

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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VENTURA, CA 93001  
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# Th 17a

Appeal Filed: 8/4/06  
49<sup>th</sup> Day: 9/22/06  
49<sup>th</sup> Day Waived: 8/29/06  
Staff: Deanna Christensen  
Staff Report: 10/26/06  
Hearing Date: 11/16/06



## **STAFF REPORT: APPEAL** **SUBSTANTIAL ISSUE**

**LOCAL GOVERNMENT:** City of Malibu  
**LOCAL DECISION:** Approval with Conditions  
**APPEAL NO.:** A-4-MAL-06-096  
**APPLICANT:** Kimberly and Arthur Silver  
**APPELLANTS:** Ron Goldman and Mark Zucker; Patt Healy and Malibu Coalition for Slow Growth  
**PROJECT LOCATION:** 24950 Pacific Coast Highway, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construction of an 11,158 sq. ft. single-family residence, with a 5,550 sq. ft. basement/garage, pool, spa, alternative onsite wastewater treatment system, and 3,124 cu. yds. of grading (2,132 cu. yds. cut and 992 cu. yds. fill).

**SUBSTANTIVE FILE DOCUMENTS:** City of Malibu Administrative CDP No. 05-144; "Hydrology, Control Structure, Detention System and Conveyance Study", dated September 25, 1999, prepared by Servtec Consultants Inc.; "Preliminary Geotechnical Engineering and Hydrogeologic Report", dated May 2, 2003, prepared by Earth Systems; "Update Geotechnical Engineering Report", dated July 27, 2005, prepared by Earth Systems; "Response to City of Malibu Review Letter Dated October 19, 2005" by Earth Systems, dated November 30, 2005; Court-approved Settlement Agreement between Kimberly and Arthur Silver and City of Malibu, dated January 20, 2005; Coastal Commission CDP No. 4-98-163 (Duggan & Levenson).

### **SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS**

Staff recommends that the Commission determine that **no substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the hazard/bluff development and visual resource policies and standards of the certified Local Coastal Program (LCP).

The project site is a blufftop parcel on the seaward side of Pacific Coast Highway. There are bluewater views from the highway across the site. The residence, as sited and designed, and as conditioned by the City in CDP 05-144, is located 16 feet (continued)

(continued from Page 1)

below the road grade of PCH at its highest point (although the majority of the structure will be 17 to 21 feet below road grade). The residence is also sited to provide wide view corridors on either side of the property. The project, as approved, will avoid impacts to the existing bluewater views across the site. Further, the proposed residential landscaping, as conditioned by the City, is adequately specified and restricted to minimize adverse impacts on bluewater views from PCH, and is in compliance with LIP Section 6.5(E)(1) by not exceeding road grade. Finally, the project, as approved and conditioned by the City, will minimize risks to life and property from geologic hazard and will assure site stability and structural integrity, consistent with the applicable policies and standards of the Malibu LCP.

The motion and resolution for the Commission to find that the appeals raise no substantial issue can be found on **Page 4**.

## **APPEAL JURISDICTION**

The project site is a blufftop parcel on the seaward side of Pacific Coast Highway (**Exhibits 1, 4**). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends 300 feet inland from the beach or of the mean high-tide line of the sea where there is no beach, whichever is greater. The southern portion of 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.

### **A. 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, staff anticipates de novo permit consideration by the Commission at a future Commission hearing.

## **B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL**

On January 5, 2006, the City of Malibu Planning Manager approved Administrative Coastal Development Permit No. 05-144 for the proposed project. On January 17, 2006 the City Planning Manager reported the administrative CDP decision to the Planning

Commission. At this time, the project was determined to be non-appealable to the Coastal Commission. Ron Goldman filed a local appeal (Appeal 06-001) of the Planning Manager's action on January 17, 2006, within the City's appeal period. The City of Malibu Planning Commission denied Appeal 06-001 on March 20, 2006, upholding the Planning Manager's action. On March 29, 2006, Ron Goldman and Mark Zucker filed a local appeal (Appeal 06-007) of the Planning Commission's action. After submittal of this appeal to the Malibu City Council, and before the City Council's appeal hearing, City staff consulted with Coastal Commission staff to clarify the beginning point at which to measure the appeal jurisdiction line (300 feet from the inland extent of the beach) in this case. Coastal Commission staff identified the seaward edge of Malibu Road, which was more conservative than the line the City had originally determined. Therefore, City staff found that proposed drainage devices would fall within the revised appeal jurisdiction boundary and the project would be appealable to the Coastal Commission. The appeal hearing public notices indicated that the project was appealable to the Coastal Commission. The City Council denied Appeal 06-007 on July 10, 2006.

The Notice of Final Action for the project was received by Commission staff on July 21, 2006. A ten working day appeal period was set and notice provided beginning July 24, 2006, and extending to August 4, 2006. The Notice of Final Action identified the project as appealable to the Coastal Commission, since portions of the project (drainage features) are located within the Commission's appeal jurisdiction. Appeals of the City's action were filed by Ron Goldman and Mark Zucker (August 4, 2006), and Patt Healy and Malibu Coalition for Slow Growth (July 31, 2006), all 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 August 8, 2006.

## **STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

**MOTION:**      *I move that the Commission determine that Appeal No. A-4-MAL-06-096 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

### **STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

### **RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-4-MAL-06-096 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section

30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

## **FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION AND BACKGROUND**

The City of Malibu approved CDP 05-144 for the construction of an 11,158 sq. ft., partial two-story, 18 to 22-foot high single-family residence, with a 5,550 sq. ft. basement/garage, pool, spa, alternative onsite wastewater treatment system, and 3,124 cu. yds. of grading (2,132 cu. yds. cut and 992 cu. yds. fill) at 24950 Pacific Coast Highway (formerly 24920 Pacific Coast Highway) (**Exhibits 4-11**).

The proposed project site is located on a 5.24-acre bluff top lot located on the ocean side of Pacific Coast Highway. The site is comprised of a gentle slope extending south from the highway to a bluff face that descends, at a gradient of approximately 1.5:1 to 2:1, down to Malibu Road and a row of beachfronting parcels that are developed with single family residences.

In 1998 the Commission approved CDP No. 4-98-163 (Duggan & Levenson) for construction of a 9,398 sq. ft., 18-foot high, one-story single family residence with attached garage, tennis court, pool, spa, septic system, and grading (**Exhibit 13**). Slope remediation work on the site's bluff face, consisting of drainage improvements and 1,800 cu. yds. of grading to remove landslide debris, cut benches in the underlying bedrock, and import fill material to be recompact at a slope of 1.5:1, was also proposed on the subject property as the winter storms of 1998 resulted in a landslide on the bluff portion of the lot. Special conditions of CDP approval related to assumption of risk, conformance with geologic recommendations, landscape, erosion control and drainage plans, view corridor, future improvements, and archaeology. The permit was issued in December 1998, and the proposed slope remediation and slope drainage work was completed thereafter. However, the residence was never built and the property transferred ownership.

In 2000, the new property owner (the applicant) requested Site Plan Review approval from the City of Malibu for a new development plan on the site. The local level permit and appeal process continued for several years, and in December 2002, the Malibu City Council adopted Resolution No. 02-38 conditionally approving the construction of a new, two-story residence on the property. The project then went into litigation and resulted in a Settlement Agreement between the City of Malibu and the applicants, dated January 20, 2005. The court-approved Settlement Agreement resulted in a revision of the landscaping and structure height conditions of Site Plan Review approval contained in the City's Resolution No. 02-38. Therefore, the City's 2002 approval, as amended by the terms of the court-approved Settlement Agreement, resulted in the

revised development design that was considered and approved by the City of Malibu in the subject CDP on July 10, 2006 (**Exhibit 12**).

## **B. APPELLANTS' CONTENTIONS**

As noted above, two appeals of the subject CDP were submitted within the appeal period; 1) by Ron Goldman and Mark Zucker, and 2) by Patt Healy and Malibu Coalition for Slow Growth. The contentions of each appellant are described separately below.

### **Ron Goldman and Mark Zucker**

The appeal filed by Ron Goldman and Mark Zucker is attached as **Exhibit 2**. The appeal provides several grounds for appeal: 1) the permit application was incomplete because slope stability and public safety were not addressed and landscape plans were incomplete; 2) slope/bluff stability issues were not adequately addressed; 3) submitted landscape plans will block 70% of the remaining blue water view from Pacific Coast Highway after the house is built and no plant material or fencing is specified; 4) the structure exceeds the 18-foot height limit and the trellis unnecessarily blocks public views; and 5) the structure exceeds the maximum allowable area. Several diagram and photograph exhibits to demonstrate the appellants concerns were attached to the appeal filed by Ron Goldman and Mark Zucker. These attachments are also included in **Exhibit 2**.

### **Patt Healy and Malibu Coalition for Slow Growth**

The appeal filed by Patt Healy and Malibu Coalition for Slow Growth is attached as **Exhibit 3**. The appeal asserts that the project does not meet the requirements of the Malibu LCP and gives the following grounds for the appeal: 1) final landscape and drainage plans necessary for visual and slope stability analysis, and required by LIP Sections 13.6.4 (D)(4) and (G), were not provided; 2) the submitted erosion control plan does not address the eroding bluff; 3) the project does not comply with the scenic view protection provisions contained in Chapter 6 of the LIP and the required analysis was not submitted; 4) feasible alternatives exist that would minimize impacts on scenic resources; 5) the project will adversely affect neighborhood character; and 6) the structure exceeds the maximum allowable square footage contained in LIP Sections 3.5 and 3.6.

## **C. ANALYSIS OF SUBSTANTIAL ISSUE**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access 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. However, should the Commission find Substantial Issue based on

the grounds that are cited, the public access of the Coastal Act would be addressed in the de novo review of the project.

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

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

In this case, for the reasons discussed further below, the Commission determines that the development, as approved by the City, raises no substantial issue with regard to the grounds on which the appeal has been filed.

## 1. Visual Resources

Patt Healy and Malibu Coalition for Slow Growth assert that the project does not comply with the scenic view protection provisions of LIP Chapter 6 and the required analysis was not provided. Ron Goldman and Mark Zucker assert that the structure exceeds the 18-foot height limit and proposed structural and landscape elements block blue water views. Both appellants also assert that complete landscape plans were not provided.

Section 30251 of the Coastal Act, below, is a policy of the Malibu LUP that pertains to scenic and visual resource protection.

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

The Malibu LIP contains several policies regarding scenic and visual resources:

**6.5 (A) Development Siting**

1. *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.*
2. *Where there is no feasible alternative that is not visible from scenic highways or public viewing areas, the development area shall be restricted to minimize adverse impacts on views from scenic highways or public viewing areas.*
3. *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.*
4. *New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.*

**6.5 (B) Development Design**

1. *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, pursuant to Section 13.27 of the Malibu LIP 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.*
2. *The length of on-site roads or driveways shall be minimized, except where a longer road or driveway would allow for an alternative building site location that would be more protective of visual resources or ESHA. Driveway slopes shall be designed to follow the natural topography. Driveways that are visible from a scenic highway, a beach, a public viewing area, or public hiking trail shall be a neutral color that blends with the surrounding landforms and vegetation.*
3. *Retaining walls visible from scenic highways, public viewing areas, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.*
4. *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public view areas.*



5. ***New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.***

#### **6.5 (E) Ocean Views**

***New development on parcels located on the ocean side of public roads, including but not limited to, Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, Cliffside Drive shall protect public ocean views.***

1. ***Where the topography of the project site descends from the roadway, new development shall be sited and designed to preserve bluewater ocean views over the approved structures by incorporating the following measures.***
  - a. ***Structures shall extend no higher than the road grade adjacent to the project site, where feasible.***
  - b. ***Structures shall not exceed one story in height, as necessary, to ensure bluewater views are maintained over the entire site.***
  - c. ***Fences shall be located away from the road edge and fences or walls shall be no higher than adjacent road grade, with the exception of fences that are composed of visually permeable design and materials.***
  - d. ***The project site shall be landscaped with native vegetation types that have a maximum growth height at maturity and are located such that landscaping will not extend above road grade.***

In this case, Pacific Coast Highway (PCH) lies adjacent to the site and is recognized as a “scenic highway” in the Malibu LCP. Given the topography and location of the project site, there is a potential for impact to public views from PCH across the project site to the ocean.

#### **1) Proposed Residential Structure**

Regarding the residential structure, the appellants contend that the project does not comply with the scenic view protection provisions contained in Chapter 6 of the LIP in that the structure exceeds the 18-foot height limit and maximum allowable square footage, the project will adversely affect neighborhood character, the trellis blocks public views, and feasible alternatives exist that would minimize impacts to scenic resources.

Section 6.5(B)(1) of the LIP specifies that the maximum allowable height of structures shall be 18 feet above existing or finished grade, whichever is lower. However, where found appropriate through Site Plan Review, the maximum height may be increased to 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Site Plan Review (pursuant to Section 13.27 of the LIP), provides for the consideration of one of seven specific deviations from development standards required by the LCP, so long as certain findings can be made. As in this case, an increase in height over 18 feet may be approved through the Site Plan Review process, where considered concurrently with a coastal development permit application. Section

6.5(E)(1)(b) of the LIP specifies that where a project site on the ocean side of a public road such as PCH descends from the roadway, new structures shall not exceed one story in height, as necessary, to ensure bluewater views are maintained over the entire site.

As discussed previously, development of the project site was subject to a previous permit action by the Coastal Commission in 1998 (CDP No. 4-98-163), which approved a one-story, 18-ft. high, 9,398 sq. ft. residence with an attached garage, tennis court, pool, spa, septic system, and slope remediation. This residence was never constructed.

The proposed residence is primarily one-story and 18 feet in height, however a portion of the residence is two-story and 22 feet in height (flat roof). Approximately 72 percent is one-story and approximately 28 percent is two-story in height. The residence is situated about 320 feet away from PCH on a gently descending slope. The centerline elevation of PCH at the development area is approximately 163 feet above sea level. The one-story portion of the structure is 18 feet above finished grade and at an elevation that ranges between 142 and 146 feet. The highest roof elevation of the proposed residence (which is 22 feet above finished grade for the eastern, two-story portion of the structure) is at an elevation of approximately 147 feet. Therefore, the one-story portion of the proposed residence is 17 to 21 feet below road grade and the two-story portion is 16 feet below the road grade of PCH (**Exhibits 8-11**).

The City analyzed the potential impact on ocean views across the project site from PCH with the use of story poles, alternatives analysis, and a visual analysis submitted by the applicant. Siting and design alternatives were explored and analyzed by the applicant and City staff throughout their lengthy Site Plan Review and Coastal Development Permit process. The City approved the two-story, 22-foot high portion of the residence through Site Plan Review by finding, pursuant to Section 13.27 of the Malibu LIP, that the project does not adversely affect neighborhood character, provides maximum feasible protection of public bluewater views, and is consistent with the LCP. Commission staff reviewed the approved plans as well as story poles placed on the property to depict the height and location of the structure. Staff's review indicates that given that the top of the proposed development will be significantly below road grade, bluewater ocean views would be maintained over the entire site. Further, the proposed development has been clustered in the center of the property, leaving wide corridors along both sides of the property that maximize bluewater views across the site (**Exhibit 15**). While a portion of the proposed residence exceeds one-story and 18 feet in height, this 22-foot high second story portion of the residence will be 16 feet below the road grade and will not significantly reduce or obstruct bluewater views as seen from PCH. The proposed wooden trellis attached to the west side of the residence is 18 feet high and 15 feet wide. The trellis does not exceed the height or elevation of the residence, nor pose a bluewater view obstruction. Additionally, review of Commission-approved residences on adjacent parcels indicate that the proposed residential project is similar in scale and height and conforms to the character of the neighborhood. Therefore, as approved, the residential structure has been sited and designed to avoid impacts to

bluewater views to the maximum extent feasible and the applicable findings for Site Plan Review regarding structure maximum height were sufficiently made by the City.

Since the proposed residence will be unavoidably visible from a scenic road, the City required, as a condition of approval, that the development shall incorporate colors and exterior materials that are compatible with the surrounding landscape, consistent with Section 6.5(B)(5) of the LIP.

Further, the proposed 11,158 sq. ft. structure complies with the total allowable square footage provision of Section 3.6 of the LIP in that it does not exceed 11,172 sq. ft., the maximum allowed for a parcel greater than five acres in size. The proposed 5,550 sq. ft. basement/garage is situated below grade, and pursuant to Section 3.6(K)(3) of the LIP, this area does not count in the total allowable square footage calculation. The structure has been sited and designed to minimize its overall width, massing and architectural projections, so as to provide large, side yard setbacks to maximize bluewater views as seen from PCH. Proposed side yard setbacks (84-ft. west yard setback and 71-ft. east yard setback) are far in excess of the minimum required by the LCP's residential development standards.

In conclusion, the residence, as sited and designed, and as conditioned by the City in CDP 05-144, is located 16 feet below the road grade of PCH at its highest point (although the majority of the structure will be 17 to 21 feet below road grade). The residence is also sited to provide wide view corridors on either side of the property. The project, as approved, will avoid impacts to the existing bluewater views across the site. Therefore, the Commission finds that the proposed residential structure, as approved by the City, conforms to the visual resource protection policies and provisions of the Malibu LCP.

## *2) Proposed Residential Landscaping*

The appellants contend that submitted landscape plans will block 70% of the remaining bluewater view from Pacific Coast Highway after the house is built and no plant material or fencing is specified, inconsistent with the scenic view protection provisions contained in Chapter 6 of the LIP. Both appellants also assert that complete landscape plans were not provided.

Section 13.6.4(D)(4) of the LIP requires that a coastal development permit application shall be accompanied by a site plan that shows major natural and man-made landscape features, including location, type, size, and quantification of acreage of any trees or other vegetation to be planted or removed by the proposed project. Section 6.5(B)(4) of the LIP specifies that fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public view areas. Additionally, Section 6.5(E)(1) of the LIP requires that the project site shall be landscaped with native vegetation types that have a maximum growth height at maturity and are located such that landscaping will not extend above road grade.

As discussed previously, the court-approved Settlement Agreement between the City of Malibu and the applicant resulted in the revision of the landscaping condition of the City's 2003 conditional Site Plan Review approval (Resolution No. 02-38) for a new residence on the subject property. The revised landscaping condition per the Settlement Agreement relied upon the landscape plan approved by the Coastal Commission in 1998 per CDP No. 4-98-163 as a basis for the approved tree configuration on the site and then assigned height limits for the individual trees, as well as height parameters for all other landscape vegetation. The revised landscaping condition of approval per the Settlement Agreement reads as follows and is contained in **Exhibit 17** of this report:

*All landscaped areas shall be planted and maintained in accordance with Exhibit A, attached hereto and made a part hereof. Applicants are allowed to eliminate or reduce the size of the landscaping but not plant additional landscaping or trees in excess of specified heights. No landscaping which blocks bluewater ocean views shall be maintained in the view corridors depicted on Exhibit A, except for those 10-foot-high trees depicted in pink on Exhibit A. Consistent with CDP 4-98-163, except as otherwise provided herein, all landscaping outside the view corridors on site shall be limited to 18 feet in height or the centerline elevation of Pacific Coast Highway (elevation 163.28' by survey), whichever is lower. Vegetation within 15 feet of Pacific Coast Highway shall be limited to no more than 2 feet in height. Prior to the issuance of a building permit, final landscape plans shall be submitted for review and approval by the Planning Manager and/or City Biologist. Failure to comply with the landscaping conditions is a violation of these Conditions of Approval. Landscaping shall be used to soften views of the structure as seen from Pacific Coast Highway and surrounding properties. Plant species shall be approved by the City Biologist in advance and shall be ones that will not grow higher than the maximum height allowed in accordance with Exhibit A and the approved landscaping plan.*

The exhibit (plan view of the site) approved as part of this Settlement Agreement show the trees that are allowed, their exact location, and the maximum height allowed for each. The closest 18-foot tall tree to PCH identified on the landscape plan is approximately 170 feet seaward from the centerline of PCH. Only two trees are allowed nearer (approximately 120 feet seaward from centerline of PCH), and those are restricted to no more than 10 feet in height. Select trees in the view corridors on either side of the residence were also restricted to 10 feet in height to maximize public views. The landscape plan also specifies that landscape vegetation within 15 feet of PCH be no more than two feet in height. All other landscape vegetation (excluding trees) on the site must be limited to 18 feet in height or the centerline elevation of Pacific Coast Highway, whichever is lower. As such, no trees are allowed on the site besides those illustrated on the landscaping condition exhibit and in no event shall other landscaping exceed road grade. The City found that the landscaping restrictions imposed by the 2005 Settlement Agreement would ensure that bluewater views are maintained over the entire site.

As part of the administrative coastal development permit application, the applicant had provided the City with a detailed, pre-Settlement Agreement landscape plan that was supplemented by the court-approved Settlement Agreement landscape plan which imposed restrictions on the height and location of trees and other landscaping on the

property. While a final, detailed landscape plan had not been provided to the City, plans with sufficient specificity to analyze potential impacts to scenic/visual resources as a result of the project had been provided. As a condition of the City's approval of the subject permit, a final landscaping plan, which complies with the court-approved Settlement Agreement, must be reviewed and approved by the City prior to issuance of a building permit. The City Biologist must approve landscape plant species in advance, as the City is not relying on landscape maintenance to enforce the landscape condition, rather on the selection and planting of specimen trees. In addition, the City has required that any boundary fencing must comply with the LCP and the court-approved Settlement Agreement in that it may not exceed road grade or obstruct bluewater views over the approved structures.

Commission staff reviewed the landscaping restrictions imposed by the Settlement Agreement and analyzed how the landscape height limitations would impact the sight line of bluewater views from PCH across the site. The site descends seaward from PCH and review of cross-section drawings indicate that the landscape plan trees, at the full height allowed (18 feet or 10 feet as applicable), would be situated below road grade and would not obstruct bluewater views from PCH over the site (**Exhibit 14**). The applicant's visual analysis takes into consideration both the proposed structure's story poles and the specific trees allowed on the site per the Settlement Agreement landscape plan (**Exhibit 16**). The tree closest to PCH that may be 18 feet tall, as identified on the landscape plan, is approximately 170 feet seaward from the centerline of PCH and the maximum point of the tree (at 18 feet) will be located below the road grade of Pacific Coast Highway. Other landscape vegetation within 15 feet of PCH must be two feet tall. As such, the maximum height of the landscaping, including trees, permitted by the City, will be further below road grade the further they are located from PCH and will maintain bluewater views from PCH, as views are framed by a descending cone of vision.

Therefore, the proposed residential landscaping, as conditioned by the City, is adequately specified and restricted to minimize adverse impacts on bluewater views from PCH, and is in compliance with LIP Section 6.5(E)(1) by not exceeding road grade. The Commission finds that this contention does not raise substantial issue with respect to the allegations that the landscaping portion of the project, as approved by the City, is not consistent with the visual resource policies and provisions of the LCP.

## **2. Hazards/Bluff Development**

An appeal ground cited by both appellants relates to slope stability of the on-site bluff. The appeal filed by Patt Healy asserts that a drainage plan for the proposed project had not been provided to the City as required by LIP Section 13.6.4(G), which states that drainage and erosion control plans shall be submitted with all coastal development permit applications. However, the City's administrative record includes both drainage and erosion control plans for the proposed project.

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:

- 4.2     *All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.***
- 4.5     *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.***

Policy 4.27 of the Malibu LUP requires a sufficient setback from the edge of a bluff to ensure that development will not be endangered from erosion for the life of the structures:

- 4.27    *All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.***

The LCP requires a 100 ft. setback from the bluff edge unless the geologist recommends a lesser setback with the assurance of a safety factor of 1.5 over an economic life of the structure for 100 years, in which case the required setback may be reduced to 50 feet. The bluff development policies and provisions of the LCP require setbacks from the bluff edge to assure stability and structural integrity of new development for the anticipated life of the structures, as well as to prevent the future need for shoreline protective devices.

The proposed project site is located on a 5.24-acre bluff top lot located on the ocean side of PCH. The site is comprised of a gentle slope extending south from the highway to a bluff face that descends, at a gradient of approximately 1.5:1 to 2:1, down to Malibu Road and a row of beachfronting parcels that are developed with single family residences.

The bluff face in the immediate area and surrounding vicinity of the subject parcel has experienced failures in the past. These failures have resulted in excessive material sloughing off onto Malibu Road and have required remedial action. In 1997, the Commission approved a coastal development permit (CDP No. 4-97-031) on the parcel adjacent to the subject property to the west that involved slope remediation work as a result of a failure. In 2000, the Commission approved CDP No. 4-98-142 on the parcel to the east that involved landslide slope remediation work as well. The winter storms of 1998 also resulted in a slope failure on the bluff portion of the subject property. Slope remediation and associated drainage, erosion control, and landscape plans were reviewed, approved, and implemented pursuant to CDP No. 4-98-163 (Duggan & Levenson), issued by the Commission in December 1998. Slope remediation work consisted of grading to remove the landslide debris, cutting benches in the underlying bedrock, and importing fill material for recompaction at a slope of 1.5:1 (**Exhibit 13**). CDP No. 4-98-163 also authorized the construction of a residence on the property that adhered to a recommended geotechnical setback and was greater than 100 feet from the top of the bluff slope (the approved residence was never constructed).

The proposed project includes a residential structure and an ancillary structure (deck) that extend 180 feet and 140 feet, respectively, from the edge of the coastal bluff. This is consistent with the bluff development provisions of the LCP. The proposed residence is in essentially the same footprint as the previous Commission-approved residence and maintains the same bluff setback, which is in excess of 100 feet. The project does not involve any modification to the site's existing slope remediation or drainage features that were previously approved, constructed, and vested pursuant to CDP No. 4-98-163. Commission staff has reviewed the project's geotechnical reports to confirm the results of the slope stability and recommended geologic setback analyses for the proposed project. The proposed development is adequately setback from the minimum required factor of safety lines for static and seismic conditions as determined by the project geotechnical consultant. The reports also provide comprehensive recommendations regarding stormwater detention and drainage for the site. Given the demonstrated fragility of the bluff in the vicinity of the subject property, a state-of-the-art stormwater conveyance system has been recommended to restrict drainage flows from PCH and the development site in order to protect the bluff face and development below. Plans for such a permanent drainage system were considered by the City and the conditions of approval require this system to be implemented as part of the project.

The project has been extensively reviewed and ultimately approved by City Geotechnical staff, subject to special conditions. In August 2005, groundwater levels were measured from the 13 active groundwater monitoring wells on the site. When compared to the levels measured in January 2003 as part of the project's Preliminary

Geotechnical Engineering Report, the groundwater data indicated that groundwater elevations have risen by an average of approximately 4 feet in most of the wells since 2003. Stability analyses were subsequently updated by the geotechnical consultant using the more recent groundwater levels and found to result in little or no change, as the increased groundwater levels are not large compared to the height of the slope. To address the change in groundwater conditions identified beneath the site, the City has required a comprehensive hydrogeologic report and site drainage plan to be reviewed and approved by City Geotechnical staff prior to final planning approval.

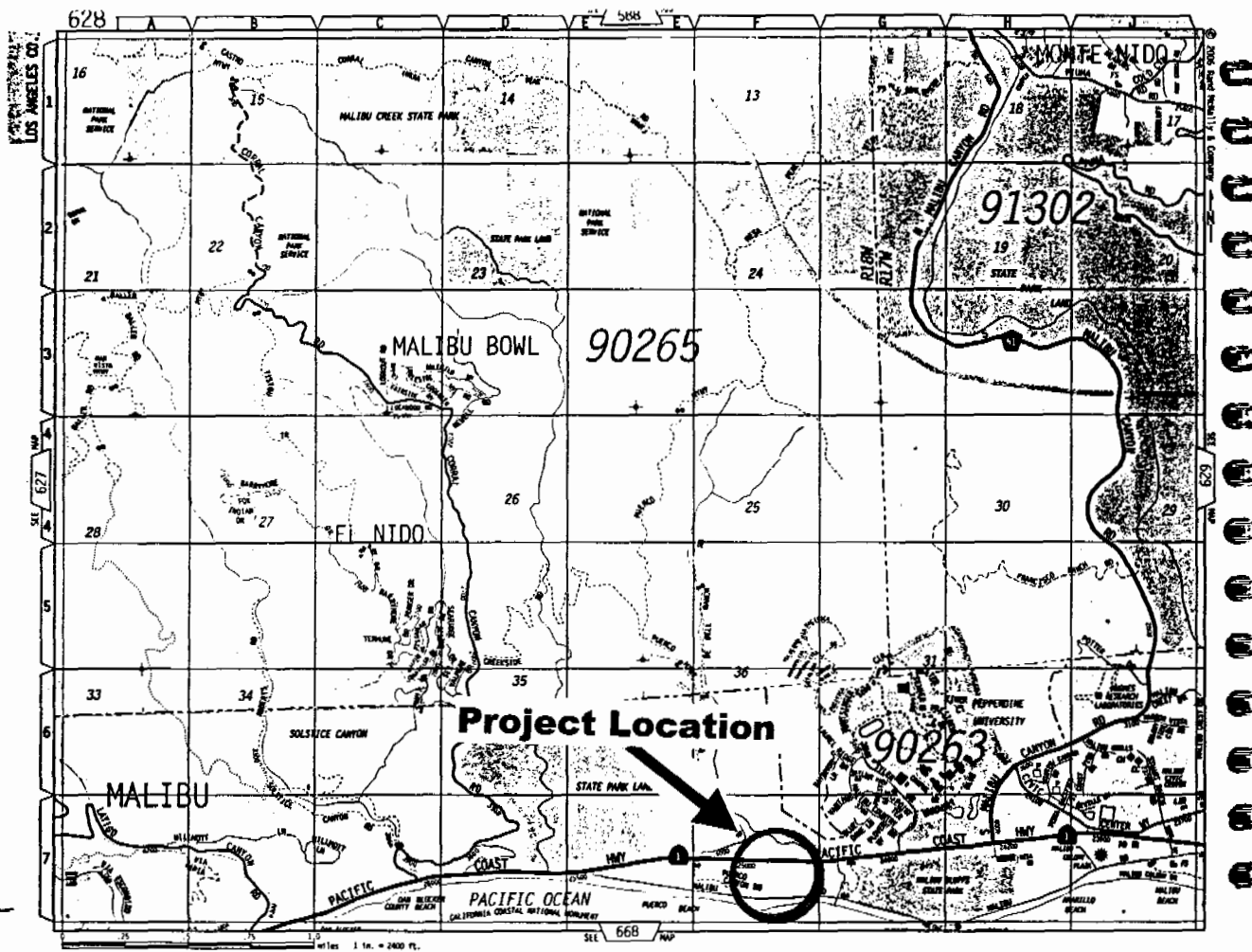
Conformance with the recommendations of the applicant's geologic, hydrogeologic and geotechnical consultants regarding foundations, grading, drainage, erosion and stormwater control is included in the City's conditions of approval for the project. In addition, the City has required as a condition of approval that all disturbed and graded areas on the subject site be stabilized with native vegetation and all slopes incorporate slope planting measures to ensure the stability and geotechnical safety of the site and to prevent surface soil erosion. As such, the project, as approved and conditioned by the City, will minimize risks to life and property from geologic hazard and will assure site stability and structural integrity and is consistent with the applicable policies and standards of the Malibu LCP.

Therefore, the Commission finds that the appellant's contentions does not raise substantial issue with respect to the allegations that the project, as approved by the City, is not consistent with the hazard/bluff development policies and provisions of the LCP.

## **D. CONCLUSION**

The purpose of the substantial issue determination is to review the administrative record and establish whether a substantial question is raised with respect to the appellants' assertions that the project does not conform to the certified LCP or public access policies of the Coastal Act. In this case, neither appeal made any assertion that the project is not consistent with the public access policies of the Coastal Act. As described above, the Commission finds that the appellants' contentions do not raise substantial issue with regard to the consistency of the approved project with the hazard/bluff development or visual resource policies and standards of the adopted City of Malibu Local Coastal Program.

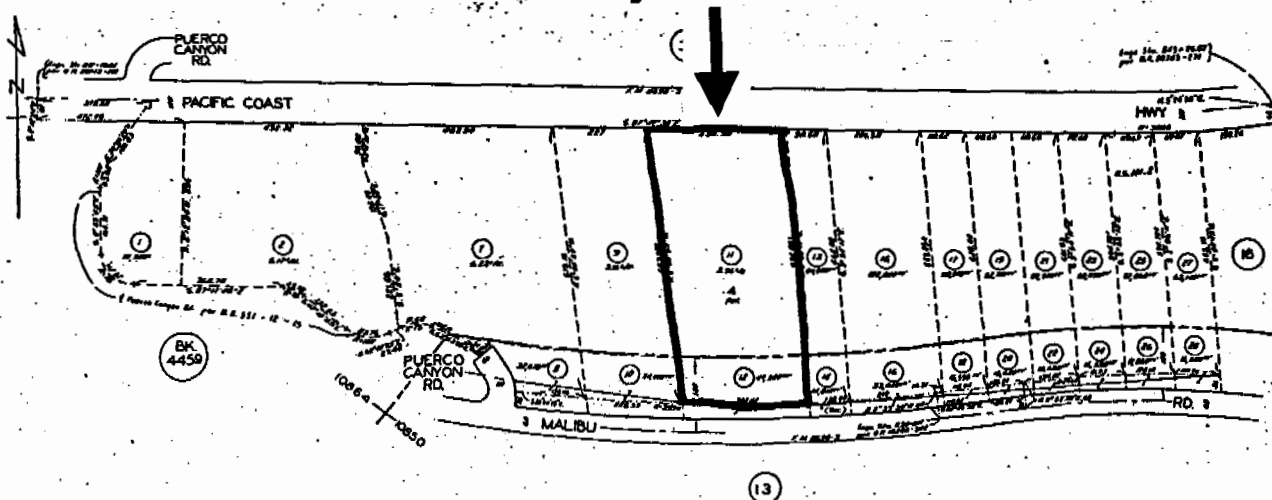




4458 15  
SCALE 1" = 200'

1992

**Subject Parcel**



CODE  
10850  
10884

FOR PREV. ASSMT SEE:  
4458 - 15

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

**Exhibit 1**  
**A-4-MAL-06-096**  
**Vicinity and Parcel**  
**Map**

**CALIFORNIA COASTAL COMMISSION**

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

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

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

**SECTION I. Appellant(s)**

Name: Ron Goldman and Mark Zucker

Mailing Address: 24955 Pacific Coast Highway, Suite A202 and 25000 Pacific Coast Highway

City: Malibu

Zip Code: 90265

Phone: 301-456-1831

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

16,708 s.f. single family residence on a coastal bluff between Pacific Coast Highway and Pacific Ocean.

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

24950 Pacific Coast Highway, Malibu

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

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

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: A-4-MAL-06-096  
DATE FILED: 8/4/06  
DISTRICT: So. Central Coast

Exhibit 2
A-4-MAL-06-096
Goldman and Zucker
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: July 17, 2006

7. Local government's file number (if any): CDP No. 05-144

**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:

April Verbanic  
Dudek and Associates  
621 Chapala Street  
Santa Barbara, CA 93101

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) Joyce Mendlin, Attorney  
Rosenberg Mendlin Rosen, LLP  
528 Colorado Avenue  
Santa Monica, CA 90401

(2) Greg Aftergood, Esq.  
Law Offices of G. Greg Aftergood  
21700 Oxnard Street, Suite 430  
Woodland Hills, CA 91367

(3) Mark Zucker  
25000 Pacific Coast Highway  
Malibu, CA 90265

(4) Patt Healy  
403 San Vicente Blvd.  
Santa Monica, CA 90402

## 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.

1. Applicant and city agreed on an inaccurate coastal appeal jurisdiction line which led to:
  - a) Keeping unstable coastal bluff issues out of their application. This bluff already is and will be further impacted with development immediately adjacent to the bluff.
  - b) An administrative approval was granted when there was a public hearing required (no public hearing has taken place, only 2 unsuccessful appeals before the city planning commission and the city council). If the application had been filed correctly and had not intentionally bifurcated the property, a full public hearing would have been required instead of an administrative approval.
2. The application was grossly incomplete due to:
  - a) Not addressing significant issues dealing with slope stability and public safety which were left out as they didn't want the application to be within the coastal jurisdiction appeal zone.
  - b) Grossly incomplete landscape plans which were simply the same schematic plans reached in a legal settlement with the city following a planning commission action which took place 4 years ago before the city's processing of coastal permits.
3. Landscape plans will allow blockage of 70% of the remaining blue water view from Pacific Coast Highway after the house is built. No plant material or fencing is specified.
4. Slope stability issues which were not addressed in a public forum, but instead left reports to be submitted and reviewed prior to obtaining a building permit. The slope has already experienced significant landsliding.
5. House design unnecessarily exceeds the 18 ft. height limit and has a "trellis" in the sideyard of the house with 4 ft. thick posts and 5 ft. deep trellis members unnecessarily blocking additional public views.

(continued on page 3(a))

## APPEAL FROM COAST PERMIT DECISION OF LOCAL GOVERNMENT

### SECTION IV. Reasons Supporting This Appeal

Page 3(a)

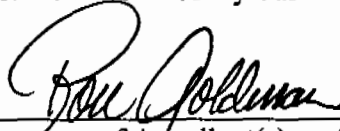
6. The house square footage totaling 16,708 s.f. substantially exceeds the allowable area under the current Malibu code, which I believe was in effect at the time a settlement agreement was reached between the applicant and the city. The current code allows a maximum 1000 s.f. basement, with 50% of the balance added to the maximum house square footage. This plan exceeds the allowable area by approximately 4500 s.f. I believe the city may also have erred in this respect.

In summary, there are serious issues of public view and public safety which have not been addressed.

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

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



\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 7-23-06

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

## Mark S. Zucker

25000 Pacific Coast Highway, Malibu, CA 90265, Tel (310) 456-9011, Fax (310) 402-5094

VIA FACSIMILE & MAIL: (805) 641-1732

RECEIVED  
AUG 04 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

August 2, 2006

Attn: Barbara Rodriguez  
California Coastal Commission  
South Central Coast District  
89 South California Street, Suite 200  
Ventura, CA 93001

Re: *24950 Pacific Coast Highway, Malibu, CA*

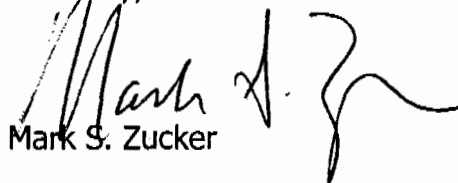
Dear Ms. Rodriguez:

I wish to join the appeal that was filed by Ron Goldman with regard to the property at 24950 Pacific Coast Highway, reference Local Permit #: CDP Nol. 05-144, Commission Appeal No. A-4-MAL-06-096.

Please contact me at the above number and or address should you have any inquiries.

Thank you for your prompt attention to this letter.

Sincerely,

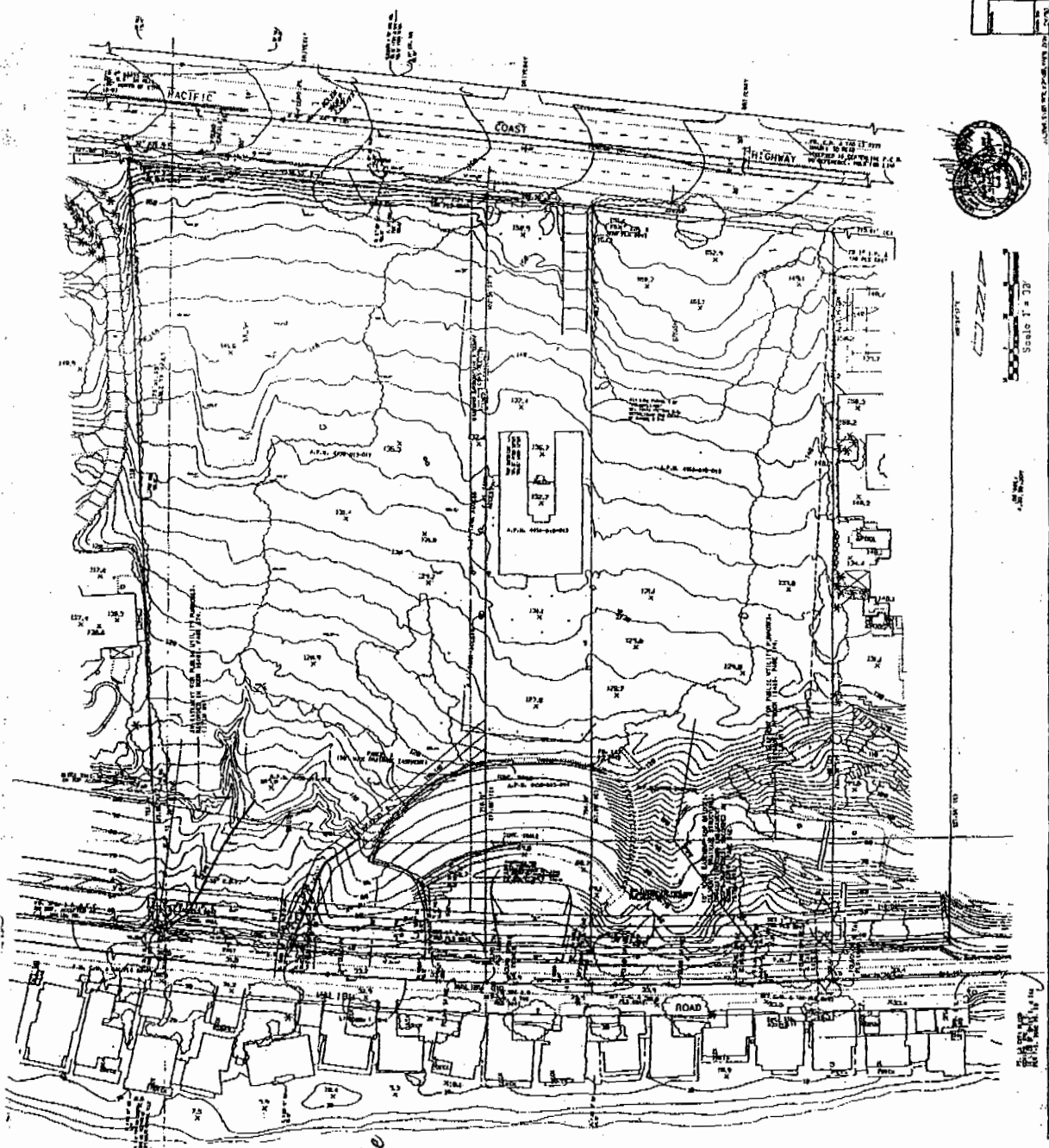
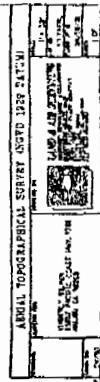
  
Mark S. Zucker

cc: Joyce S Mendlin

Year	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100
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1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348.

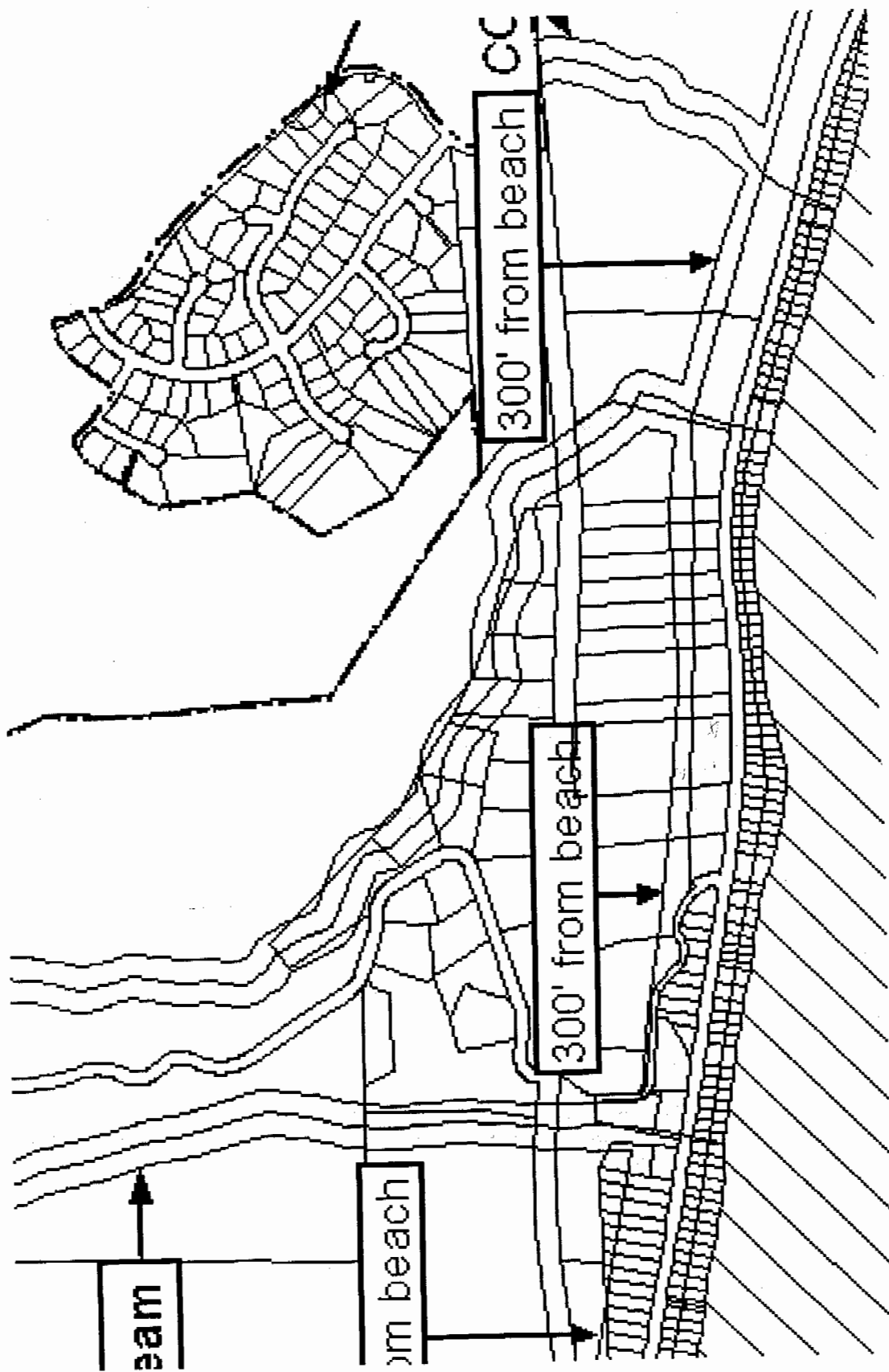
SECRET  
DECLASSIFIED BY: 6032  
DATE: 08-01-2001  
PAGE 10



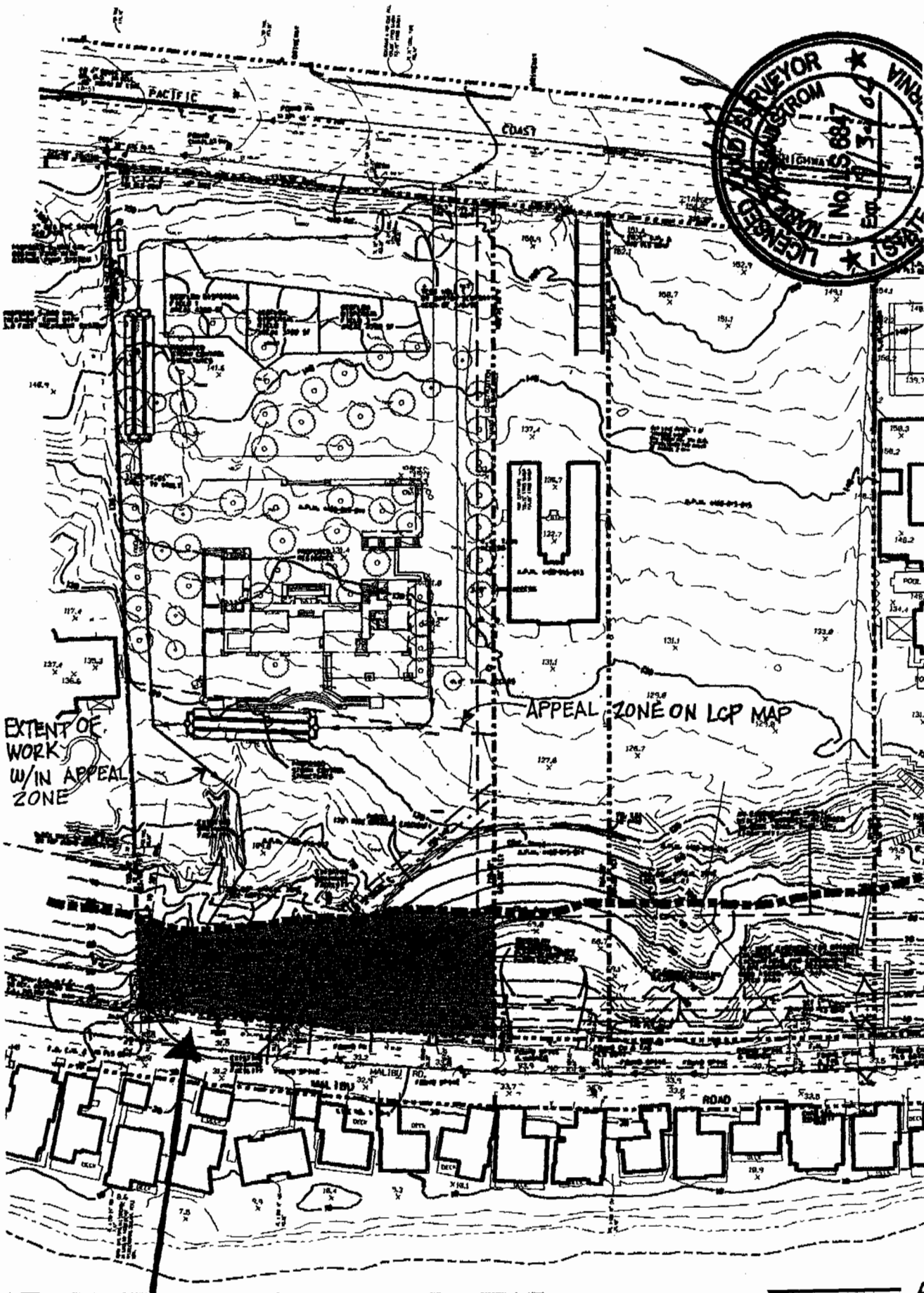
existing site  
exhibits re:  
coastal  
jurisdiction line



100



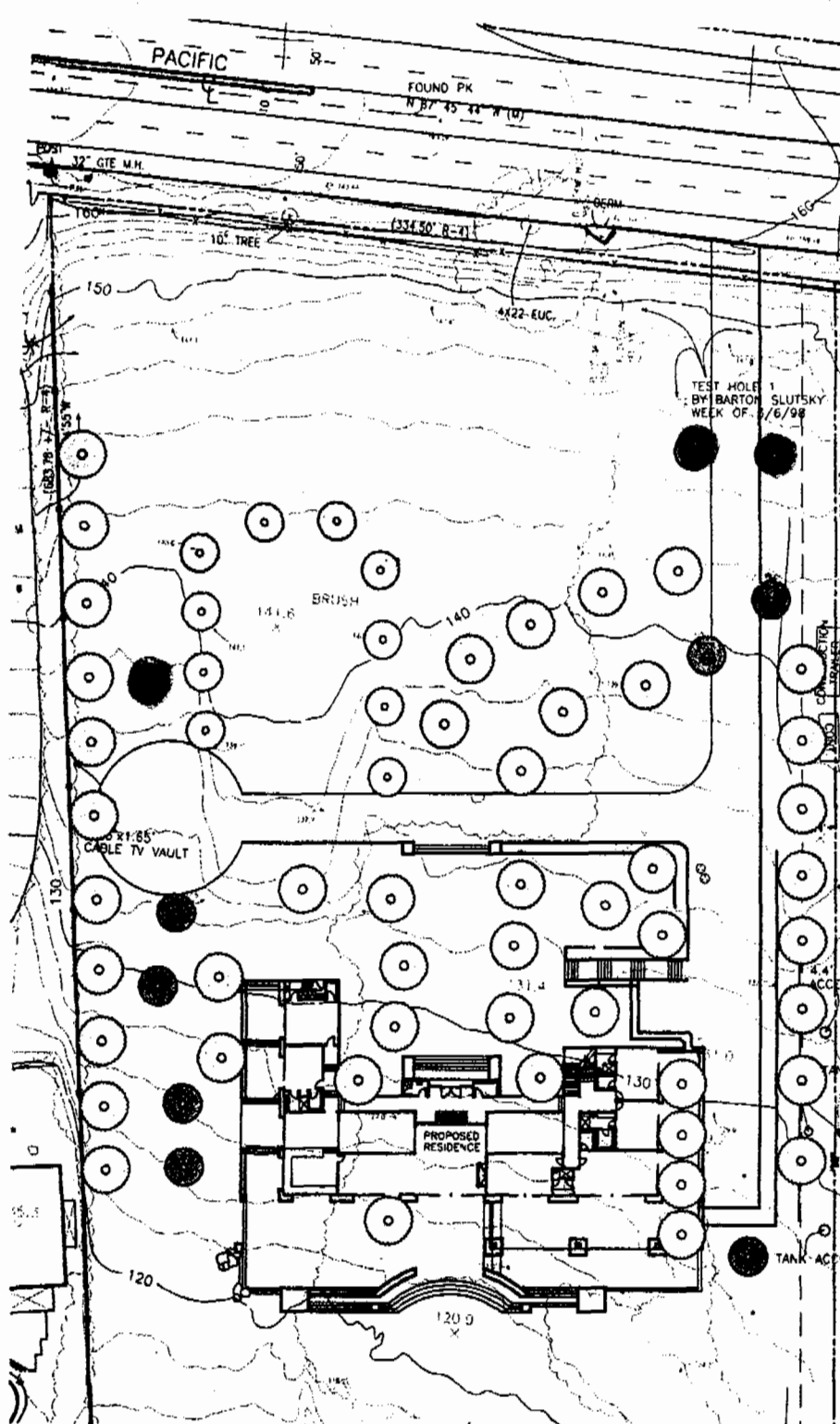
appeal justification line



Appeal zone Shaded

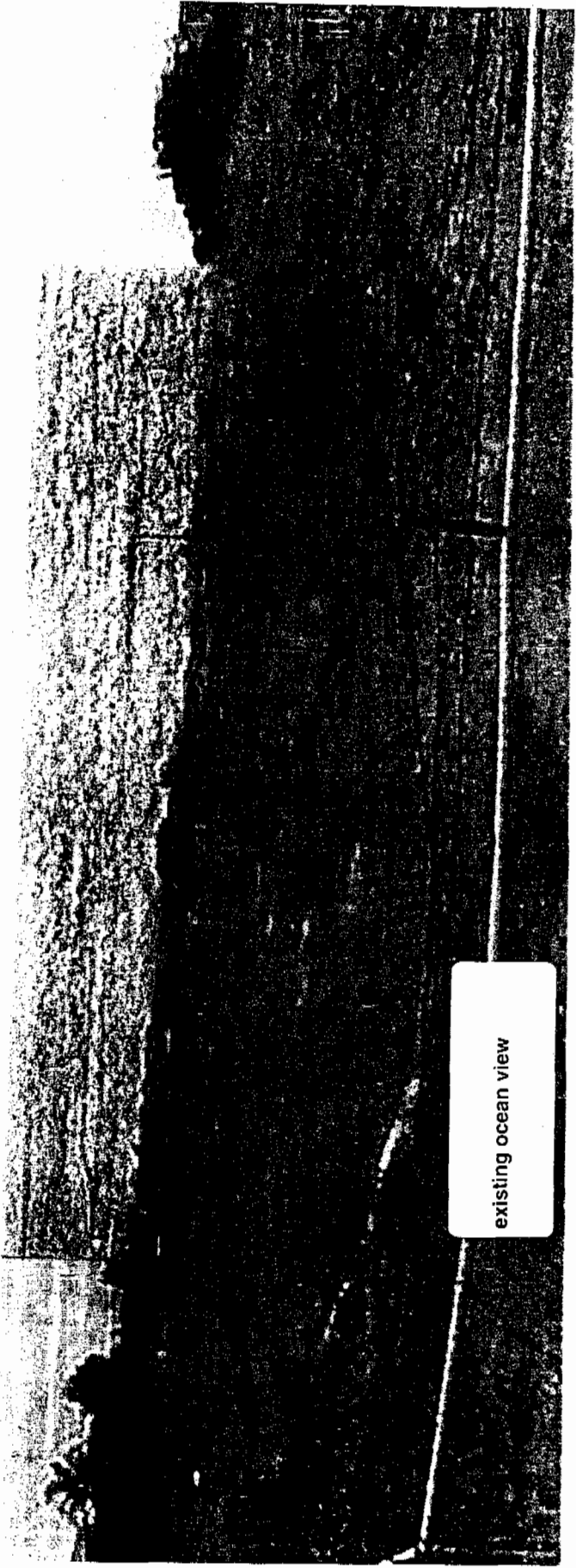
as shown by applicant

exhibits re:  
*SCENIC RESOURCES*  
 City approval  
 landscape plan  
 (yellow = 18' tree)  
 (red = 10' tree)



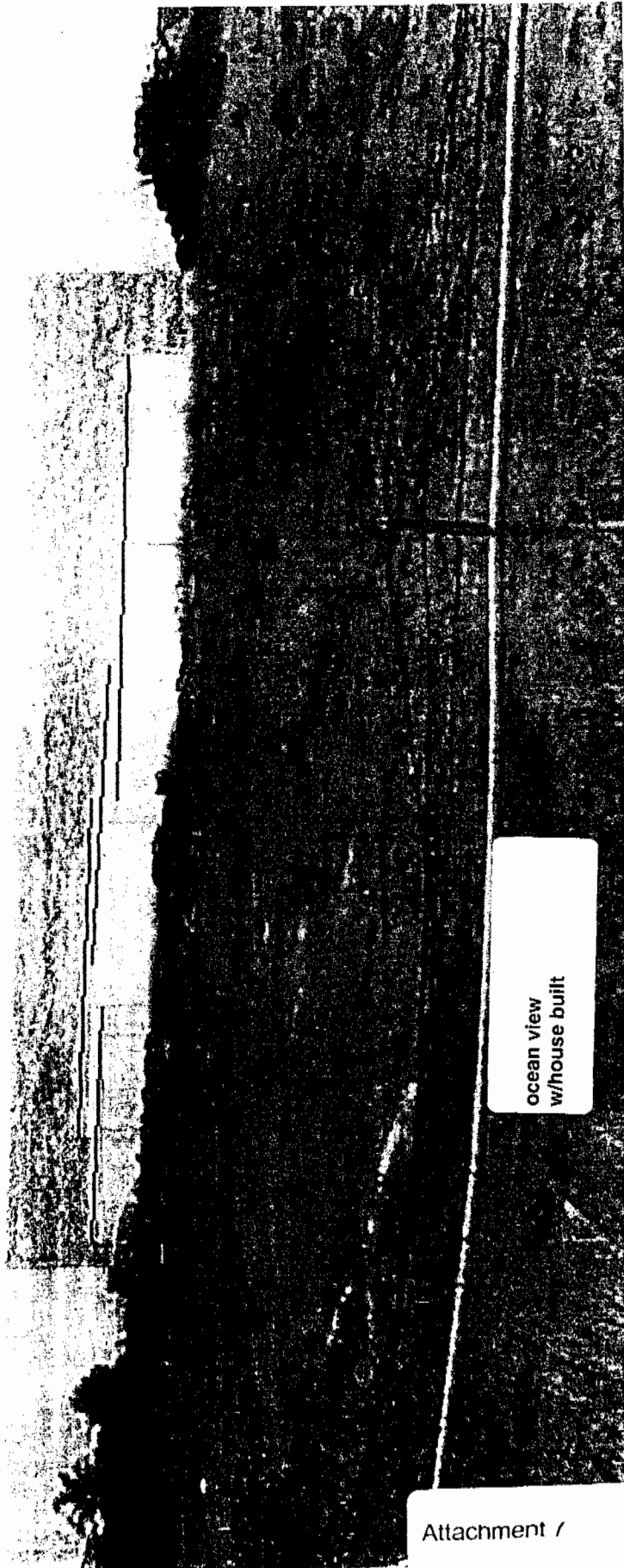
Scale: 1" = 40'-0"

24950 Pacific Coast Highway  
 Malibu, Ca. 90265



existing ocean view

\* note - lines drawn by <sup>city</sup> staff

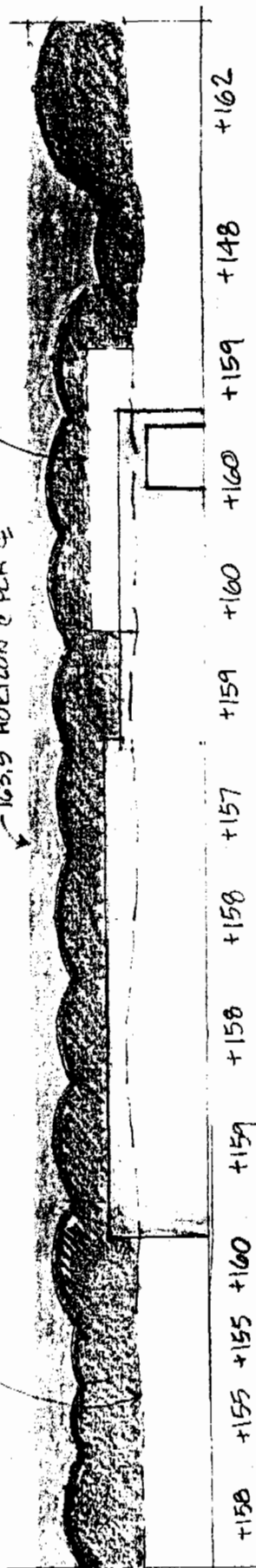


ocean view  
w/house built

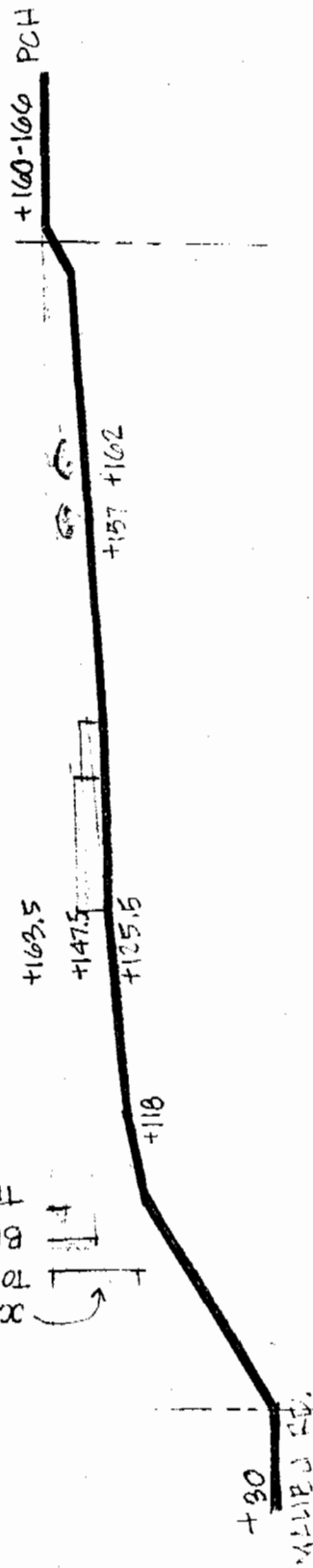
FUTURE TENNIS CBT. FENCE

163.5 HORIZON CBT. FENCE

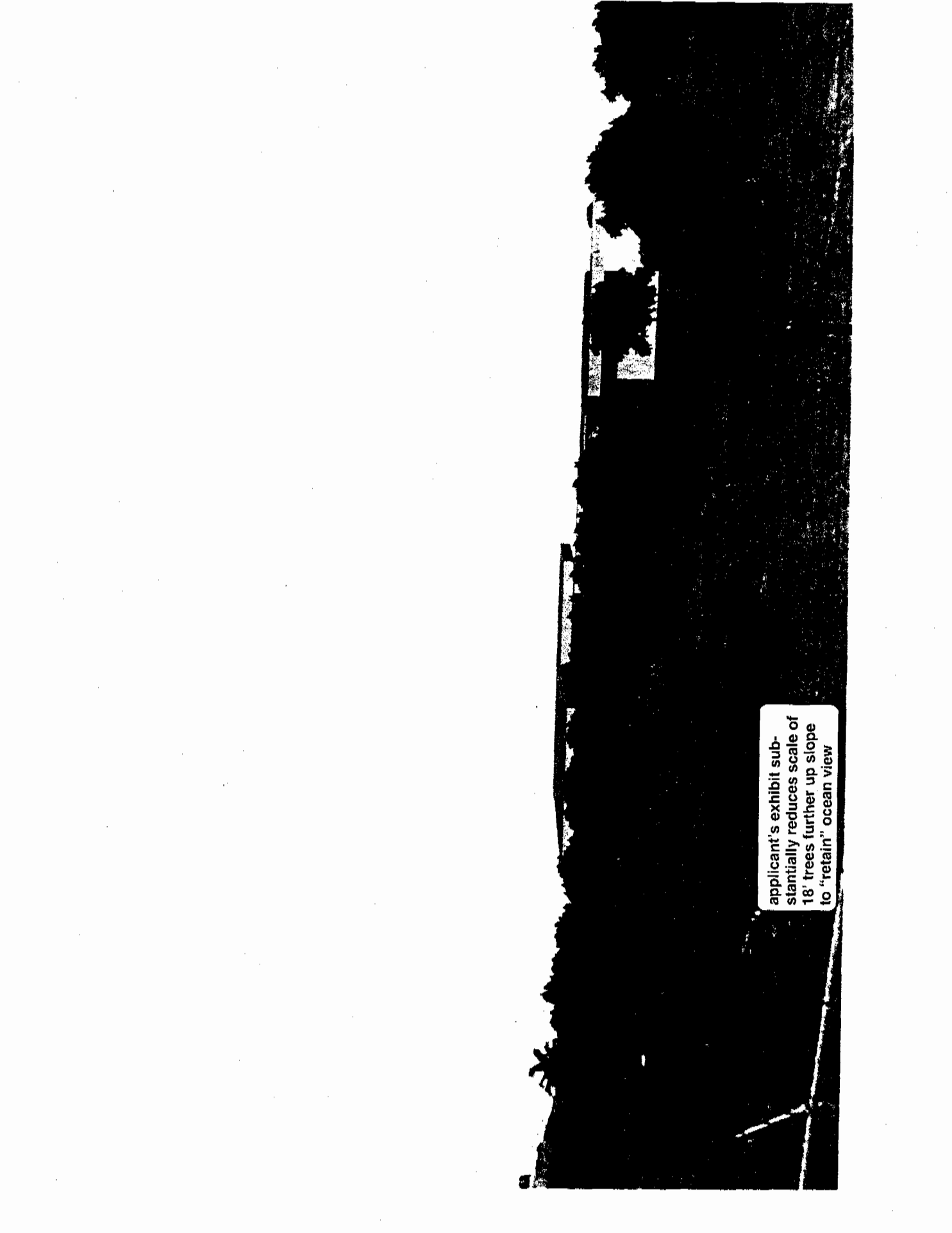
CONTOURS w/ 10' ROWS of TREES



OCEAN VIEW ABOVE  
TOP OF SLOPE  
BLDG. ROOFLINE  
TREE TOPS



view obstruction  
by landscape



applicant's exhibit sub-  
stantially reduces scale of  
18' trees further up slope  
to "retain" ocean view



exhibits re:

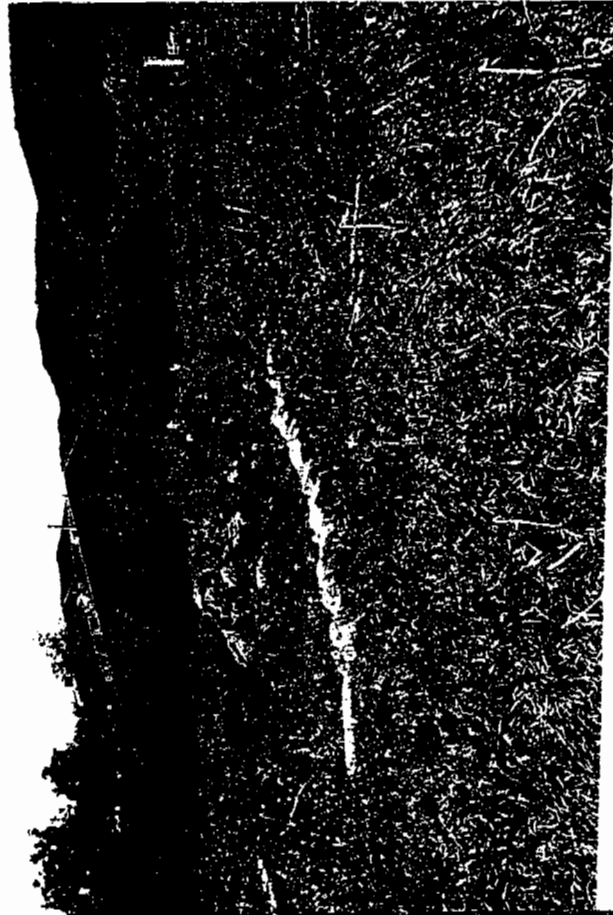
bluff slope  
instability



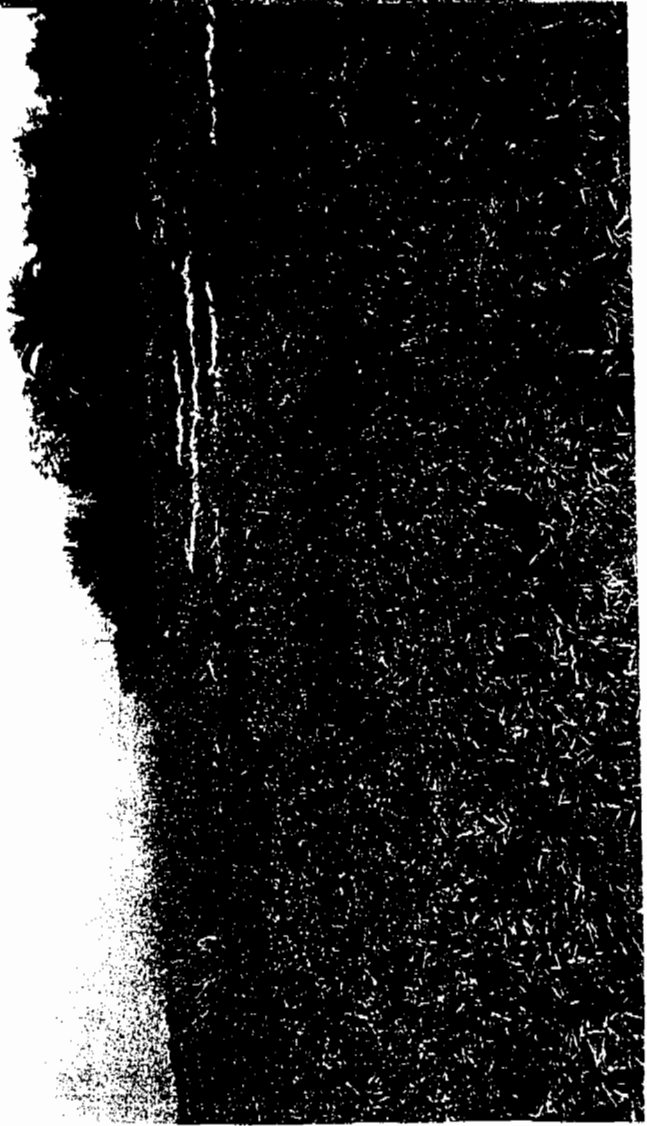
erosion begins on far  
left - considerably inland  
from top of slope

erosion back from  
top of slope





erosion control  
system = sandbags

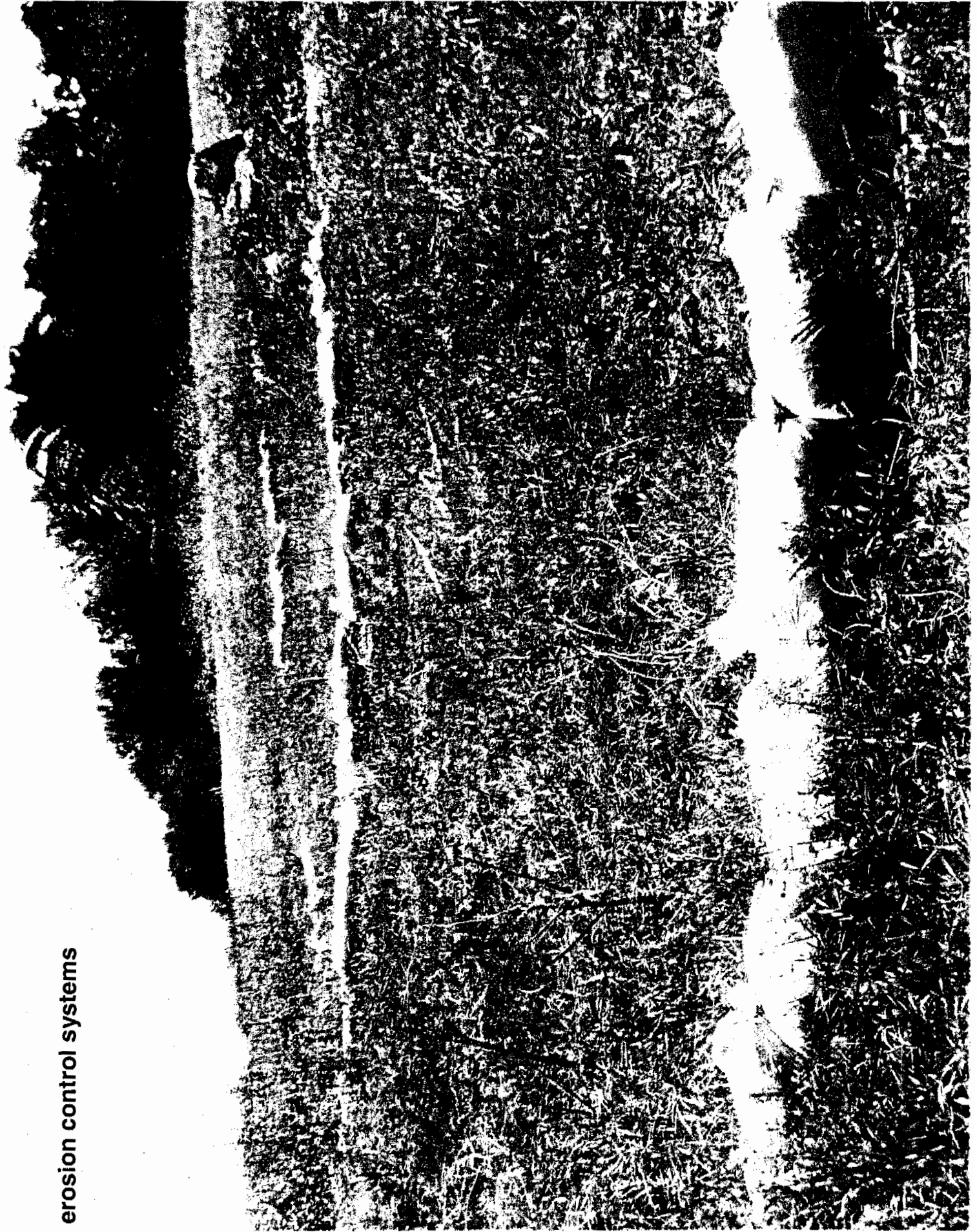


A black and white photograph showing a steep, grassy slope. Several horizontal, light-colored lines or strips are visible across the slope, likely representing erosion control measures such as straw mulch or geotextiles. The vegetation is dense and appears to be a mix of grass and small plants. The overall scene suggests a construction or land management site where erosion control is being implemented.

erosion control  
system



erosion control systems



sandbags, pipe and  
erosion all inland of  
top of slope





sole drainage system



drainage system above  
erosion ravines







pipng "supported"  
on eroded ravine



ravine at center of site



erosion abutting  
neighbor to west  
(Malibu Road below)



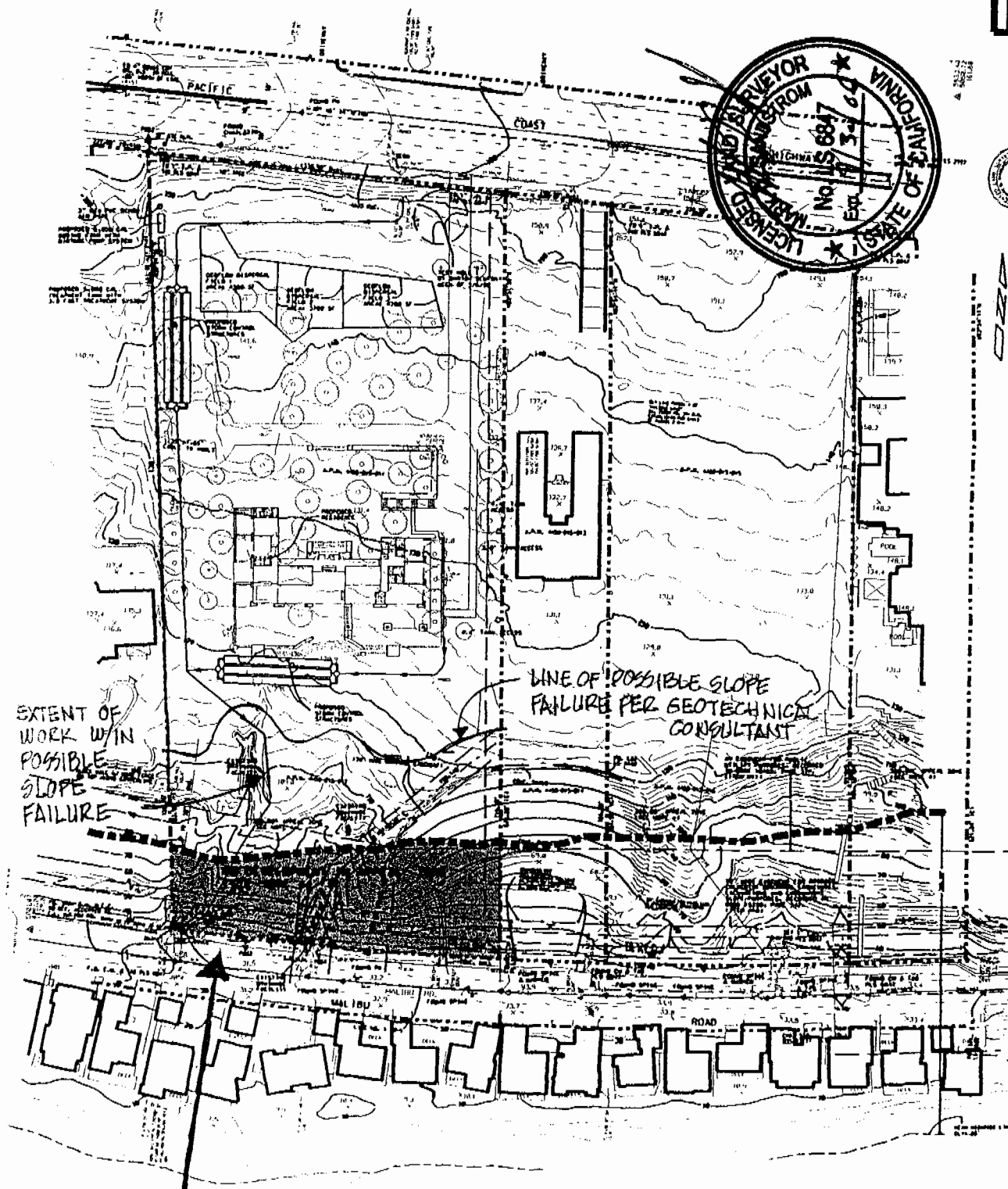


drainage through  
neighbor's wall  
© west p.i.

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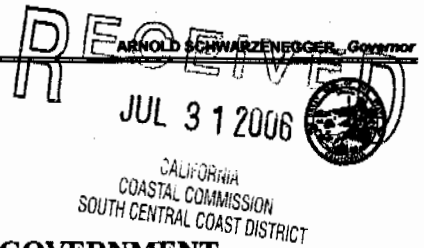
Appeal zone shaded as shown by applicant            Attachment



slope failures and  
remediation in  
immediate vicinity

## 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: *Patt Healy +/or Malibu Coalition For Slow Growth*  
Mailing Address: *403 San Vicente Blvd*  
City: *Santa Monica* Zip Code: *90402* Phone:

SECTION II. Decision Being Appealed

1. Name of local/port government: *Malibu*
2. Brief description of development being appealed:  
*Project on Coastal Bluff, that is in scenic view corridor*
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
*24950 Pacific Coast Hwy*
4. Description of decision being appealed (check one.):  
☐ Approval; no special conditions  
☒ Approval with special conditions:  
☐ Denial

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: *A-4-MAL-06-096*  
DATE FILED: *7/31/06*  
DISTRICT: *So. Central Coast*

Exhibit 3  
A-4-MAL-06-096  
Healy 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 *and*  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: 6.26.06

7. Local government's file number (if any): appeal # 06.001

**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:

*April Verbana Applicant  
Duke + Associates  
will provide if needed not on city website*

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) *Ron Goldman  
24955 Pacific Coast Hwy  
Malibu, 90265*

(2) *John Mazza  
6613 Zumerly Dr  
Malibu, 90265*

(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.

*See attached*

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

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

*Patt Healy + 102 Malibu Coalition Slow Growth*

*[Signature]*

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: \_\_\_\_\_

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby  
authorize \_\_\_\_\_

to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

## **Reasons for Appeal**

The proposed project is to be located on a coastal bluff hence it is in the appealable zone.

The story poles we believe do not accurately reflect the actual size and bulk of the structure since only countable square footage is indicated. We ask for your analysis that you require applicant to erect story poles that indicate the so called trellis, decks and patio's and to stake the drive way as required by LCP.

### **.1.Application is Incomplete**

A current and accurate final landscape plan which is necessary to do a proper visual analysis of projects view impacts, plans for a less impactful structure that affords better view protection and a drainage plan were not submitted as required as part of the application for this project.

#### **.a Required Landscape Plan Absent**

Under section LIP 13.6.4 D 4 a landscape plan is required indicating any natural or man made landscape features to be planted including location, type, size and quantification of any trees or other natural vegetation.

In their submission to the city the owner's submitted an outdated landscape plan that no longer is part of the project. Since this plan is outdated, this old landscape plan can't be considered as a legitimate landscape submission. A final, accurate and current landscape plan is required and necessary for meaningful view analysis.

In addition, to the outdated landscape plan, the applicant submitted a document that was attached to a city settlement which showed the allowable height and location of certain trees . It clearly is not a landscape plan for this project and city staff has confirmed this fact stating that it would be required at a later date. It is not acceptable to perform visual analysis of view impacts of trees ( when the tree species is unknown since different species would have different view impacts). Also no shrubs or hedges are indicated. How can potential hedge, and shrub impacts and other landscaping impacts on public views be assessed (when they are not provided).

Also, there is no landscape plan indicating what plant material will be on the bluff (whether it be new landscaping or existing plant material) or elsewhere on the site. Due to the potential instability of the bluff face and its erosion potential as a result of this project, it is imperative that the proposed landscaping over the entire site be provided, including the bluff face for review prior to CDP approval.

City staff states that the landscaping plan will be revised after planning approval. This is not acceptable when an accurate landscaping plan for this project is required with the application to assess view blockage and needed to allow the public to assess and comment on slope stability matters. Once a CDP is approved the public no longer has the right to review or give input on this project hence depriving us of our right to address grievances and of due process.

**b. Required Drainage Plan Absent.**

Under 13.6.4 Drainage and Erosion plans are required. There is no Drainage Plan. . The Erosion Control Plan is not a Drainage plan.

This project is being piecemealed. The drainage plans required with the application have not been submitted as required. Hence no approval of a CDP should have been granted. It is obvious that drainage improvements are required on this property and on the bluff face itself.. Hence the drainage plans are clearly a part of this project. Owner is piecemealing this project by eliminating slope drainage plans from the project description

**c. Required Erosion Plan Incomplete** There is no erosion control plan that addresses the eroding bluff. In fact the submitted Erosion Control Plan dated August , 2005 has a notation stating "A registered geotechninical engineer, under the direction of owner shall determine if the stormwater appurtenances and sheetflow will cause the existing slope to become unstable. Ensitu Engineering, Inc is not a geotechnical engineering firm, therefore we can not predict or determine the stability of the existing slope."

## **2. Development Violates Scenic View Protection Ordinance.**

This project must be denied since it doesn't meet the requirements of LIP chapter 6 which governs required scenic view protection.

### **a. Required Submission Incomplete**

Once again the owner did not make all of the additional submissions required by Chapter 6. For example:

LIP 6.7 states that the application shall include a visual analysis that includes:

6.7.3. requires a Line of sight analysis showing the view of the project site from public viewing

areas. 6.7.5. requires an analysis of the potential impacts of the proposed development on the identified public views.

Landscaping is part of the project. Under the LCP the line of site analysis submitted is deficient since there is no analysis of the impact of the projects entire landscaping on public views. Since this information has not been submitted as required, no determination can be made as to the projects impact on ocean views. Since no determination can be made, it is impossible for city staff to make the required findings needed for this project with respect to ocean view blockage.

### **b. Required Project Alternatives not Submitted**

6.7.6 requires that the application include project alternatives designed to avoid and minimize impacts to visual resources. No project alternatives to minimize impacts to visual resources was submitted. Another reason this application must be deemed incomplete.

### **c. Fencing**

Fencing is allowed along PCH ( the scenic viewshed) with no requirement that it be permeable. We believe that there may not be a height limitation on perimeter fencing.

## **3. Necessary Findings Cannot Be Made**

Without legitimate findings there can be no justification for the city's approval of a CDP for this project.

Here are a few examples of where the finding can not be made to support this

project.

i. Even if the application were complete this project would still be deemed in violation of Chapter 6 and the required findings can not be made to approve this project.

Under 6.4 it states the findings shall address the specific project impacts relative to specific development standards set forth in 6.5. This has not been done adequately by the city. For example, under 6.5A.2 landscape screening of the structure shall not be a substitute for project alternatives including reducing the height and bulk of structure. This would require design changes but the height and bulk of this structure can certainly be reduced.

Staff indicates that the square footage for the structure, including projections is 11,158 square feet. This is misleading since projections are not included in the allowable square footage. For example the so called "trellis" is 18 ft wide and 89 ft long (more than 1600 sq ft). It is taller than and just about the size of many of the smaller homes in Malibu and is not included in square footage. We believe that this is not a trellis as defined by the LCP. In our opinion it is a covered deck or portico that runs the width of the proposed structure. This structure has many large projections such as overhangs, decks, etc that are not counted in allowable square footage. It also has 2 interior atriums of 1,100 square feet that are not counted in the square footage. This structure will have the appearance of 14,160 square ft. Please understand that this structure is enormous and is to be in a prime public viewshed. It will dwarf the homes directly to the east and west of the site.

By eliminating the western so called "trellis" and its huge support columns, the bulk of the structure would be reduced by approximately 1600 feet and would be more protective of ocean views. Reducing the height of the structure to the required 18 ft. without increasing the existing foot print would also protect views of the ocean to a greater extent.

Attachment 9 sketch in Planning Commission report show substantial and unnecessarily blockage of public views by trees. For these reasons, it is impossible to make the finding "there are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

ii. 6.5.B.1 states that the height of structures shall be limited to minimize

impacts to visual resources. The maximum allowable height shall be 18 ft above existing or finished grade whichever is lower. This design requirement is being ignored by the owner and staff. 6..5.E .1.b. is not an exception to 6.5.B.1. This section reinforces the 18 ft height limit. It states that structures shall not exceed one story in height, as necessary, to ensure that bluewater views are maintained over the site.

City staff does not dispute this. The findings in the Administrative Permit supports the 18 feet height restriction for it states on page 5 of the staff report for the Planning Commission meeting that "Staff has determined except for the site plan review request, the proposed structure project conforms to the property development and design standards of the Local Coastal Program" Site Plan review is done when proposed structures are over 18 ft in height. Also on page 2 of the Administrative Coastal Development Permit , the chart clearly states that the allowed/ required height is 18 ft, 22ft was proposed but after site plan review a 22ft was allowed even though staff does not say this complies with the LCP They indicate that every other development requirement on this chart complies except this one. Hence city staff supports our contention that the height of this structure should be limited to 18ft. the required finding that this project conforms to the LCP can not be made.

iii. This project will clearly adversely affect neighborhood character so this finding can't be made. With respect to character of the neighborhood , before the planning Commission Staff says that the residence is similar to the size of houses to the north, east south and west. This is inaccurate. The proposed structure is 2 stories and more than 11,000 square feet. The house to the immediate west is approximately 7,500 sq ft and one story The house to the immediate east is one story and smaller than the house to the west. The homes to the south on the Malibu Road are easily one quarter the size of this proposed structure. We are not aware of any large homes in the neighborhood north of the property. The city in an earlier hearing said that the Trento house (further west) was taller than one story However, the Trento residence is entirely below PCH and there is no view obstruction. Also, Trento was approved prior to the 2002 LCP.

Staff dropped that argument before the city council and to justify the structures

enormous proportions staff used the Floor Area Ratio ( FAR ) as a justification for the enormous size of the structure which is a standard used only for commercial projects and not applicable here.

iv. Staff states that this project meets the requirements and design standards set forth in LIP section 3.5 and 3.6. We disagree with this statement. Plans previously approved for a residence on this site for a residence designed by the owner's architect indicates the maximum allowable square footage for a structure on this parcel is 10,553. The structure before you is 11,158 sq ft . This issue was raised previously by us incityhearings. No where in the planning file does it indicate that the discrepancy has been resolved. If the maximum square footage is 10,553 the structure is over the maximum allowable square footage. This discrepancy has never been addressed. Until this mystery is solved the finding can't be made that this project is in conformance with the LCP

v. Condition of Approval 42 on page15 of the ACDP which incorporates the settlement agreement terms into the project violates the LCP and a CDP can't be approved with this Condition in place since the necessary finding of LCP project conformance can't be made

vi. Findings 8,9,10, are meaningless since they are based on the visual analysis in the record that is woefully incomplete and inaccurate due to lack of a final project landscape plan. Finding 11 for reasons stated earlier is not supportable.

As a rationale for approval the staff report raises the argument that the owner could put the structure closer to PCH at a higher elevation causing greater view obstruction. This is not allowed under the LCP Chapter 6.5.A.1 New development shall be sited to minimize impacts to scenic areas to the maximum extent feasible.

Under 6.5A.3,. Structure must be sited to avoid impacts to visual resources.

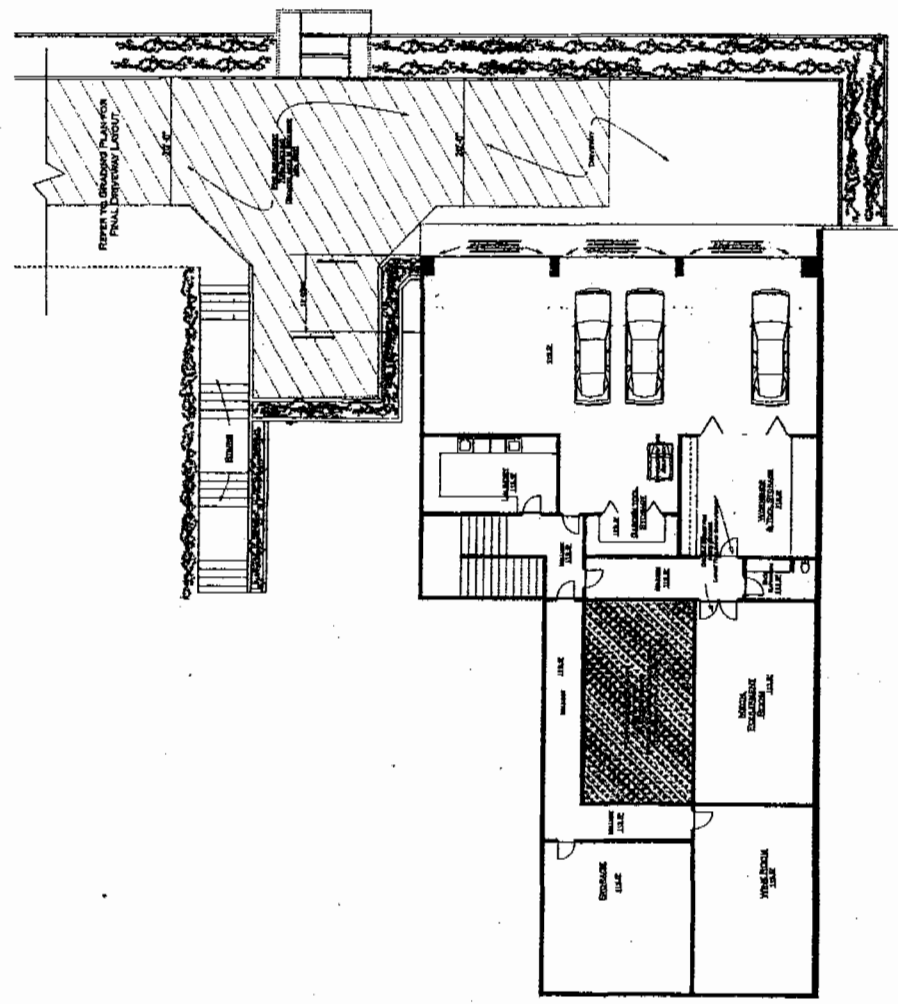




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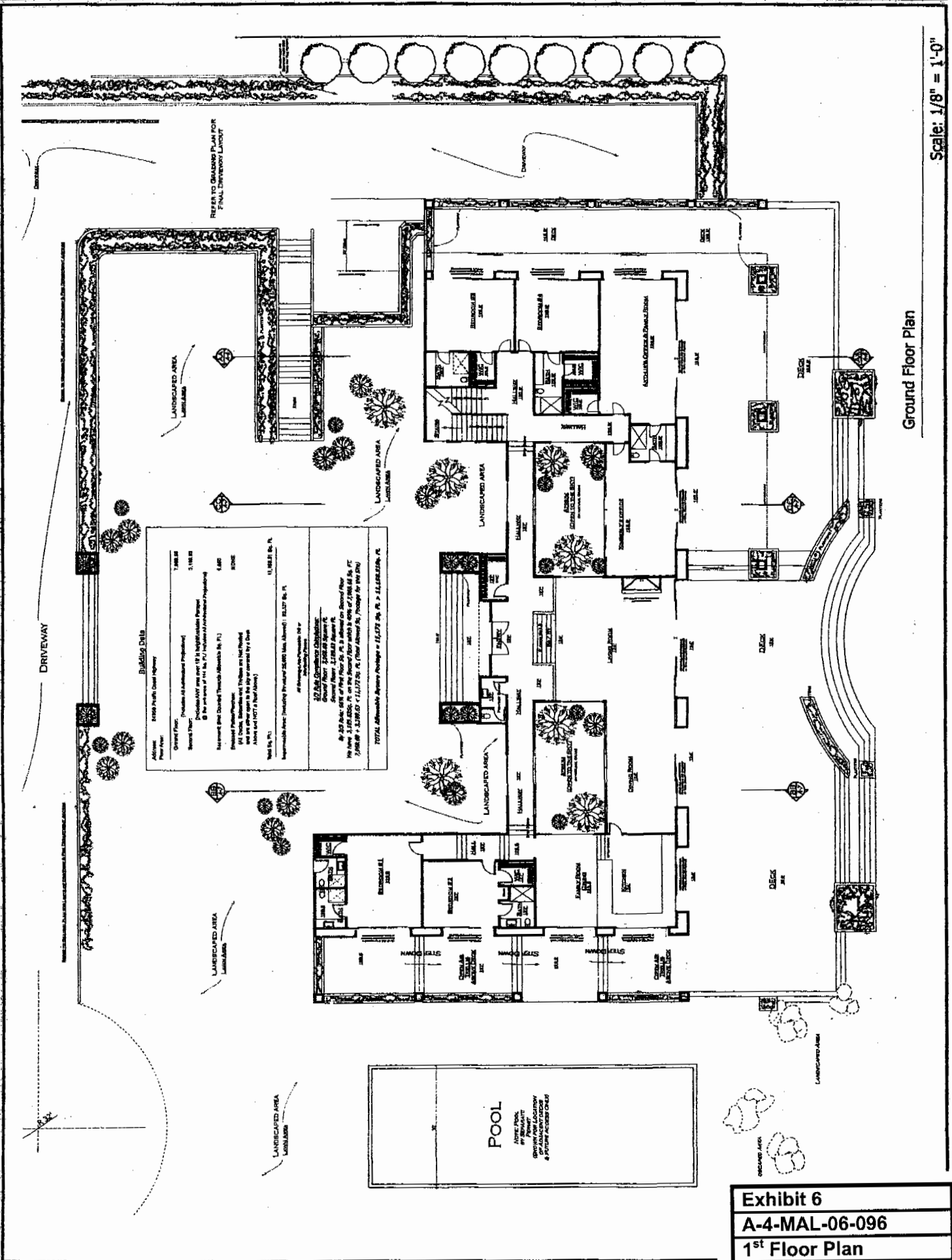
Lillichman, LLC  
24950 Pacific Coast Highway  
Malibu, CA 90265

Basement Floor Plan  
A.3  
1/8" = 1'-0"



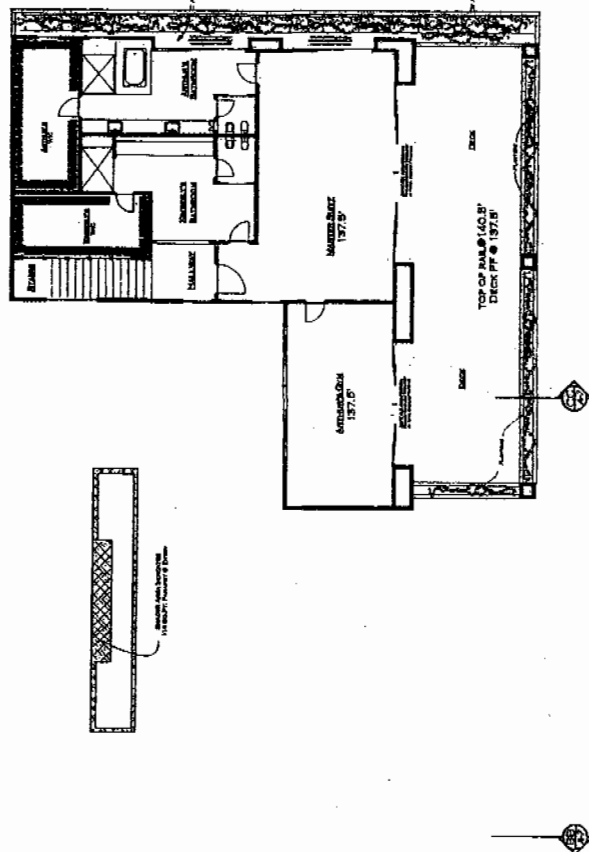
Basement Level Plan

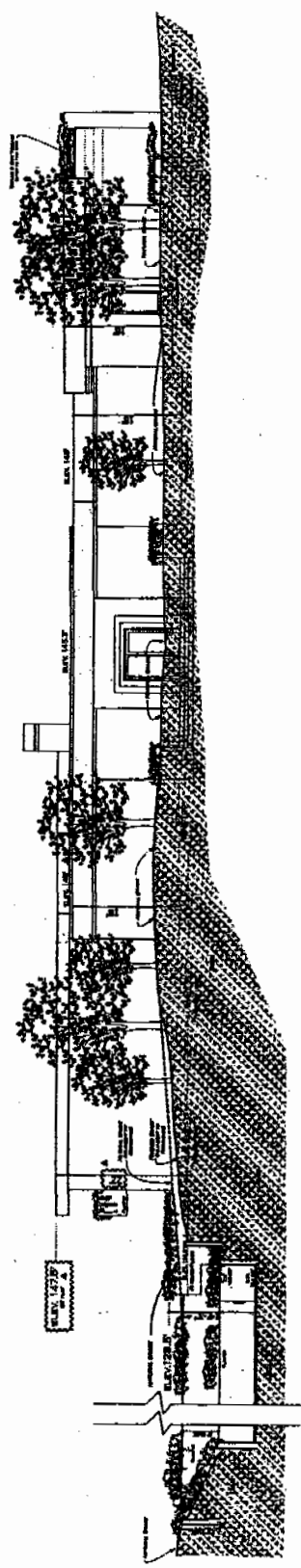
Exhibit 5  
A-4-MAL-06-096  
Basement Floor Plan



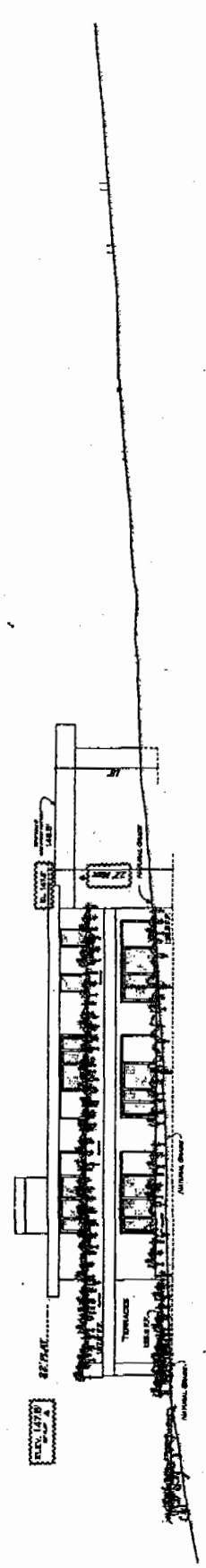
**Scale: 1/8" = 1'-0"**

|                            |
|----------------------------|
| Exhibit 7                  |
| A-4-MAL-06-096             |
| 2 <sup>nd</sup> Floor Plan |

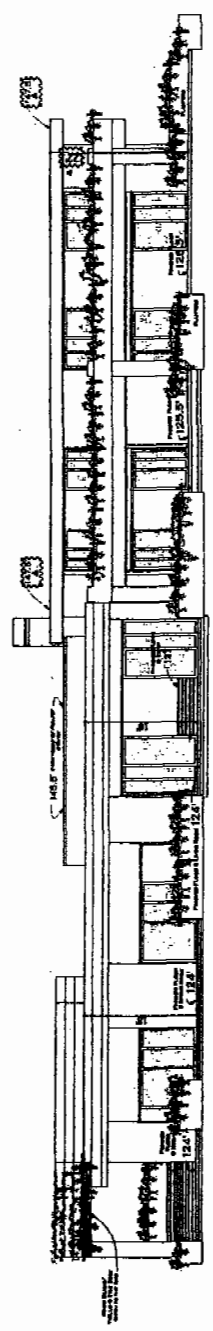




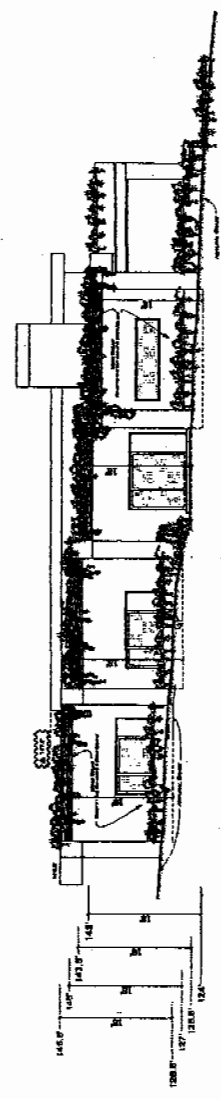
North Elevation  
 Scale: 1/8" = 1'-0"



East Elevation  
 Scale: 1/8" = 1'-0"



South Elevation  
 Scale: 1/8" = 1'-0"

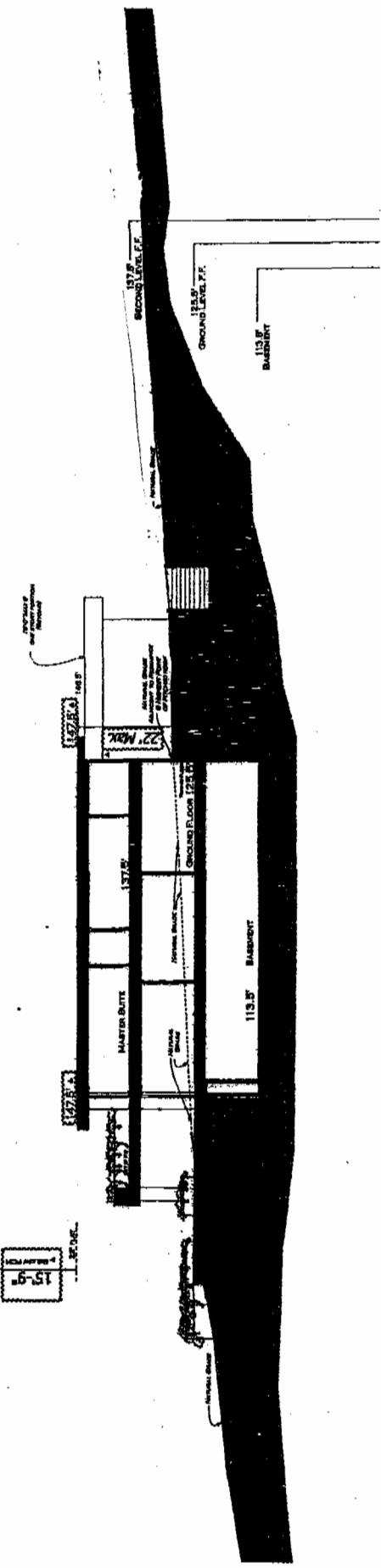


West Elevation  
 Scale: 1/8" = 1'-0"

|            |             |
|------------|-------------|
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| BY         | CS          |
| CHECKED BY | CS          |
| SCALE      | 1" = 10'-0" |

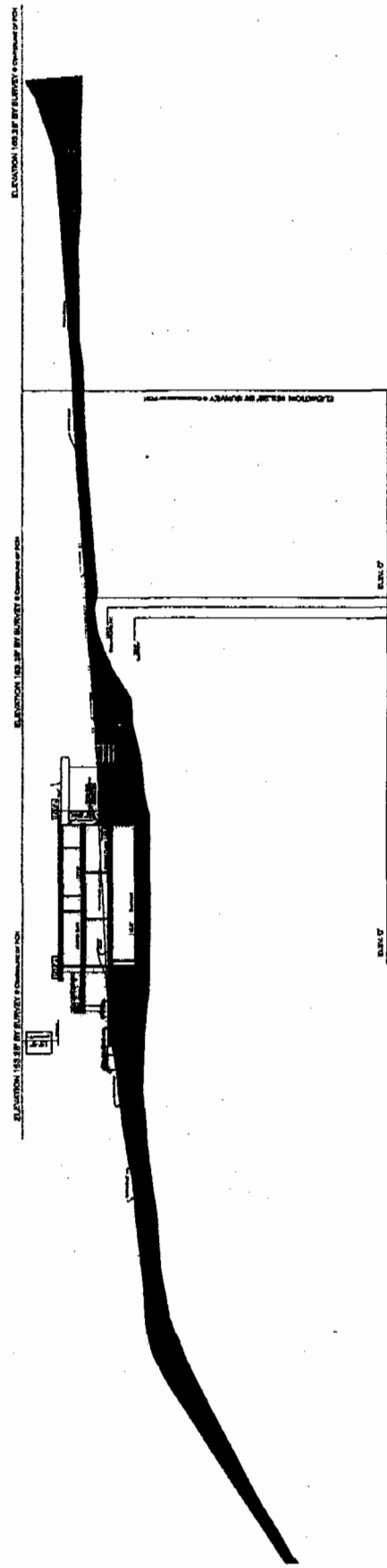
ELEVATION 163.28' BY SURVEY @ CENTERLINE OF PCH

ELEVATION 163.28' BY SURVEY @ CENTERLINE OF PCH



Section AA (thru East Side of Residence)

Scale: 1/8" = 1'-0"



Section AA (thru East Side of Residence)

Scale: 1" = 20'-0"

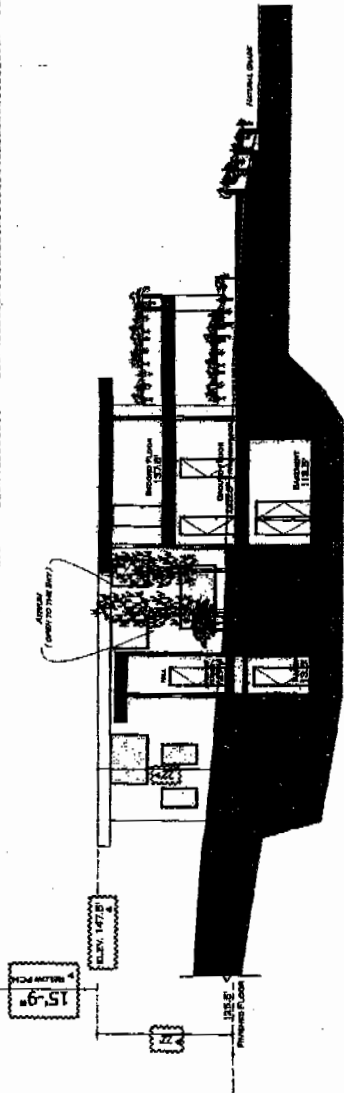
|             |               |
|-------------|---------------|
| DATE        | 1/14/00       |
| BY          | LILLICHMAN, L |
| CHECKED     | LILLICHMAN, L |
| APPROVED    | LILLICHMAN, L |
| SCALE       | 1/8" = 1'-0"  |
| PROJECT     | Section BB    |
| DESCRIPTION | AND CC        |

Lillichman, L  
24950 Pacific Coast Highway  
Malibu, CA 90265

Section BB  
AND CC

A7

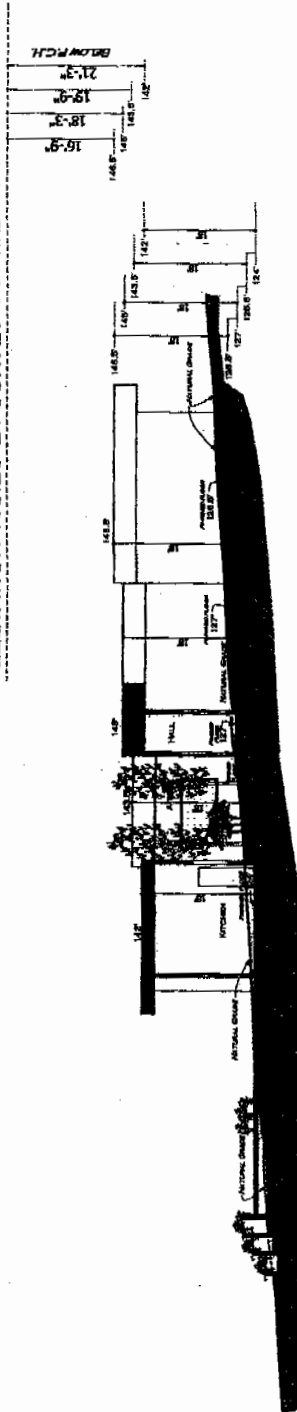
ELEVATION 163.28' BY SURVEY @ CENTERLINE OF PCH



Section CC (thru Atrium & Two Story Portion of Residence)

Scale: 1/8" = 1'-0"

ELEVATION 163.28' BY SURVEY @ CENTERLINE OF PCH



Section BB (thru Atrium & One Story Portion of Residence)

Scale: 1/8" = 1'-0"



RESOLUTION NO. 06-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 06-007, APPEAL OF PLANNING COMMISSION RESOLUTION NO. 06-19, DENYING APPEAL NO. 06-001, UPHOLDING THE PLANNING MANAGER'S APPROVAL OF COASTAL DEVELOPMENT PERMIT (CDP) NO. 05-144 FOR THE CONSTRUCTION OF A NEW, 11,158 SQUARE FOOT, TWO-STORY, SINGLE-FAMILY RESIDENCE WITH A 5,550 SQUARE FOOT BASEMENT, A SITE PLAN REVIEW REQUEST FOR HEIGHT OVER 18- FEET UP TO A MAXIMUM OF 28- FEET (22- FEET PROPOSED), AND AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM FOR THE PROJECT LOCATED AT 24950 PACIFIC COAST HIGHWAY (SILVER)

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

Section 1. Recitals.

A. On December 22, 2000, Arthur and Kimberly Silver applied for permits to construct a two-story 10,221 square foot single-family residence with a 750 square foot guesthouse, a 9,000 square foot basement, and a swimming pool and spa on a bluff-top located at 24950 Pacific Coast Highway in Malibu.

B. On October 2, 2001, Ron Goldman filed a timely appeal (Appeal No. 01-016) on four issues of the Planning Director's decision to conditionally approve an application for the construction of a new, single-family, bluff-top residence.

C. On December 3, 2001, the Planning Commission held a duly noticed continued public hearing on the application, reviewed and considered the staff report, public testimony, and all related information.

D. On December 11, 2001, the applicant filed a premature Appeal to City Council (Appeal No. 01-020). The Planning Commission had not yet adopted its written findings; therefore, there was not a final Planning Commission decision from which to appeal.

E. On March 8, 2002, on their own initiative, the applicants prepared revised plans in attempt to address the specific bases for denial of the application and requested that the Planning Department and Planning Commission consider conditionally approving the application based on the incorporation of the proposed revisions.

F. On April 1, 2002, the Planning Commission held a duly noticed public hearing on the appeal previously filed by Ron Goldman (Appeal No. 01-016), reviewed and considered the staff report, public testimony and all related information. The Planning Commission thereafter adopted the Resolution No. 01-039, denying the project and upholding Appeal No. 01-016.

|                              |
|------------------------------|
| Exhibit 12                   |
| A-4-MAL-06-096               |
| City of Malibu<br>Resolution |

G. On April 16, 2002, staff received and reviewed revised plans from the applicant which addressed the specific bases for denial of the application. The applicant requested that the Planning Department and Planning Commission consider conditionally approving the application based on the incorporation of the proposed revisions.

H. On June 24, 2002, the City Council considered the applicant request for the Council to consider the revised plans as part of Appeal No. 01-020; however, the Council remanded the project back to the Planning Commission for its review and consideration of the plans submitted on April 16, 2002 (referred to as Plan D).

I. On July 15, 2002, the Planning Commission considered and approved the applicant's third plan ("Plan D") at a duly noticed public hearing (Resolution No. 02-017).

J. On July 25, 2002, Patt Healy and/or Malibu Coalition for Slow Growth filed Appeal No. 02-006 due to concerns with public views and General Plan consistency.

K. On December 9, 2002, the City Council adopted Resolution No. 02-38 denying Appeal No. 02-006 and conditionally approving Plot Plan Review No. 00-129 and Site Plan Review No. 00-083 at a maximum of 24-feet in height for a portion of a new, two-story single-family, bluff-top residence. The project went into litigation and resulted in a settlement agreement between the City of Malibu and Arthur and Kimberly Silver dated February 1, 2005.

L. On August 9, 2005, a coastal development permit (CDP) application was filed by April Verbanac of Dudek and Associates, on behalf of Kimberly and Arthur Silver for a new, 11,158 square foot, two-story, single-family residence with a 5,550 square foot basement, and an alternative onsite wastewater treatment system. A site plan review (SPR) was requested for height over 18-feet up to a maximum of 28-feet (22-feet proposed).

M. On January 5, 2006, the Planning Manager approved administrative CDP No. 05-144.

N. On January 17, 2006, the Planning Manager reported the administrative CDP decision to the Planning Commission.

O. On January 17, 2006, Ron Goldman filed a timely appeal (Appeal No. 06-001) on four categories of issues of the Planning Manager's decision to conditionally approve an application for the construction of a new, single-family, bluff-top residence.

P. On January 28, 2006, staff met with Ron Goldman, John Mazza, Patt Healy, City Geologist Chris Dean, Interim Public Works Director Granville "Bow" Bowman, Contract Geologist Lauren Doyle and City Biologist Dave Crawford to discuss issues of concern on the CDP.

Q. On February 14, 2006, staff met with Richard Scott, retained by the property owner, to discuss a meeting he had with Ron Goldman and remaining concerns on view obstruction, landscaping, and development within the appeal area.

R. On February 23, 2006, pursuant to Local Implementation Plan (LIP) Sections 13.12.2 and 13.20.1(E), a 21-day Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. On February 23, 2006, a notice was mailed to all property owners and occupants within a 500-foot radius of the subject property.

S. On March 20, 2006, the Planning Commission held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, public testimony, all related information, and denied the subject appeal.

T. On March 29, 2006, Ron Goldman filed a timely appeal (Appeal No. 06-007) on several categories of issues of the Planning Commission's decision to conditionally approve an application for the construction of a new, single-family, bluff-top residence.

U. On June 1, 2006, pursuant to LIP Sections 13.12.2 and 13.20.1(E), a 21-day Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. On June 1, 2006, a notice was mailed to all property owners and occupants within a 500-foot radius of the subject property.

V. On June 26, 2006, the City Council continued the appeal to a date certain of July 10, 2006.

W. On July 10, 2006, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, public testimony, and all related information.

## Section 2. Appeal of Action

The appellant has appealed the Planning Commission's approval of Coastal Development Permit No. 05-144, contending that the findings or conditions are not supported by the evidence or the decision is not supported by the findings.

The appellant submittal includes several categories of statements, which form the basis of the appeal. These categories are summarized as follows: concerns based on findings (including site plan review findings), conditions of approval, and biology/drainage.

## Section 3. Findings for Denial of Appeal.

Based on evidence in the record and in the City Council Agenda Report dated July 10, 2006, the City Council hereby makes the following findings of fact upholding the Planning Commission's approval of Coastal Development Permit No. 05-144 and denying Appeal No. 06-007.

- A. Findings: The CDP was approved based on a complete application. The project has also been determined by staff to be the least environmentally damaging

alternative based on conferring with City agencies and constraints on the site. The City Council agrees with that finding. The project was reviewed several times for the plot plan review, and again for the CDP. A more detailed landscape design plan linking the settlement agreement and approved conceptual landscape plan is required prior to final planning approval. The settlement agreement states "Prior to the issuance of a building permit, final landscape plans shall be submitted for review and approval by the Planning Manager and/or City Biologist." The current landscape plan as proposed and all conditions of approval (including the settlement agreement) are consistent with the CDP application process requirements.

Story poles were placed to determine visual impacts. An additional landscape plan will be submitted to illustrate the settlement agreement and the previously approved coastal landscape plan. The residence is similar in size to houses to the north, south, east and west, and blue water is visible above the existing story poles. The subject structure is set back approximately 280-feet from the property line at Pacific Coast Highway. The minimum setback requirement is 65-feet. An 18-foot high structure at the 65-foot setback would be 161-feet above sea level, higher than the proposed structure. Since the property is located on the bluff, a geologically constrained area, the applicant proposed to locate the project a distance of 210-feet from the rear property line. The proposed residence is on a 5.21 acre adjusted lot area and is 11,158.31 square feet, including non-habitable architectural projections.

- B. Conditions of Approval: The current landscape plan as proposed and all conditions of approval are consistent with the CDP application process requirements. A more detailed landscape plan needs to be approved by the Planning Division prior to issuance of a building permit. Compliance with the settlement agreement is incorporated into the CDP as one of the many conditions of approval. The LIP findings are also incorporated into the CDP and have been approved by the Planning Manager and Planning Commission. In addition to the Local Coastal Program (LCP) requirements, this project has an additional condition to comply with the settlement agreement, which contains more restrictive landscape conditions than a routine CDP. Any boundary fencing must comply with the settlement agreement and LCP. Pool equipment must comply with Chapter 3 of the LIP. The City Biologist, City Geologist, and Public Works Department have all conditionally approved the CDP.

#### Section 4. Findings of Fact for Approval of the Application

The City Council hereby makes the following findings of fact in upholding the Planning Commission's approval of the project:

**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 the associated agenda reports, the project, as proposed and/or conditioned, conforms to the certified City of Malibu LCP.

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

The project is not located between the first public road and the sea. The project site does not accommodate public access to the shoreline. 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 Malibu Municipal Code (M.M.C.). The project will result in less than significant impacts on the physical environment. Due to topographical constraints on the property, the proposed location is the least environmentally damaging feasible alternative. The project as proposed has been found to be Categorical Exempt under CEQA Section 15303 "New Construction" Class 3(a).

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. In any case, alternative configurations to the addition and remodel would not alter the project's potential environmental damages. The project is the least environmentally damaging alternative.

Alternative locations would result in placing the structure closer to Pacific Coast Highway (PCH) with more visual impact, or closer to the bluff, resulting in increased grading quantities and a greater developed area. The relocation alternative would not be the least environmentally damaging alternative. In this regard, due to physical constraints on the

property including its topography and setback requirements, the proposed location is the least environmentally damaging feasible 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 designated an Environmental Sensitive Habitat Area (ESHA) in the ESHA Overlay Map. The City Biologist has determined that the project is not expected to result in any new biological impacts. A biological inventory indicates that the project will result in less than significant impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into ESHA.

#### **B. Environmentally Sensitive Habitat Area (LIP Chapter 4)**

The subject parcel is not located in the ESHA Overlay Map and the project will result in less than significant impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into an 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 native trees exist on the 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 in a developed neighborhood. Story poles were placed on the site to demonstrate potential visual impacts. Staff visited the site to review potential view impacts. Less than significant impacts on scenic or visual resources are anticipated. The project site is visible from a scenic road or viewing area; therefore, according to LIP Section 6.4, the scenic resource findings are applicable.

Local Implementation Plan Section 6.5 states that new development on PCH shall protect public ocean views. The centerline elevation of PCH at the Silver residence is 163-feet, and the highest top of roof at 22-feet (for the second story portion) is at an elevation of 147-feet. As demonstrated on the attached photos, blue water is visible over the entire house. Pursuant to LIP Section 6.5.E.1, a view corridor is not required because the topography of the project site descends from the roadway and bluewater views are maintained over the entire site. The view corridor requirement in LIP Section 6.5.E.2 states that "Where the topography of the

project site does not permit the siting or design of a structure that is located below road grade, new development shall provide an ocean view corridor on the project site by incorporating the following measures (a) buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site (b) the remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor." Since the top of the proposed structure is located below road grade, and the structure protects public bluewater ocean views, LIP Sections 6.5.E.2 (a) and (b) do not apply.

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

Due to the lot location and topography, there is no alternative building site location where development would not be visible. However, the project has been designed to avoid any adverse or scenic impacts by emulating the setbacks of properties in the vicinity. In addition, the proposed project is under the maximum development envelope allowed for the subject property. The use of landscaping, non-metallic and non-glare siding, as required by the LCP will help minimize visual impacts upon viewing the subject site.

Staff conducted several site visits. Story poles were in-place to demonstrate potential visual impacts. The analysis of the project's visual impact from public viewing areas along PCH included site reconnaissance, view of the property from PCH, and review of the landscape and architectural plans. Staff determined that the proposed residence would result in a less than significant visual impact to public views from PCH.

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

The project has been designed to avoid any adverse or scenic impacts. The proposed residence is designed utilizing colors and materials that will be compatible with the surrounding natural and residential character and will be compatible with the architectural character of the surrounding neighborhood.

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

As discussed in A. General Coastal Development Permit, Finding C. the project as proposed or as conditioned is the least environmentally damaging alternative.

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

As discussed in A. General Coastal Development Permit, Finding C. the proposed location of the structure will result in less than significant impacts on scenic and visual resources.



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

As discussed in A. General Coastal Development Permit, Finding C. the project will have less than significant scenic and visual impacts.

#### **E. Transfer Development Credits (LIP Chapter 7)**

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

#### **F. Hazards (LIP Chapter 9)**

The proposed project is not anticipated to result in the potential to create adverse impacts, onsite stability or structural integrity. The project consists of a new single family residence. The project has been reviewed by the City Geologist, and Public Works Department, and has been determined to be consistent with all relevant policies and regulations. According to geotechnical and coastal engineering reports and addenda on file at City Hall, the project will not result in potentially significant adverse impacts to onsite stability or structural integrity. Therefore, according to LIP Section 9.3, hazards findings need not be made.

#### **G. Shoreline and Bluff Development (LIP Chapter 10)**

LIP Section 10.3 requires that shoreline and bluff development findings be made if the proposed project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. Since the City Council has found that the project will not result in such impacts, the findings from LIP Section 10.3 need not be made in order to issue a coastal development permit for this project. Nevertheless, even if the project were anticipated to result in such impacts, the bluff development findings from LIP Section 10.3 could be made for the reasons stated below.

#### **H. Public Access (LIP Chapter 12)**

##### **Bluff-Top Access**

The project is located near a bluff-top; however, due to the scope of the project, no potential project-related or cumulative impact on bluff-top access is anticipated. The ability of the public to access nearby public coastal tidelands is available from the beaches located both east and west of the project site. The project as proposed does not block or impede access to the ocean. Conditioning the project to provide a bluff-top access would not provide additional access to coastal resources because adequate public access is provided in the vicinity. Since existing access to coastal resources is adequate, no legitimate governmental or public interest would be furthered by requiring access at the project site.



No potential project-related or cumulative impact on bluff-top public access is anticipated. Nevertheless, the following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding bluff-top access. Due to these findings, Section LIP Section 12.8.1 is not applicable.

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

Bluff-top access would not impact fragile coastal resources or have any impact on a military facility. Providing bluff-top public access at the subject site is not reasonable given the slope and topography, and would provide no direct beach access. In addition, adequate bluff access exists in the area at nearby Bluffs Park. No potential project-related or cumulative impact on bluff-top public access is anticipated.

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

As discussed previously, no mitigation measures are available to manage the type, character, intensity, hours, season or location of a bluff-top access to public safety because of location and topography. No impacts to military security or to fragile coastal resource have been identified. No potential project-related or cumulative impact on bluff-top public access is anticipated.

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

No potential project-related or cumulative impact on bluff-top public access is anticipated. The ability of the public to access nearby public coastal tidelands is available from the beaches and parks located both east and west of the project site. The project as proposed does not block or impede access to the ocean. Conditioning the project to provide a bluff-top public access would not provide additional access to coastal resources because adequate public access is provided in the vicinity. Since existing access to coastal resources is adequate, no legitimate governmental or public interest would be furthered by requiring access at the project site.

#### Trail Access

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

### Recreational Access

The project site is not adjacent to, does not include, nor has any access ways to existing or planned public recreational areas. Therefore, no conditions or findings for recreational access are required.

### **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 5. Conditions of Approval

Based on evidence in the record and the findings in Section 4 of this Resolution, the City Council hereby denies Appeal 06-007 and upholds the Planning Commission's approval of Coastal Development Permit No. 05-144 dated January 17, 2006.

The permit is subject to the following conditions:

#### Standard Conditions

1. Approval of this application is to allow for construction of a new, two-story 11,158 square foot, single-family residence with an attached garage, 5,500 square foot basement, an alternative onsite waste water treatment system, landscape and hardscape and 1,188 cubic yards of safety grading, 971 cubic yards of remedial grading, and 965 cubic yards of non-exempt grading. Site plan review is requested for height over 18-feet up to a maximum of 22-feet. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
2. 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.
3. Pursuant to LIP Section 13.18.2 (page 237), this permit and rights conferred in this approval shall not be effective until the permittee or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 working days of this decision and prior to the issuance of any development permits.

4. This 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 for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two (2) weeks prior to the expiration of the two-year period and shall set forth the reasons for the request.
5. This resolution shall be copied in its entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
6. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
7. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
8. Minor changes to the approved plans or the conditions may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
9. All structures shall conform to the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Specialist, City Biologist, City Public Works Department, and the Los Angeles County Fire Department requirements. Notwithstanding this review, all required permits shall be secured.
10. The applicant shall request a final planning inspection prior to final inspection by the 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 coastal development permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
11. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
12. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Where, as a result of this evaluation, the Planning Manager determines that the project may have an adverse impact on

cultural resources; a Phase II Evaluation of cultural resources shall be required pursuant to Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code.

13. 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.
14. When the framing is completed, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. The Planning Division shall sign off stating that said document has been received and verified.
15. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
16. The building pad and all other graded or disturbed areas on the subject site shall be planted within sixty (60) days of receipt of the Certificate of Occupancy for the residence.
17. All landscaping and revegetation shall provide 90 percent coverage within five (5) years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for revegetation and approved by the City Biologist.
18. Prior to issuance of a Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans. Any alterations from the final approved plans must be submitted to the City Biologist prior to installation. Any unauthorized vegetation may require removal prior to issuance of a Certificate of Occupancy.
19. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
20. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
21. New structures shall incorporate colors and exterior materials that are compatible with the surrounding landscape. 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. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible. All windows shall be comprised of non-glare glass.

22. Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that includes grading on slopes greater than 4:1. Approved grading operations shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1, unless the Planning Manager determines that completion of grading would be more protective of resources.
23. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
24. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
25. Final plans approved by the City Geologist shall be in substantial conformance with the approved coastal development permit relative to construction, grading, sewage disposal and drainage. Any substantial changes may require an amendment to this coastal development permit or a new coastal development permit.
26. The non-exempt grading for the project shall not exceed 1,000 cubic yards of cut and fill.
27. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the raining season). The following elements shall be included:
  - a. Locations where concentrated runoff will occur.
  - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures.
  - c. Location and sizing criteria for silt basins, sandbag barriers, and silt fencing.
  - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.

28. a. A Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the grading permits for the project. This plan shall include:
- Dust Control Plan for the management of fugitive dust during extended periods without rain.
  - Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff.
  - Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset.
  - Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.
- b. A Storm Water Management Plan (SWMP) is required for this project. The SWMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The SWMP shall identify the site design (page 283-4 LCP) and source control (page 284 LCP) Best Management Practices (BMP's) that have been implemented in the design of the project.
29. Pursuant to LIP Section 13.20, development pursuant to an approved coastal development permit shall not commence until the coastal development permit is effective. The coastal development permit is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
30. This coastal development permit runs with the land and binds all future owners of the property.

### Special Conditions

#### **Lighting**

31. 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. 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, which 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. No lighting for sports courts or other private recreational facilities shall be allowed.
- h. Prior to issuance of the CDP, the applicant shall be required to execute and record a deed restriction reflecting the above conditions.

### **Biology**

- 32. All landscape plans shall be prepared by a licensed landscape architect or qualified resource specialist for all graded or disturbed areas on the project site. The landscape plans shall include a scale map of the project site that shows the location, species, and size of each plant to be included in the site landscaping. The landscape plans shall be designed to meet the standards in LIP Sections 3.10.1 (A) through (D).
  - a. Invasive plant species, as determined by the City of Malibu, are prohibited.
  - b. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
  - c. Native species of the Santa Monica Mountains, characteristic of the local habitat, shall be used on graded slopes or where slope plantings are required for slope stabilization, erosion control, and watershed protection. Plants should be selected to have a variety of rooting depths. A spacing of 15 -feet between large woody ( $\geq 10$ -foot canopy) shrubs is recommended by the Fire Department. Lawns are prohibited on slopes  $> 5\%$ .
  - d. Slope planting measures such as contour planting and terracing or other techniques shall be incorporated on slopes to interrupt the flow and rate of surface runoff in order to prevent surface soil erosion.
  - e. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
  - f. The landscape plan shall comply with the Court-approved settlement agreement of January 27, 2005.
- 33. All landscaping shall be native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site, except as noted in Section 3.10.1 (A)(3) of the Malibu LIP. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.
- 34. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu's Invasive Exotic
- 35. Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.



36. Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone (Zone A) required for fuel modification nearest the approved residential structures. Irrigated lawn, turf and ground cover shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
37. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
38. The building pad and all other graded or disturbed areas on the subject site shall be planted within sixty (60) days of receipt of the certificate of occupancy for the residence.

#### **Solid Waste**

39. 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 be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
40. Prior to the issuance of the 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. The final report shall be approved by the City Public Works Department.

#### **Water Service**

41. Prior to the issuance of a building permit, the applicant shall submit a Will Serve letter from the Los Angeles County Waterworks District No. 29 indicating the ability of the proposed project or receive adequate water service.

#### **Onsite Wastewater Treatment System**

42. Prior to issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of LIP Section 18.9 related to continued operation, maintenance and monitoring of onsite facilities.

#### **Geotechnical**

43. Prior to final planning approval, the applicant shall retain a hydrogeologic consultant to evaluate and model the groundwater under the site. The results of the exploration, monitoring, modeling and analyses shall be incorporated into a hydrogeologic report, and two copies of the report must be submitted to City geotechnical staff for review.

44. Prior to final planning approval, a comprehensive site drainage plan incorporating the Project Geotechnical Consultant's recommendations shall be submitted to City geotechnical staff for review. The drainage plan shall include details for all measures to mitigate the shallow groundwater conditions underlying the site. All French drains, basement subdrains, retaining wall backdrains, and other subsurface nonerosive drainage devices must be included on the plan.
45. City Guidelines require installation of a subdrain beneath the long axis of the swimming pool, where feasible. Prior to final planning approval, the applicant shall provide specific recommendations for a swimming pool subdrain and suitable outlet. The plans shall include a detail for the swimming pool subdrain and outlet as recommended by the project geotechnical consultant.
46. All foundation excavations must be observed and approved by the project engineering geologist and/or project geotechnical engineer prior to placement of reinforcing steel.

#### **Storm Water/Drainage**

47. The City Engineer shall impose best management practices (BMPs) to control erosion and manage storm water.
48. Vegetation shall be planted on the bluff face to screen the two existing down-drains (or other measures acceptable to the Public Works Director).
49. This project shall comply with all of the requirements of Chapter 13.04 of the City of Malibu Municipal Code – Storm Water and Urban Runoff Pollution Control.
50. Onsite drainage construction will be in substantial conformance with "Hydrology, Control Structure, Detention System and Conveyance Study, 24920, 24910 and 24900 Pacific Coast Highway", latest revision dated September 25, 1999.

#### **Other Conditions**

51. All conditions of the Court-approved settlement agreement dated January 27, 2005 remain in effect.
52. No construction of a new block wall may be constructed on slopes greater than 25 percent.
53. When the framing is completed, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. The Planning Division shall sign off stating that said document has been received and verified.
54. If any slope failure occurs during construction, all construction shall cease immediately until a remediation plan is submitted to and approved by the Building Official.

Section 5. Certification.

The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th day of July, 2006.

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KEN KEARSLEY, Mayor

ATTEST:

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LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

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CHRISTI HOGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Municipal Code and Code of Civil Procedure.

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

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 641-0142



Filed: 8/11/98  
49th Day: 9/29/98  
180th Day: 2/7/99  
Staff: JEL-V  
Staff Report: 8/20/98  
Hearing Date: 9/8-11/98

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.: 4-98-163****APPLICANT: Patrica DUGGAN & Ted LEVENSON AGENT: Michael Barsocchini****PROJECT LOCATION:** 24920 Pacific Coast Highway, Malibu (Los Angeles County)

**PROJECT DESCRIPTION:** Construct 9,398 sq. ft., 18 foot high, one-story, single family residence with an attached 868 sq. ft. garage, tennis court, pool, spa and septic system. 1,170 cu. yds. of grading (415 cu. yds. of cut & 755 cu. yds. of fill). An additional 1,800 cu. yds. of grading (600 cu. yds. of cut & 1200 cu. yds. of fill) will be required for landslide slope remediation.

|                            |                 |
|----------------------------|-----------------|
| <b>Lot area:</b>           | 5.24 acres      |
| <b>Building coverage:</b>  | 10,266 sq. ft.  |
| <b>Pavement coverage:</b>  | 10,896 sq. ft.  |
| <b>Landscape coverage:</b> | 168,342 sq. ft. |
| <b>Parking spaces:</b>     | three covered   |
| <b>Ht abv fin grade:</b>   | 18 feet         |

**LOCAL APPROVALS RECEIVED:** City of Malibu: Planning Department, Approval in Concept, 5/5/98; Geology and Geotechnical Engineering, Approved "in-concept", 3/20/98; Environmental Health, In-Concept Approval, 4/17/98; Los Angeles County Fire Department, feasible-in-concept, 8/4/97.

**SUBSTANTIVE FILE DOCUMENTS:** Malibu/Santa Monica Mountains certified Land Use Plan; Geologic and Geotechnical Investigation, Geosoils Inc., 11/1/95; Update Report with Alternative Deepened Foundation Recommendations, Geosoils Inc., 4/16/97; Response to City of Malibu, Geosoils Inc., 9/4/97 & 10/22/98; Recommendations for Mitigation of Winter of 1998 Landslides, Geosoils Inc., 7/27/98; Percolation Test, Barton Slutske, 2/3/98; Archeological Report, W & S Consultants 7/2/97; Coastal Development Permits: 5-90-1057 (Young), 4-98-143 (Duggan); and 4-98-163 (Duggan); 4-92-176 (Saso); 4-95-174 (Kempin); 4-97-031 (Anvil); 4-97-033 (Sweet).

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|------------------|
| Exhibit 13       |
| A-4-MAL-06-096   |
| CDP No. 4-98-163 |

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## **SUMMARY OF STAFF RECOMMENDATION**

The applicant is proposing to construct a one-story, single family residence on a bluff top lot, adjacent to Pacific Coast Highway, which includes archeological resources. The recent winter rains have caused a landslide along the bluffs of the parcel, and the proposed location between PCH and the ocean present potential visual resource issues. Staff recommends approval of the project with special conditions relating to assumption of risk; conformance to geologic recommendations; landscape, erosion control and drainage plans; wildfire waiver of liability; view corridor; future improvements; and archeology.

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## **STAFF RECOMMENDATION**

The staff recommends that the Commission adopt the following resolution:

### **I. Approval with Conditions**

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

### **II. Standard Conditions**

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

4. Interpretation Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. Special Conditions

#### 1. Assumption of Risk

Prior to issuance of a coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from, landsliding and erosion on site and the applicant assumes the risk from such hazards, and (b) the applicant unconditionally waives any claim of liability against the Commission and agrees to indemnify and hold harmless the Commission and/or its officers, agents and employees relative to the Commission's approval of the project for any damage from such hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. 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.

#### 2. Plans Conforming to Geologic Recommendations

Prior to the issuance of a coastal development permit the applicant shall submit, for review and approval by the Executive Director, evidence of the geology and geotechnical consultants' review and approval of all project plans. All recommendations contained in the Geologic and Geotechnical Investigation, by Geosoils Inc., dated 11/1/95; Update Report with Alternative Deepened Foundation Recommendations, by Geosoils Inc., dated 4/16/97; Response to City of Malibu, by Geosoils Inc., dated 9/4/97 and 10/22/97; and Recommendations for Mitigation of Winter of 1998 Landslides, by Geosoils Inc., dated 7/27/98 shall be incorporated into all final design and construction plans including recommendations concerning foundations, retaining walls, fill placement, grading, backfilling and landslide mitigations. All plans must be reviewed and approved by the geologic consultants.

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 which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

### 3. Landscape, Erosion Control and Drainage Plans

Prior to issuance of the coastal development permit, the applicant shall submit landscape, erosion control and drainage plans for review and approval by the Executive Director. The landscape, erosion control and drainage plans shall be reviewed and approved by the consulting geologist to ensure the plans are consistent with the geologist's recommendations for slope stability and proper site drainage. The plans shall incorporate the following criteria:

- (a) *Landscape and Erosion Control Plans*, prepared by a licensed landscape architect, which assure all graded and disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes within (60) days of final occupancy of the residence. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used;
- (b) All cut and fill slopes, and disturbed areas, shall be stabilized with planting at the completion of final grading. Planting should utilize accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- (c) Plantings shall be primarily low profile species that will not block or obscure views of the ocean as seen from Pacific Coast Highway. All plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- (d) Fencing along Pacific Coast Highway shall be a see through design that will not block views of the ocean or horizon line as seen from Pacific Coast Highway.
- (e) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an



appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill;

- (f) A *Drainage Plan*, designed by a licensed engineer, which assures that run-off from the roof, patios, and all other impervious surfaces on the subject parcel are collected and discharged in a manner which avoids ponding on the pad area. Site drainage shall not be accomplished by sheetflow runoff over the bluff. The drainage plan shall include installation of slope dewatering devices if determined necessary by the Consulting Engineer;
- (g) The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final landscape, erosion control or drainage plans shall be reported to the Executive Director. No changes to said plans shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

#### 4. Wildfire Waiver of Liability

Prior to the issuance of a coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property

#### 5. Future Improvements

Prior to the issuance of a coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 4-98-163; and that any additions or future improvements to the permitted structure(s), or property, including but not limited to clearing of vegetation and grading, that might otherwise be exempt under Public Resource Code Section 30610(a),(b), will require an amendment to this permit or an additional permit from the Coastal Commission or the affected local government authorized to issue such coastal development permits. Removal of vegetation consistent with L. A. County Fire Department standards relative to fire protection is permitted.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. 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.

## 6. Archaeological Resources

Prior to issuance of a coastal development permit, the applicant shall conduct a Phase II archaeological evaluation, as specified in the archaeological report dated 7/2/97, for review and approval by the Executive Director. All final recommendations for the management of the cultural resources contained in the Phase II archaeological evaluation, shall be incorporated into all final design, grading and construction Plans. If the consulting archaeologist's recommendations, based on the Phase II archaeological evaluation of the site, requires a substantial modification or redesign of the proposed project plans, an amendment of this permit is required..

The applicant shall have a qualified archaeologist(s) and appropriate Native American consultant(s) present on-site during all grading, excavation and site preparation that involve earth moving operations. The number of monitors shall be adequate to observe the activities of each piece of active earth moving equipment. Specifically, the earth moving operations on the project site shall be controlled and monitored by the archaeologist(s) with the purpose of locating, recording and collecting any archaeological materials. In the event that an area of intact buried cultural deposits are discovered during operations, grading work in this area shall be halted and an appropriate data recovery strategy be developed, subject to the review and approval of the Executive Director, by the applicant's archaeologist, the City of Malibu Archaeologist, and the Native American consultant consistent CEQA guidelines.

## IV. Findings and Declarations

The Commission hereby finds and declares:

### A. Project Description and Background

The applicant proposes to construct a 9,398 sq. ft., 18 foot high, one-story, single family residence with an attached 868 sq. ft. garage, tennis court, pool, spa and septic system. The tennis court and pool structures will be constructed to the north and south of the main residence respectively. The proposed project will require 1,170 cu. yds. of finish grading (415 cu. yds of cut & 755 cu. yds. of fill). The project also includes remedial grading to stabilize a large landslide complex located on the bluff south of the proposed residence. Approximately 1,800 cu. yds. of grading is proposed to stabilize this slide mass.

The proposed project is located on a 5.24 acre bluff top lot, situated south of Pacific Coast Highway and north of Malibu Road, with parcel dimensions of approximately 323' x 700'. Access to the site is via Pacific Coast Highway. The applicant is also proposing to develop the two vacant lots to the east of the proposed project with a single family residences under separate coastal development permit applications (see 4-98-142 and 4-98-143). There is an existing single family residence to west of the subject site, and across Pacific Coast Highway to the north. The subject lot gently slopes south to the bluffs which maintain a gradient of 11/2:1 to 2:1 down to Malibu Road. The proposed structures will be located 143 feet at the nearest point from the top of the slope, consistent with the recommended geologic and fault setbacks.

During the winter storms of 1998, a landslide occurred on the bluff portion of the lot which slid onto Malibu Road. As a temporary emergency measure, the landslide debris on Malibu Road was transported to, and stored on, the northern portion of the lot adjacent to Pacific Coast Highway. The applicant has indicated that this material shall be used for the tennis court foundation.

## B. Geologic Stability and Hazards

Section 30253 of the Coastal Act states in 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.*

The Malibu/Santa Monica Mountains certified Land Use Plan also provides policy guidance, in regards to geologic hazards, in policies P144, P147-152 and 156.

The proposed development is located along the coastal flank of the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains 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.

Within the subject parcel, a very gentle slope dipping southerly from Pacific Coast Highway covers the general part of the parcel. Bluffs with a gradient of 11/2:1 and 2:1 exist between the gentle slope and Malibu Road. Surface water is limited to seasonal precipitation, falling directly on the site. Sheetflow concentrates into the numerous small canyons and gullies and flows down the bluffs to the Malibu Road storm drain system.

### 1. Geology

The applicant has submitted a Geologic and Geotechnical Investigation, dated 11/1/95, prepared by Geosoils Inc.; an Update Report with Alternative Deepened Foundation Recommendations, by Geosoils Inc., dated 4/16/97, Responses to the City of Malibu by Geosoils Inc., dated 9/4/97 and 10/22/97; and Recommendations for Mitigation of Winter of 1998 Landslides, by Geosoils Inc., dated 7/27/98 for the subject site.

The geological consultants identify the location of the Malibu Coast Fault to be .1 mile north of the site, and across Pacific Coast Highway. In addition, they have identified a minor seismic offset or shear fault which runs east to west through the parcel, towards the

southern end of the property. Consequently, the consultants have recommended a 25 foot building setback from the shear fault, which is reflected in the site plans as currently proposed.

Geosoils, Inc. also indicates that the slope along the bluffs is unstable: "It is our opinion that the moderately steep slope descending to Malibu Road is surficially unstable. This is based on the presence of small landslides on the slope, as mapped and as discussed in item 4. The (recommended) setback zone will preclude development on or near the slope". Following the landslide on the bluffs that occurred during last winter's storm, as noted above, the consulting geologist revised the location of the recommended slope setback northward accordingly. The location of the proposed structures adhere to the revised, recommended slope setback, which is approximately 143 feet from the top of the slope (based on an average distance from the bluffs), as noted in Exhibit 2.

Nevertheless, despite the fact the applicant has provided a shear fault setback and a geotechnical setback, there remains a level of risk and therefore, the Commission can only approve the project if the applicant assumes the liability from the associated risks of developing this site. This responsibility is carried out through the recordation of a deed restriction, as noted in *Special Condition one (1)*. The assumption of risk deed restriction, when recorded against the property will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development.

Based on the geotechnical consultant's evaluation of previous research, mapping of geologic data, excavation and geologic logging, laboratory testing, site observations and engineering analysis, the geologic and geotechnical engineers have provided recommendations to address the specific geotechnical conditions related to foundations, retaining walls, fill placement, grading, backfilling and landslide mitigations.

In conclusion, the geotechnical investigation states that:

*"It is our professional opinion that, provided our recommendations are followed, the property at 24900 Pacific Coast Highway will be safe from landslide, settlement, and slippage. Proposed building/grading will not adversely affect off-site development."*

Based on the findings and recommendations of the consulting geologist and geotechnical engineers, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as all recommendations regarding the proposed development are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting geologist and geotechnical engineer as conforming to their recommendations, as noted in *Special Condition number two (2)* for the final project plans for the proposed project.

## 2. Erosion

The proposed project will create additional stormwater runoff, thus exacerbating the erosion potential of the bluffs, located at the south end of the property. Erosion of the bluffs will in turn result in sedimentation of the coastal waters, just to the south of Malibu Road. The consulting geologist recognizes the potential for on-site erosion along the south end of the parcel and recommends the following:

*"Water runoff control should be considered by the Project Civil Engineer in providing storm protection and to reduce the erosional potential on the descending slope for proposed and existing developments. ...We recommend that positive drainage be provided on the property. Water should not be allowed to pond or spill over slopes in a concentrated manner. Drainage should be collected and conducted to approved locations through non-erosive devices."*

In addition, the geotechnical report titled Recommendations for the Mitigation of Winter of 1998 Landslides, prepared by Geosoils, and dated 7/27/98, was prepared to address the three landslides that occurred on the properties of 24900, 24910 and 24920 Pacific Coast Highway. These landslides were previously mapped by Geosoils in their 11/1/98 report, and observed to be shallow, at approximately five to ten feet thick.

The 1998 rains caused some renewed movement of two slide masses along the ascending slope north of Malibu Road. The larger, easterly slope failure temporarily blocked traffic along Malibu Road below. The portion of slide debris intruding into the road was promptly removed by the City of Malibu and deposited at the top of the parcel, adjacent to Pacific Coast Highway.

The larger of the two small, shallow landslides is located mostly within the southern portion of 24910 Pacific Coast Highway. The failure caused the landslide scarp to be extended approximately 15 feet to the north. The landslide has widened along the western portion of the slide by approximately 25 to 30 feet. The smaller failure occurred along the western ridge, adjacent to a drainage canyon. In this area, the landslide scarp extended upslope approximately 35 feet. The width of the landslide remained approximately the same as the previous failure.

The consulting geologist concludes that:

*"Due to the size and surface expression of the new landslides, and because of possibly unsafe condition, no subsurface investigation was performed or deemed necessary. The two new landslides are shallow and observed to be approximately 5 to 10 feet thick in the westerly slide and up to 15 feet thick in the eastern slide. During the heavy rains, the unsupported material upslope of the previously mapped scarps, lost its cohesion due to the lubricating and extra weight of water and failed downslope."*

In order to mitigate any further landslide movement along the ascending slope, that would threaten Malibu Road and the adjacent homes to the south, Geosoils has recommended remedial grading of the site that would include removal of the landslide debris and cutting

the slope back to competent bedrock material, at a slope not to exceed 1.5:1. The project engineer has developed a remediation plan that requires 1,800 cu. yds. of grading, that includes removal of the landslide debris, cutting benches in the undying bedrock, and importing fill material to be recompacted at a slope of 1.5:1 (see Exhibit X).

In past permit actions in the immediate area of Malibu Road, the Commission has reviewed various alternative means for remediating landslide activity along the bluffs. Alternatives applicable to this circumstance have included eliminating the grading and replanting the slope, or recontouring the slope and replanting the slope without removing the landslide material.

The replanting of the slope will provide surfical stability and aid in the reduction of surface runoff and erosion down the bluff. However, such an alternative will not provide for any subsurface drainage of the site. Without removal of the landslide and correction of the subsurface drainage problem, the movement of the landslide will not cease. Landscaping the site will not stop the landslide from moving. Similarly, the recontouring of the slope and landscaping will improve surface stability and decrease surface erosion. However, without the removal of the landslide and correction of the water infiltration, further enlargement of the landslide can not be prevented.

Thus, the Commission finds that given the volume and location of the landslide debris on the ascending slope, the potential landslide and mudflow hazard this material presents for Malibu Road and the residences to the south of the road, and the absence of any other viable solution to further minimize landform alteration, the proposed 1,800 cu. yds. of grading including drainage improvements is necessary to protect life and property, and is therefore consistent with Section 30253 of the Coastal Act.

Further, the Commission finds that uncontrolled storm water runoff associated with the construction of the proposed project and landslide remediation could create significant erosion and sedimentation impacts offsite. In order to ensure that drainage and potential erosion from the residential building pad and the remediated slope is conveyed from the site in a non-erosive manner and erosion is controlled and minimized during construction, the Commission finds it necessary to require the applicant to submit drainage and erosion control plans, as required by *Special Condition number three (3)*. This condition requires the drainage plan to be completed by a licensed engineer.

### 3. Fire

The Coastal Act also requires that new development minimize the risk to life and property in areas of high fire hazard. The Coastal Act recognizes that new development may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.



Vegetation in the coastal areas of the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through the wildfire waiver of liability, the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development, as incorporated by *Special Condition number five (5)*.

The Commission finds that only as conditioned above is the proposed project consistent with Section 30253 of the Coastal Act.

### C. Visual Resources

Section 30251 of the Coastal Act states that:

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

In addition, the Malibu/Santa Monica Mountains Land Use Plan protects specific visual resources in the Santa Monica Mountains. In this particular case, the adjacent Pacific Coast Highway is recognized as a "scenic highway", and specifically, the bluewater views of the Pacific Ocean from the highway. To assess any potential visual impacts of this project to the public, the Commission also reviews the publicly accessible locations where the proposed development is visible, such as parks and trails. The proposed project would be visible from the Coastal Slope Trail, located approximately .65 of a mile to the north, above Pureco Canyon.

The Commission typically examines the building site, any proposed grading, and the size of the structure. Given the building pad is existing, the proposed residence raises two issues regarding siting and design: one, whether or not views from public roadways will be impacted, and two, whether or not views from public trails will be impacted.

### 1. Residential Structures

The subject site is located on a bluff top lot with single family residences across Pacific Coast Highway to the north, a vacant lot to the east, and numerous single family residences location across Malibu Road to the south. Staff requested that the applicant stake the site in order to assess the visual impact of the structure heights, including the tennis court fence, in the context of the bluewater views and the surrounding development. In addition, the applicant was required to graphically demonstrate the proposed structures would not significantly obscure the bluewater views from Pacific Coast Highway (see Exhibit 2).

The amount of proposed finish grading, 1,170 cu. yds., is limited to the preparation of the building pad and tennis court and will not be perceptible from Pacific Coast Highway nor the Coastal Slope Trail, given the relatively flat, albeit gentle sloping nature of the bluff top. Thus, the proposed grading will not result in a significant amount of landform alteration.

The proposed 9,398 sq. ft., 18 feet, one-story, single family residence will maintain bluewater views of the Pacific Ocean for travelers along the Pacific Coast Highway. The residential structure will occupy 60% or 193 feet of the 323 foot parcel width, with sideyards of 68' on the east and 62' on the west, although the 18 foot height of the structure will not block the horizon line. The tennis court will be constructed directly in-line with the main residence and as such will not obstruct any public views along the sideyards. The height of the tennis court fence is 12 feet which, given the fence elevation towards the middle of the parcel, will be ten feet lower than the base elevation of Pacific Coast Highway, and thus will not block bluewater views.

A site visit by staff to observe the staked structure heights confirmed the proposed structures would maintain bluewater views. Thus, although a 193' long by 18' high view segment will be lost, overall, the bluewater views will be minimally reduced given the preserved views along the sideyards and above the roof of the structure. Public views of the Pacific Ocean from the Coastal Slope Trail will not be affected given the location of the trail well above the subject site.

However, should the proposed one story structure increase in height, or should a solid fence be proposed along Pacific Coast Highway, bluewater views of the Pacific Ocean from Pacific Coast Highway would be significantly degraded. Similarly, should landscape vegetation be permitted beyond low profile species, the ocean views from Pacific Coast Highway as modified by the proposed structures would be significantly degraded.

Further, the Commission has found through past permit action that landscaping softens, screens and mitigates the visual impact of development. In this particular instance, however, the vegetative landscape must also be selected and maintained in such a way as to protect public views of the Pacific Ocean. Therefore, the Commission finds it necessary to require a landscaping plan in keeping with the native vegetation of the Santa Monica Mountains to mitigate any visual impacts of development through the use of primarily native, drought tolerant plantings, and to ensure the landscape plan is designed



and maintained to protect public views by limiting the heights of the plantings and fencing as specified in *Special Condition number three (3)*.

In addition, future developments or improvements to the property have the potential to create adverse visual impacts as seen from Pacific Coast Highway, as noted. It is necessary to ensure that future developments or improvements normally associated with a single family residence, which might otherwise be exempt, such as a second story addition or construction in the sideyard, be reviewed by the Commission for compliance with the visual resource protection policies of the Coastal Act. *Special Condition number six (6)*, the future improvements deed restriction, will ensure the Commission will have the opportunity to review future projects for compliance with the Coastal Act.

## 2. Landslide Remediation

The bluffs to the south of the subject parcel are not typical coastal bluffs in that they are separated from the shoreline first by Malibu Road and then by residential development between the road and the shoreline. Furthermore, these bluffs are not visible from any scenic road, public park or from the Coastal Slope Trail. In past permit actions, 4-92-176 (Saso); 4-97-031 (Anvil); 4-97-033 (Sweet), the Commission has approved similar remedial grading projects for the bluffs along Malibu Road in which the finished grade of the bluff has been reduced to a 1.5:1 slope in order to minimize landslide hazards.

The remedial work on the bluff face requires a significant amount of grading. However, a majority of the 1,800 cu. yds. of grading is for overexcavation and recompaction on the bluff face and will not expand the area already altered by the landslide. The grading for the bluff face is the minimal amount possible to remove the landslide and provide a stable slope. However, in order to minimize the amount of adverse visual impact to the greatest extent feasible, the Commission finds it necessary to require a landscaping plan in keeping with the native vegetation of the Santa Monica Mountains as specified in *Special Condition number three (3)*.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

## D. Archaeological Resources

Section 30244 of the Coastal Act states that:

***Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.***

Archaeological resources are significant to an understanding of cultural, environmental, biological, and geological history.—The proposed development is located in a region of the Santa Monica Mountains which contains one of the most significant concentrations of archaeological sites in southern California. The Coastal Act requires the protection of such

resources to reduce the potential adverse impacts through the use of reasonable mitigation measures.

Degradation of archaeological resources can occur if a project is not properly monitored and managed during earth moving activities and construction. Site preparation can disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be permanently lost. In the past, numerous archaeological sites have been destroyed or damaged as a result of development. As a result, the remaining sites, even though often less rich in materials, have become increasingly valuable as a resource. Further, because archaeological sites, if studied collectively, may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the sites which remain intact.

The applicant has submitted two archaeological reports titled Archeological Reconnaissance and Recommendations for Archeological Evaluation, prepared by Chester King, and dated 6/14/97, and Research Design and Scope of Work Phase II Test Excavations, prepared by W & S Consultants, and dated 7/2/98. Following research of previous studies in the immediate area and an inspection of the test pits used by GeoSoils for the geologic and geotechnical investigation, Chester King concludes:

*"A large portion of the site has not been disturbed within the project area. My observations and available information indicate that construction activities will disturb prehistoric sites deposits which are present in the project area."*

The findings of the W & S Consultants report confirm Chester King's findings and indicate there are, in all likelihood, archaeological resources on site:

*"Based on the previous archeological work that has been conducted on CA-LAN-19 , we can infer that the property may contain intact archaeological deposits. These have the potential to maintain importance based on the research potential criterion outlined in both CEQA Appendix K and 36 CFR 60.4."*

The report makes recommendations for a Phase II project, in order to provide baseline data from which to determine the nature and significance of the site, and from which final recommendations for the management of this cultural resource can be prepared. This fieldwork would be limited to the proposed areas of direct adverse impact.

Thus, the Commission finds that the subject site, in all probability, contains archaeological resources and as such, the project will have a significant adverse impact on these archaeological resources. Further, the Commission finds it necessary to ensure that the design of the project will minimize any adverse impacts to archaeological resources the maximum extent feasible.

Therefore, the Commission finds it necessary to require the applicant conduct a Phase II archaeological evaluation and have a qualified archaeologist(s) and appropriate Native American consultant(s) present on-site during all grading, excavation and site preparation that

involve earth moving operations as specified in *Special Condition number seven (7)*. The Commission finds that, as conditioned above, the project is consistent with Section 30244 of the Coastal Act.

#### E. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 of the Coastal Act states that:

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

The proposed septic system includes a 2,000 gallon septic tank with seepage pits. A percolation test was performed on the subject property which indicated the percolation rate meets Uniform Plumbing Code requirements for a eight bedroom residence and is sufficient to serve the proposed single family residence. The applicant has submitted a conceptual approval for the sewage disposal system from the City of Malibu Department of Environmental Health, based on a eight bedroom single family residence. This approval indicates that the sewage disposal system for the project in this application complies with all minimum requirements of the Uniform Plumbing Code.

The Commission has found in past permit actions that compliance with the health and safety codes will minimize any potential for waste water discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed septic system is consistent with Section 30231 of the Coastal Act.

#### F. Local Coastal Program

Section 30604(a) of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse effects and is found to be consistent with the applicable policies contained in Chapter 3.

Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

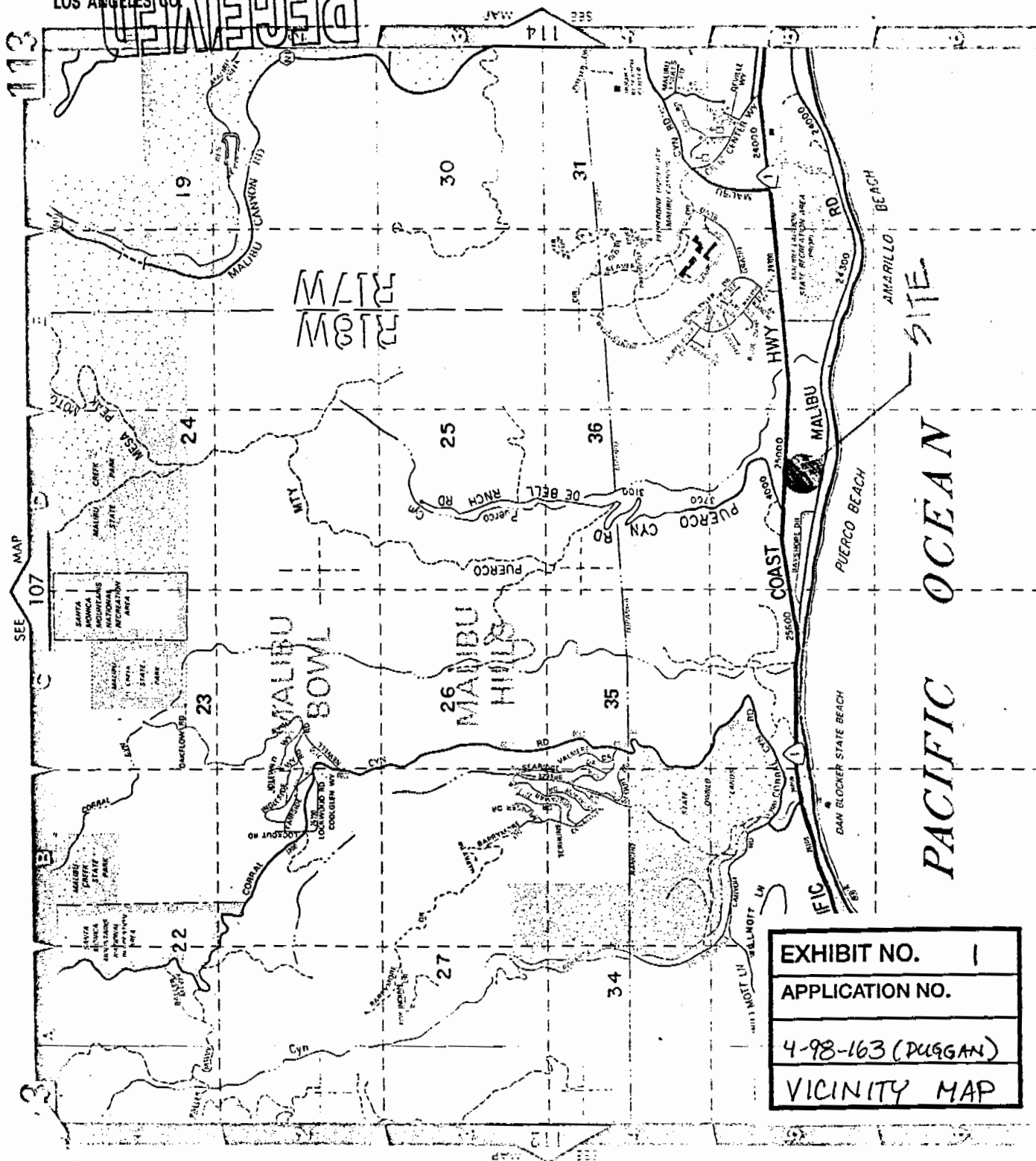
G. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, 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 effects which the activity would have on the environment.

The proposed development would not cause significant, adverse environmental effects which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.

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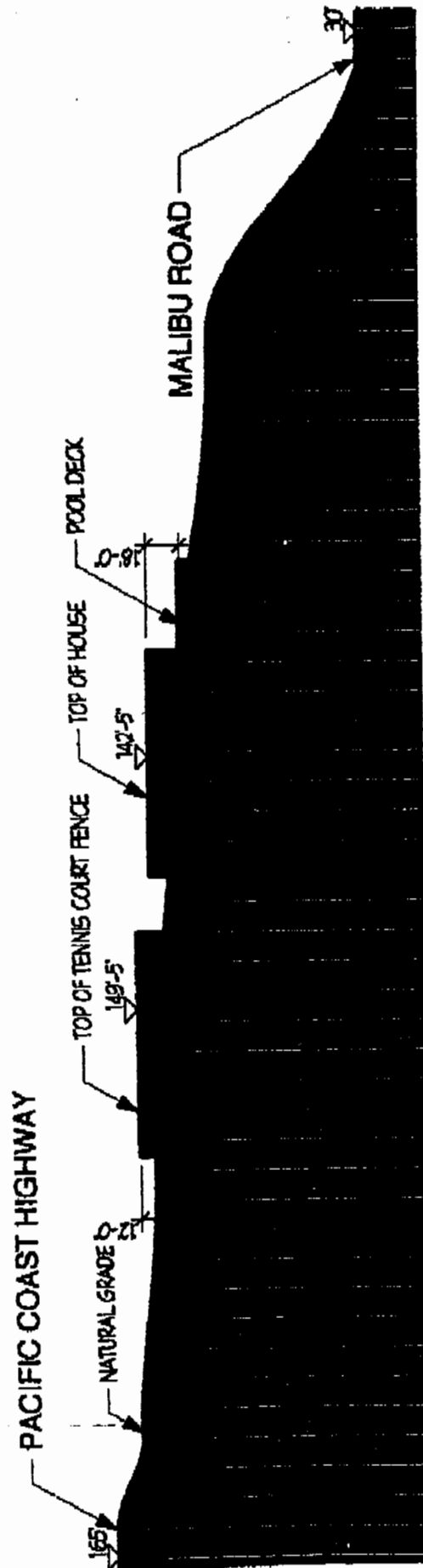
## DETAIL



|                   |   |
|-------------------|---|
| EXHIBIT NO.       | 1 |
| APPLICATION NO.   |   |
| 4-98-163 (PUGGAN) |   |
| VICINITY MAP      |   |

# SECTION THROUGH 24920 PCH

VIEW TO PACIFIC OCEAN →



|                   |
|-------------------|
| EXHIBIT NO. 2     |
| APPLICATION NO.   |
| 4-98-163 (DUGGAN) |
| VIEW PROFILE      |



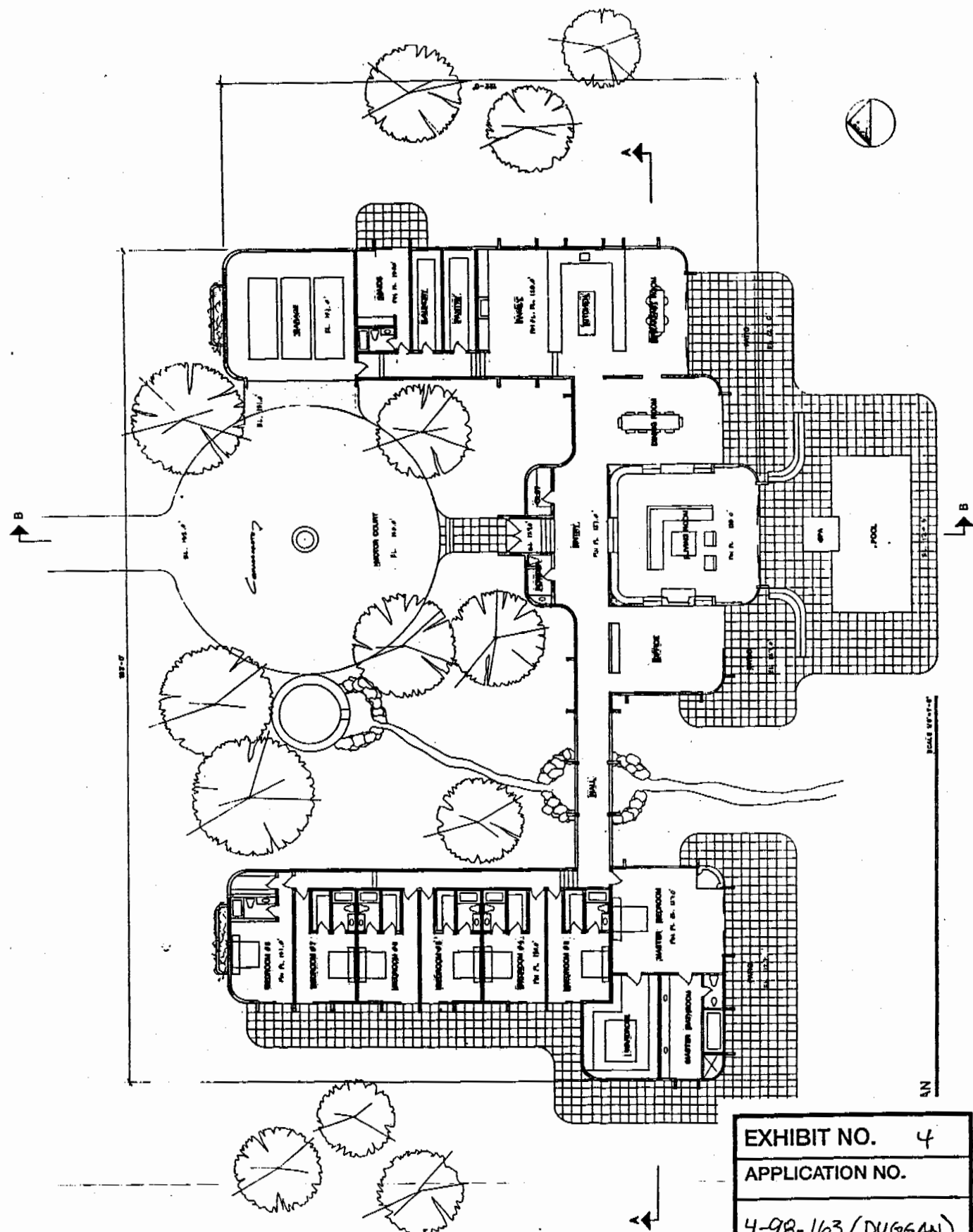


EXHIBIT NO. 4

APPLICATION NO.

4-98-163 (DUGGAN)

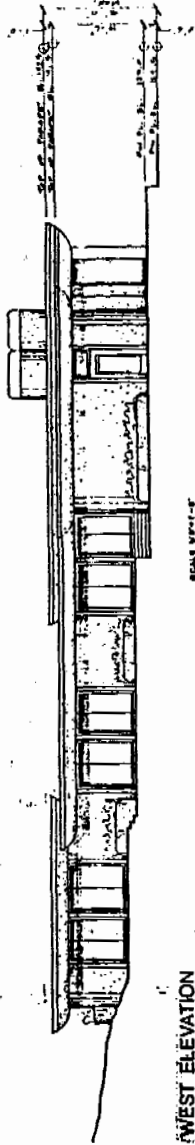
## FLOOR PLAN



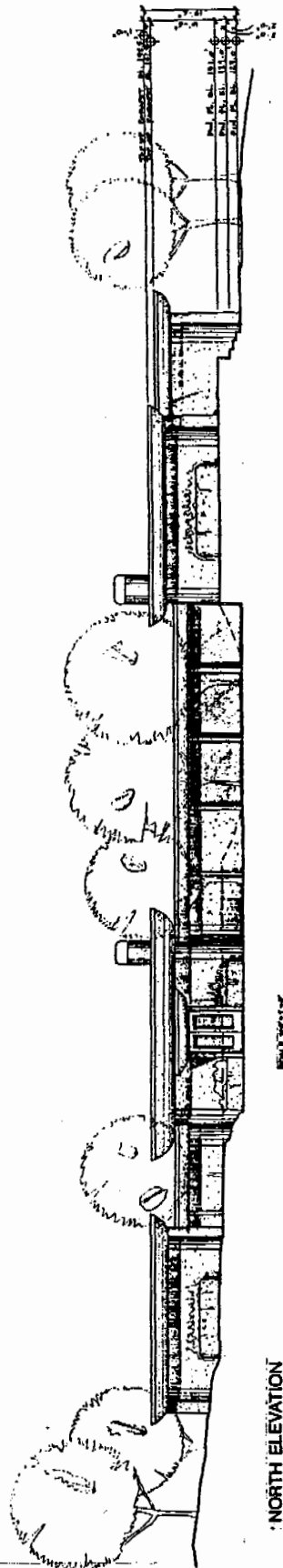
BARSOCCCHINI & ASSOCIATES, INC.  
ARCHITECTS  
MICHAEL E. BARSOCCCHINI AIA  
3902 COAST VIEW DRIVE  
MALIBU, CA 90263

DUGGAN-LEVENSON  
24920 Pacific Coast Highway  
Malibu, California 90265

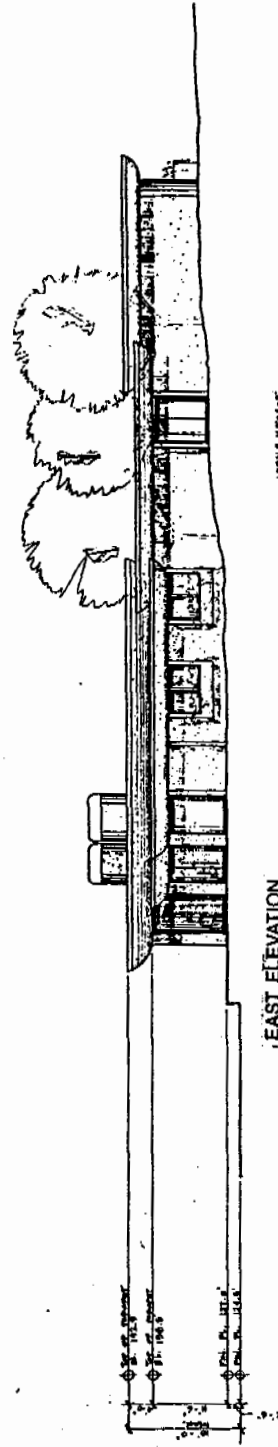
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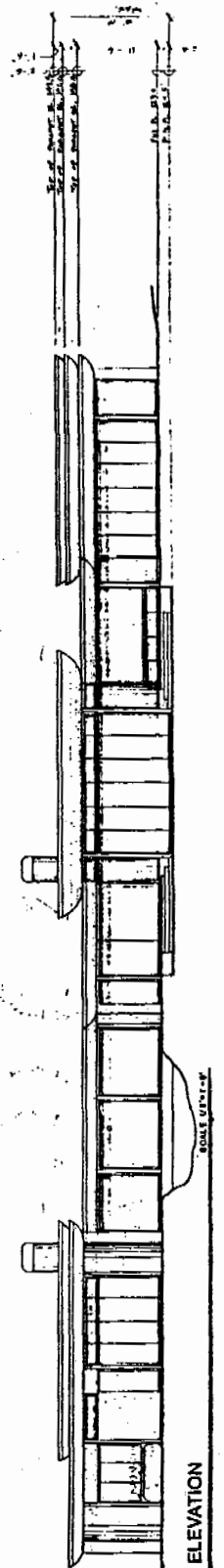
WEST ELEVATION



NORTH ELEVATION



EAST ELEVATION

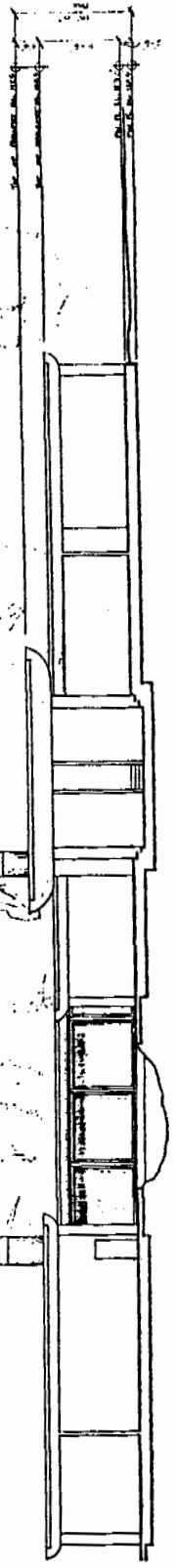


SOUTH ELEVATION

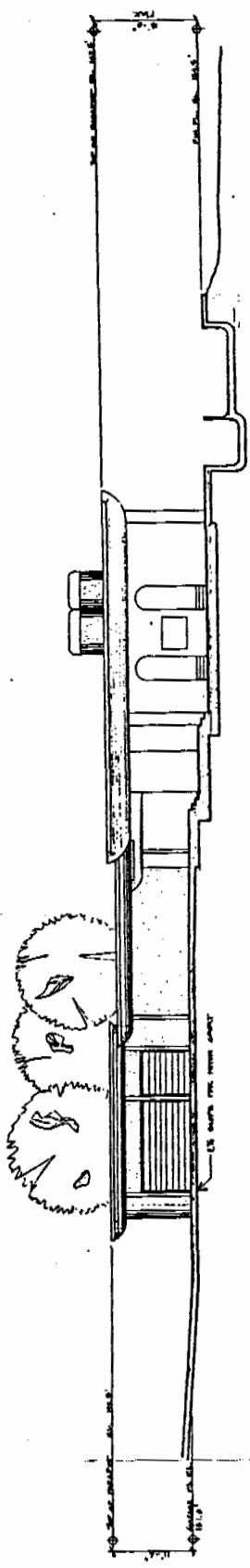
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| EXHIBIT NO.       | 5 |
| APPLICATION NO.   |   |
| 4-98-163 (DUGGAN) |   |
| ELEVATIONS        |   |

BARSOCCCHINI & ASSOCIATES, INC.  
ARCHITECTS  
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MALIBU, CA 90265

DUGGAN-LEVENSON  
24920 Pacific Coast Highway  
Malibu, California 90265



SECTION A-A



SECTION B-B

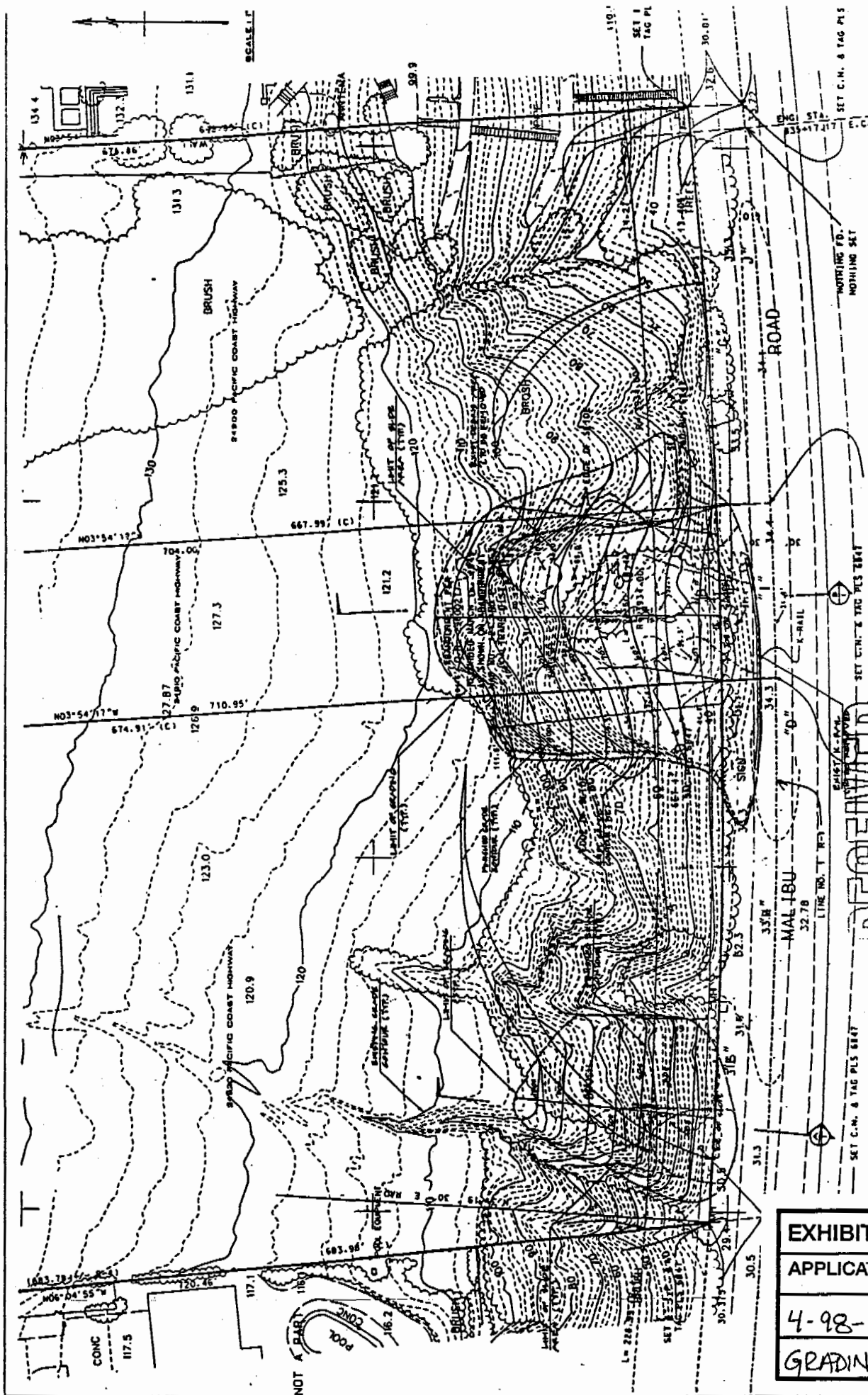


TENNIS COURT SECTION C-C



TENNIS COURT SECTION D-D

|                   |   |
|-------------------|---|
| EXHIBIT NO.       | 6 |
| APPLICATION NO.   |   |
| 4-98-143 (DUGGAN) |   |
| CROSS SECTIONS    |   |



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| EXHIBIT NO. 7    |
| APPLICATION NO.  |
| 4-98-163(DUGGAN) |
| GRADING PLAN     |

RECEIVED

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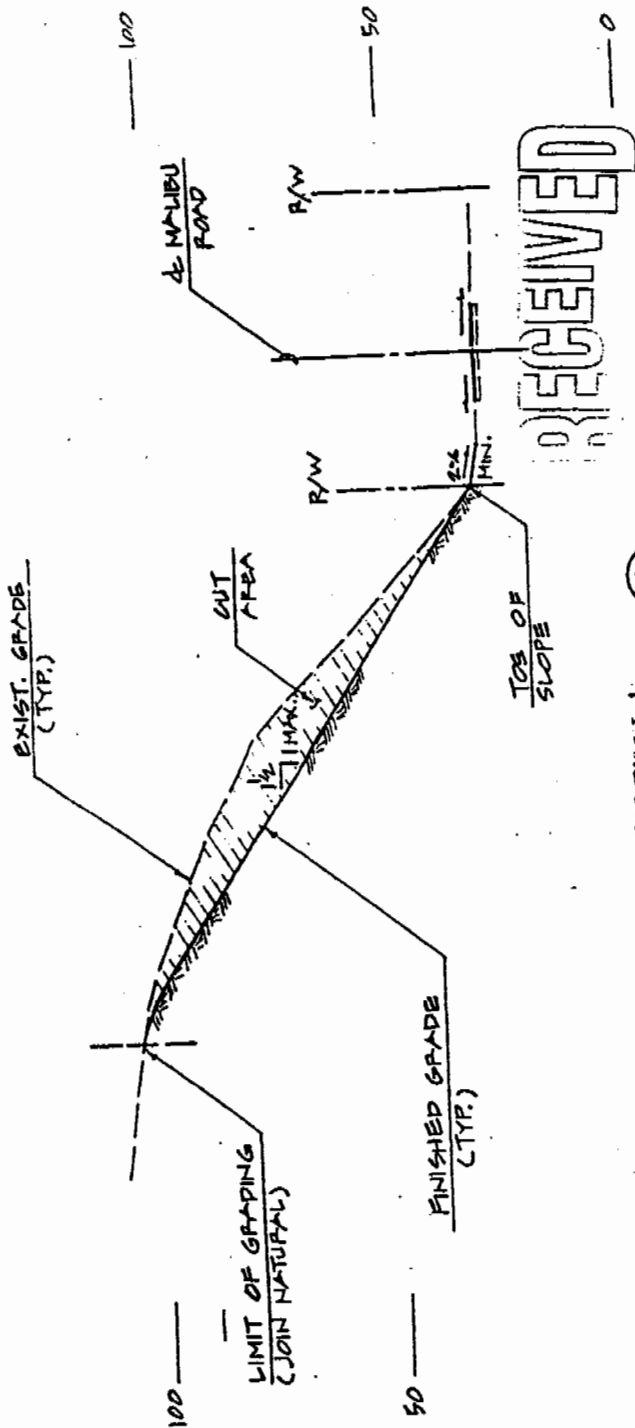
SOUTH CENTRAL COAST DISTRICT  
COASTAL COMMISSION  
Cedar Point

SHEET 8 OF 8  
GRADING PLAN FOR:

PAT DUGGAN

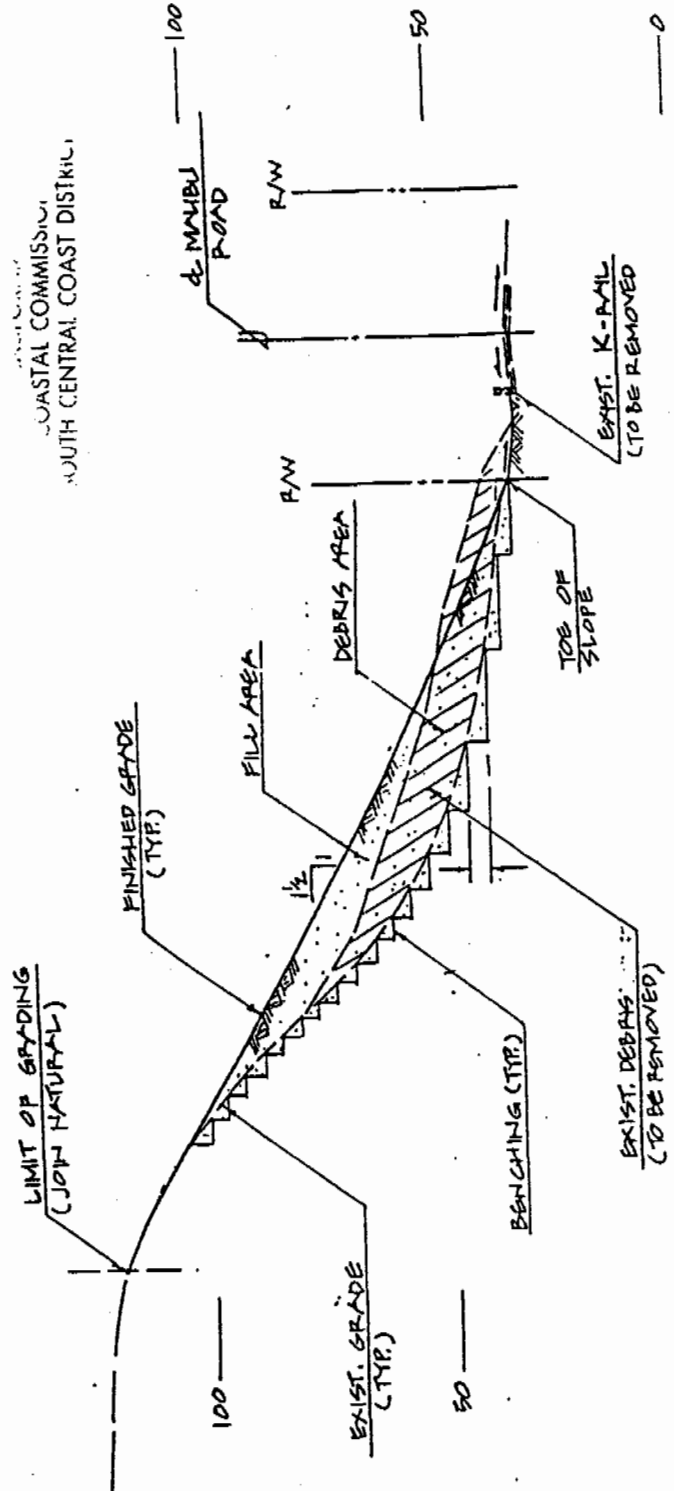
W.D. 98028 DATE: AUG 14, 1998

Service Consultants  
1000 S. Main Street, Suite 100  
San Francisco, CA 94103  
Tel: 415.398.1811  
Fax: 415.398.1812



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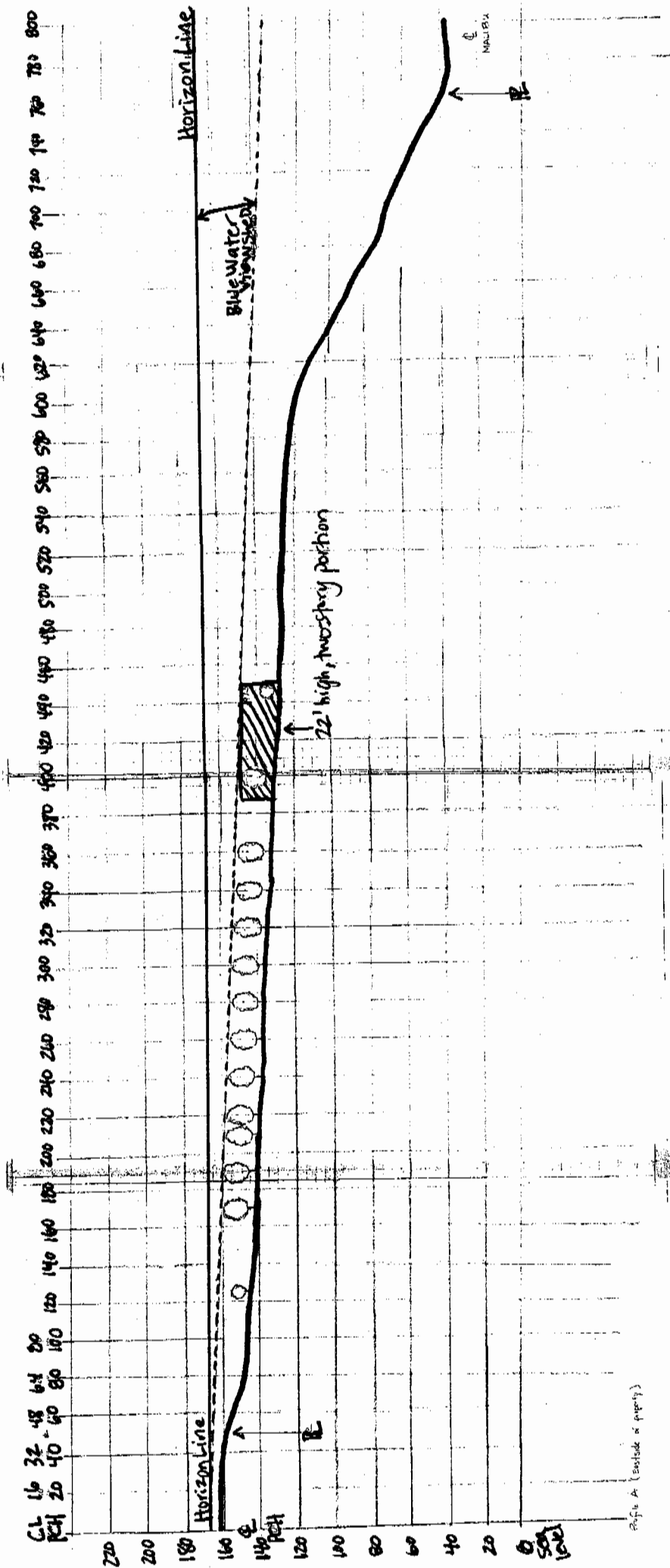
SECTION A-1  
SCALE: 1" = 20'



SECTION B-1  
SCALE: 1" = 20'

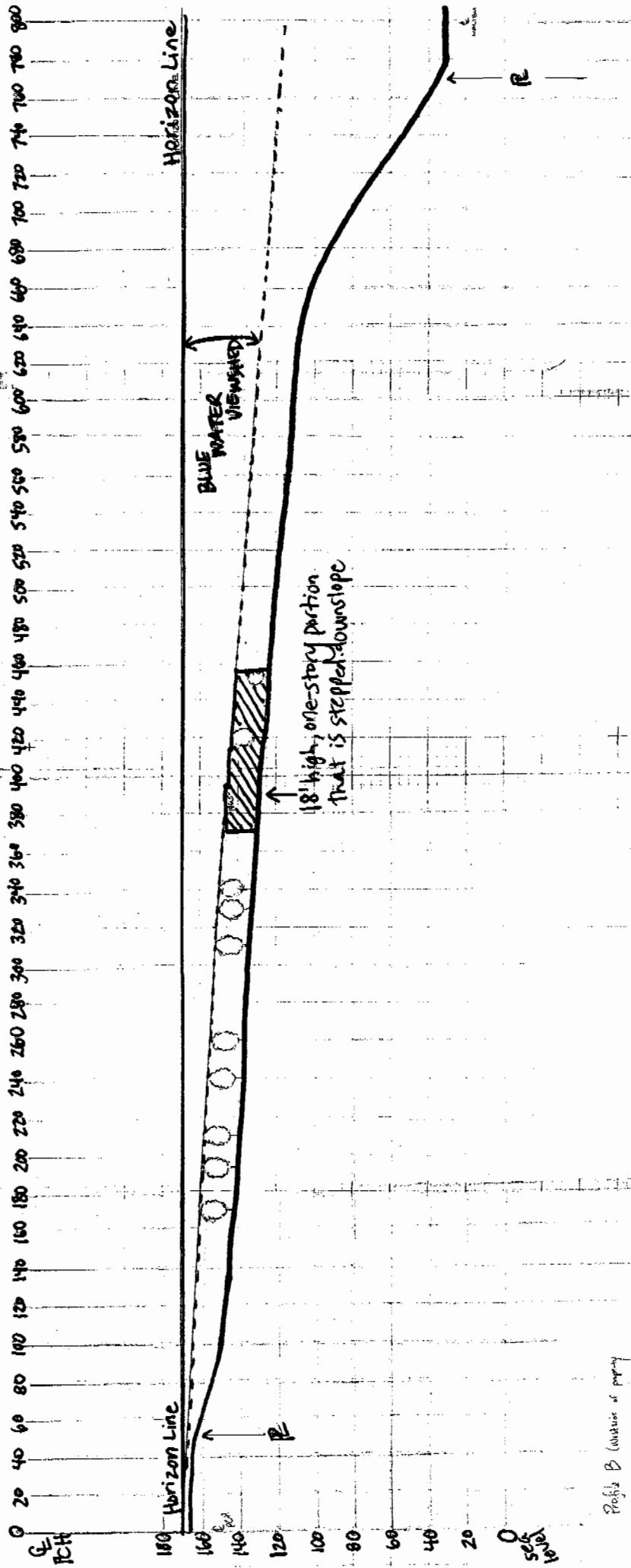
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| APPLICATION NO.   |
| 4-98-163 (DUGGAN) |
| GRADING SECTION   |

# Profile A (Eastside of Property)



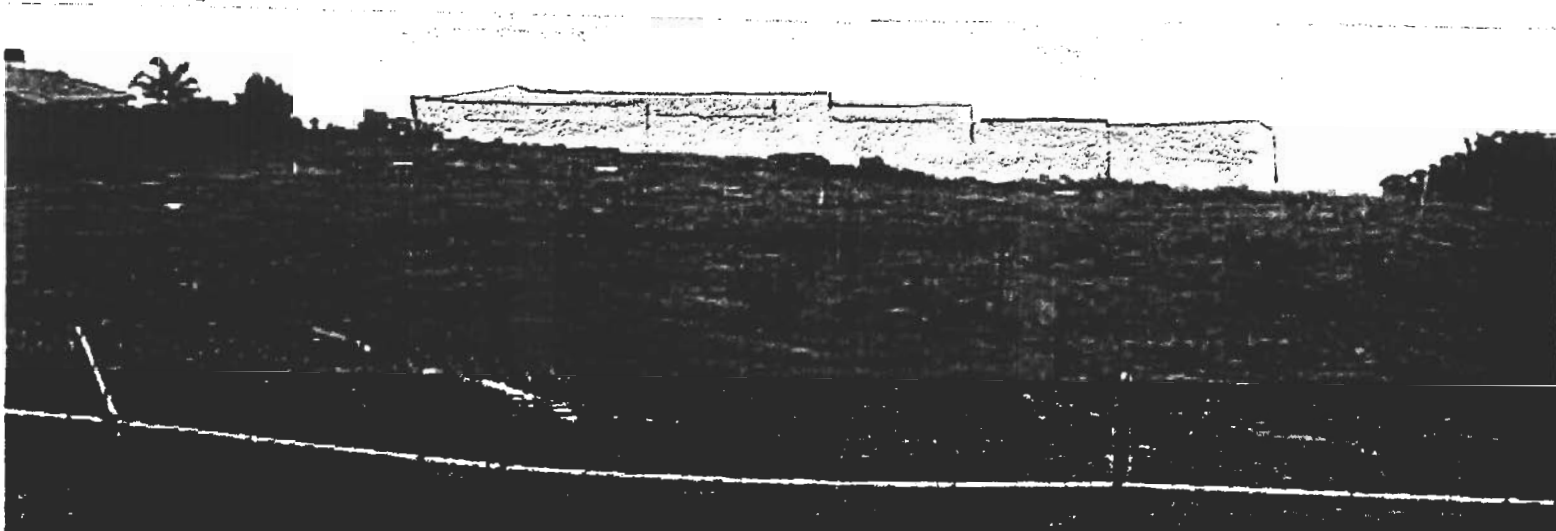
Note: Horizon line approx. 4 feet above road grade

# Profile B (Westside of Property)



Note: horizon line approx. 4 feet above road grade

horizon line  
↓



note: shading added for emphasis

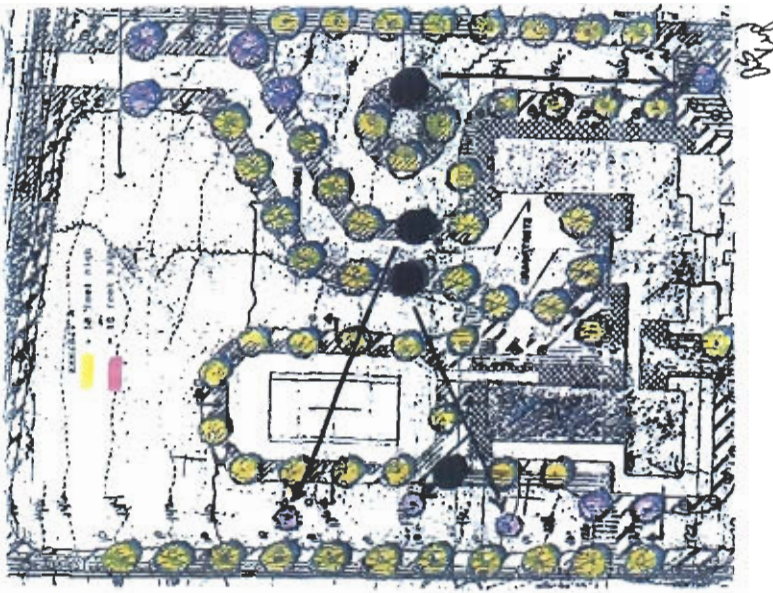
|                    |
|--------------------|
| Exhibit 15         |
| A-4-MAL-06-096     |
| Story Poles        |
| (as seen from PCH) |



|                                  |
|----------------------------------|
| Exhibit 16                       |
| A-4-MAL-06-096                   |
| Applicant's Visual<br>Simulation |



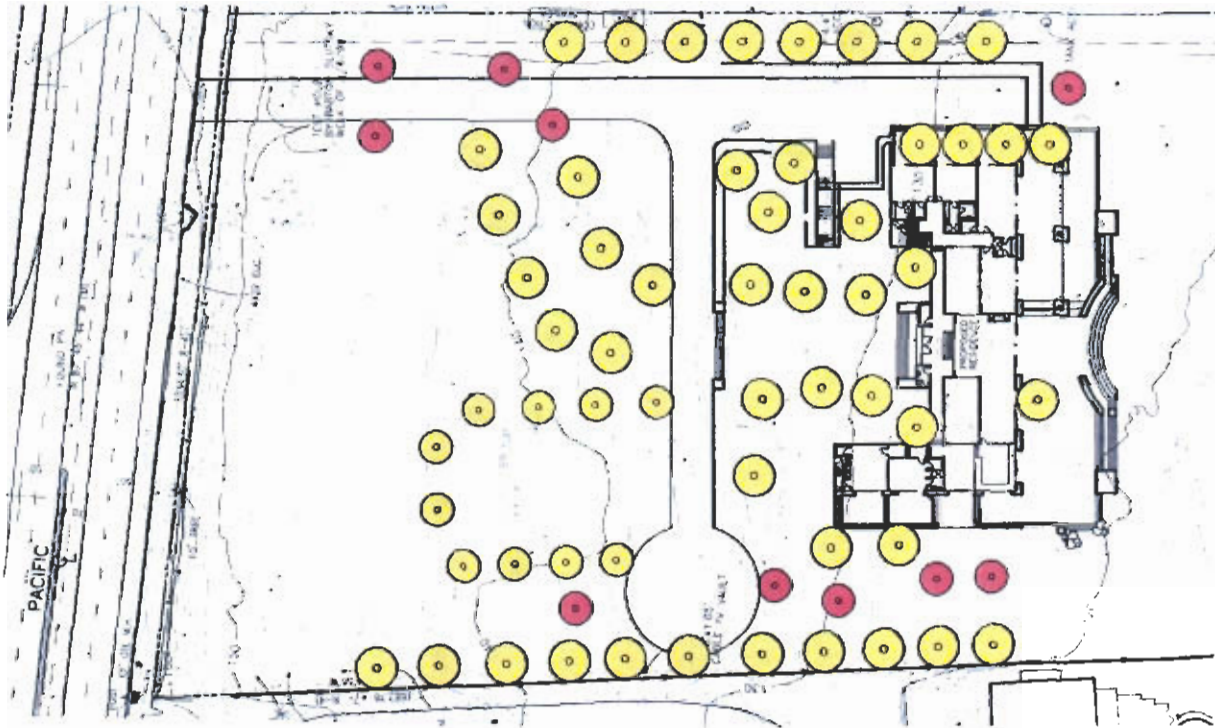
# EXHIBIT A of Settlement Agreement



Landscape is conditioned per the Court-Approved Settlement Agreement dated January 20, 2011.

All landscaped areas shall be planted and maintained in accordance with Exhibit A, attached hereto and made a part hereof. Applicants are allowed to eliminate or reduce the size of the landscaping but not plant additional landscaping or trees in excess of specified heights. No landscaping which blocks blue-sky ocean views shall be maintained in the view corridors depicted on Exhibit A, except for those 10-foot-high trees depicted in pink on Exhibit A. Consistent with CDP-190-164, except as otherwise provided herein, all landscaping outside the building footprint shall be limited to a maximum height of 18 feet. For the purposes of this plan, all Pacific Coast Highway shall be limited to no more than 2 feet in height. For the purposes of a building permit, final landscape plan shall be submitted for review and approval by the Planning Manager and/or City Engineer. Failure to comply with the landscaping conditions in a structure as seen from Pacific Coast Highway and surrounding properties. Plant species shall be approved by the City Engineer in advance and shall be trees that will not grow higher than the maximum height allowed in accordance with Exhibit A and the approved landscaping plan.

Yellow = max. 18 foot high trees  
 Pink = max. 10 foot high trees



24950 Pacific Coast Highway  
 Malibu, Ca. 90265

Scale: 1" = 40'-0"