no public access, as stated in A. General Coastal Development Permit, Finding B above, a recorded document for vertical access exists on a property nearby. The proposed project is not anticipated to impact public access.

The *Coastal Engineering Impacts and Review* section of the Wave Uprush Study concludes that the construction of the residence and bulkhead will have no significant effect on the normal coastal and littoral processes [associated with shoreline sand supply]. The study also indicates that the proposed project will have an insignificant effect on the shoreline position compared to fluvial sediment sources. The proposed project is located well landward of the ocean currents that carry sand along the beach. The proposed bulkhead will have no effect on adjacent properties. City Geotechnical staff have reviewed and conditionally approved the project; the proposed project will not have a significant adverse impact upon public access, shoreline sand supply or other resources due to project design location on the site or other reasons.

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

As stated in G. Shoreline and Bluff Development, Finding 1 above, as designed, conditioned, and approved by City Geotechnical staff, the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

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

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

Finding 4. There are not alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As stated in G. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

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

As stated in G. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

The proposed shoreline protection structure is located as far landward as feasible (approximately 28 feet

seaward of the Sea Level Drive right-of-way line). As stated in the Wave Uprush Study prepared for the project, the bulkhead will have no negative impact on the natural coastal and littoral processes of the beach.

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

H. Public Access (LIP Chapter 12)

The subject site is located between the first public road and the sea, along Lechuza Beach on the ocean side of Sea Level Drive. The project involves the construction of a new single-family residence on a vacant lot. No onsite vertical or lateral access is currently provided on the subject parcel. The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; however, LIP Section 12.6 states that public access is not required when adequate access exists nearby and the findings addressing LIP Section 12.8.3 can be made. The following findings satisfy this requirement. Analyses required by LIP Section 12.8.2 are provided herein, and in geotechnical and coastal engineering reports referenced elsewhere in this report. Bluff top, trail, and recreational accesses are not applicable. No issue of public prescriptive rights has been raised.

Bluff Top Access

The project is not located on a bluff top; and therefore, no condition for bluff top access is required by the Local Coastal Program.

Trail Access

The project site does not include any existing or planned trails as indicated on the Trails Master Plan; and therefore, no condition for trail access is required by the Local Coastal Program.

Recreational Access

The project site is not adjacent to, does not include, or have any access ways to existing or planned public recreational areas; and therefore, no condition for recreational access is required by the Local Coastal Program

Lateral Access

As discussed above, the project is located along the shoreline; however, as indicated on the LCP Public Access Map 1, it is located along a private road and does not provide access to a public beach. El Matador State Beach is located less than 1 mile to the west, which is accessible from a public road, Pacific Coast Highway. In addition, documents for lateral access have been recorded on adjacent property to the east and west. Consistent with LIP Section 12.6, due to the ability of the public, through other reasonable means to reach nearby coastal resources, an exception for lateral access has been determined to be appropriate for the project and no condition for lateral access has been required.

Finding 1 – Lateral Access The type of access potentially applicable to the site involved (vertical,

lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Lateral access would not impact fragile coastal resources, does not raise a significant public safety concern, or have any impact on a military facility. The basis for the exception to the requirement for lateral access is associated with the availability of access nearby, as described in H. Lateral Public Access, Finding 3, below.

Finding 2 – Lateral Access Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

Lateral access would not impact fragile coastal resources, does not raise a significant public safety concern, or have any impact on a military facility. The basis for the exception to the requirement for lateral access is associated with the availability of access nearby, as described in H. Lateral Public Access, Finding 3, below.

Finding 3 – Lateral Access Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

The public, through another reasonable means, can reach the same area of public tidelands as would be made accessible by an access way on the subject land. The project as proposed does not block or impede access to the ocean. The project site is located along a private street and does accommodate access to a public beach. Conditioning the project to provide a lateral public access would not provide additional access to coastal resources because adequate public access is provided nearby. As indicated on the LCP Public Access Map 1, there are recorded documents for lateral access on properties located adjacent to the east and west. In addition, El Matador State Beach is located approximately 3,000 feet to the west of the project site and parking and access to the shoreline are available from this location. No legitimate governmental or public interest would be furthered by requiring access at the project site because existing access to coastal resources is adequate, the proposed project will not impact the public's ability to access the shoreline or other coastal resources and the project site is not within the vicinity of a public beach.

Vertical Access

As indicated above, the project is located along the shoreline; however, as shown on the LCP Public Access Map 1, it is located along a private road and does not provide access to a public beach. El Matador State Beach is located less than 1 mile to the west and vertical access is available to this beach from a public road, Pacific Coast Highway. In addition, a document for vertical access has been recorded on the property less than 1,000 feet to the west of the project site. Consistent with LIP Section 12.6, due to the ability of the public, through other reasonable means to reach nearby coastal resources, an exception for public vertical access has been determined to be appropriate for the project and no condition for vertical access has been required.

Finding 1 – Vertical Access The type of access potentially applicable to the site involved (vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

Vertical access would not impact fragile coastal resources, does not raise a significant public safety concern, or have any impact on a military facility. The basis for the exception to the requirement for vertical access is associated with the availability of access nearby, as described in H. Vertical Access Finding 3, below.

Finding 2 – Vertical Access Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

Vertical access would not impact fragile coastal resources, does not raise a significant public safety concern, or have any impact on a military facility. The basis for the exception to the requirement for vertical access is associated with the availability of access nearby, as described in H. Vertical Access Finding 3, below.

Finding 3 – Vertical Access Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

The public, through another reasonable means, can reach the same area of public tidelands as would be made accessible by an access way on the subject land. The project as proposed does not block or impede access to the ocean. The project site is located along a private street and does not accommodate access to a public beach. Conditioning the project to provide a vertical public access would not provide additional access to coastal resources because adequate public access is provided nearby. As indicated on the LCP Public Access Map 1, there is a recorded document for vertical access on a property less than 1,000 feet to the west. In addition, El Matador State Beach is located approximately 3,000 feet to the west of the project site and parking and access to the shoreline are available from this location. No legitimate governmental or public interest would be furthered by requiring access at the project site because existing access to coastal resources is adequate, the proposed project will not impact the public's ability to access the shoreline or other coastal resources and the project site is not within the vicinity of a public beach.

I. Land Division (LIP Chapter 15)

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

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 04-057, subject to the conditions listed below:

Standard Conditions

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

project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application is to allow for the construction of a new, 3,035 square foot single-family residence and associated development as depicted on the plans submitted with the subject application and stamp received by the Planning Division on December 2, 2004. Subsequent submittals for this project shall be in substantial conformance with these plans. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
3. This permit and rights conferred in this approval shall not be effective until the property owner signs, notarizes, and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 30 days of this decision and prior to the issuance of any development permits.
4. These Conditions of Approval shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
5. The coastal development permit shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
6. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Division Manager upon written request of such interpretation.
7. All structures shall conform to the requirements of the City of Malibu Environmental and Building Safety Division, Public Works Department and to all City Geologist, City Environmental Health Specialist, City Biologist, and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits shall be secured.
8. The applicant shall submit three complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
9. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this CDP. A temporary certificate of occupancy may be granted at the discretion of the Planning Division Manager, provided adequate security has been deposited with the City.

to ensure compliance should the final work not be completed in accordance with this permit.

10. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Division Manager can review this information. Thereafter, the procedures contained in Chapter 11 of the LCP and those in Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code shall be followed.
11. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Division Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
13. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.
14. The CDP runs with the land and binds all future owners of the property.

Special Conditions

15. All conditions required for Plot Plan Review No. 03-080 shall remain in effect.
- 15.a. The property owner is required to acknowledge, by the recordation of a deed restriction, that the proposed project is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.

Biology/Landscaping

16. All landscaping and irrigation shall conform to the plans approved by the City Biologist on April 4, 2005 and maintained on file with the City.
17. The use of building materials treated with toxic compounds such as, but not limited to,

copper arsenate shall be prohibited.

Site Conditions

18. The residence shall have an exterior siding of brick, wood, stucco, metal, concrete or other similar material. Reflective glossy, polished and/or roll-formed type metal siding is prohibited.
19. Prior to approval of the project plans, the applicant shall remove the partition within the proposed mezzanine (separating proposed loft storage room 1 from loft storage room 2) to create a single room loft area.

Lighting

20. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas, including Pacific Coast Highway, public beaches, and/or the Pacific Ocean. Permitted lighting shall conform to the following standards:
 - a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent.
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent.
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent.
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent
 - e. Site perimeter lighting shall be prohibited.
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
 - g. Night lighting for sports courts or other private recreational facilities shall be prohibited.
 - h. Prior to issuance of the CDP, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.

Geology

21. All recommendations of the consulting Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and/or the City Geologist and Coastal Engineer shall be

incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist and Coastal Engineer prior to the issuance of a grading permit.

22. Final plans approved by the City Geologist and Coastal Engineer shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require an amendment of the Coastal Development Permit or a new Coastal Development Permit

Water Quality

23. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in Chapter 17 of the Malibu LIP.
24. All conditions of approval in the Public Works Department Memorandum dated February 8, 2005 shall be adhered to.

Shoreline Protection

25. No stockpiling of dirt or construction materials shall occur on the beach.
26. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work.
27. No machinery shall be allowed in the intertidal zone at any time unless necessary for protection of life and/or property.
28. All construction debris shall be removed from the beach daily and at the completion of development.
29. Prior to the issuance of a grading or building permit, a plan for the removal of excavated soil shall be submitted to the Environmental and Building and Safety Division for review and approval.
30. All construction material shall be stored onsite and shall not block or impede vehicular movement along Sea Level Drive (a.k.a. Lot A), which is a fire access lane.
- 30.a. The property owner is required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. Said deed restriction shall be submitted to the Planning Division for approval prior to recordation.

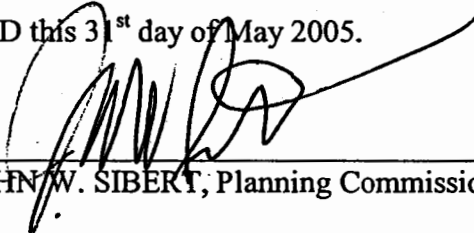
Solid Waste

31. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but not limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
32. Prior to the issuance of a Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. This final report shall be approved by the City Public Works Department.

Section 5. Certification.


The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 31st day of May 2005.



JOHN W. SIBERT, Planning Commission Chair

ATTEST:



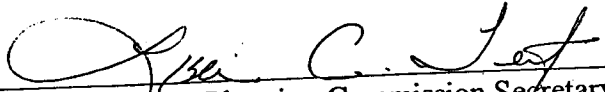
LISA A. TENT, Planning Commission Secretary

LOCAL APPEAL - The decision of the Planning Commission may be appealed by an aggrieved person to the City Council, within 10 days of the decision, by written statement and upon payment of an appeal fee of \$282.00. The grounds for appeal are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act. Appeal forms may be found online at www.ci.malibu.ca.us or in person at City Hall, or by calling (310) 456-2489 ext. 245.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 05-21 was passed and adopted by the Planning Commission of the City of Malibu at the special meeting thereof held on the 31st day of May 2005, by the following vote:

AYES: 4 Commissioners: Schaar, Anthony, Moss and Sibert
NOES: 0
ABSTAIN: 0
ABSENT: 1 Commissioners: Randall



LISA A. TENT, Planning Commission Secretary

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



PAUL D. THAYER, Executive Officer
(916) 574-1800 FAX (916) 574-1810
Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1879
Contact FAX: (916) 574-1925

OCT 28 2004

File Ref: SD 2004-09-22.3

Yasuro Yamaguchi
David Lawrence Gray Architects
1548 9th Street Suite 200
Santa Monica, CA 90401

Dear Mr. Yamaguchi:

Subject: Coastal Development Project Review for Proposed Construction of a Single Family Residence on Vacant Lot at 31364 Sea Level Drive, Malibu, Los Angeles County

This is in response to your request on behalf of your clients, Michael J. and Lisa L. Kamen, for a determination by the California State Lands Commission (CSLC) whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters.

The facts pertaining to your clients' project, as we understand them, are these:

Your clients propose to construct a single-family residence on a vacant lot located at 31634 Sea Level Drive in the Lechuza Beach area of Malibu. The September 10, 2004 plans prepared by your firm show a first floor deck string line extending from the nearest corner of the residential deck to the west to the nearest corner of the residential deck to the east. It appears that the proposed first floor deck will extend approximately two feet waterward of this indicated string line. We are unsure whether this string line complies with the established string line policy of the California Coastal Commission (CCC), as we understand it to be, or with the local coastal program in Malibu. Therefore, we anticipate any adjustment of the location of the deck string line, if necessary, will be worked out to the mutual satisfaction of your client and the CCC and/or the City of Malibu.

We do not at this time have sufficient information to determine whether this project will intrude upon state sovereign lands or interfere with other public rights. Development of information sufficient to make such a determination would be expensive

CDP 04-057

RECEIVED
OCT 02 2
PLANNING

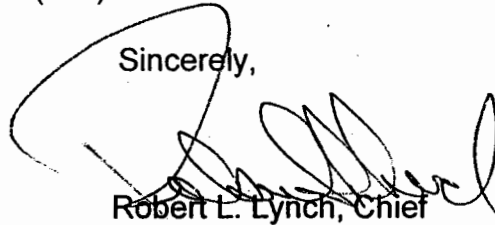
EXHIBIT NO. 3
APPLICATION NO.
A-4-MAL-05-075
STATE LANDS LETTER

and time consuming. We do not think such an expenditure of time, effort and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. This conclusion is based on the size and location of the property, the character and history of the adjacent development, and the minimal potential benefit to the public, even if such an inquiry were to reveal the basis for the assertion of public claims and those claims were to be pursued to an ultimate resolution in the state's favor through litigation or otherwise.

Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

If you have any questions, please contact Susan M. Young, Public Land Management Specialist at (916) 574-1879.

Sincerely,



Robert L. Lynch, Chief
Division of Land Management

cc: Drew Purvis, City of Malibu

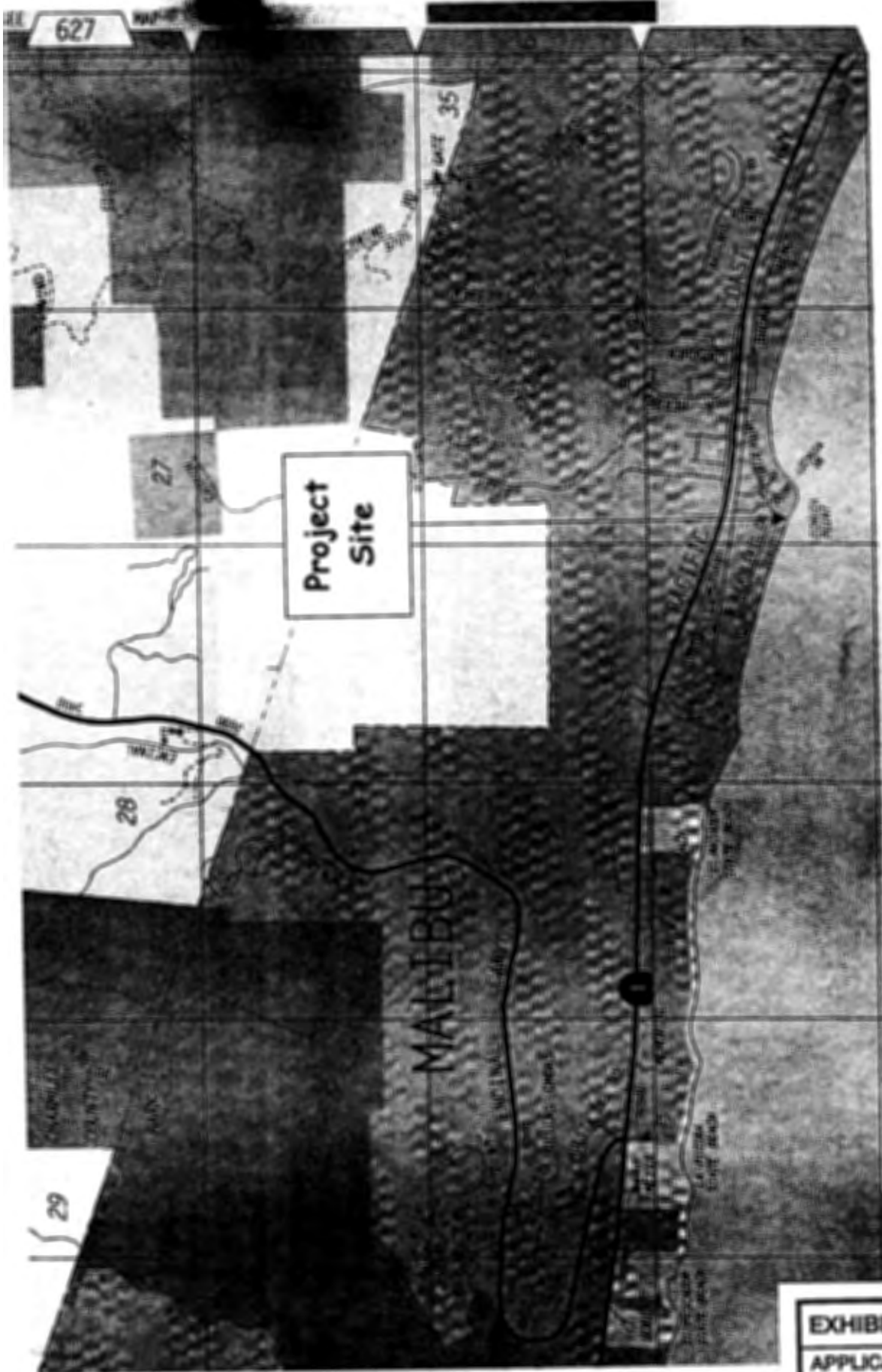
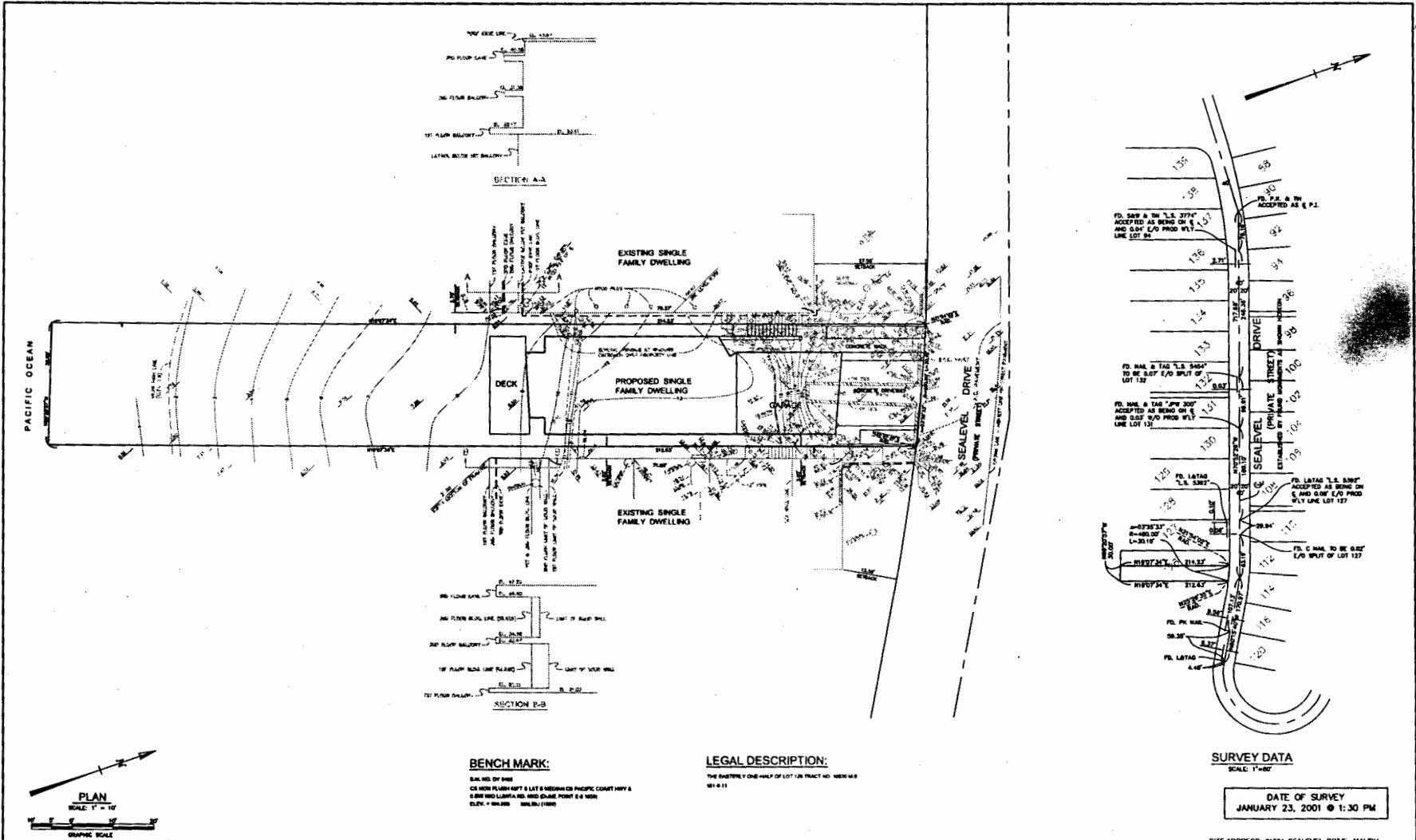


EXHIBIT NO. 4
APPLICATION NO.
A-4-MAL-05-075
VICINITY MAP



SURVEYOR'S NOTE TO CONTRACTOR

1. LISTING THE LOCATION OF ANY UNRECORDED EASEMENTS OR RIGHTS OF WAY IS NOT THE DUTY OF A SURVEYOR. IT IS THE DUTY OF THE CLIENT TO OBTAIN ALL NECESSARY RECORDS AND TO PROVIDE THE SURVEYOR WITH A COMPLETE LIST OF ALL EASEMENTS AND RIGHTS OF WAY. THE SURVEYOR WILL NOT BE RESPONSIBLE FOR ANY OMISSIONS OR ERRORS IN THIS REGARD.

2. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND NO EVIDENCE OF ANY UNRECORDED EASEMENTS OR RIGHTS OF WAY. HOWEVER, THE SURVEYOR DOES NOT GUARANTEE THE ACCURACY OF THIS INFORMATION.

3. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND NO EVIDENCE OF ANY UNRECORDED EASEMENTS OR RIGHTS OF WAY. HOWEVER, THE SURVEYOR DOES NOT GUARANTEE THE ACCURACY OF THIS INFORMATION.

LEGEND	
AC	ASPHALT CONCRETE
SB	SIDE OF BALK
CG	CATCH BASIN
CL	CLIPPING
ED	EDGE OF OUTRIG
EP	ELECTRIC POLE BOX
FF	FINISHED FLOOR
PH	PIPE HODGENT
PL	PLAIN LINE
FS	FINISHED SURFACE
GD	GARAGE FLOOR @ DOOR
GA	GAS METER
CP	CLAMP POST
SA	SALE SIGN
PA	PAID SIGN
PO	POWER POLE
EC	ELECTRIC CATCH BASIN
SE	TOP OF SEAM
CL	TOP OF CLUMP
CB	TOP OF CATCH BASIN
FT	TOP OF FOOTING
TM	TEL. MANHOLE
TP	TOP PLASTER
TS	TOP OF TRAFFIC SIGNAL
ST	TOP OF STALL
SD	STONE DRAIN MANHOLE
SM	SMOKE MANHOLE
SI	SILVER METER
WM	WATER METER
WP	WATER VALVE
TR	TOP OF TRAFFIC SIGNAL
TL	TOP OF TRAFFIC LIGHT
TR	TRAFFIC SIGNAL
PL	POWER POLE
SL	STREET LIGHT
TL	TRAFFIC LIGHT
TR	TREE
PR	PAVED WALK
SL	SEWER LINE
WL	WATER LINE
BL	BAS LINE
TL	TEL. LINE
CL	CL. LINE
CO	CREST CONTOUR
FO	FRESH CONTOUR
WF	WROUGHT IRON FENCE
WF	WOODEN FENCE
CF	CHAIN LINK FENCE
RF	RETAINING WALL
GW	GARDEN WALL

SYMBOLS	
—	WROUGHT IRON FENCE
—	WOODEN FENCE
—	CHAIN LINK FENCE
—	RETAINING WALL
—	GARDEN WALL

PREPARED BY:
LANCO ENGINEERING
 1000 CRENSHAW AVE. SUITE 100
 TORRANCE, CA 90503
 PHONE: (310) 553-8800
 FAX: (310) 553-1000
 EMAIL: lanco@lanco.com

MOHAMED A. MOHAMED R.C.E. 22304

SITE ADDRESS: 3153M SCALELEVEL DRIVE, MALIBU

SITE SURVEY

SURVEY A-1.1

DATE: 8-23-04 **REVISION:** JOB NO. 2840 **DRAWING NUMBER:** B-3413

EXHIBIT NO. 5

APPLICATION NO.

A-4-MAL-05-075

SITE SURVEY

FOR THE ARCHITECT
 KAMEN ARCHITECTS
 1000 WEST 10TH STREET
 SANTA ANA, CALIFORNIA 92703
 TEL: 714/241-1111
 FAX: 714/241-1112
 WWW.KAMENARCHITECTS.COM

KAMEN ARCHITECTS
 1000 WEST 10TH STREET
 SANTA ANA, CALIFORNIA 92703
 TEL: 714/241-1111
 FAX: 714/241-1112
 WWW.KAMENARCHITECTS.COM



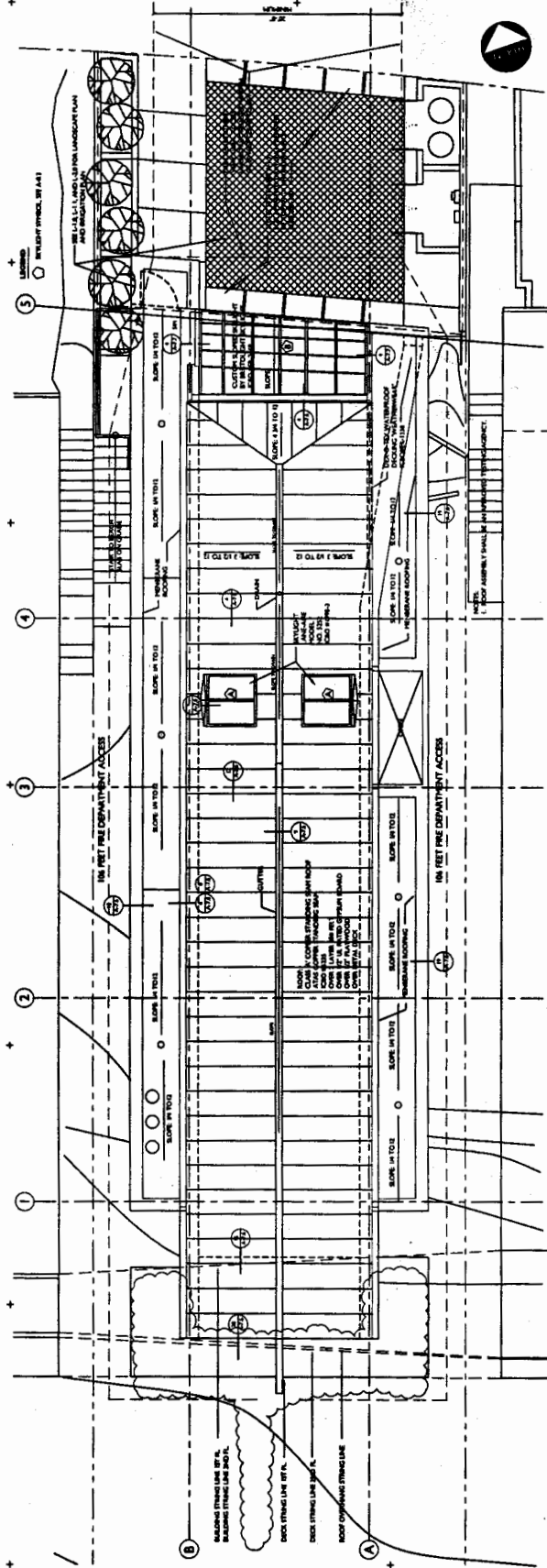
NOT FOR CONSTRUCTION
 THESE NOTES ARE TO BE USED IN CONJUNCTION WITH THE SPECIFICATIONS AND CONTRACT DOCUMENTS FOR THIS PROJECT.

- 1. GENERAL NOTES
- 2. SITE PLAN
- 3. FLOOR PLAN
- 4. ROOF PLAN
- 5. SECTION
- 6. ELEVATION
- 7. DETAIL
- 8. SCHEDULE
- 9. SPECIFICATIONS
- 10. CONTRACT DOCUMENTS

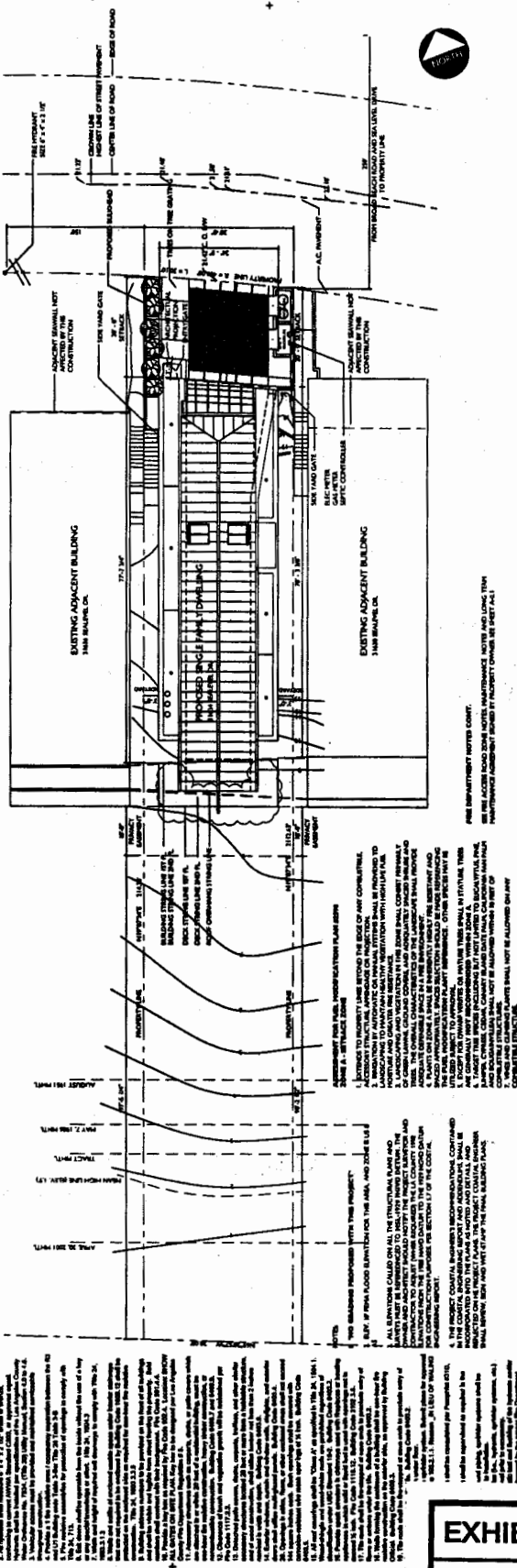
SITE & ROOF PLANS

PROJECT NO.	2002-2003
DATE	NOV 05
DATE REVISION	NOV 05
DATE	NOV 05
DATE	NOV 05
DATE	NOV 05

A-2.1

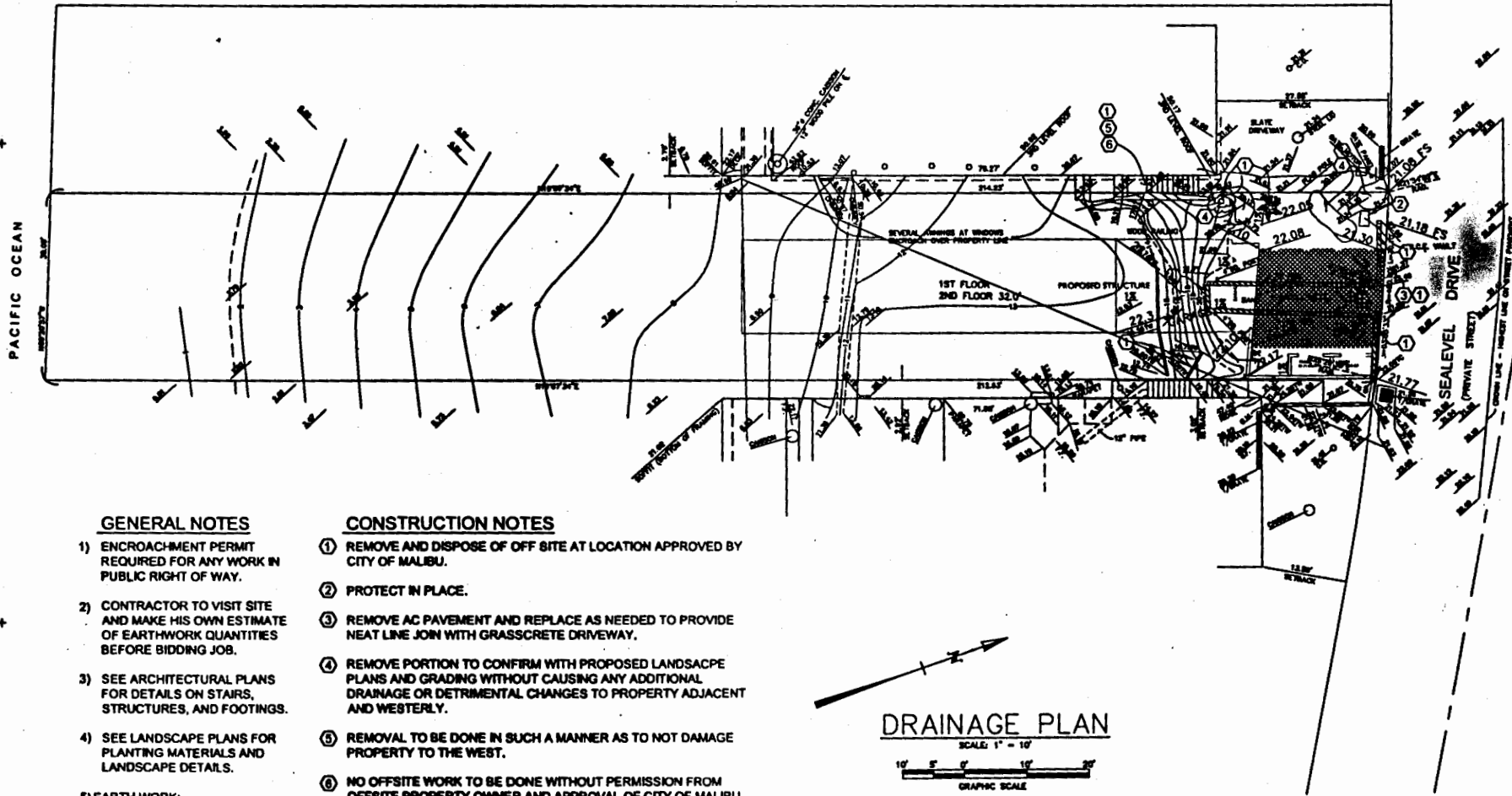


ROOF PLAN / SITE PLAN
 1/4" = 1'-0"



SITE PLAN / PLOT PLAN
 1" = 10'-0"

EXHIBIT NO. 6
APPLICATION NO.
A-4-MAL-05-075
SITE PLAN



GENERAL NOTES

- 1) ENCROACHMENT PERMIT REQUIRED FOR ANY WORK IN PUBLIC RIGHT OF WAY.
- 2) CONTRACTOR TO VISIT SITE AND MAKE HIS OWN ESTIMATE OF EARTHWORK QUANTITIES BEFORE BIDDING JOB.
- 3) SEE ARCHITECTURAL PLANS FOR DETAILS ON STAIRS, STRUCTURES, AND FOOTINGS.
- 4) SEE LANDSCAPE PLANS FOR PLANTING MATERIALS AND LANDSCAPE DETAILS.
- 5) EARTH WORK:
EXVACATION 25CY, FILL 0CY
IMPORT 0CY, EXPORT 0CY
AREA DISTURBED GROUND = 700SF
- 6) ALL EARTHWORK OPERATIONS WILL TAKE PLACE ON SITE.
- 7) SHOULD ANY CONTAMINATED SEDIMENT COLLECT ON SITE IT WILL BE DISPOSED OF OFFSITE IN AN AREA AND MANNER APPROVED OF FOR ALL SUCH DISPOSAL
- 8) IMPERVIOUS AREAS:
EXISTING IMPERVIOUS AREA = 126 SF
PROPOSED IMPERVIOUS AREA = 2,367 SF
- 9) ELEVATION 10' FEMA FLOOD ELEVATION FOR THIS AREA, AND ZONE IS V5 & AS AS PER FIRM MAP REVISED 11/15/1985.

CONSTRUCTION NOTES

- 1) REMOVE AND DISPOSE OF OFF SITE AT LOCATION APPROVED BY CITY OF MALIBU.
- 2) PROTECT IN PLACE.
- 3) REMOVE AC PAVEMENT AND REPLACE AS NEEDED TO PROVIDE NEAT LINE JOIN WITH GRASSCRETE DRIVEWAY.
- 4) REMOVE PORTION TO CONFIRM WITH PROPOSED LANDSCAPE PLANS AND GRADING WITHOUT CAUSING ANY ADDITIONAL DRAINAGE OR DETRIMENTAL CHANGES TO PROPERTY ADJACENT AND WESTERLY.
- 5) REMOVAL TO BE DONE IN SUCH A MANNER AS TO NOT DAMAGE PROPERTY TO THE WEST.
- 6) NO OFFSITE WORK TO BE DONE WITHOUT PERMISSION FROM OFFSITE PROPERTY OWNER AND APPROVAL OF CITY OF MALIBU.

BENCH MARK:

B.M. NO. 17 3485
ON SIGN FLUSH W/PT 8 LET 8 MERRILL CO PACIFIC COAST HWY &
8 AND WED LAMAR RD. MID (BLVD POINT 8-4 1000)
ELEV. = 104.886 MALIBU (1988)

DRAINAGE PLAN

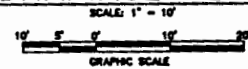


EXHIBIT NO. 7
 APPLICATION NO.
 A-4-MAL-05-07E
 DRAINAGE/GRADING



THE NEW SYSTEM
 HARRY B. BROWN
 ARCHITECT
 1111 11TH STREET
 SAN FRANCISCO, CALIF.



FARMER
 1111 11TH STREET
 SAN FRANCISCO, CALIF.



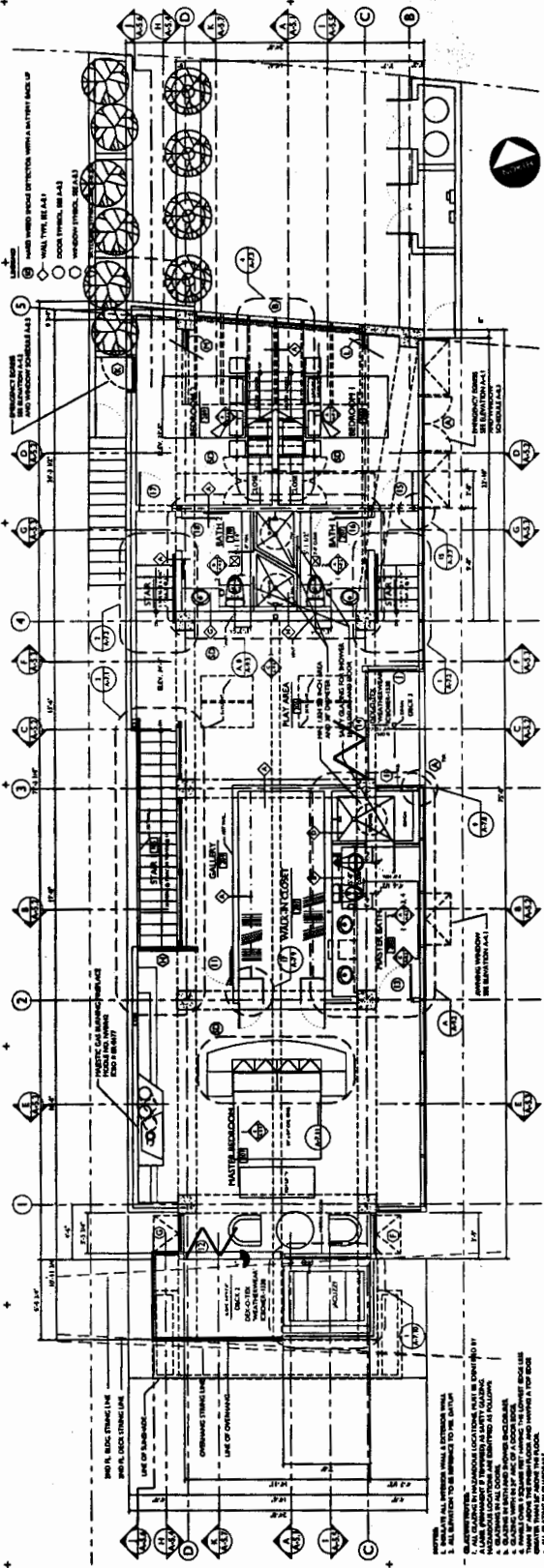
NOTICE TO CONTRACTOR
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE SPECIFICATIONS AND CONTRACT DOCUMENTS.
 2. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER.
 3. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT.
 4. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER AND ARCHITECT.
 5. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER AND ARCHITECT.

NOTICE TO CONTRACTOR
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 2. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER.
 3. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT.
 4. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER AND ARCHITECT.
 5. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER AND ARCHITECT.

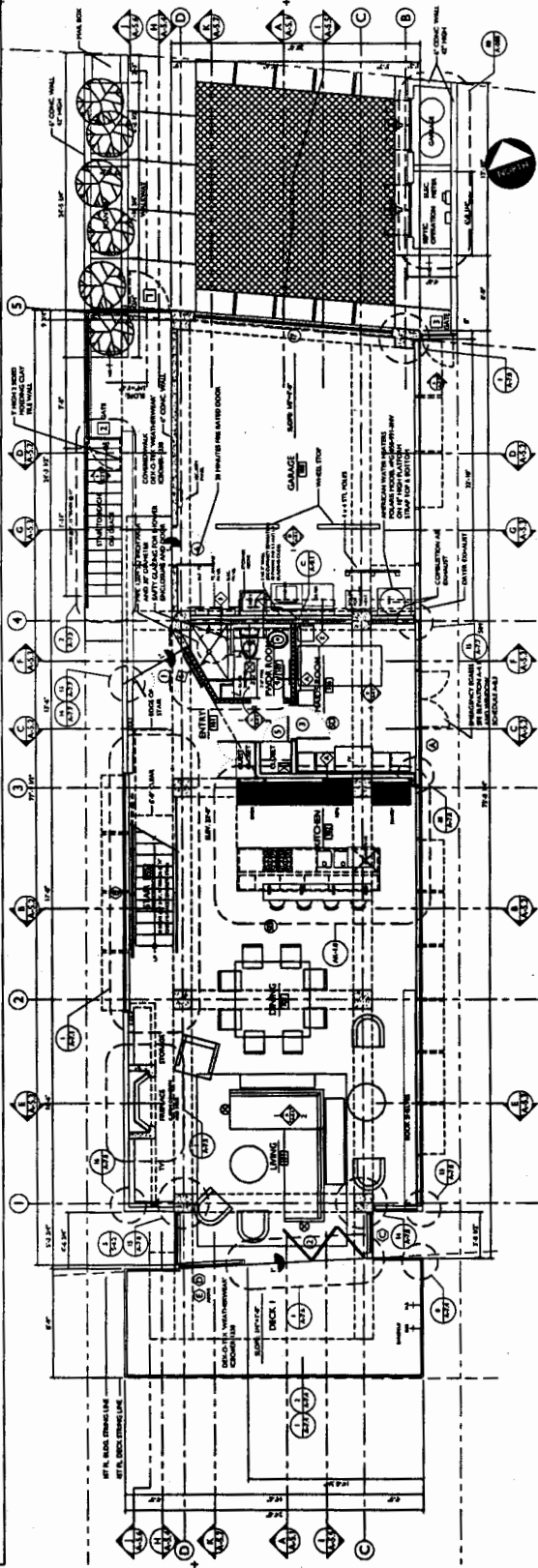
1ST & 2ND FLOOR PLANS

DATE: 10/15/05
 DRAWN BY: J. BROWN
 CHECKED BY: J. BROWN
 TITLE: 1ST & 2ND FLOOR PLANS

A-3.1



SECOND FLOOR PLAN



FIRST FLOOR PLAN

EXHIBIT NO. 8
 APPLICATION NO.
 A-4-MAL-05-075
 1ST & 2ND FLOOR PLANS

1000 WEST STREET
 SUITE 100
 PASADENA, CALIFORNIA 91105
 TEL: 626 792 1000
 FAX: 626 792 1001
 WWW.KAMEN.COM

KAMEN
 ARCHITECTURE

3148 BALDWIN DRIVE
 PASADENA, CA 91107



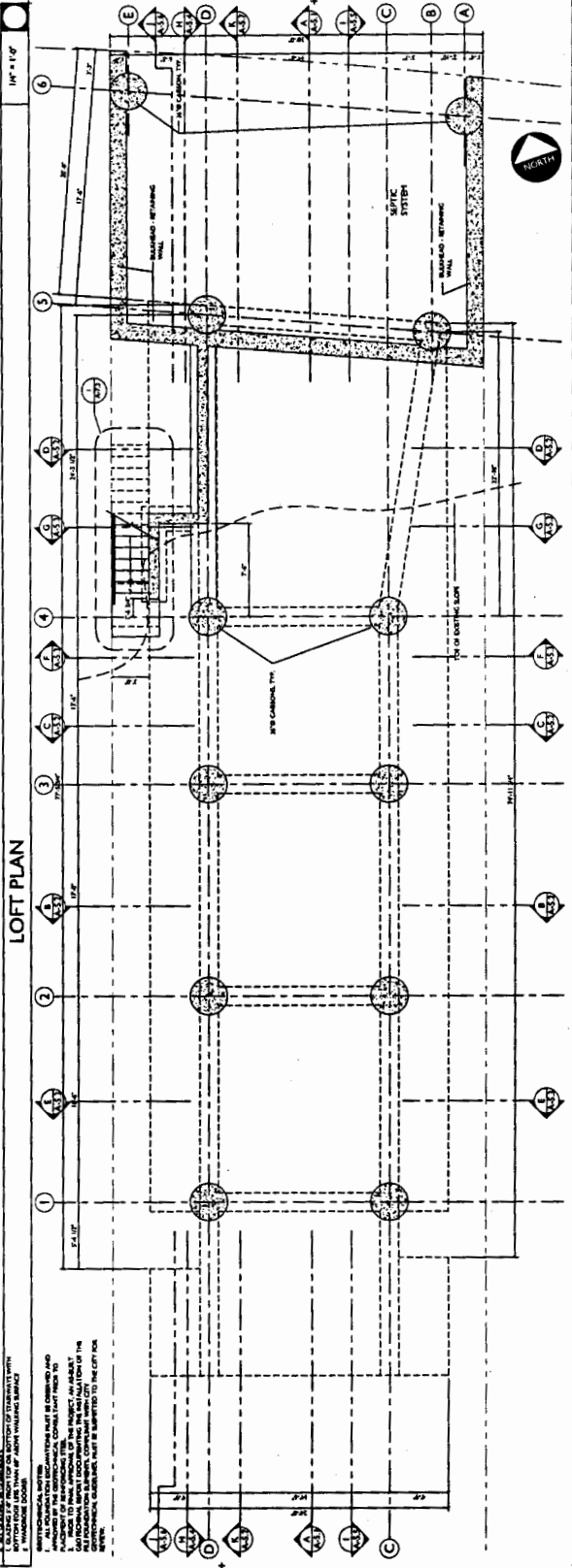
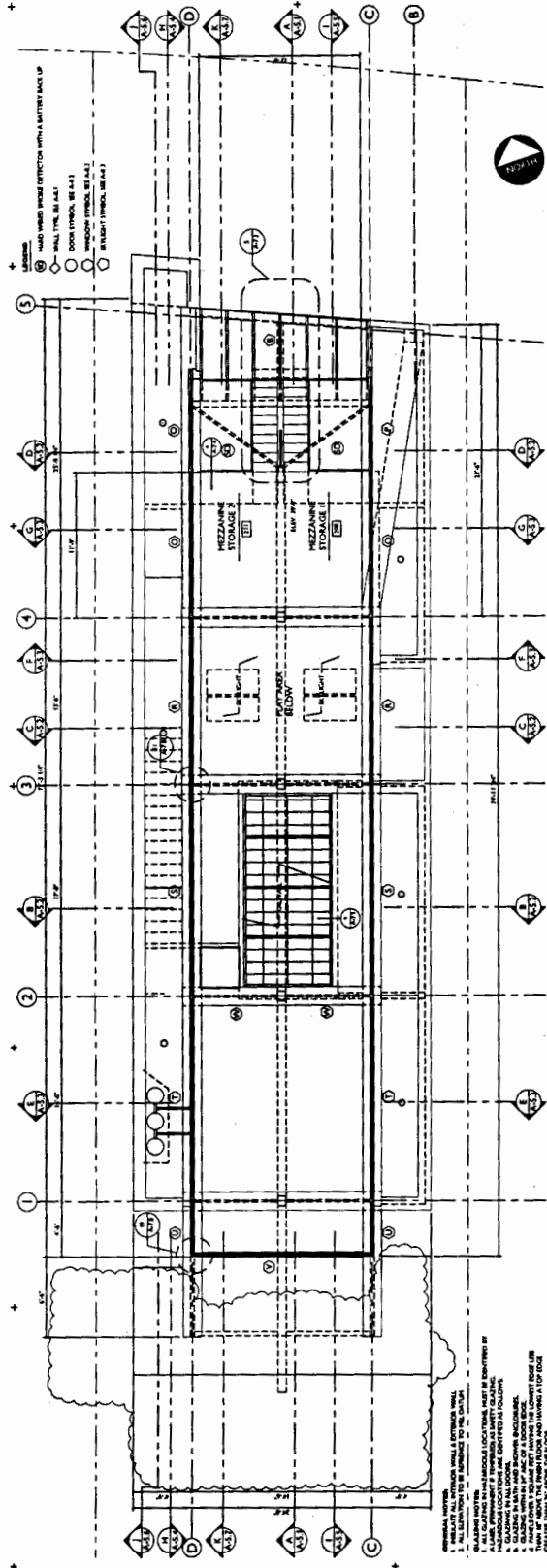
NOT FOR CONSTRUCTION

DATE: 05/11/05
 DRAWN BY: J. KAMEN
 CHECKED BY: J. KAMEN
 PROJECT NO.: 05-075
 SHEET NO.: 01
 TOTAL SHEETS: 01

MEZZANINE STORAGE & FOUNDATION PLANS

PROJECT NO. 05-075
 SHEET NO. 01
 TOTAL SHEETS: 01

A-3.2



LOFT PLAN

FOUNDATION PLAN

1. ALL ELEVATIONS TO BE FINISHED TO THE CENTER.
 2. ALL DIMENSIONS TO BE FINISHED TO THE CENTER.
 3. ALL DIMENSIONS TO BE FINISHED TO THE CENTER.
 4. ALL DIMENSIONS TO BE FINISHED TO THE CENTER.
 5. ALL DIMENSIONS TO BE FINISHED TO THE CENTER.

1. ALL FOUNDATION RECOMMENDATIONS ARE BASED ON THE ASSUMPTIONS AND INFORMATION PROVIDED BY THE CLIENT AND THE ARCHITECT. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE FOUNDATION PLAN AND FOUNDATION PLAN. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE FOUNDATION PLAN AND FOUNDATION PLAN. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE FOUNDATION PLAN AND FOUNDATION PLAN.

EXHIBIT NO. 9
APPLICATION NO.
A-4-MAL-05-075
LOFT + FOUNDATION PLAN

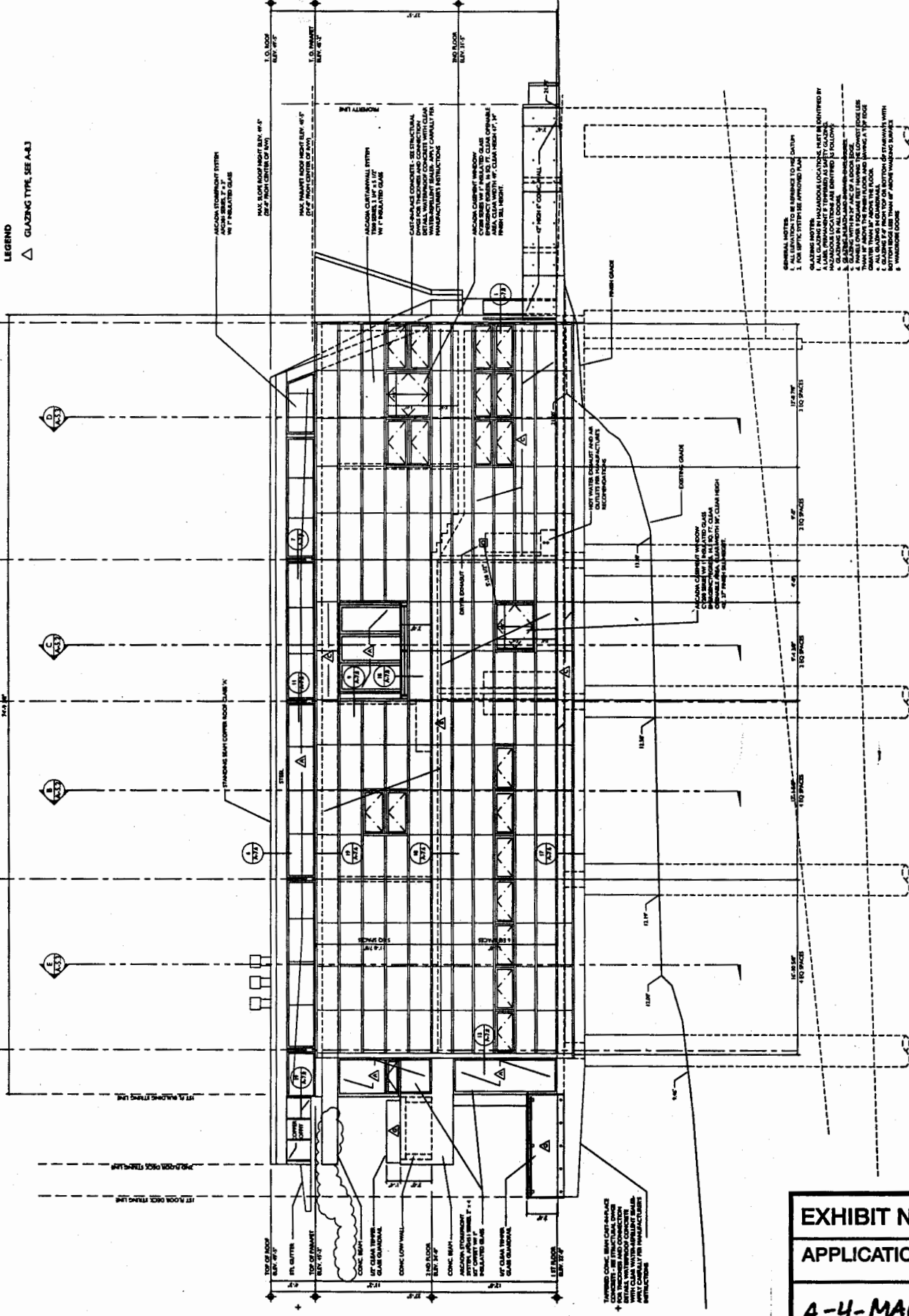


NOT FOR CONSTRUCTION
 THESE ELEVATIONS
 DATE: 08/20/05
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT: [Name]

EAST ELEVATION

PROJECT NO.	302-3001
DATE	10/21/05
TITLE	ELEVATION
SCALE	1/4" = 1'-0"

A-4.1



LEGEND
 △ GLAZING TYPE, SEE A-4.3

GENERAL NOTES:
 1. ALL ELEVATIONS TO BE APPROVED TO THE OWNER.
 2. FOR SPIC SYSTEMS USE APPROVED PLAN.
 3. GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.
 4. ALL GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.
 5. ALL GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.
 6. ALL GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.
 7. ALL GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.
 8. ALL GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.
 9. ALL GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.
 10. ALL GLAZING SYSTEMS TO BE APPROVED TO THE OWNER.

EXHIBIT NO. 10
APPLICATION NO.
A-4-MAL-05-075
EAST+WEST ELEVATIONS
 (2 PP.)

DAVID LAWRENCE ARCHITECTS
1000 PINE STREET
SAN FRANCISCO, CA 94109
TEL: 415.774.2000
FAX: 415.774.2001
www.davidlawrence.com

1155 BAY STREET
SAN FRANCISCO, CA 94133
TEL: 415.774.2000
FAX: 415.774.2001
www.kamen.com

KAMEN
ARCHITECTS
1155 BAY STREET
SAN FRANCISCO, CA 94133
TEL: 415.774.2000
FAX: 415.774.2001
www.kamen.com



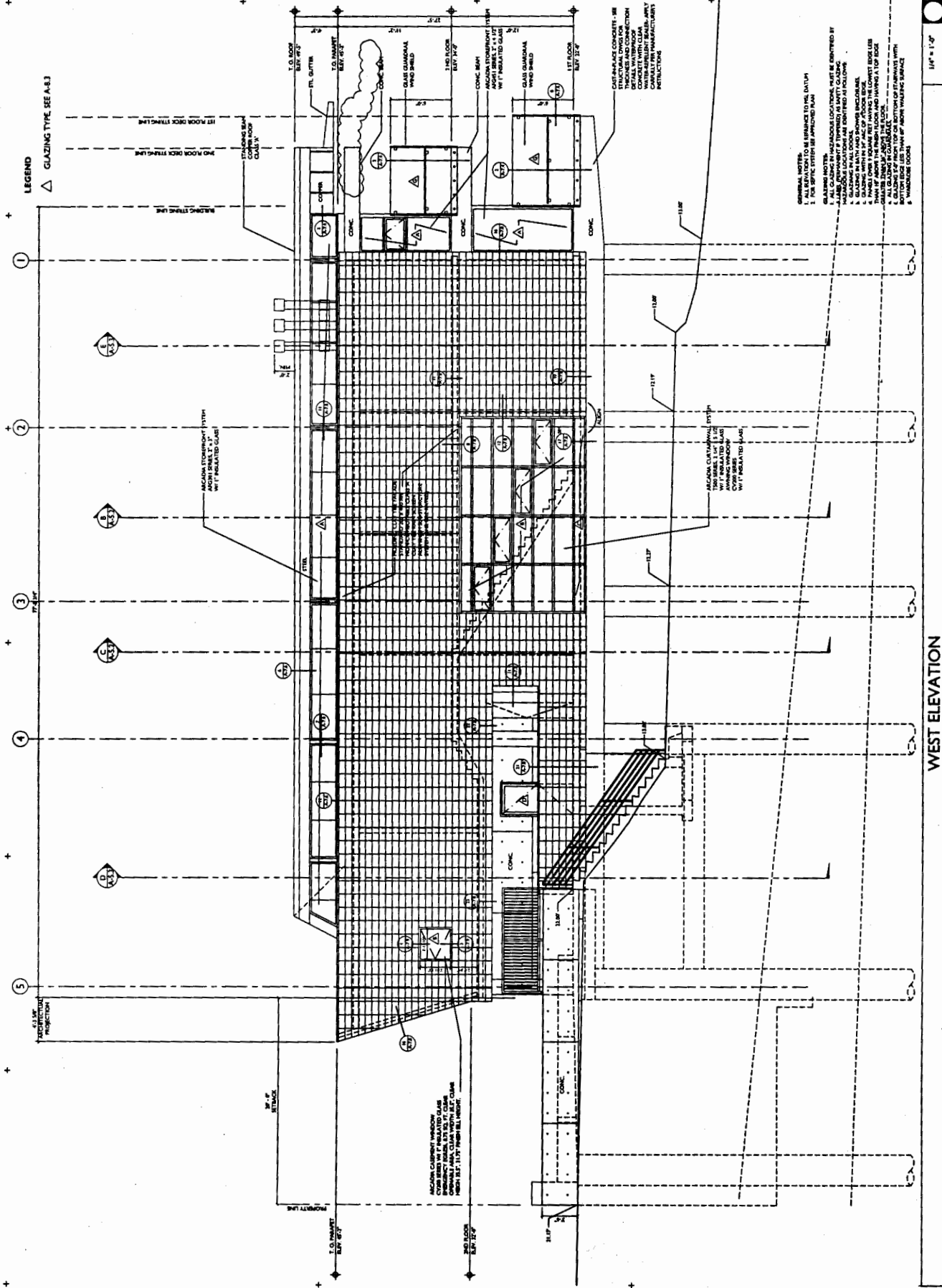
NOT FOR CONSTRUCTION
11/17/11

PROJECT NO. 100-2003
DATE 10/1/11
DRAWN BY [Name]
CHECKED BY [Name]
SCALE AS SHOWN
SHEET NO. [Number]

WEST ELEVATION

PROJECT NO. 100-2003
DATE 10/1/11
DRAWN BY [Name]
CHECKED BY [Name]
SCALE AS SHOWN
SHEET NO. [Number]

A-42



LEGEND
△ GLAZING TYPE SEE A.8.3

GENERAL NOTES:
1. ALL ELEVATIONS TO BE FINISHED TO THE DATUM.
2. FOR SPECIFIC SYSTEMS REFER TO APPROVED PLAN.
GLAZING NOTES:
1. ALL GLAZING UNITS SHALL BE MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
A. MANUFACTURED IN THE U.S.A.
B. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
C. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
D. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
E. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
F. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
G. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
H. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
I. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
J. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
K. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
L. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
M. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
N. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
O. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
P. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
Q. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
R. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
S. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
T. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
U. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
V. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
W. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
X. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
Y. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:
Z. MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:

WEST ELEVATION

1/4" = 1'-0"

1000 THE STRAITS
SUITE 100
SAN FRANCISCO, CALIFORNIA 94104
TEL: 415 774 1100
FAX: 415 774 1101
WWW: WWW.HOK.COM

KAMEN
3144 RAYBURN DRIVE
PALM BEACH, FLORIDA 33480



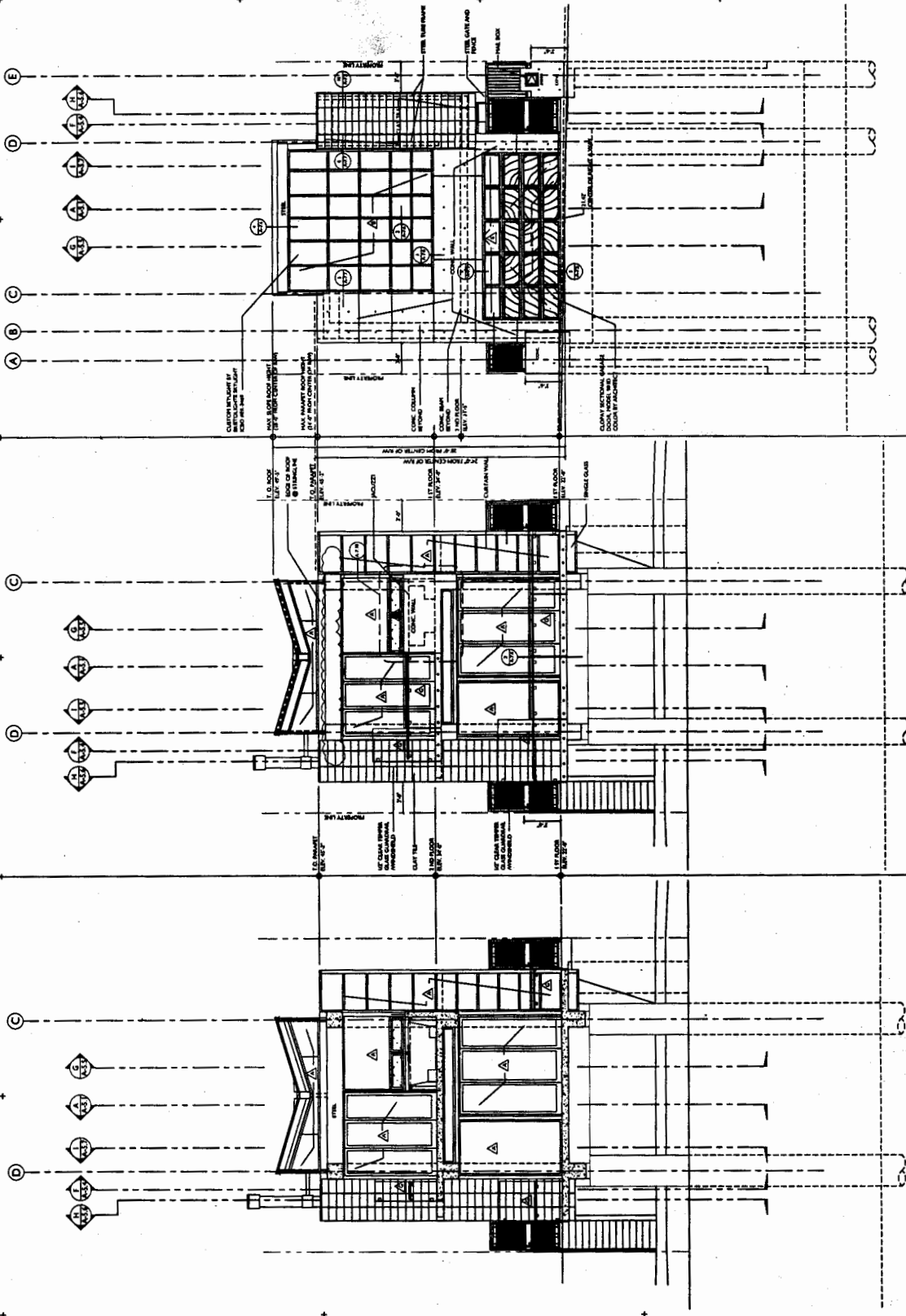
HOK FOR
CONSTRUCTION
TRISTAR SYSTEMS

PROJECT NO. 05-075
DATE: 05/05/05
DRAWN BY: J. [Name]
CHECKED BY: [Name]
SCALE: AS SHOWN
SHEET NO. 10 OF 10

NORTH & SOUTH
ELEVATIONS

DATE: 05/05/05
SCALE: AS SHOWN
SHEET NO. 10 OF 10

A-4.3



SOUTH ELEVATION / SECTION SOUTH ELEVATION NORTH ELEVATION

EXHIBIT NO. 11
APPLICATION NO.
A-4-MAL-05-075
SOUTH+ NORTH ELEVATIONS

FOASIVE
ARCHITECTURE
ARCHITECTS

1545 17th STREET
SUITE 104
SAN FRANCISCO, CA 94109
TEL: 415.774.1222
FAX: 415.774.8477
www.foasive.com

KAMEN
ARCHITECTS

3148 BAYVIEW DRIVE
SAN FRANCISCO, CA 94134



NOT FOR CONSTRUCTION

DATE: 05/15/05

PROJECT: 05-075

DATE: 05/15/05

PROJECT: 05-075

DATE: 05/15/05

PROJECT: 05-075

DATE: 05/15/05

PROJECT: 05-075

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PROJECT: 05-075

DATE: 05/15/05

PROJECT: 05-075

DATE: 05/15/05

BUILDING SECTION 'A'

PROJECT NO. 05-075
DATE: 05/15/05
PROJECT: 05-075
DATE: 05/15/05

A-5.1

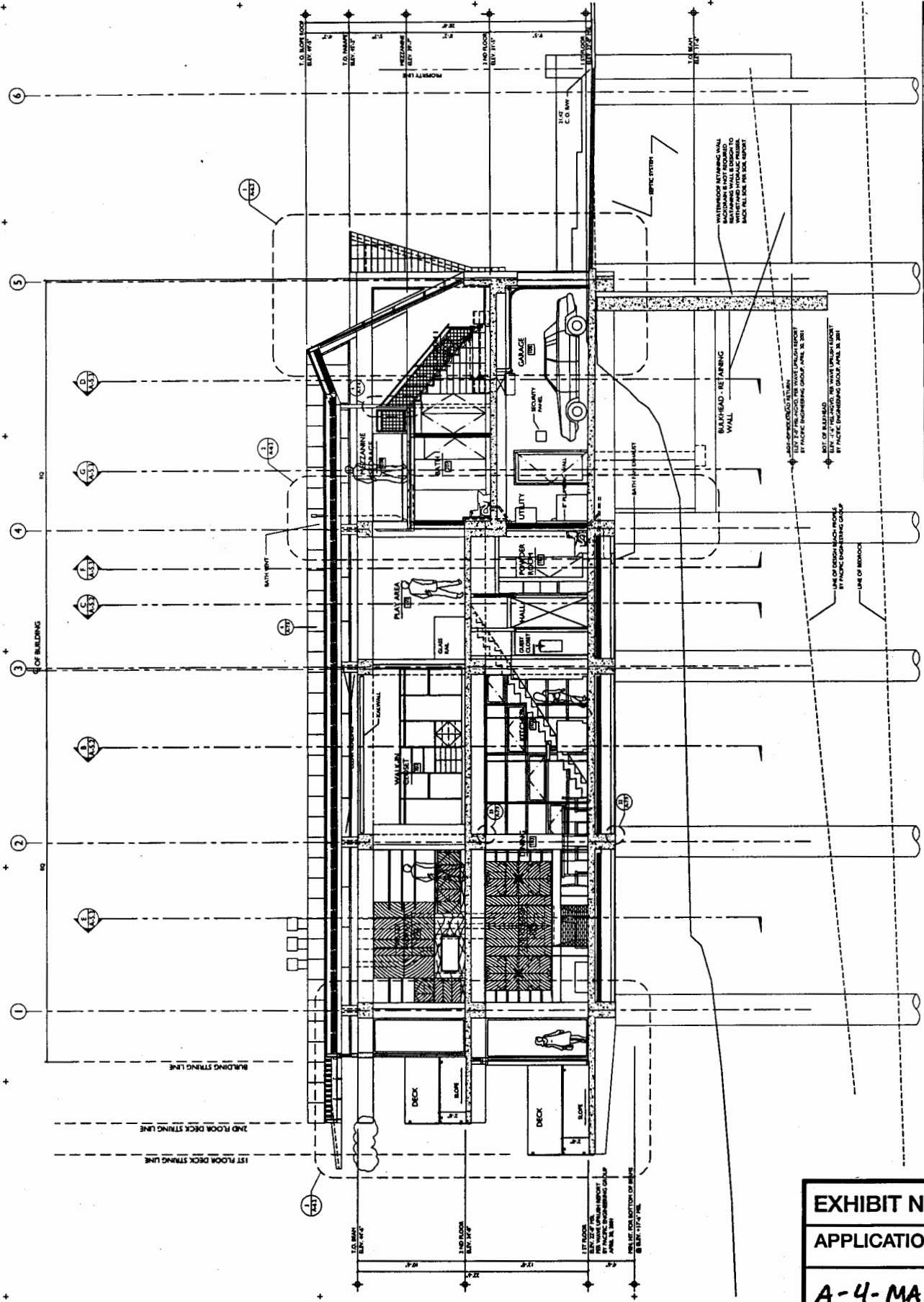
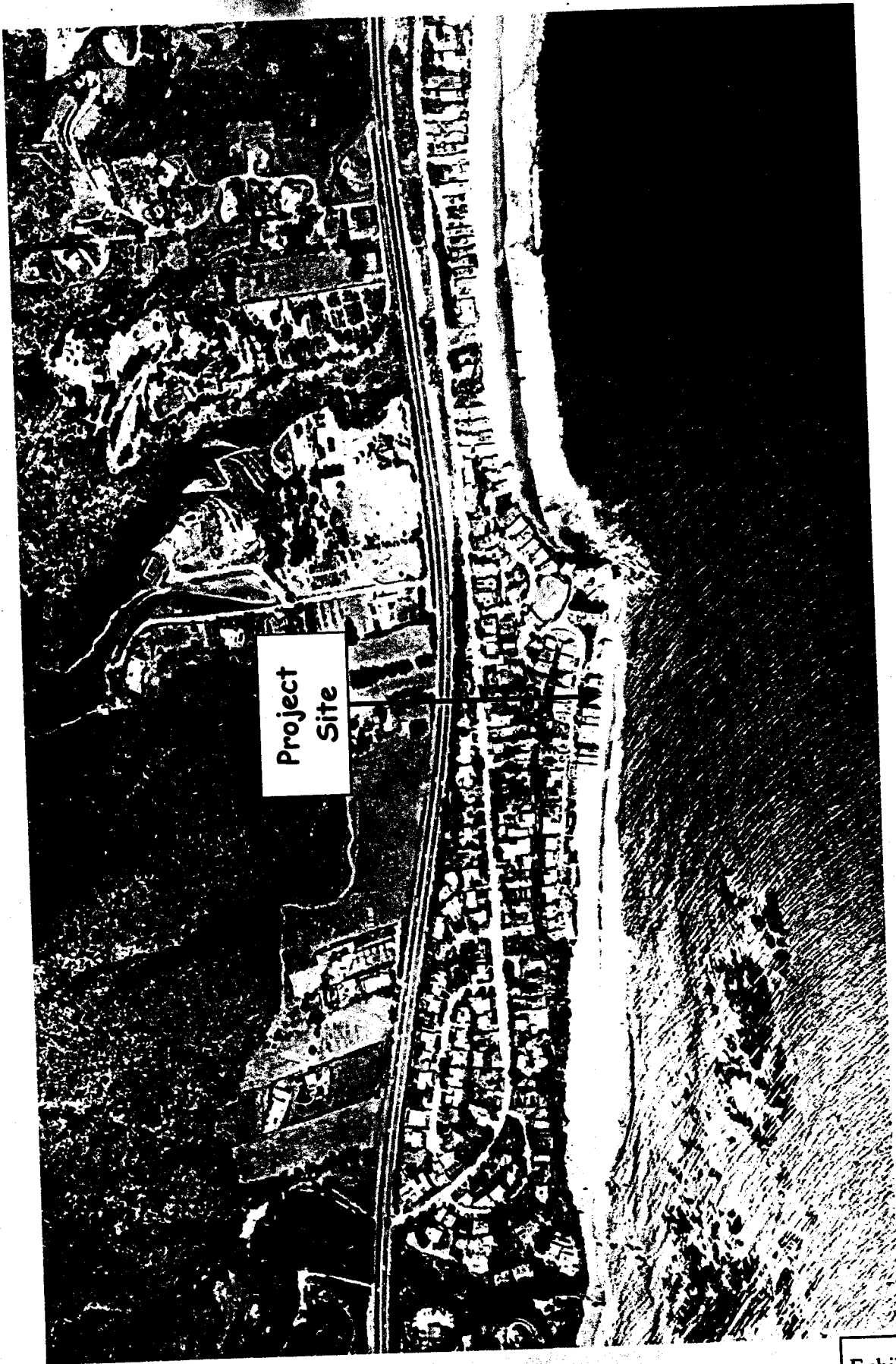


EXHIBIT NO. 12
APPLICATION NO.
A-4-MAL-05-075
BUILDING SECTION

BUILDING SECTION 'A'

1/4" = 1'-0"



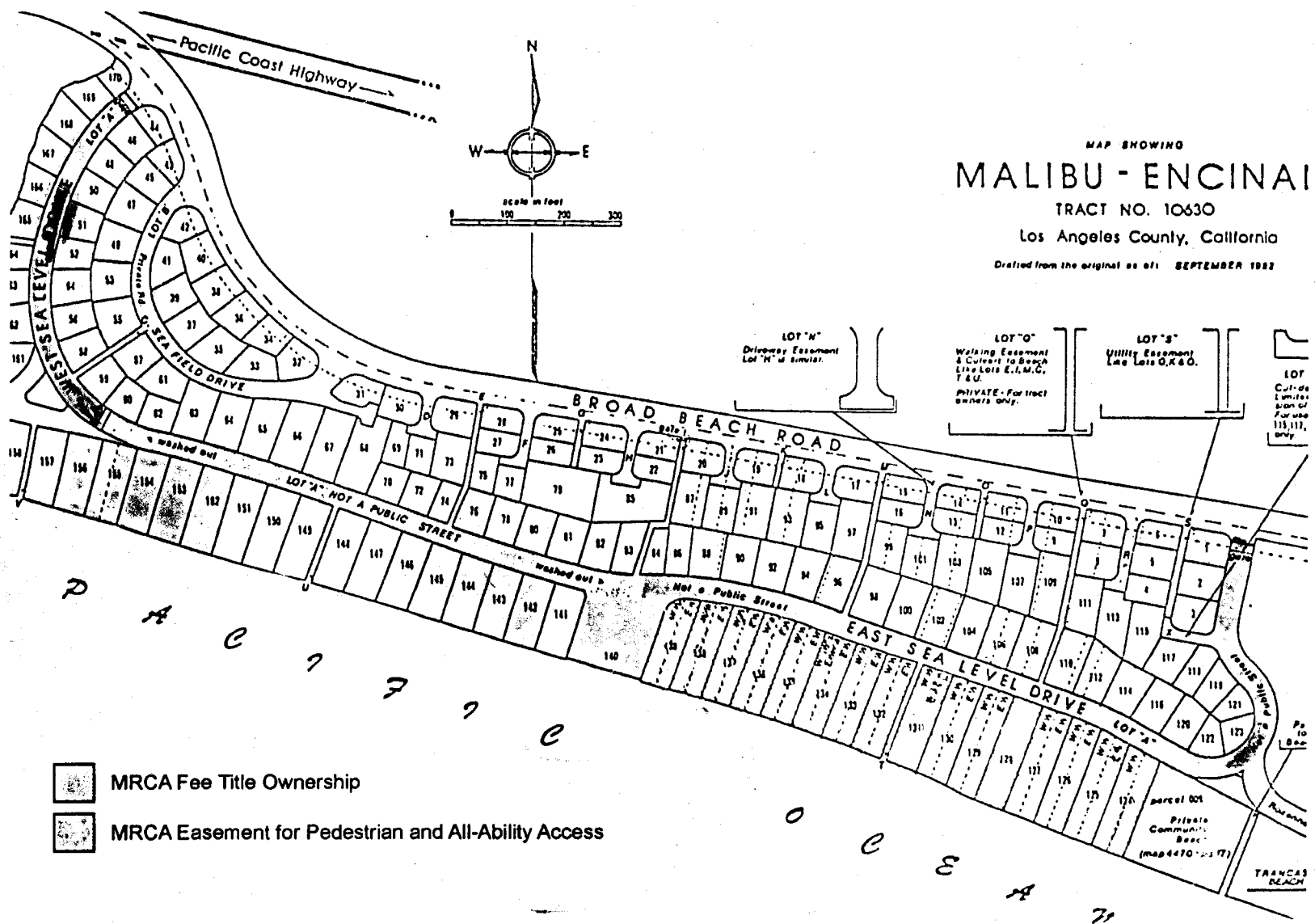
Project
Site

Exhibit 13
A-4-MAL-05-075
Aerial View



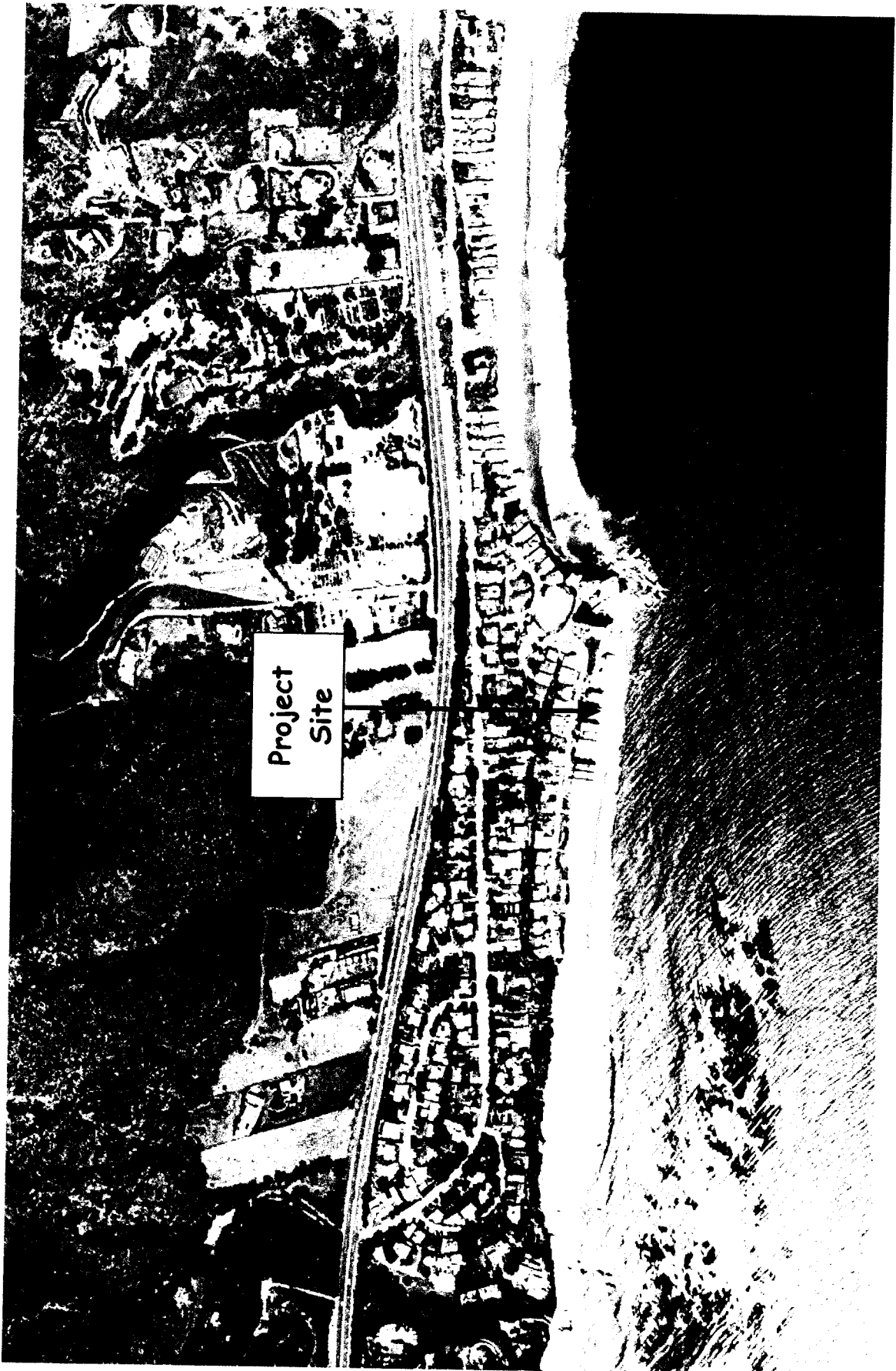
Exhibit 14
A-4-MAL-05-075
Aerial Close-up

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-  MRCA Fee Title Ownership
-  MRCA Easement for Pedestrian and All-Ability Access

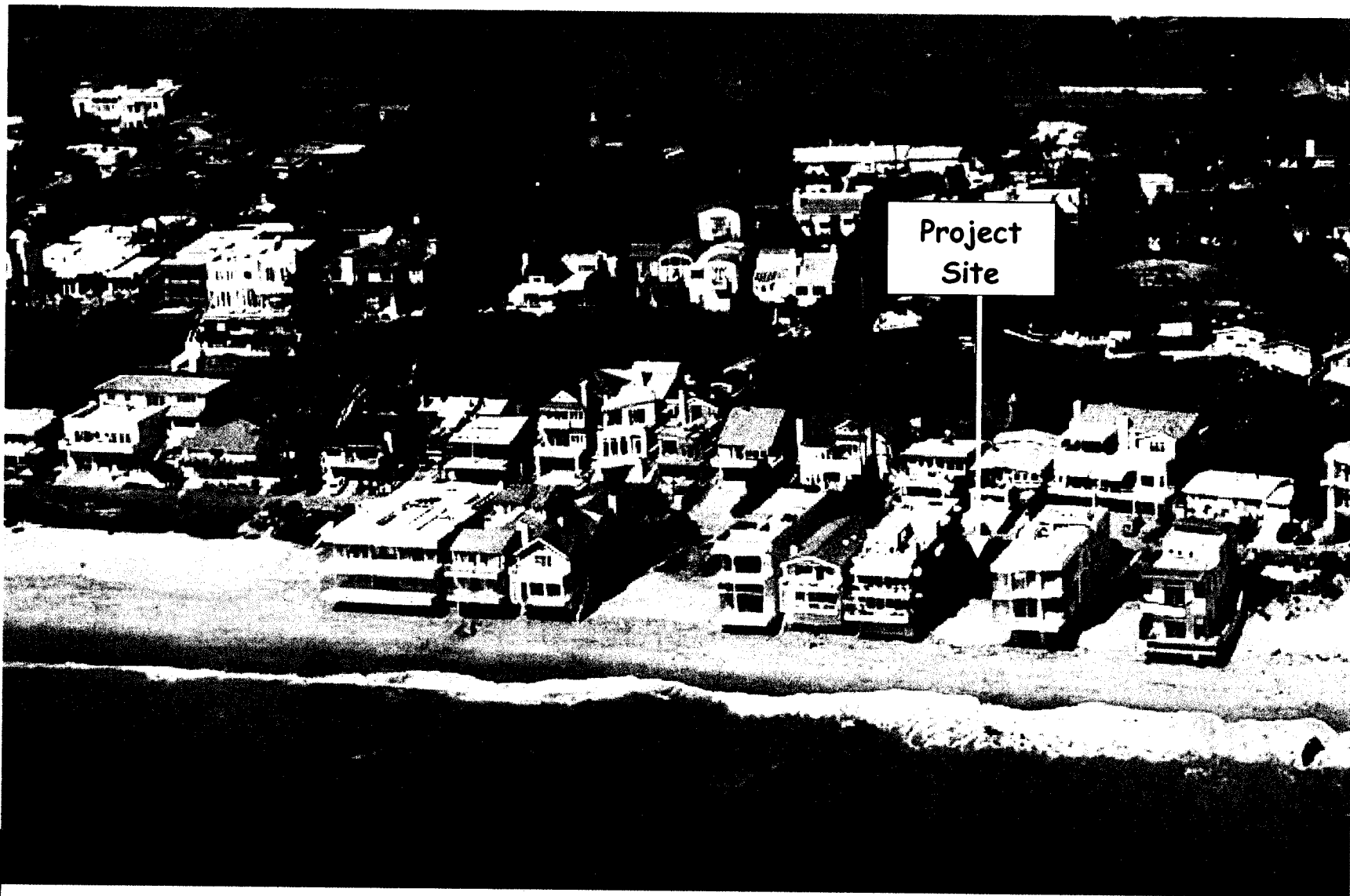
Exhibit 15
 A-4-MAL-05-075
 Nearby Public Access



Project
Site

Exhibit 13
A-4-MAL-05-075
Aerial View

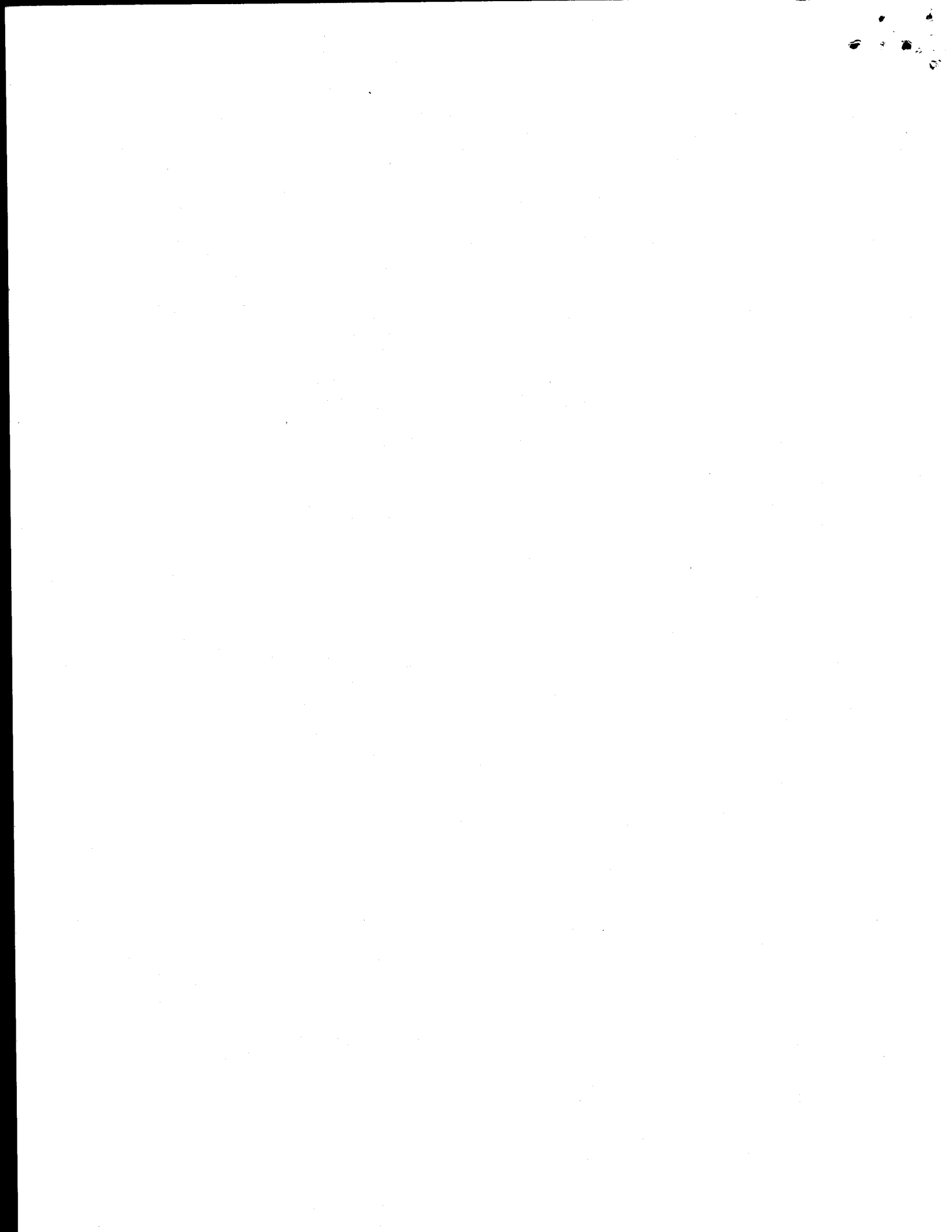




Project
Site

Exhibit 14
A-4-MAL-05-075
Aerial Close-up

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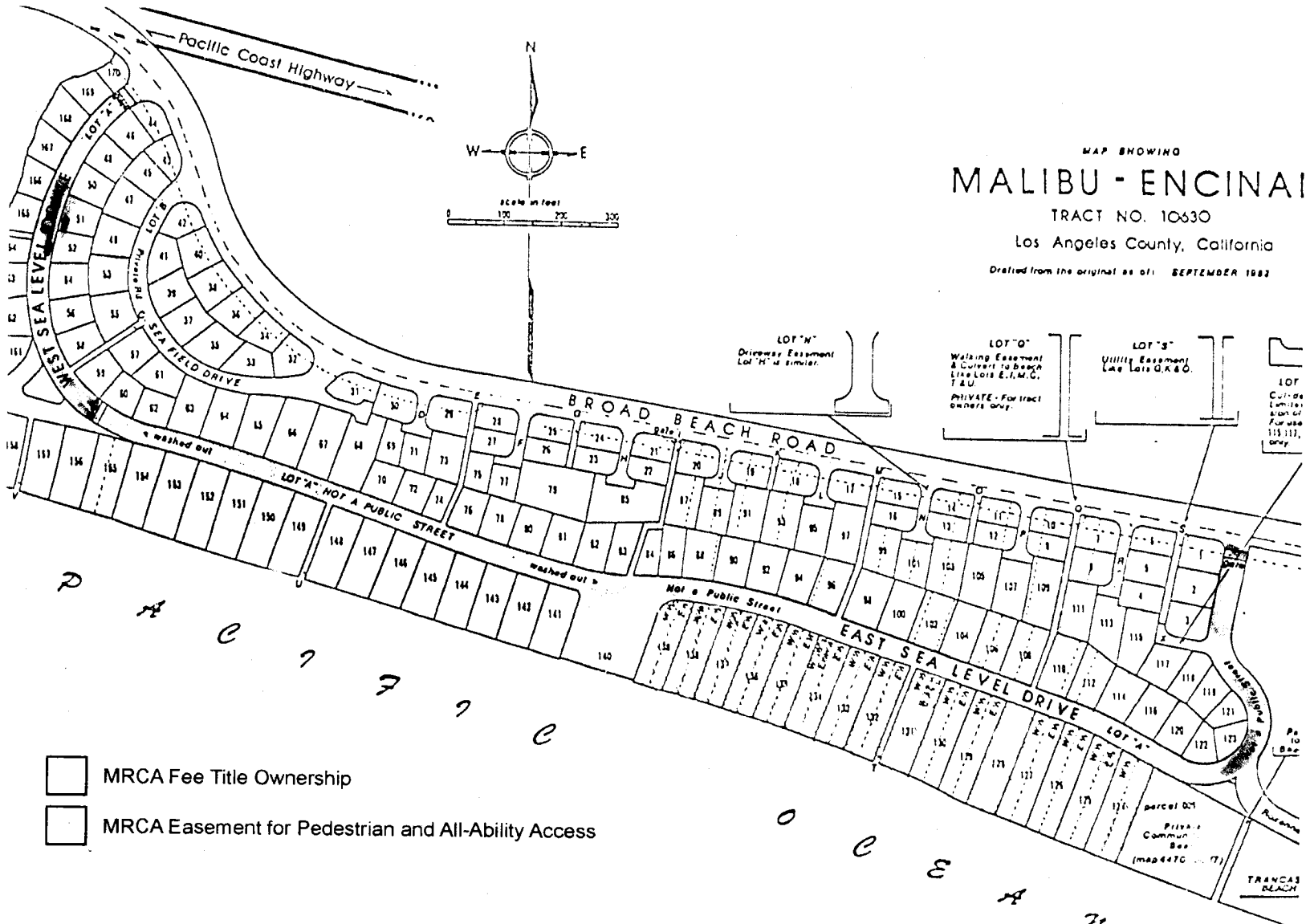


Exhibit 15
 A-4-MAL-05-075
 Nearby Public Access

