

CALIFORNIA COASTAL COMMISSION

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

Th 17b

Appeal Filed: 9/21/06
49th Day: 11/9/06
49th Day Waived: 10/6/06
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-06-125
APPLICANT: Kamyar Lashgari
APPELLANTS: Will O'Leary
PROJECT LOCATION: 27927 Pacific Coast Highway, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a new, one-story 4,981 sq. ft. single-family residence, grading, pool and spa, drainage improvements, Fire Department turnaround, and on-site wastewater treatment system.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for City of Malibu Coastal Development Permit No. 05-191; City of Malibu Planning Commission Resolution No. 06-72.

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that **no substantial issue exists** with respect to the appellants' assertion that the project is not consistent with the ESHA provisions of the certified Local Coastal Program (LCP). The project, as approved by the City of Malibu, conforms to the ESHA protection policies and standards of the Malibu LCP. While the proposed project is located within the required ESHA buffer, there are no alternative development locations that could provide the required buffer or significantly increase the buffer. Therefore, the approved project was sited and designed to conform to the provisions of Section 4.7 of the Malibu LCP, including the maximum 10,000 square foot allowable development area, and siting and design measures were included to minimize significant adverse impacts to ESHA, and in addition, restoration is proposed to enhance the on-site ESHA. The motion and resolution can be found on **Pages 3 and 4**.

I. APPEAL JURISDICTION

The project site is located on the inland side of Pacific Coast Highway in the City of Malibu (**Exhibit 1**). The subject property supports a drainage that the City Planning Commission determined to be a stream. The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu does not depict the site as located within the appeals jurisdiction. However, the subject development is appealable to the Commission because the City has determined the on-site drainage course to be a stream and development located within 100 feet of any stream is appealable (Coastal Act Section 30603[a]). The City properly determined that the project was appealable and this determination was included in the City's hearing notice for the project.

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 no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on substantial issue. A majority vote of the members of the Commission is required to determine that the Commission will not hear an appeal. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that substantial issue does 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.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On August 21, 2006, the City of Malibu Planning Commission approved Coastal Development Permit 05-191 for the construction of a single-family residence. The Notice of Final Action for the project was received by Commission staff on September 7, 2006. A ten working day appeal period was set and notice provided beginning September 8, 2006, and extending to September 21, 2006.

An appeal was filed during the appeal period by Will O'Leary (September 21, 2006). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The complete administrative record was received on September 28, 2006.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-MAL-06-125 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-06-125 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.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The City of Malibu Planning Commission approved Coastal Development Permit (CDP) No. 05-043 for construction of a new 4,981 sq. ft., one-story single-family residence, with a driveway, turnaround, pool and spa, and on-site wastewater treatment system at 27927 Pacific Coast Highway. The City's resolution that approves the CDP is attached as **Exhibit 8**.

The approved project site is a 1.6-acre parcel located on the inland side of Pacific Coast Highway (PCH) (**Exhibits 3-6**). The parcel is zoned Rural Residential-2 (RR-2). The site is undeveloped and surrounded by vacant land to the east, single-family residences to the north and west, and Pacific Coast Highway to the south. Although not designated as an Environmentally Sensitive Habitat Area (ESHA) or blue-line stream on the Malibu LCP ESHA maps, the City Biologist had determined that a drainage feature on the subject property qualifies as a stream that contains riparian habitat area, and therefore meets the definition of an ESHA. The on-site stream bisects the property north to south and its associated riparian habitat covers the eastern two-thirds of the parcel (**Exhibit 2**). The entire parcel is within either ESHA or the required 100-foot ESHA buffer.

B. APPELLANTS' CONTENTIONS

The City's action was appealed by Will O'Leary. The appeal is attached as **Exhibit 7**. The appeal contends that the approved project will result in significant impacts to the on-site stream Environmentally Sensitive Habitat Area and feasible siting and design alternatives exist that would substantially lessen adverse impacts of the development on the environment. The appeal also contends that access to the project site is proposed through a California State Department of Transportation (Caltrans) easement on Pacific Coast Highway, and as such, the project will encroach upon the public's right of safe

travel, parking and accessing W. Winding Way. The appeal does not provide specific LCP policies or provisions that is pertinent to this contention.

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 appellant 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 appellant did not cite the public access policies of the Coastal Act as a ground for appeal.

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. Environmentally Sensitive Habitat Areas

The eastern portion of the subject parcel contains a drainage that has both native riparian vegetation and non-native/invasive vegetation along its banks. The drainage runs from the northern, upslope portion of the property down to a 24-inch culvert at Pacific Coast Highway (**Exhibit 2**). The site slopes downward to the east and south from the flatter, northwestern corner of the parcel. Although the on-site drainage is not identified as a stream Environmentally Sensitive Habitat Area (ESHA) on the Malibu LCP ESHA maps, based upon a site reconnaissance and the applicant's biological reports, the City Biologist determined that the drainage feature meets the definition of a stream. The City Biologist recommended and the Malibu Planning Commission found in its action approving the subject CDP that this stream and its associated riparian corridor

meets the LCP definition of ESHA, consistent with the requirements of LUP Policy 3.4 and LIP Section 4.3(A). The project was reviewed by the City Environmental Review Board, as required by LUP Policies 3.39 and 3.40. The entire parcel is either ESHA or is situated within the required 100-foot ESHA buffer.

The proposed project involves the construction of a one-story, 4,981 sq. ft. residence with a driveway, Fire Department turnaround, pool, spa, and on-site wastewater treatment system. The proposed development is situated on the flat, northwestern corner of the parcel and, at its closest point, the proposed residence is setback five feet from the on-site ESHA (**Exhibit 3**).

The appeal filed by Will O'Leary contends that while measures had been taken by the City and applicant to lessen impacts to the on-site ESHA, further feasible alternatives exist that would substantially lessen adverse impacts of the development on the environment. The appellant states that the ESHA setback can be increased by changing the siting of the project, decreasing the total size of the improvements, or changing the shape/design of the building.

Section 4.6.1 of the Malibu LIP states, in part, the following with regard to ESHA buffers:

4.6.1. Buffers

New development adjacent to the following habitats shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers except as provided in Section 4.6.1 (E) or (F) of the Malibu LIP. The following buffer standards shall apply:

A. Stream/Riparian

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

LIP Section 4.7 states, in part, that:

Where all feasible building sites are ESHA or ESHA buffer, the City may only permit development as specified below in sections 4.7.1 through 4.7.4 of the Malibu LIP in order to provide the owner with an economically viable use of the property.

Section 4.7.1 states, in part, that:

In other ESHA areas, the allowable development area on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 sq. ft. or 25 percent of the parcel size, whichever is less.

As stated previously, the entire subject parcel lies within either ESHA or the required 100-foot ESHA buffer of the on-site stream. The parcel is zoned Rural Residential 2

(RR-2), and residential development is a permitted use within this zone. Given that there is no siting alternative that could provide the required ESHA buffer, the City determined that it was necessary to apply the provisions of Section 4.7, which limit the development area that can be approved in such a case. The proposed development area is approximately 8,000 sq. ft. As such, the project has been designed, as well as conditioned by the City, to conform to the development area limitation of 10,000 sq. ft. to allow for an economically viable use of the property located within ESHA buffer.

Additionally, Section 4.7 of the LIP states, in part, the following in regards to the protection of ESHA:

The uses of the property and the siting, design, and size of any development approved in ESHA or ESHA buffer, shall be limited, restricted, and/or conditioned to minimize impacts to ESHA on and adjacent to the property, to the maximum extent feasible.

Further, Section 4.8(A) of the Malibu LIP states, in part, the following:

New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected.

Siting and design alternatives were analyzed by the applicant and City staff throughout the coastal development permit process. The applicant redesigned the project in April 2006 to delete a proposed guesthouse, cluster development and comply with the 10,000 sq. ft. maximum development area provision. The approved development has been clustered onto a single pad area and oriented in a north-south direction to maximize the setback from the on-site stream corridor. The on-site wastewater treatment system has been sited beneath the driveway in the corner of the property furthest from the stream. Additionally, the applicant has worked with the Fire Department to ensure that fuel modification activities will not be required within the on-site stream corridor ESHA area in order to avoid adverse impacts from the removal or thinning of riparian vegetation. Also, per the recommendation of the City Environmental Review Board, the applicant has incorporated restoration of the on-site ESHA areas, including removal of exotic vegetation and revegetation of disturbed areas with native riparian plant species into the proposed project.

City staff and the applicant considered re-siting the residence downslope and closer to PCH so as to provide an increased setback from the on-site ESHA. However, this alternative was found to result in increased grading and retaining walls, and increased noise to the residents of the proposed house, given the close proximity to PCH. Further, siting the development closer to PCH (a scenic route) would result in much greater impacts to visual resources, as viewed by the public. Siting the residence closer to PCH and further from existing residential development would serve to provide an increase in the ESHA buffer of only approximately 10-20 feet at its closest point, but this buffer increase would not significantly reduce impacts to ESHA. The proposed building site is situated on the flatter, northwestern portion of the parcel that is closer to existing residential development and within an area previously disturbed by neighboring fuel modification requirements. As such, the overall amount of required fuel modification will

be minimized because of the overlapping fuel modification provided by clustering residential development.

There are also potential design alternatives, including reducing the overall size of the proposed residence. However, given the configuration of the parcel, the location of the stream and riparian corridor on the site, and the proximity of the riparian vegetation to the development area, even a substantial reduction in the development footprint would not significantly reduce impacts to ESHA. Therefore, as approved, the project has been sited and designed to minimize impacts to ESHA to the maximum extent feasible.

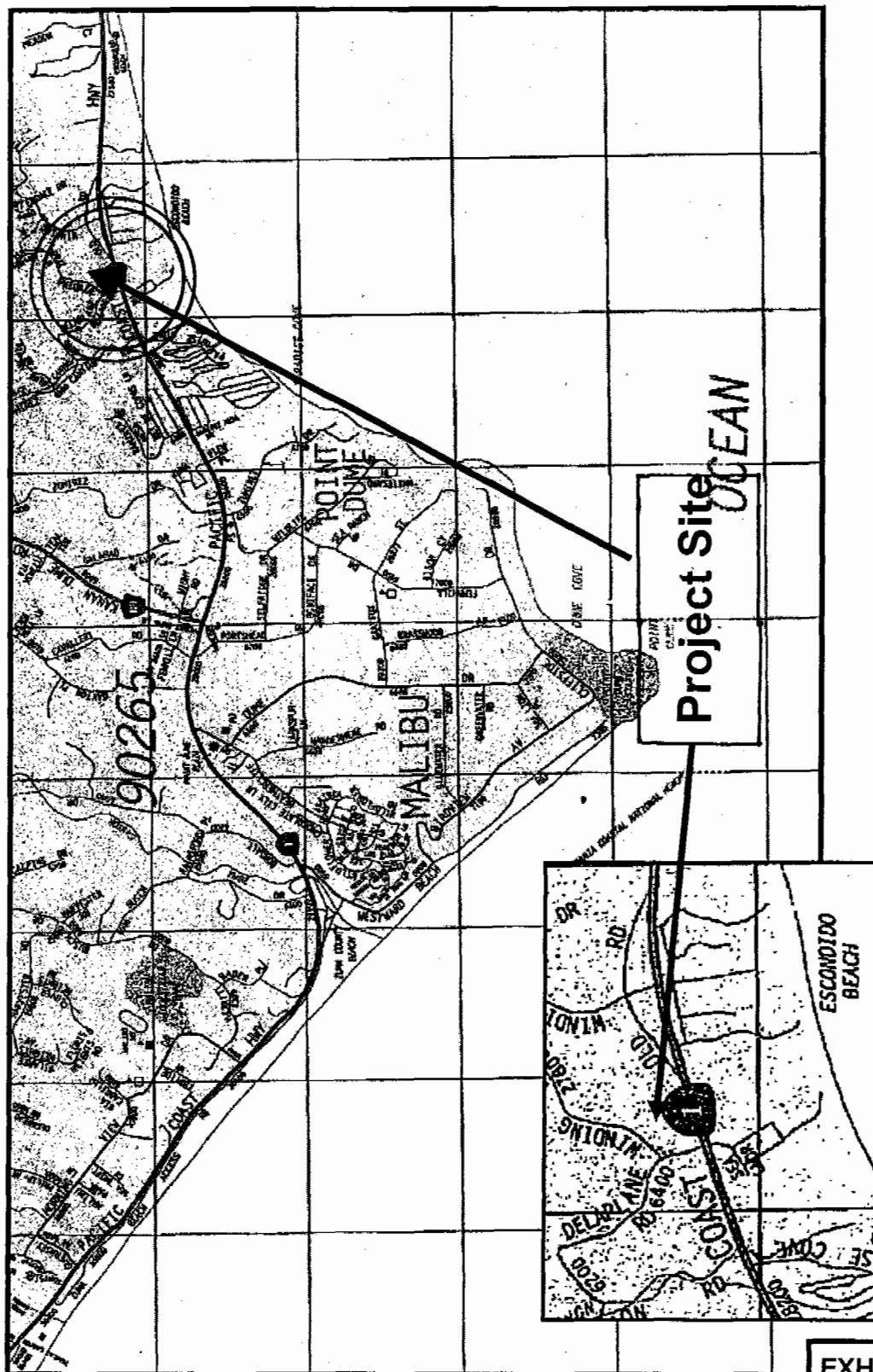
In conclusion, the project, as approved by the City of Malibu, conforms to the ESHA protection policies and standards of the Malibu LCP. While the proposed project is located within the required ESHA buffer, there are no alternative development locations that could provide the required buffer or significantly increase the buffer. Therefore, the approved project was sited and designed to conform to the provisions of Section 4.7 of the Malibu LCP. The project is consistent with the maximum 10,000 square foot allowable development area required under LIP Section 4.7 and siting and design measures were included to minimize significant adverse impacts to ESHA, and in addition, restoration is proposed to enhance the on-site ESHA. As such, the Commission finds that the appellant's contentions regarding development adjacent to ESHA raise no substantial issue with regard to consistency with the policies and provisions of the certified LCP.

2. Traffic

The appeal filed by Will O'Leary contends that access to the project site will be through a California State Department of Transportation (Caltrans) easement on Pacific Coast Highway, and as such, the project will encroach upon the public's right of safe travel, parking and accessing W. Winding Way. The appellant provides no specific LCP policies or provisions that is pertinent to this contention, nor specific information as to the scope and nature of these traffic impacts and why the appellant believes the impacts are significant. The LCP does not have specific policies or provisions regarding traffic or traffic safety, with the exception of several that require adequate provisions for transit services and off-street parking in order to minimize impacts to routes that the public uses to gain coastal access. The appellant has not asserted that the approved project will impact the public's ability to access the coast. Staff cannot identify any potential impacts to public access as the proposed driveway will not impact any areas along Pacific Coast Highway that is used by the public for coastal access. In addition, the proposed driveway approach on Pacific Coast Highway has been designed to meet Caltrans safety standards. As such, this contention raises no substantial issue with regard to consistency of the approved project with the policies and provisions of the certified LCP.

D. CONCLUSION

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the City's certified LCP regarding ESHA. Therefore, the Commission finds that the appeal does not raise a substantial issue as to the City's application of the policies of the LCP in approving the proposed development.



Vicinity Map – 27927 Pacific Coast Highway

EXHIBIT NO. |

APPLICATION NO.

A-4-MAL-06-125

Vicinity Map

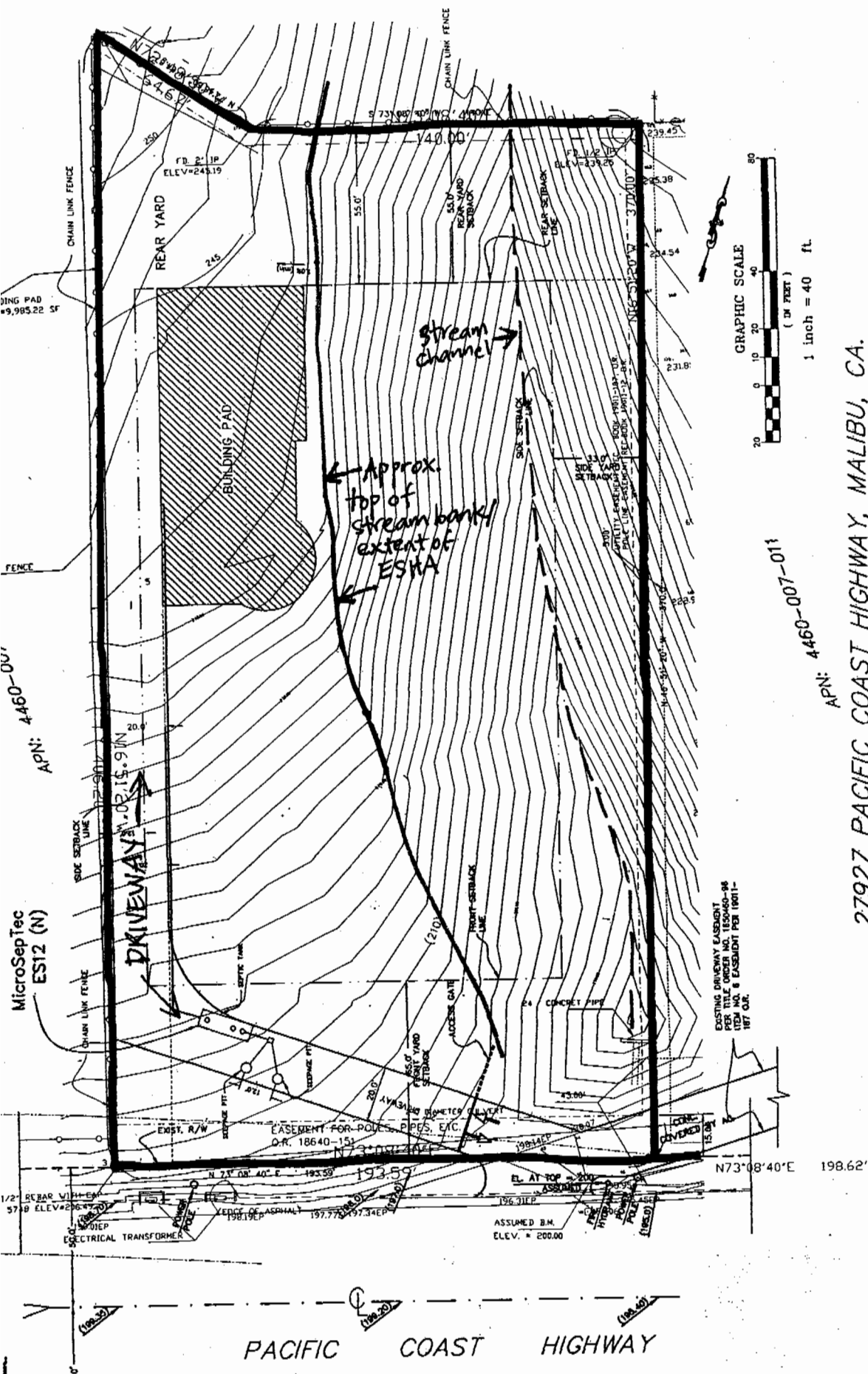


EXHIBIT NO. 2
APPLICATION NO.
A-4-MAL-06-125
SUBJECT PARCEL

EXHIBIT NO. 4
APPLICATION NO.
A-4-MAL-06-125
Floor Plan



East/West Elevations

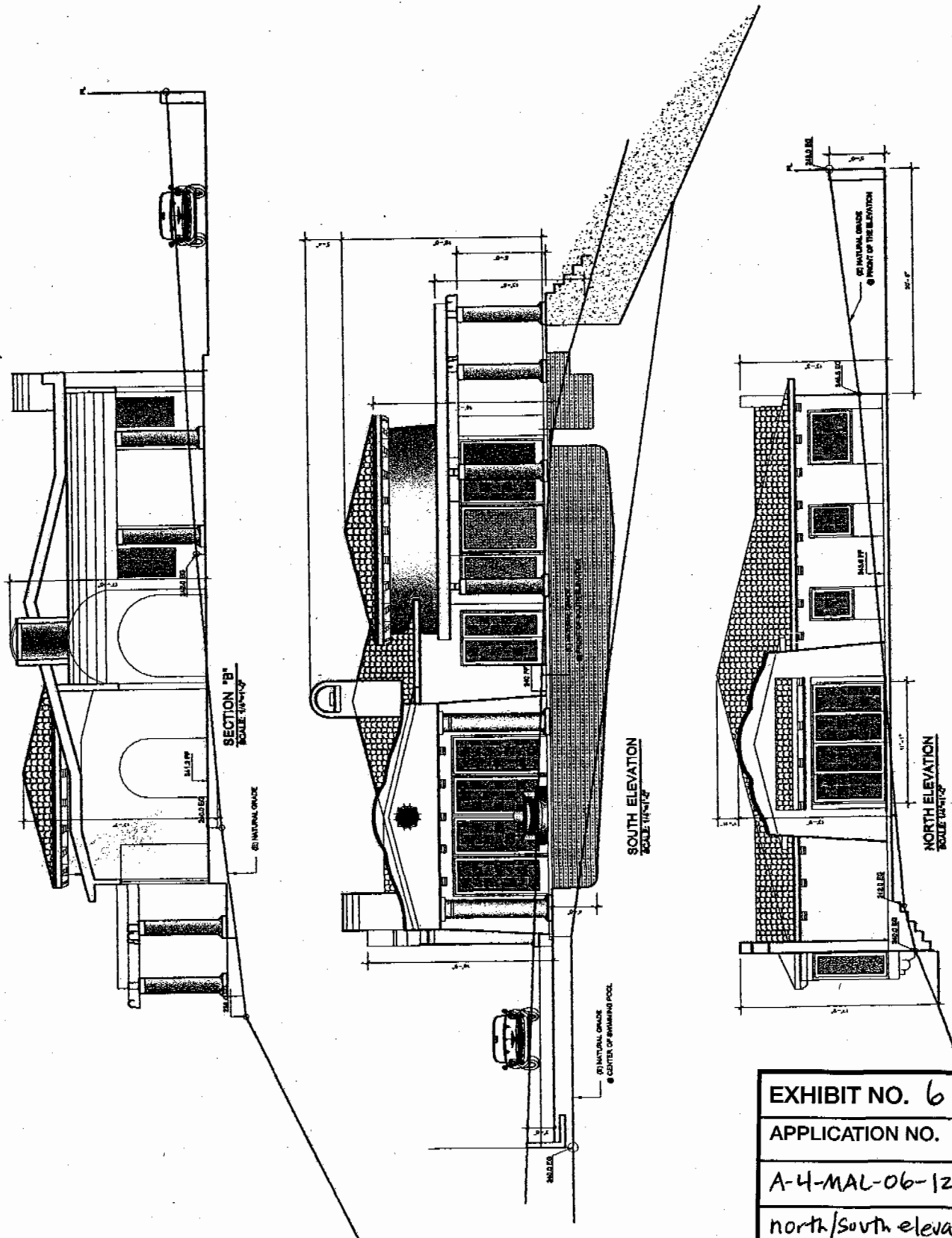


EXHIBIT NO. 6
APPLICATION NO.
A-4-MAL-06-125
north/south elevations

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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

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SEP 21 2006

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Will W. O'Leary
Mailing Address: 6355 Symonsen Meadows Dr
City: Malibu Zip Code: 90265 Phone: 310.924.4350

SECTION II. Decision Being Appealed

- Name of local/port government:
City of Malibu
- Brief description of development being appealed: CDP 05-171
The construction of a one story, 4981 sq. ft. residence, grading, pool-spa
and onsite wastewater treatment system.
- Development's location (street address, assessor's parcel no., cross street, etc.):
27927 Pacific Coast Highway 4460-007-010
Malibu CA 90265
- 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-06-125
DATE FILED: 9/21/06
DISTRICT: South Central Coast

EXHIBIT NO. 7

APPLICATION NO.

A-4-MAL-06-125

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:

August 21, 2006 Resolution 06-72

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

CDP 05-171

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:

KANYAN LASHGARI
26740 VIA LINDA ST
MALIBU CA 90265

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) Will W. O'Leary

(2) LIN-BOLEN WENDIGOS
27940 W. WINDING WAY
MALIBU CA 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.

The development proposed in CDP 05-191 application has an ESHA setback of approximately five linear feet at its closest point. Thus, the application is located in an Applicable Jurisdiction.

The project will result in significant impacts to the ESHA and although measures were taken to lessen the impacts, there are further feasible alternatives that would substantially lessen adverse impacts of the development on the environment. Specifically, increase the size of the minimum ESHA setback of five feet. This would reduce the impact to the environment during the construction period and after the home is built and occupied. The setback can be increased by changing the siting of the project, decreasing the total size of the improvements or changing the shape/design of the building. These alternatives to increase the ESHA setback may also result in increasing the preservation of the public's interests as well as private view corridors. Reducing the size of the project will also result in reducing the impact to drainage course/ESHAs located from the project towards the Pacific Ocean a few hundred feet away.

The project will result in increased risk to drivers on PCH as access to the property is through a Caltrans easement along a 50 mph area of PCH and encroaches on the public's rights of safe travel and parking and accessing W. Windward Way.

The project will result in a substantial impact to the flora, plant and wild life located in and around the ESHA and the project. The site affords a two-tiered design, the garage could be relocated to the PCH side, and the pad could be lowered without violating the excavation code limit.

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.

W.D. [Signature]
Signature of Appellant(s) or/Authorized Agent

Date: 9/20/06

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: _____

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 06-72**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 05-191 TO ALLOW FOR THE CONSTRUCTION OF NEW, ONE-STORY, 4,981 SQUARE FOOT, SINGLE-FAMILY RESIDENCE, GRADING, NEW POOL AND SPA, THE INSTALLATION OF DRAINAGE IMPROVEMENTS, FIRE DEPARTMENT TURNAROUND AREA, LANDSCAPING, HARDSCAPE AND THE INSTALLATION OF A NEW, ONSITE WASTEWATER TREATMENT SYSTEM IN A RURAL RESIDENTIAL 2 (RR-2) ZONING DISTRICT LOCATED AT 27927 PACIFIC COAST HIGHWAY. (25 & K, LLC)

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

Section 1. Recitals.

A. On November 29, 2005, an application for Coastal Development Permit (CDP) No. 05-191 was duly filed by Kamyar Lashgari, on behalf of property owner, 25 & K, LLC, requesting approval of a new, one-story, 4,502 square foot, single-family residence, a 1,340 square foot detached secondary dwelling unit, and associated development.

B. Although LCP ESHA Overlay Map No. 2 does not designate the project site as ESHA, on February 6, 2006, the City Biologist determined that the subject property supports a drainage feature that meets the definition of a stream. Pursuant to LIP Section 4.3 (B), streams meet the criteria as ESHA. Subsequently, after conducting review of the project for compliance with the ESHA Overlay development standards, staff determined the project was not in compliance with the criteria that requires a maximum development area of 10,000 square feet when all feasible building sites are within an ESHA or ESHA buffer area.

C. On April 21, 2006, the project was subsequently redesigned to propose a new, one-story, 4,981 square foot, single-family residence and associated development.

D. On April 27, 2006, the Malibu City Biologist determined that the subject project required review by the City of Malibu Environmental Review Board (ERB) to assess and reduce potential impacts to the jurisdictional drainage and riparian habitat, which covers the eastern two-thirds of the project site.

E. On May 30, 2006, after consultation with the applicant and reviewing the revised project plans, the California Department of Fish and Game (CDFG) determined that the proposed project will not require the issuance of a Streambed Alteration Agreement because the proposed project will not: 1) substantially divert, obstruct, or change any natural flow or bed, channel, or bank of a river, stream or lake; 2) use material from a streambed; 3) introduce deleterious material into the Santa Monica Bay; or 4) substantially adversely affect existing fish or wil

EXHIBIT NO. 8

APPLICATION NO.

A-4-MAL-06-125

City Resolution

F. On June 28, 2006, the subject project was reviewed by the ERB and recommendations were discussed.

G. On August 10, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on August 10, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

H. On August 21, 2006, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

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

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B and 13.9 of the City Malibu LCP Local Implementation Plan, the Planning Commission hereby adopts the findings in the staff report, the findings of fact below, and approves Coastal Development Permit No. 05-191.

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

A. General Coastal Development Permit (LIP – Chapter 13)

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

The project has been reviewed for conformance with the LCP. As discussed herein, and as indicated in Table 2 of the Planning Commission staff report, 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 (Pacific Coast Highway) and the sea. Therefore, this finding is not applicable to the proposed project.

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, as discussed later in this report, is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements of the LCP and the M.M.C. The proposed single-family residence is a permitted use within the RR-2 zoning designation of the subject property. Due to constraints on the property, including the jurisdictional drainage and riparian habitat, which covers the eastern two-thirds of the project site, the proposed location is the least environmentally damaging feasible alternative.

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

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.

In this case, the City Biologist has made the determination, based on the Biological Inventory and an onsite investigation, that the subject property supports a drainage feature that meets the definition of a stream. Pursuant to LIP Section 4.3 (B), streams meet the criteria as ESHA. Attachment 4 (City Biologist Request for Additional Information, dated February 6, 2006) Pursuant to LIP Section 4.5.3, the following types of development are permitted in the ESHA: "A. Public accessways and trails; C. Restoration projects where the primary purpose is restoration of the habitat; and D. Invasive plant eradication projects if they are designed to protect and enhance habitat values." Moreover, as discussed earlier, the City Biologist has determined that the development of the single-family residence will not result in an adverse impact to the ESHA because the project has been designed to reduce any potential impacts to a level of insignificance.

Pursuant to LIP Section 4.3(D), the City Biologist and the Environmental Review Board (ERB) shall review proposed projects within the ESHA Overlay. This project was reviewed by the ERB on June 28, 2006 and the following recommendations were made:

Impacts to ESHA

1. Project shall incorporate restoration of the ESHA by the removal of ice plant and other non-native invasive plant species within the ESHA and ESHA buffer.
2. To avoid the potential adverse impact to riparian areas the Board recommended the use an herbicide such as Roundup® (upland areas) or Rodeo® (within the riparian zone) as appropriate for the area being treated.

Landscaping

3. Trees identified in the proposed landscaping plan shall be removed to address potential visual impacts to neighbors north and northwest of the project site. All proposed landscaping 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). Proposed landscaping at the rear of the property shall not exceed six feet in height.

The applicant has agreed to incorporate the above referenced recommendations into the proposed project. In addition to the above referenced recommendations, the ERB expressed concern regarding the feasibility of siting the proposed development closer to Pacific Coast Highway. However, according to the applicant, re-siting the proposed development closer to Pacific Coast Highway would result in increased grading quantities, the construction of higher retaining walls, increased visual impacts from Pacific Coast Highway (a scenic road), and increased noise from the highway. Re-siting the proposed development closer to Pacific Coast Highway was determined to result in environmental impacts which would not result from the proposed project.

As discussed above, the applicant has made an effort to incorporate all of ERB's feasible recommendations. Accordingly, this project complies with the criteria established in the LCP.

B. Environmentally Sensitive Habitat Area (LIP - Chapter 4)

The Environmentally Sensitive Habitat Area (ESHA) Overlay provisions apply to Coastal Development Permit applications when the proposed project site is designated environmentally sensitive habitat area on the Malibu LIP ESHA Overlay Map, in addition to those areas within 200 feet of a designated ESHA. This project is proposed within the ESHA Overlay; therefore, the provisions of the Environmentally Sensitive Habitat Area Overlay apply and the three findings set forth in LIP Section 4.7.6 are hereby made as follows:

Finding A. The application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel.

As discussed earlier, the site is constrained by the presence of a jurisdictional drainage and riparian habitat, which covers the eastern two-thirds of the project site. Application of the required 100-foot setback from the ESHA would make the subject site infeasible for residential development. The proposed development maintains an ESHA setback of approximately five linear feet, at its closest point. The proposed development does, however, maintain the required maximum 10,000 square foot

development area. Application of the standard development restrictions that apply to ESHA would not permit the construction of a residence on this parcel, which is zoned for residential use.

Finding B. The use proposed by the applicant is consistent with the applicable zoning.

The proposed single-family residence is consistent with the property's RR-2 zoning designation.

Finding C. The project is consistent with all provisions of the certified LCP with the exception of the ESHA Overlay ordinance and it complies with the provisions of Section 4.7 of the Malibu LIP.

As discussed in A. General Coastal development Permit, Finding D. this project conforms to the recommendations of the ERB and, therefore, complies with the criteria established in the LCP.

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

The provisions of the Native Tree Protection Ordinance only apply to those areas containing one or more native Oak, California Walnut, Western Sycamore, Alder or Toyon trees, that has at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, 4 ½ feet from the ground. According to the Biological Assessment prepared by Ecology Consultants, Inc. in November 2002, there are several native tree species present on the property. The report identified Coast Live Oaks, Toyons, Western Sycamores, and California Black Walnuts as the sensitive native tree species observed on the property. Accordingly, the provisions of the Native Tree Protection Ordinance apply and the three findings set forth in LIP Section 5.7 are hereby made as follows:

Finding A. The proposed project is sited and designed to minimize removal of or encroachment in the protected zone of native trees to the maximum extent feasible.

The native trees observed at the project site are within the riparian habitat and will not encroached upon or impacted by the proposed project. No native trees will be removed; therefore, no adverse impacts on native trees are expected.

Finding B. The adverse impact to tree removal and/or encroachment cannot be avoided because there is no other feasible alternative.

The development of the single-family residence would not disturb any native plant species and no native trees would be removed. Therefore, no adverse impacts on native trees are expected.

Finding C. All feasible mitigation measures that would substantially lessen any significant impact on native trees have been incorporated into the approved project through design or conditions of approval.

The development of the single-family residence would not disturb any native plant species and no native trees would be removed. Therefore, no adverse impacts on native trees are expected.

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

The Scenic, Visual and Hillside Resource Protection Ordinance governs those Coastal Development Permit 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. This project is visible from a scenic road (Kanan Dume Road); therefore, the Scenic, Visual and Hillside Resource Protection Ordinance applies and the five findings set forth in LIP Section 6.4 are hereby made as follows.

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.

Story poles were placed on the site. Staff visited the site to determine if any public views would be blocked, and found that no ocean views will be blocked by the proposed project. Therefore, there are no significant adverse scenic or visual impacts anticipated due to project design, location, or other reasons.

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

As previously stated, there are no public views currently available at the project site. The conditions of approval include restrictions on materials and landscaping that can be used at the site to prevent any future impacts and/or maintain the existing conditions as they pertain to public views. Therefore, the project will not have any significant adverse scenic or visual impacts due to project modifications, new landscaping or other conditions.

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 no 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 no significant scenic and visual impacts nor contribute adversely to sensitive resource protection policies.

E. Transfer Development Credits (LIP – Chapter 7)

Pursuant to section 7.2 of the LIP the regulations requiring a transfer development credit apply to any action to authorize a coastal development permit for a land division. The proposed coastal development permit does not involve a land division, and is located on a vacant residential lot. Therefore, Chapter 7 of the LIP does not apply to this application.

F. Hazards (LIP - Chapter 9)

The project was analyzed by City staff, consultants, and City Department agencies including Geology, Coastal Engineering, Public Works and Environmental Health for the hazards listed in the Local Implementation Plan Section 9.2.A.1-7. Analysis of the project for hazards included review of the City of Malibu General Plan, and several hazards reports as follows: original Engineering Geology and Geotechnical Report dated June 22, 1990 and associated addendums, prepared by Donald B. Kowalewsky.

The project has been reviewed by the above referenced agencies and has been determined to be consistent with all relevant policies and regulations regarding potential hazards. The proposed project is not anticipated to result in the potential to create adverse impacts on site stability or structural integrity.

The General Plan shows that the project site is in the vicinity of extreme fire hazard areas. Review of the project, with conditions, by staff show that there are no substantial risks to life and property provided that the recommendations of the geotechnical reports and conditions provided by City Geologist are followed.

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

The proposed site was analyzed for geologic and structural integrity hazards. Based on the reports by the applicant's geotechnical consultant (Donald B. Kowalewsky), as well as a review of the Seismic Hazards Zone Maps and Earthquake Fault Zone Maps, the site is within a potentially seismic landslide area. In an effort to provide protection of the proposed residence, the applicant has incorporated recommended design considerations regarding the placement of retaining walls, supporting components of the development on conventional spread footings, etc. The subject site is not located within the 100-year FEMA Flood zone. The entire City of Malibu is located within the fire hazard zone so no other alternatives were considered.

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

As stated in the Hazards Finding 1 above, the proposed site is within a potentially seismic landslide area. In an effort to provide protection of the proposed residence, the applicant has incorporated recommended design considerations regarding the placement of retaining walls, supporting components of the development on conventional spread footings, etc. The project has been approved by the City Geologist, City Public Works Department and the Los Angeles County Fire Department and the various departments

conditioned the project to ensure that it will not have any significant adverse impacts on the site stability or structural integrity.

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

The proposed project is the least environmentally damaging alternative, and all hazards have been addressed by the proposed construction as indicated in Finding 1 and 2 above.

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

Based on site visits and review of the consultants' reports, it has been concluded that all recommendations and/or conditions remain applicable and the proposed project will be safe and that the site will not be affected by any hazard from landslide, settlement or slippage, and the completed work will not adversely affect adjacent properties. As such, there are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity. Any special conditions from the City Geologist, the Los Angeles County Fire Department and City Public Works Department must be met prior to issuance of a building permit.

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

The City Geologist, after viewing the site and reviewing the geologic reports submitted, did not identify any hazards or mitigation related to the subject development. Therefore, the development will not have any adverse impacts.

G. Public Access (LIP - Chapter 12)

In accordance with Section 12.6.B.2 of the Malibu Local Implementation Plan, the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Vertical Access. The project is not adjacent to the Pacific Ocean and access to the Pacific Ocean from the project site is not possible; therefore, no conditions or findings for vertical access are required.

Lateral Access. The project is not located on a beach; therefore, no conditions or findings for lateral access are required.

Bluff Top Access. The project is not located on a bluff top per the applicability standards of Chapter 10 of the LIP; therefore, no conditions or findings for bluff top access are required.

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. Moreover, no issue of public prescriptive rights has been raised. 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.

H. Land Division (LIP - Chapter 15)

This project does not involve the division of land; therefore, no further discussion is required.

I. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design, and performance requirements. The project includes an AOWTS, which has been reviewed by the City Environmental Health Specialist and found to meet the minimum requirements of the Malibu Plumbing Code, the City of Malibu Municipal Code, and the LCP/LIP. The subject system will meet all applicable requirements, and operating permits will be required. The system will incorporate an Orenco Advantex system with ultra violet disinfection. Tertiary treatment will be required. An operation and maintenance contract and recorded covenant covering such shall be in compliance with the City of Malibu Environmental Health requirements. Nevertheless, conditions of approval have been included to require continued operation, maintenance and monitoring of onsite facilities.

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 05-191, subject to the conditions listed below:

Standard Conditions

1. Approval of this application is to allow for the construction of a new, one-story, 4,981 square foot, single-family residence, grading, new pool and Spa, the installation of drainage improvements, Fire Department turnaround area, landscaping, hardscape and the installation of a new, onsite wastewater treatment system. 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 all permittees or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth

herein. The applicant shall file this form with the Planning Division within 10 working days of this decision.

4. 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 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. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2.B.2.

29. This administrative coastal development permit runs with the land and binds all future owners of the property.

Other Conditions

Biology/Landscaping

30. Invasive plant species, as determined by the City of Malibu, are prohibited.
31. 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).
32. Trees identified in the proposed landscaping plan shall be removed to address potential visual impacts to neighbors north and northwest of the project site. All proposed landscaping 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). Proposed landscaping at the rear of the property shall not exceed six feet in height.
33. Project shall incorporate restoration of the ESHA by the removal of ice plant and other non-native invasive plant species within the ESHA and ESHA buffer.
34. To avoid the potential adverse impact to riparian areas the Board recommending the use an herbicide such as Roundup® (upland areas) or Rodeo® (within the riparian zone) as appropriate for the area being treated.
35. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
36. Provide Approval in Concept from the Los Angeles County Fire Department (626-969-5205). The plan shall balance the Department's landscape and fuel modification requirements with the need to preserve native vegetation on slopes and in sensitive resource areas. The fuel modification notes for any areas of native vegetation should be site-specific and appropriate to the plant species present on site. Fuel load shall be reduced by removing or thinning non-native species prior to impacting native species.
37. Grading shall be scheduled only during the dry season from April 1-October 31st. If it becomes necessary to conduct grading activities from November 1 –March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
38. Construction fencing shall be placed within 5 feet beyond the eastern limits of grading and indicated on the site plan. Construction fencing shall be installed prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.

39. Due to the proximity of development to riparian ESHA, the total development area (as defined in LIP Chapter 2) shall not exceed 10,000 square feet.
40. The landscape and fuel modification plan has been conditioned to protect natural resources in accordance with the Local Coastal Program. All areas shall be planted and maintained as described in the final approved landscape and fuel modification plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project.
41. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
42. Necessary boundary fencing shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred. NO fencing is permitted within the Riparian Drainage ESHA area.
43. **PRIOR TO ISSUING 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.
44. All new development including structures, septic systems, or landscaping, shall be set back no less than the approved limits of ESHA.

Lighting

45. 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 that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent.
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent.
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent.
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent
 - e. Site perimeter lighting shall be prohibited.

- f. Outdoor decorative lighting for aesthetic purposes is prohibited.
- g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.
- h. Prior to issuance of the CDP, the applicant shall be required to execute and record a deed restriction reflecting the above conditions.

Site Conditions

- 46. The residence shall have an exterior siding of brick, wood, stucco, metal, concrete or other similar material. Reflective glossy, polished and/or roll-formed type metal siding is prohibited.
- 47. The subject project shall maintain a minimum rear yard setback of 55 linear feet.

Pools and Spas

- 48. All swimming pools shall contain double walled construction with drains and leak detection systems capable of sensing a leak of the inner wall.
- 49. All swimming pools and spas must incorporate alternative sanitation methods, such as no chlorine or low chlorinated pool water.
- 50. The discharge of chlorinated pool water shall be prohibited.
- 51. The discharge of non-chlorinated pool water into streets, storm drains, creeks, canyons, drainage channels, or other locations where it could enter receiving waters shall be prohibited.

Geology

- 52. All recommendations of the consulting Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) 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.
- 53. 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 amendment of the Coastal Development Permit or a new Coastal Development Permit.

Public Works

- 54. A grading and drainage plan shall be approved containing by the Public Works Department prior to the issuance of grading permits. The plan shall include the following:

- a. Public Works Department "General Notes".
 - b. The existing and proposed square footage of impervious coverage on the property, including separate areas for buildings, driveways, walkways, parking, tennis courts, and pool decks.
 - c. The limits of land to be disturbed during project development shall be delineated on the grading plan and a total area shown on the plan. Areas disturbed by grading equipment or shoring beyond the limits of grading shall be shown within the area delineated.
 - d. The grading limits shall include temporary cuts made for retaining walls, buttresses, and over excavations for fill slopes and shall be shown on the plans.
 - e. If the property contains trees that are to be protected, they shall be highlighted on the grading plan.
 - f. If the property contains rare and endangered species identified in the resources study, the grading plan shall contain a prominent note identifying the areas to be protected (to be left undisturbed). Fencing of these areas shall be delineated on the grading plan if required by the City Biologist.
 - g. Private storm drain systems shall be shown on the grading plan.
55. A Storm Water Pollution Prevention Plan shall be provided to and approved by the Public Works Department prior to the issuance of Grading Permits for the project. The following elements shall be included:
- a. Dust Control plan for the management of fugitive dust during extended periods without rain.
 - b. Locations where concentrated runoff will occur.
 - c. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for installation of the protective measures.
 - d. Location and sizing criteria for silt basins, sandbag barriers, and silt fencing.
 - e. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off-site.
 - f. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff.
 - g. Designated areas for the construction of portable toilets that separates them from storm water runoff and limits the potential for upset.
 - h. 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.

56. 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 and source control best management practices that have been implemented in the design of the project. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within Local Implementation Plan Section 17.4.2.B.2.
57. Exported soil from the subject site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept material in compliance with LIP Section 9.3
58. The maximum height of a single retaining wall shall not exceed six feet in height or 12 feet in height for two or more retaining walls with a minimum separation of 3 linear feet.
59. Geology and geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The Developer's Consulting Engineer shall sign the final plans prior to the issuance of permits.

California Department of Fish and Game (CDFG)

60. In the event the applicant proposes changes to the footprint of the subject development, proof of consultation and approval from the California Department of Fish and Game (CDFG) shall be submitted to the City of Malibu Planning Division for the revised project.

Water Quality

61. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in Chapter 17 of the Malibu LIP.
62. A Storm Water Management Plan (SWMP) shall be submitted for review and approval of the Public Works Director. The SWMP shall be prepared in accordance with the Malibu LCP and all other applicable ordinances and regulations.
63. A Water Quality Management Plan (WQMP) shall be submitted for review and approval of the Public Works Director. The WQMP shall be prepared in accordance with the Malibu LCP and all other applicable ordinances and regulations.

Solid Waste

If the project is comprised of new construction (residential and non-residential), demolition (non-residential and apartment houses with 3 or more units) or an addition/alteration with construction valuation of \$50,000 or more:

64. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but not be limited to: Asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
65. 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.

Onsite Wastewater Treatment System

66. 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 the Chapter 18.9 of the LCP related to continued operation, maintenance and monitoring of on-site facilities.

Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 21st day of August 2006.


CAROL RANDALL, Planning Commission Chair

ATTEST:

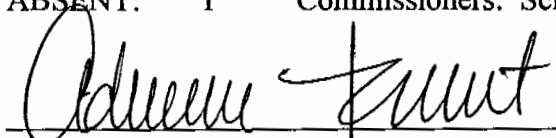

ADRIENNE FURST, Recording Secretary

Local Appeal - Pursuant to Local Coastal Program Local Implementation (LIP) Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee of \$655.00, as specified by the City Council. Appeal forms may be found online at www.ci.malibu.ca.us or in person at City Hall, or by calling (310) 456-2489, ext. 245 or ext. 256.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 06-72 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 21st day of August 2006, by the following vote:

AYES:	3	Commissioners: Moss, Sibert and Randall
NOES:	0	
ABSTAIN:	0	
ABSENT:	1	Commissioners: Schaar and House



ADRIENNE FURST, Recording Secretary