

## CALIFORNIA COASTAL COMMISSION

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

**Th 18b**

Appeal Filed: 4/10/06  
49<sup>th</sup> Day: 5/29/06  
Staff: Deanna Phelps  
Staff Report: 4/25/06  
Hearing Date: 5/11/06

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

**LOCAL GOVERNMENT:** City of Malibu  
**LOCAL DECISION:** Approval with Conditions  
**APPEAL NO.:** A-4-MAL-06-043  
**APPLICANT:** Moses Lerner  
**APPELLANTS:** Patt Healy and Malibu Coalition for Slow Growth  
**PROJECT LOCATION:** 31858 Sea Level Drive, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Installation of a swimming pool on a property developed with an existing 3,965 sq. ft. single-family residence.

**SUBSTANTIVE FILE DOCUMENTS:** Staff Report for City of Malibu Coastal Development Permit No. 05-162; City of Malibu Planning Commission Resolution No. 06-23.

**SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS**

Staff recommends that the Commission determine that **substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the ESHA buffer, maximum development area, and water quality provisions of the certified Local Coastal Program (LCP). Motion and resolution can be found on **Pages 3 and 4**.

## **I. APPEAL JURISDICTION**

The project site is located on Sea Level Drive, at the south end of Broad Beach Road in Malibu (**Exhibit 1**). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the proposed project site is within the appeal jurisdiction. 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 March 20, 2006, the City of Malibu Planning Commission approved Coastal Development Permit 05-162 for the swimming pool project. The Notice of Final Action for the project was received by Commission staff on April 7, 2006. A ten working day appeal period was set and notice provided beginning April 10, 2006, and extending to April 21, 2006.

An appeal of the City's action was filed by Patt Healy and Malibu Coalition for Slow Growth on April 10, 2006, on the first day of 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 April 18, 2006.

## **II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

### **MOTION:**

*I move that the Commission determine that Appeal No. A-4-MAL-06-043 raises NO substantial issue with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act.*

### **STAFF RECOMMENDATION:**

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

### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-4-MAL-06-043 presents a **substantial issue** with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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

The Commission hereby finds and declares:

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

The City of Malibu Planning Commission approved Coastal Development Permit (CDP) No. 05-162 for the installation of a pre-fabricated, 8-ft. by 15-ft. by 39-in. swimming pool on a 0.0587-acre parcel with an existing 3,965 sq. ft. single-family residence at 31858 Sea Level Drive, Malibu (**Exhibit 2**). Approximately 50 cubic yards of excavation is required for installation of the pool. The approved pool site is situated at the rear of the existing residence, approximately 40 feet east of the center line of Encinal Creek, a blue-line stream mapped as a Environmentally Sensitive Habitat Area stream corridor on the Malibu LCP ESHA maps. The entire parcel is within the 100-foot ESHA buffer.

#### **Past Commission Actions on the Project Site**

The Commission has previously approved coastal development permit applications for development associated with the subject parcel. Staff would note that the applicant for the pool project considered herein is the same individual who has twice been granted CDPs for development on the project site.

Permit 5-89-325 (Lerner) was approved for resubdivision of 10 lots into 3 lots, lot line adjustments for the 3 lots, demolition of existing structures, and the construction of a single-family residence on one of the three lots (lot adjacent to subject lot). This permit was approved subject to seven special conditions of approval, including revised lot line adjustment plans, open space easement offer to dedicate, revegetation and landscape plans, future improvements deed restriction, assumption of risk, revised development

plans, and archaeological recovery plan (**Exhibit 6**). Special Condition No. 2 of CDP 5-89-325 required the applicant to record an offer to dedicate (OTD) an easement for open space, view preservation, and habitat protection/restoration. The terms of the easement prohibit grading, clearance, development, removal of vegetation, and placement of structures, decks, or fences within the open space area. This easement area was required to be located next to Encinal Creek, along the west property line of each of the three parcels approved under this CDP. The open space area generally followed the top of the creek bank and was required to ensure that development would not encroach into the creek ESHA or impact eucalyptus trees that provide overwintering habitat area for Monarch butterflies. The applicant recorded this easement OTD in 1991. The mapped and recorded location of this easement is shown on **Exhibit 3**.

Special Condition No. 4 of CDP 5-89-325 required the recordation of a future improvements deed restriction across the three parcels approved in this permit. This restriction specifies that any future improvements to the property requires a new CDP. Additionally, the restriction states, in part, that:

...all development, with the exception of the house shown in Exhibit 2 [This is the house approved on Lot 1 as part of CDP 5-89-325] shall be located no less than 15 feet away from the easement established in condition 3. Decks at grade that do not require grading or excavation may also be permitted.

This requirement results in a setback of all development, except at grade decks, of approximately 15 feet from the top of the creek bank and is designed to ensure that structural development will not impact the eucalyptus trees and other vegetation within the open space area. This deed restriction was also recorded by the applicant in 1991.

Coastal Development Permit No. 5-89-1037 (Lerner) was subsequently approved for construction of two single-family residences on two of the three lots (one of which is the subject lot) created pursuant to Permit 5-89-325, demolition of an existing tennis court, and removal of trees (**Exhibit 6**). In approving this permit, the Commission found that all of the conditions of 5-89-325 would remain in full force and effect on the property, including the open space easement and future improvements deed restriction. Further, the Commission required that 70% of the area within 15 feet of the open space easement area to be revegetated with suitable riparian plants and other replacement roosts for the butterflies and to delete a concrete slab patio, guardrails, and retaining walls from this area of the project site. The Commission found that to allow this type of development would: "...subject the Eucalyptus trees that provide roosting area to the Monarch butterflies to root zone stress from soil compaction and runoff".

## **B. APPELLANTS' CONTENTIONS**

The City's action was appealed by Patt Healy and Malibu Coalition for Slow Growth. The appeal filed by Patt Healy and Malibu Coalition for Slow Growth is attached as **Exhibit 4**. This appeal contends that the approved project, as conditioned, does not meet requirements of the Malibu LCP and gives 2 grounds for the appeal. None of the

contentions reference specific policies or standards of the Malibu LCP. Each ground concerns the development's proximity to an ESHA stream corridor that is located just offsite along the western property line, as follows:

1. Pool will be less than 50 feet from Encinal Creek. Pool can't be placed on this site since it is in the 100-foot ESHA buffer setback. The applicant already has reasonable use of this property. Pool is being placed on property where more than 25% of site has existing development.
2. Pool is chlorinated and pool water drainage will be done by siphoning water with a hose.

## **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 appeal raises a substantial issue with regard to the grounds on which the appeals has been filed, as discussed below.

### **1. Streams and Environmentally Sensitive Habitat Areas**

The appeal contends that the project does not provide an adequate setback or buffer between the approved development and Encinal Creek, a blue-line stream. Patt Healy and Malibu Coalition for Slow Growth state that the LCP requires a 100-foot setback from streams, and the proposed pool is less than 50 feet away from Encinal Creek. Additionally, the appellant contends that the pool is being placed on a property where more than 25% of the site has existing development.

Section 4.6.1 of the Malibu LIP states, in part, the following with regard to 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.**

In approving the project, the City did not specifically address ESHA buffer requirements. The staff report states that:

The subject parcel is located in an ESHA zone and near a blue line stream, as designated in the Malibu Local Coastal Program LIP. The project has been reviewed by the City Biologist and is determined to have no impact upon environmentally sensitive habitat, since it is to be developed upon an existing pad.

Encinal Creek is designated as ESHA along the west side of the project site. Previous Commission actions on the site noted that there was not a significant riparian canopy along this reach of Encinal Creek, although there are eucalyptus trees that provide habitat for Monarch butterflies. The top of the stream bank generally follows the boundary of the open space easement area, as shown on Exhibit 2. As such, the 100-foot ESHA buffer required by the Malibu LIP would be measured from the top of stream bank and would extend across the entire project site.

However, the existing development on the site was approved prior to the adoption of the Malibu LCP and a 100-foot buffer was not applied at the time. Rather, the Commission, in previous permit actions on the site, ensured the protection of the stream ESHA by requiring an open space easement across the stream portion of the site, to the top of bank. Additionally, an ESHA buffer was provided by requiring development (except for at-grade decks) to be no less than 15 feet from the open space area, through the recordation of the future improvements deed restriction.

Similarly, the maximum development area standard was not applied to development on the site as it was approved prior to the adoption of the LCP. Nonetheless, the Commission did establish the appropriate area of the site for development, through the recordation of the open space easement OTD and the prohibition of development (except for at-grade decks) within the area 15 feet from the open space area.

Therefore, in order to ensure that the pool provides adequate setbacks to protect ESHA on the site, it is necessary to determine if the approved pool conforms to the ESHA buffer provisions required in the recorded open space easement OTD and the future improvements deed restriction. Based on staff's review of the record, it does not seem that City considered an accurate depiction of the open space area in its approval of the project. The project plans provided by the applicant to the City show a "view corridor" along the west portion of the site. The City required a condition of approval requiring the applicant to re-site the pool "nearer the existing residence to ensure that the proposed pool and any associated fencing are not located within the open space easement area". However, the "view corridor" mapped by the applicant is apparently a separate easement recorded as part of an agreement between the applicant and a neighboring property owner. It does not match the location of the open space easement area. The project plans do not actually depict the recorded open space easement area required in CDP 5-89-325. There is correspondence in the record between the project planner and

the applicant regarding the easements affecting the site (**Exhibit 7**). However, the surveyed map of easements provided by the applicant to the City does not show the open space easement. The only plan in the City's record that does depict the open space area is the onsite wastewater treatment system plan reviewed and approved by the City Health Services Department. This plan, which is a reduced copy of the approved house plans and is difficult to read, is shown in Exhibit 2 with emphasis added to show the open space easement area more clearly. There is no indication that the City reviewed this plan to determine the location of the open space easement area. Further, it is clear that the City did not apply the development restriction (required by the future improvements deed restriction required under CDP 5-89-325) to the area within 15 feet of the open space easement. Although the Notices of Intent to Issue Coastal Development Permit for CDP 5-89-325 and 5-89-1037 are part of the record for this project and attached to the staff report, the provisions of the future improvements deed restriction were not addressed by the City.

Commission staff's review of the recorded open space easement document (**Exhibit 3**) and the onsite wastewater treatment system plan demonstrates that the pool would be located just outside the open space easement area (**Exhibit 2**). However, the pool would not provide the 15-foot setback from the open space easement area that is required in conformance with the recorded future improvements deed restriction. In fact, as shown on this plan, the existing residence itself is located approximately 15 feet outside the open space area. As such, no development (except at-grade decks) would be allowed anywhere within almost the entire rear yard area and 70 percent of this area should be planted with native plant species, in accordance with the conditions of CDP 5-89-325 and CDP 5-89-1037.

As such, the Commission must conclude that the approved project does not provide an adequate buffer from the Encinal Creek ESHA, as contended by the appellant. Therefore, the Commission finds that substantial issue is raised with respect to the appellant's contentions that the project does not meet the ESHA buffer provisions of the certified Local Coastal Program.

## **2. Water Quality**

The appeal contends that the subject pool is chlorinated and pool water drainage will be done by siphoning water with a hose, and thereby the project may pose adverse impacts to water quality. However, no information was contained in the project description or record specifying the applicant's proposed pool maintenance or sanitation methods. In addition, the staff report states that the project was reviewed by the City Biologist and Public Works Department, yet their approvals were not included in the record and no findings were made in the report with regards to water quality. However, conditions were imposed upon the subject permit pertaining to water quality (**Exhibit 5**). Condition No. 24 specifies that a Water Quality Management Plan (WQMP) shall be submitted for review and approval of the Public works Director and shall be prepared in accordance with the Malibu LCP and all other applicable ordinances and regulations.



Condition No. 35 states that the project shall comply with all final conditions required by the Public Works Department.

Development-specific design standards for water quality protection are contained in Section 17.6 of the Malibu LIP. The following design standards pertain to pools and spas.

#### **17.6.6 Pools and Spas**

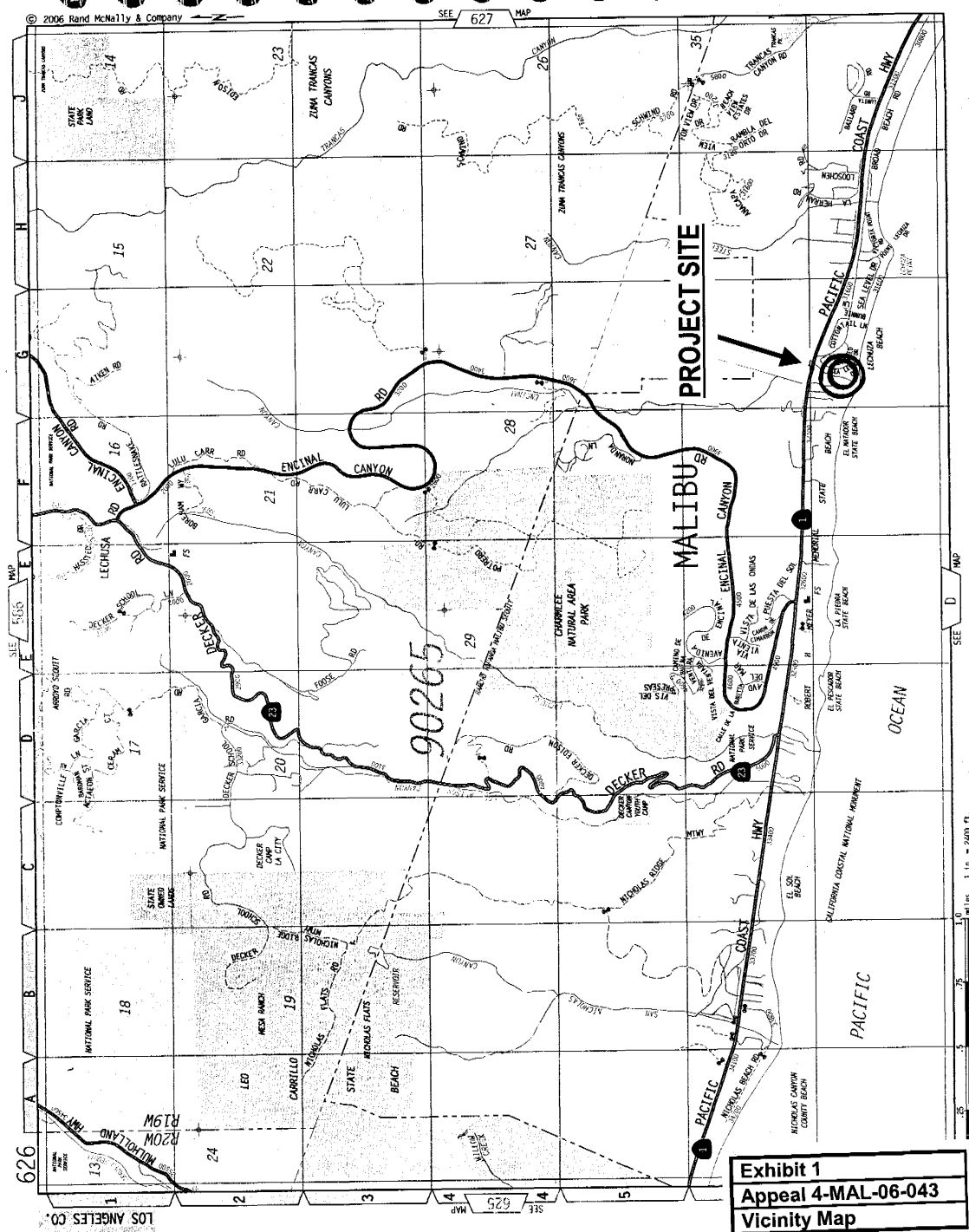
**Chlorinated and brominated pool and spa drainage have the potential to negatively impact both aquatic and marine plant and animal species. To minimize impacts to water quality, and to ensure that any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area, the following design criteria are required:**

- **Alternative sanitation methods are required for all pools and spas. This may include no chlorine or low chlorine sanitation methods.**
- **Prohibit discharge of chlorinated pool water.**
- **Prohibit discharge of non-chlorinated pool water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters.**

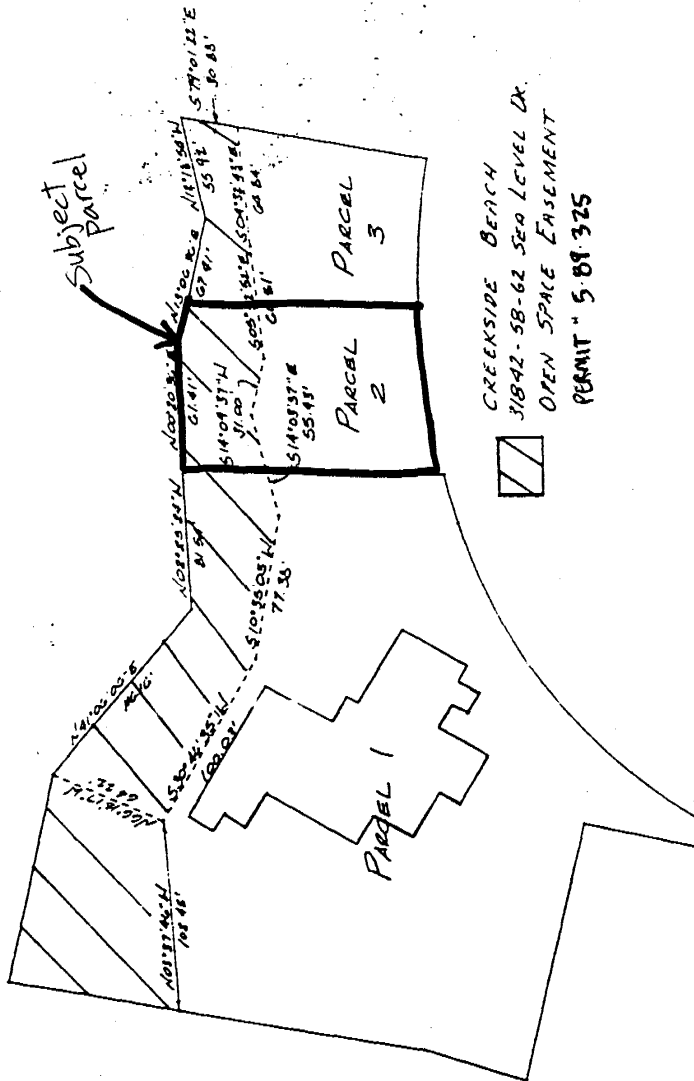
Due to the project's proximity to riparian ESHA, this design criteria must be required for the project pursuant to Section 17.6 of the LIP. It is unclear from the record if the pool project as proposed or as conditioned by the City will comply with the required pool and spa design criteria. Therefore, as approved, the Commission must conclude that the project does not minimize potential adverse impacts to water quality, as contended by the appellant. Therefore, the Commission finds that substantial issue is raised with respect to the appellant's contentions that the project does not meet water quality protection provisions of the certified Local Coastal Program.

## **D. CONCLUSION**

For the reasons discussed above, 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 raises substantial issue as to the City's application of the policies of the LCP in approving the proposed development.







CREEKSIDE BEACH  
 31842-58-62 SEA LEVEL DA.  
 OPEN SPACE EASEMENT  
 PERMIT " 5-88-325



91 044455  
 EXHIBIT C, page 2 of 2

Exhibit 3
Appeal 4-MAL-06-043
Recorded Open Space
Easement

## CALIFORNIA COASTAL COMMISSION

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

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

ARNOLD SCHWARZENEGGER, Governor



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Pat Healy +/or MAUBO Commission For Slow Growth  
Mailing Address: 403 SAN VICENTE BLVD  
City: SANTA MONICA CA Zip Code: 90402 Phone: 310.393.1818

SECTION II. Decision Being Appealed

- Name of local/port government:  
City of Malibu
- Brief description of development being appealed:  
Swimming pool in ESHA Buffer
- Development's location (street address, assessor's parcel no., cross street, etc.):  
31858 Sealevel Dr  
Malibu CA 90402
- 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: 4-4-MAL-06-043  
DATE FILED: 4/10/06  
DISTRICT: So Central Coast

Exhibit 4
Appeal 4-MAL-06-043
Appeal Form

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**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: 3.20.06

7. Local government's file number (if any): CDP 05.162

**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:

Moses Lerner  
31858 Sea Level Dr.  
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)

(2)

(3)

(4)

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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.) Pool can't be placed in/on this site since it is in the 100' setback of ~~coastal~~ ESHA Buffer. Applicant already has reasonable use of this property so there is no takings issue, pool ~~is~~ less than 50' from Euclid Stream.
- 2.) Also, ~~the~~ pool is being placed on property where more than 25% of site has existing development.
- 3.) pool is chlorinated & pool water drainage will be ~~siphoned~~ done by siphoning water with a hose.

**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.

*Pat Haly + Malibu Coalition for Slow Growth*  
*Pat Haly*  
\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: 4.1.06

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

**Section VI. Agent Authorization**

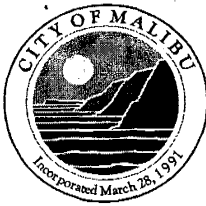
I/We hereby  
authorize

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

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

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





## Commission Agenda Report

Planning Commission  
Meeting  
03-20-06

Item  
6.C.

To: Chair Moss and Members of the Planning Commission

Prepared by: Melody Gillette, Contract Planner *MG*

Reviewed by: C.J. Amstrup, AICP, Planning Manager *CJA*

Approved by: Victor Peterson, Environmental and Community Development Director *VP*

Date prepared: February 23, 2006 Meeting date: March 20, 2006

Subject: Coastal Development Permit No. 05-162 - An application within the coastal zone to allow for a lot line adjustment and the installation of a pre-fabricated swimming pool at grade.

Application Number: Coastal Development Permit No. 05-162  
Application Filing Date: September 26, 2005  
Applicant/Owner: Moses Lerner  
Location: 31858 Sea Level Drive within the coastal zone  
APN: 4470-027-004  
Zoning: Single-Family Residential-Medium (SF-M)

**RECOMMENDED ACTION:** Adopt Planning Commission Resolution No. 06-23 (Attachment 1) approving Coastal Development Permit (CDP) No. 05-162 for the installation of a pre-fabricated swimming pool (eight-feet by 15-feet by 39-inches) at grade in the Single-Family Residential - Medium (SF-M) Zoning District located at 31858 Sea Level Drive.

**DISCUSSION:** The issue before the Planning Commission is whether to adopt Planning Commission Resolution No. 06-23, approving CDP No. 05-162. The project proposes the installation of a pre-fabricated swimming pool at grade on an approximate 0.0587 acre lot zoned SF-M.

### Chronology of Project

On August 8, 2005, an application was submitted by property owner Moses Lerner [Administrative Plan Review (APR) No. 05-056], for the installation of a pre-fabricated lan

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pool (8-feet by 15-feet by 39-inches) at the ocean side of the existing building pad on property with an existing, 3,965 square foot, single-family residence and associated development, on an approximate 0.0587 acre lot zoned SF-M.

On August 8, 2005, the City Geologist determined that geological feasibility would need to be determined prior to further planning processing. In response, on September 26, 2005, the Planning Division received a geological report on the project site, providing a slope stability analysis for the property that showed it to have a safety factor greater than 1.5. On October 25, 2005, the City Geologist approved the project from a geological perspective.

On September 26, 2005, an application was submitted to the Planning Division for Coastal Development Permit (CDP) No. 05-162 by property owner Moses Lerner, replacing Site Plan Review (SPR) No. 05-056. The application was referred to and reviewed by the City Biologist, City Geologist, City Environmental Health Specialist, and the Los Angeles County Fire Department.

On November 2, 2005, a Notice of Coastal Development Permit was posted on the subject property.

On November 16, 2005, staff received a letter of concern from the neighbor at 31862 Seal Level Drive. Review of the issues regarding impacts on a blue line stream were determined to be less than significant, based upon the distance of the project from the stream, and installation on an existing pad. Attachment 2 (Comment Letter)

On November 18, 2005, a Phase I Cultural Resources Assessment was provided, due to the site's listing on City of Malibu Cultural Resources Sensitivity Maps. The assessment determined that no cultural resources were detected on site, and recommended archeological construction monitoring. On November 30, 2005, the Environmental Health Specialist issued an approval for this project.

On February 17, 2006, the application was deemed complete for processing.

On March 9, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on March 8, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

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### **Surrounding Land Use and Setting**

The project site located at 31858 Sea Level Drive (ocean side), is zoned SF-M and comprises approximately .0587 acres of land developed with a single-family residence. The proposed pool is located to the rear of the residence. The subject property lies within the Appeal Jurisdiction and is designated Environmentally Sensitive Habitat Area (ESHA). Properties in the immediate vicinity are classified in the SF-M zone and developed with single-family residences or consist of vacant land. The subject site is bordered to the east by existing single-family residential development. The subject site is bordered to the west by vacant land which provides a landscape buffer for a stream which passes approximately 34-feet from the west property line of the project site. Sea Level Drive lies immediately to the north, and the Pacific Ocean lies immediately to the south.

### **Project Description**

The proposed project consists of the installation of a pre-fabricated eight-foot by 15-foot by 39-inch swimming pool (lap pool) on a property with an existing 3,965 square foot single-family residence and associated development, including a garage, patio, landscape, hardscape and an existing onsite wastewater treatment system on an approximate 0.0587 acre lot zoned SF-M. Attachment 3 (Architectural Plans)

### **Existing Planning Approvals**

Planning approval for Site Plan Review No. 05-056 was superseded by submittal of CDP No. 05-016. Construction of the dwelling unit was completed in 1997 under permit approvals by the California Coastal Commission. No prior planning approvals have been granted.

### **Local Coastal Program**

The Malibu Local Coastal Program (LCP) consists of a Land Use Plan (LUP) and a Local Implementation Plan (LIP). The LUP contains programs and policies to implement the Coastal Act in Malibu. The purpose of the LIP is to carry out the policies of the LUP. The LIP contains specific regulations to which every project requiring a coastal development permit must adhere.

There are 12 sections within the LIP that potentially require specified findings to be made, depending on the nature and location of the proposed project. Of these 12, three are for conformance review only and require no findings. These three sections, which include Zoning, Grading and Archaeological/Cultural Resources, are discussed under the "Conformance Analysis" section below.

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There are nine remaining sections that potentially require specific findings to be made. These findings are found in the following sections: (1) Coastal Development Permit Findings; (2) Environmentally Sensitive Habitat Area (ESHA); (3) Native Tree Protection (4) Scenic Visual and Hillside Protection; (5) Transfer of Development Credits; (6) Hazards; (7) Shoreline and Bluff Development; and (8) Public Access and (9) Land Division of the LIP. Of these nine sections, for the reasons discussed below, five are applicable to the proposed project.

The existing dwelling at 31858 Sea Level Drive was included in two California Coastal Commission (CCC) permits: CCC permit No. 5-98-1037, granted March 13, 1990, and acknowledged on May 22, 1990, providing for the construction of two single family residences, including the subject residence, as well as a garage, decks and a onsite wastewater treatment system, with conditions provided with terms and conditions to run with the land. In addition, CCC permit No. 5-89-325, granted November 16, 1989, provided for the combination of 10 lots into three lots by lot line adjustment. Attachment 4 (Coastal Commission Permits)

RELATED ACTION: The existing residence on the project site is located slightly over the side property line. Accordingly, a lot line adjustment is required under the previous approval to address the setback issues; however, because the proposed pool complies with all setback requirements, the LLA cannot be incorporated as a condition of the proposed project. Resolution of the existing residence's setback issue will be pursued as a separate action.

#### **Conformance Analysis**

The proposed project has been reviewed by the City Geologist, City Environmental Health Specialist, City Biologist, and City Public Works Department, as well as the Los Angeles County Fire Department. The project has been determined to be consistent with all applicable LCP codes, standards, goals, and policies. Attachment 5 (Department Review Sheets) According to the City of Malibu Cultural Resource Sensitivity Maps, the subject site has a low potential to contain archaeological resources.

A comment letter was received from one of the adjacent neighbors, noting that the property is located within an ESHA and is adjacent to a blue line stream. Utilizing Stream ESHA and Jurisdictional Drainage documentation, the City Biologist reviewed potential impacts and approved the proposed project on October 27, 2005. The City Environmental Health Specialist approved the proposed plan on November 30, 2005, with the determination that no impact to the blue line stream is expected, since the installation of the proposed swimming pool is within a previously graded area. The commenting neighbor was provided with this information.

## Zoning

Development standards are contained in LIP Chapter 3. These standards are similar to those required by the Malibu Municipal Code (M.M.C.). Table 1 below provides a summary of the lot dimensions and lot area of the subject parcel.

Table 1 – Property Data	
Lot Depth	135'
Lot Width	61'
Gross Lot Area (including driveway easements)	8235 sq. ft.
*Net Lot Area	Approx. 6,405 sq. ft.

\*Net Lot Area = Gross Lot Area minus the area of public or private easements and 1:1 slopes.

Table 2 below provides a summary and indicates that the proposed project meets the property development and design standards as set forth under LIP Section 3.5 and 3.6. As indicated, the project complies with the relevant development standards.

Table 2 – LCP Zoning Conformance			
Development Requirement	Allowed	Existing	Comments
<b>SETBACKS</b>			
Front Yard	20'	27'	Complies
Rear Yard	Stringline	Behind Stringline	Complies
Side Yard 10%, 3 ft. min., 5 ft. max.	5'-0"	5'-0"	Complies
PARKING	2 enclosed 2 unenclosed	2 enclosed 2 unenclosed	Complies
TOTAL DEVELOPMENT SQUARE FOOTAGE	N/A	2,690 sq. ft.	N/A
2/3RDS RULE/2 <sup>nd</sup> floor sq. ft.	N/A	N/A	N/A
HEIGHT	28'-0" (pitched)	28'-0" (pitched)	Complies
IMPERMEABLE COVERAGE	N/A	N/A	N/A
NON-EXEMPT GRADING	N/A	N/A	Complies
CONSTRUCTION ON SLOPES	N/A	N/A	Complies
<b>Fence/Wall Height</b>			
Front	42" impermeable 30" permeable	N/A	Complies
Side(s)	6 feet	6 feet	Complies
Rear	6 feet	5 feet	Complies

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### Grading

No grading is proposed for this project. The swimming pool is to be installed within the existing building pad grading area. Removal of soils to provide for installation of the pool is estimated to be less than 20 cubic yards of soil. No landform alteration or grading is proposed.

### Archaeological/Cultural Resources

A Phase I archeological review was completed by Matthew A. Bost, Consulting Archeologist, on November 20, 2005. According to this review and the City of Malibu Cultural Resource Sensitivity Maps, the subject site has a low potential to contain archaeological resources.

### Findings

The proposed project has been reviewed for conformance with the City of Malibu Local Coastal Program (LCP) by Planning Division staff, the City Geologist, City Coastal Engineer, City Environmental Health Specialist, City Biologist, City Public Works Department, and the Los Angeles County Fire Department. Staff has determined that, subject to the proposed conditions of approval, the project conforms to the City's LCP. The required findings are made below.

#### **A. General Coastal Development Permit (LIP Chapter 13)**

Pursuant to LIP Section 13.9 the following four findings are required for all coastal development permits.

***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 (see Table 2). As discussed throughout this report, the project, as proposed and/or conditioned, conforms to the certified City of Malibu LCP.

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

The project is located between the first public road and the sea. However, the project site is on a private street, which does not accommodate public parking/access to the shoreline. A document for vertical access has been

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recorded on the property less than 1,000-feet to the west of the project site and lateral access is provided on properties to the east and west. In addition, El Matador State Beach is located less than 3,000-feet to the west and is accessible from Pacific Coast Highway. The location of the proposed project and related construction activities is not anticipated to interfere with the public's right to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

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

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project would result in less than significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements of the LCP and the M.M.C. as well as view corridor requirements.

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

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

The subject parcel is located in an ESHA zone and near a blue line stream, as designated in the Malibu Local Coastal Program LIP. The project has been reviewed by the City Biologist and is determined to have no impact upon environmentally sensitive habitat, since it is to be developed upon an existing pad.

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

As discussed above, the subject parcel is located in the ESHA Overlay Map; however, the project will not result in impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

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

According to the biological assessment by the City Biologist, dated October 27, 2005, the project is in compliance with the Local Coastal Program does not require further review. The property was developed in 1997 on a re-developed, existing residential parcel. 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, prefabricated pool to be installed at grade to the rear of an existing single-family residence. Staff conducted an analysis of the project's visual impact from public viewing areas through a site reconnaissance and an investigation of the character of the surrounding property and determined that the project will result in a less than significant visual impact to public views relative to coastal resources. As proposed, the project will not interfere with views of the Santa Monica Mountains from the beach or other designated scenic areas, nor will the project obstruct views of the Pacific Ocean from Pacific Coast Highway or other designated scenic areas. The swimming pool is at grade, located outside the view corridor, and is not prominent when viewed from other LCP designated scenic areas or parkland and similar development exists on abutting property. No potentially significant impacts on scenic and/or visual resources are anticipated. Therefore, according to LIP Section 6.4, the scenic resource findings are not applicable.

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

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

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

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood, and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Staff has determined that the project will not create adverse impacts upon site stability or structural integrity, based upon applicant-provided reviews. The project is located in a



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high fire hazard area; however, it is a water feature and will not create adverse impacts by increasing plant materials or by presenting a potential fire safety risk. Pool equipment will be installed within an enclosed structure. The Los Angeles County Fire Department, in its project review of August 9, 2005, requires a Fire Department Check of the project.

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

The project was analyzed by staff for the hazards listed in LIP Section 9.2.A. (1-7). Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City Geologic Data maintained by the City; 2) Geotechnical Engineering reports prepared by Feffer Geological Consulting dated September 7, 2005. Attachment 6 (Geotechnical Report)

Based on staff's review of the above referenced information, it has been determined that:

1. slope stability analysis, calculated using reasonable sheer strengths, indicate that the safety factor is greater than 1.5;
2. the terrace material is not subject to slope creep;
3. the pool is located at a sufficient distance from the slope that design of the pool does not need to include consideration of slope stability;
4. location of the pool is approximately 30-feet above sea-level and could be subject to hazards from wave action and tsunami hazard; and
5. the project site is in the vicinity of extreme fire hazard areas.

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

#### Liquefaction Hazard

The site soils consist primarily of medium density, slightly clayey sand and rock fragments, located approximately 11-feet above bedrock. Liquefaction is not reviewed as a significant issue for this proposed eight-foot by 15-foot by 39-inch lap pool. As noted above, the project site achieves more than the required 1.5 factor of safety for slope stability.

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#### Wave Uprush/Tsunami Hazard

The project site is located 30-feet above sea level. Although subject to impacts of tsunamis, staff considers that the loss or damage to a minor accessory structure would not be significant.

#### Flood/Fire Hazard

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

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

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

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

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

As discussed previously, the project will not result in potentially significant environmental impacts because: 1) feasible 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 potentially significant adverse impacts of the development on the environment. The project is the least environmentally damaging alternative.

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

As stated in F. Hazards, Finding 1 above, the proposed project as designed, conditioned, and approved by the City Geologist, City Public Works Department

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and the Los Angeles County Fire Department, will not have any significant adverse impacts on the site stability or structural integrity.

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

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

Potential impacts to the blue line stream were identified as an issue of concern to an adjacent neighbor. Since the proposed pool will be installed on a previously graded pad, approved in California Coastal Commission (CCC) Permit Nos. 5-89-1037 and 5-89-325, blue line stream preservation issues have already been addressed. CCC permits require any further improvements to be reviewed, but specifically identify grading as a concern.

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

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

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

The proposed project is located well landward of the ocean currents that carry sand along the beach. The City Geotechnical Reviewer has reviewed and conditionally approved the project; the proposed project will not have a significant adverse impact upon public access, shoreline sand supply or other resources due to project design location on the site or other reasons. Two sets of final swimming pool plans, approved by Environmental and Building Safety, incorporating Feffer Geological Consulting's recommendations and items included in the City Geologist's review, must be reviewed, wet stamped and manually signed by the Project Engineering Geologist and Project Geotechnical Engineer. The City Geotechnical Reviewer will review the project for conformance with the project Geotechnical Consultant's recommendations and items identified by the City Geotechnical Reviewer during plan check.

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

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

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

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

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

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

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

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

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

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

The subject site is located between the first public road and the sea, along Lechuza Beach on the ocean side of Sea Level Drive. The project involves the adjustment of the property lot line to accommodate side yard setbacks for the purpose of allowing installation of a new lap pool on the same building pad as the existing single-family residence. No onsite vertical or lateral access is currently provided on the subject parcel. The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; however, LIP Section 12.6 states that public access is not required when adequate access exists nearby and the findings addressing LIP Section 12.8.3 can be made. The following findings satisfy this requirement. Analyses required by LIP Section 12.8.2 are provided herein, and in geotechnical and coastal engineering reports referenced elsewhere in this report. Bluff top, trail, and recreational accesses are not applicable. The proposed project does not intrude into view corridors from Sea Level Drive. No issue of public prescriptive rights has been raised.

##### *Bluff Top Access*

The project is located on a bluff top; however, due to the relatively minor 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 public beaches located both east and west of the project site. The project as proposed does not block or impede access to the ocean. The project site is located by way of a private lot and is not accessible to the public. 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, and the project site is located on a private street that is not accessible to the public, no legitimate governmental or public interest would be furthered by requiring access at the project site.

Furthermore, due to nearby bluff top access, and since the project site is not accessible to the public, bluff top access across the site is not deemed appropriate.

Due to the relatively minor scope of the project, no potential project-related or cumulative impact on bluff top public access is anticipated. Nevertheless, the following findings and

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analysis were conducted in accordance with LIP Section 12.8.3 regarding bluff top access. Due to these findings, 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. Due to the relatively minor scope of the project, 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. No impacts to military security or to fragile coastal resource have been identified. Due to the relatively minor scope of the project, 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.***

Due to the relatively minor scope of the project, 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 located both east and west of the project site. The project as proposed does not block or impede access to the ocean. The project site is located on a private lot and is not accessible to the public. 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, and the project site is located on a private lot that is not accessible to the public, 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 on the Trails Master Plan and; therefore, no condition for trail access is required by the Local Coastal Program.

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#### *Recreational Access*

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

#### *Lateral Access*

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

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

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

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

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

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

The public, through another reasonable means, can reach the same area of public tidelands as would be made accessible by an access way on the subject land. The project as proposed does not block or impede access to the ocean. The

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project site is located along a private street and does not accommodate access to a public beach. Conditioning the project to provide a lateral public access would not provide additional access to coastal resources because adequate public access is provided nearby. As indicated on the LCP Public Access Map 1, there are recorded documents for lateral access on properties located adjacent to the east and west. In addition, El Matador State Beach is located less than a mile to the west of the project site, with parking and access to the shoreline are available from this location. No legitimate governmental or public interest would be furthered by requiring access at the project site because existing access to coastal resources is adequate. The proposed project will not impact the public's ability to access the shoreline or other coastal resources and the project site is not within the vicinity of a public beach.

#### *Vertical Access*

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

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

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

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

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



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

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

**I. Land Division (LIP - Chapter 15)**

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

**Environmental Review Board**

The project is a lot line adjustment and pool in conformance with California Coastal Commission permit requirements and allows the installation of a new pool at grade. Because the development is proposed on an already-graded area, the project is not considered to warrant evaluation by the Environmental Review Board (ERB).

**CORRESPONDENCE:** One letter was received by an adjacent neighbor regarding development near a blue line stream.

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

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of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

**PUBLIC NOTICE:** Pursuant to Malibu Local Coastal Program LIP Section 13.12.1, staff published the required 10-day public hearing notice in the Malibu Surfside News on March 9, 2006. In addition, a Notice of Public Hearing was mailed to property owners and occupants within a 500-foot radius of the subject property on March 8, 2006. Attachment 7 (Public Hearing/Mailing Notice) The subject site was also posted on November 2, 2005.

**SUMMARY:** The required findings can be made that the project complies with the LCP. Further, the Planning Division's findings of fact are supported by substantial evidence in the record. Based on the analysis contained in this report, staff is recommending approval of this project subject to the conditions of approval contained in Section 4 of Planning Commission Resolution No. 06-23. The project has been reviewed and conditionally approved for conformance with the LCP by staff and appropriate City departments as well as the Los Angeles County Fire Department.

**ATTACHMENTS:**

1. Planning Commission Resolution No. 06-23
2. Comment Letter
3. Architectural Plans
4. Coastal Commission Permits
5. Department Review Sheets
6. Geotechnical Report Cover Letter dated September 7, 2005
7. Public Hearing/Mailing Notice

Contact Planning Division staff to review contents of project file for CDP 05-162.

## CALIFORNIA COASTAL COMMISSION

7TH COAST AREA  
WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
TEL 590-5071

Page 1 of 1

Date: May 17, 1990

Permit Application No. 5-89-1037

NOTICE OF INTENT TO ISSUE PERMIT

On March 13, 1990, the California Coastal Commission granted to Moses Lerner Permit 5-89-1037, subject to the attached conditions, for development consisting of:

Demolition of a tennis court and removal of trees and the construction of two single family residences on two lots: a 5,813 sq. ft. single family residence, garage, decks, and septic system on a 11,720 sq. ft. lot, and a 5,430 sq. ft. single family residence, garage, deck and septic system on a 10,724 sq. ft. lot.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 31858 and 31862 Sea Level Drive, Malibu.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1-3, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on March 13, 1990.

PETER DOUGLAS  
Executive Director

By: Gary J. Ponder for Bill Ponder  
Title: Staff Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-89-1037, and fully understands its contents, including all conditions imposed.

5/22/90  
Date

Moses Lerner  
Permittee

Please sign and return one copy of this form to the Commission office at the above address.

Attachment 4

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 3  
Permit Application No. 5-89-1037

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Revegetation and Landscape Plans.

Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate the portion of lots 1 and 2 between the proposed residences on each lot and the top of the creekbank on each lot. The plans shall provide that a minimum of 70% of this area will be revegetated with suitable plants and other replacement roosts for the butterflies as part of the revegetation process of these disturbed sites, similar to what the Commission is requiring the applicant to do as part of the revegetation of the creekbanks that comprise the open space area approved in coastal development permit no. 5-89-325. The plans shall provide for the staged removal of introduced ground cover plants and re-establishment of appropriate native Southern California Coastal riparian plants (as defined in standard reference texts or in or in the Nov 23 1988 California Native Plant society publication "Recommended Native Plant species for Landscaping Wildland Corridors in the Santa Monica Mountains".) The plan shall provide for replacement of trees removed by development, maintenance of the trees along the canyon edge and replacement of dead or diseased trees by trees of similar height and volume. Said plan shall be submitted to, reviewed by and approved in writing by the Executive Director.

2. Revised Plans.

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised building plans indicating the height of the pitched roofs of both residences which are the subject of this permit will extend no higher than 28 feet above existing grade.

3. Prior Permit.

All special conditions and provisions of the previously-approved coastal development permit, CDP# 5-89-325, are binding and remain in force.

DEC - 8 1989

GEORGE DEUKMEJIAN, Governor

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 WEST BROADWAY, SUITE 380

LONG BEACH, CA 90802

(213) 590-5071

Page 1 of 6

Date: December 7, 1989

Permit Application No. 5-89-325



## NOTICE OF INTENT TO ISSUE PERMIT

On November 16, 1989, the California Coastal Commission granted to MOSES LERNER Permit 5-89-325, subject to the attached conditions, for development consisting of

Resubdivide 10 lots into three lots; demolish septic system on one additional lot, record certificates of compliance (lot line adjustments) for the three new lots; demolish single family house and septic system tennis court and other buildings, construct one single family house, garage, pool landscaping and septic system, remove trees.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 31842 Sea Level Drive; Malibu, CA.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1 - 7, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on December 7, 1989.

PETER DOUGLAS  
Executive Director

By: PamTitle: Staff Analyst

## ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-89-325, and fully understands its contents, including all conditions imposed.

Date

Permittee

Please sign and return one copy of this form to the Commission office at the above address.

EXHIBIT B

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 6  
Permit Application No. 5-89-325

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Lot line adjustment

Prior to issuance of the permit the applicant shall provide evidence that a lot line adjustment has been approved by the Executive Director and recorded with the County of Los Angeles that shows the following:

Parcel 1. Lot 157 shall be included within the boundaries of Parcel one.

Parcel 2 and 3. The applicant shall demonstrate to the satisfaction of the Executive Director that there is adequate space on each created parcel for a septic system and replacement system, or submit an enforceable easement, approved by the Los Angeles County Department of Health Services, over an adjacent parcel for the purposes of constructing a leach field and a replacement area.

This leach field and replacement area shall be set back no less than 50 feet from the edge of the riparian area, defined in this case as the top of the ravine, shown as the break in slope of the ravine (where the slope becomes 2:1 or steeper), at approximately elevation 30 in present lots ~~lots 161, 162, 163 and 164, (parcels 2 and 3 and portion parcel 1)~~ and elevation 25 in the ~~southerly~~ portion of parcel 1 (creek lot and lot 159). The line is shown on Exhibit 2. ARB

## 2. Easement for Open Space and Habitat Protection:

Prior to transmittal of permit, the applicant shall map and record an irrevocable offer to dedicate to a public agency or private association acceptable to the Executive Director, an easement for open space, view preservation, and habitat protection/restoration. The right to enter, restore and maintain habitat on this easement shall be included in the offer. Pending acceptance of the offer, the responsibility of the easement shall be held by a homeowners association created by the applicant. The easement shall restrict the applicant and successors in interest from grading, clearance, development, removal of vegetation and placement of structures, decks or fences within the area described as "portion of parcel one", or as assessors parcel 4450-19-36, described in certificate of compliance 100463, and those portions of the newly created parcels that lie northerly of the line indicated on Exhibit 2. (the canyon lot and the mature cypress trees.) This easement shall not apply the the approved house footprint shown in Exhibit 2. The easement shall allow entry for educational and scientific observation and shall permit one controlled trail along the southern edge of the canyon, if developed with a coastal development permit. The easement shall be described in metes and bounds, following the line depicted in Exhibit 2. The easement shall permit and require revegetation with native plants and selective removal and replacement of trees consistent with a revegetation and habitat management plan and fuel modification plan required in condition number 3, or prepared by an accepting agency and submitted to the Commission as a Coastal Development Permit.

The easement shall be subject to the review and approval of the Executive Director in consultation with the Santa Monica Mountains Conservancy. The offer shall be recorded free of prior liens and encumbrances except for tax liens, and shall be binding on heirs, assigns and successors in interest. The offer shall run with the land in favor of the People of the State of California. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

## 3. Revegetation and Landscape Plans.

Prior to transmittal of permit the applicant shall submit for review and approval of the Executive Director, plans prepared by a wildlife biologist that show a plan for revegetation and preservation of ESHA and butterfly habitat (trees over 30 feet in height and the open space easement described above). The plan shall retain existing trees along the top of the ravine, and keep the stream bed clear of tree-like vegetation.



The plans shall provide for the staged removal of introduced ground cover plants and re-establishment of appropriate native Southern California Coastal riparian plants (as defined in standard reference texts or in or in the Nov 23 1988 California Native Plant society publication "Recommended Native Plant species for Landscaping Wildland Corridors in the Santa Monica Mountains".) The plan shall provide for replacement of trees removed by development, maintenance of the trees along the canyon edge and replacement of dead or diseased trees in the same location by trees of similar height and volume. The plan shall include a schedule of completion. The objective of the plan shall be to restore riparian habitat, establish landscape cover for erosion control, provide wildlife cover, and preserve roosting spots for birds and Monarch butterflies. Pursuant to this no more than 15 percent of the plant cover and the no more than 15 percent of the present number of trees 30 feet or more in height may be removed at any one time. The next stage of restoration shall not begin until the replacement plants and trees are established in equivalent volume and and performing the function of the present vegetation in terms of cover and roosting. The plans shall reflect the requirements of the Los Angeles County Fire Marshall's fuel modification requirements.

#### 4. Future Improvements.

→ Prior to authorization of permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-89-325 is for the approved development only, and that any future additions or improvements to the property including clearing of vegetation and grading will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The deed restriction shall specify that all development, with the exception of the house shown on Exhibit 2 shall be located no less than 15 feet away from the easement established in condition 3. Decks at grade that do not require grading or excavation may also be permitted. The deed restriction shall be binding on all successors in interest, heirs and assigns, for the life of the improvement approved with this action. permit 5-89-325. It shall be recorded free of prior liens.

#### 5. Applicant's Assumption of Risk

Prior to transmittal of 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 fire, flood and wave damage and applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Revised Plans

Prior to issuance of a permit the applicant shall submit revised plans for the review and approval of the Executive Director. These plans shall show:

a) Revised engineered grading plans for the site that show: 1) ~~no grading or disturbance within the drip line of the viable cypress canopy shown in Exhibit 2. 14)~~ If indicated in an archaeology report, engineering for capping the site for purposes of archaeological protection. The cap may be up to three feet in depth; approved septic systems and driveways may be constructed without capping. 18721

b) ~~Revised house plans for the proposed single family house on parcel one showing the preservation of the three trees on the bluff top at the interface of the canyon and the beach. Such plans may show removal of the three trees identified as sick and damaged in the applicant's tree surgeon report. The house and all development except for decks and the pool shall maintain a set back of no less than 25 feet from the edge of the sea bluff. The dead and diseased trees cut down as part of this development shall be replaced with native trees 20 feet or more in height on a one to one basis.~~ AR

c) Revised foundation plans showing the depth of existing excavations. No additional excavation into the midden shall be required for the pool or for cellars. The house shall use pier or continuous footings instead of slabs.

d) Plans showing no portion of the structure more than 35 feet above natural grade or the soil cap that has been placed on the midden.

e) Revised plans for the septic systems showing location of all septic systems and the replacement areas no less than 50 feet from the break in slope at the arroyo established in condition one and no less than 25 feet from the edge of the coastal bluff.

7) An Archaeological Recovery and Protection Plan

Prior to transmittal of the permit the applicant shall provide for the review and approval of the Executive Director a phase II archaeological study, preservation and recovery plan for LAN 114. The plan shall include methods for capping the site and for recovery, study and monitoring of the portions of the site to be disturbed during construction, including the foundations, holes for tree planting and the leachfields. The Executive Director shall approve the study, preservation and recovery plan only after review by the ~~California State Office of Historic Preservation, by representatives of Native American groups identified by the Native American Heritage Commission as professional monitors, qualified to review work in Chumash sites in the Santa Monica Mountains portions of Los Angeles County, and by professional archaeologists who have published studies concerning the Santa Monica Mountains. The study shall be consistent with the Archaeological impact standards established by the State Office of Historic Preservation, and shall include a signed contract~~ AR

for archaeological salvage that follows current professional practice. Before approving the plan, the Executive Director shall determine whether the study, recovery and preservation plan requires an amendment to the permit because it changes the basic scope of preservation or changes the location of development on the site.

**\*NOTE:** The documents needed to comply with Conditions 1 - 7 will be sent to you from our San Francisco Office AFTER THE Commission meeting. When you receive the documents, if you have any questions, please contact the Legal Department at (415) 543-8555.

0098M:PE/gf



# City of Malibu PLANNING REVIEW

23815 Stuart Ranch Road • Malibu, California 90265-4861  
(310) 456-2489 • Fax (310) 456-7650 • [www.ci.malibu.ca.us](http://www.ci.malibu.ca.us)

## GEOTECHNICAL REVIEW SHEET

<u>Project Information</u>	
Date:	October 25, 2005
Site Address:	31858 Sea Level Drive
Lot/Tract/PM #:	n/a
Applicant/Contact:	Moses Lerner
Contact Phone #:	310-589-1553
Project Type:	New (continuous current) swimming pool
Review Log #:	2607
Planning #:	CDP 05-162
BPC/GPC #:	
Planner:	Chris Koontz
Fax #:	310-589-0899

<u>Submittal Information</u>	
Consultant(s) / Report Date(s):	Feffer Geological Consulting (Robinson, RGE 2491; Feffer, CEG 2138); 9-7-05
(Current submittal(s) in Bold.)	Ref: Tierra Tech Testing Lab, Inc.: 7-24-90, 1-5-90, 11-21-89, 3-17-88, 12-4-78
	Ref: Westland Geological Services, Inc.: 9-22-89, 8-28-89, 12-16-88
Previous Reviews:	Geology review Referral Sheet

<u>Review Findings</u>	
<u>Coastal Development Review</u>	
<input checked="" type="checkbox"/>	<b>APPROVED</b> from a geotechnical perspective.
<input type="checkbox"/>	<b>NOT APPROVED</b> from a geotechnical perspective. The listed 'Review Comments' shall be addressed prior to approval.
<u>Building Plan-Check Stage</u>	
<input checked="" type="checkbox"/>	<b>Awaiting Building plan check submittal.</b> Please respond to the listed 'Building Plan-Check Stage Review Comments' AND review and incorporate the attached 'Geotechnical Notes for Building Plan Check' into the plans.
<input type="checkbox"/>	<b>APPROVED</b> from a geotechnical perspective. Please review the attached 'Geotechnical Notes for Building Plan Check' and incorporate into Building Plan-Check submittals.
<input type="checkbox"/>	<b>NOT APPROVED</b> from a geotechnical perspective. The listed 'Building Plan-Check Stage Review Comments' shall be addressed prior to Building Plan-Check Stage approval.

### Remarks

The referenced report was reviewed by the City from a geotechnical perspective. Based upon the submitted information, the project comprises a new 120 square foot lap swimming pool (continuous current).

Guidelines for geotechnical reports (dated February 2002) are available on the City of Malibu web site:  
<http://www.ci.malibu.ca.us/index.cfm?fuseaction=nav&navid=30>.

Fugrc

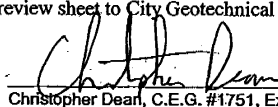
Attachment 5

**Building Plan-Check Stage Review Comments:**

1. Figures 1 and 2, as presented, do not provide the reviewers with enough information as to where the pool site is relative to the canyon slope and bluff above the beach. Please provide a site plan that depicts the entire property, existing improvements, and proposed improvements. It does not appear that the lot depicted on Figure 2 (Westland Geological Services Location Map) is the subject lot. Please clarify, and depict the subject site on the map.
2. Please provide recommendations for pool subdrainage, as discussed in the City's Geotechnical Guidelines.
3. Two sets of final swimming pool plans (**APPROVED BY BUILDING AND SAFETY**) incorporating the Project Geotechnical Consultant's recommendations and items in this review sheet must be reviewed and wet stamped and manually signed by the Project Engineering Geologist and Project Geotechnical Engineer. City geotechnical staff will review the plans for conformance with the Project Geotechnical Consultants' recommendations and items in this review sheet over the counter at City Hall on Mondays or Thursdays between 8 AM and 12 noon.

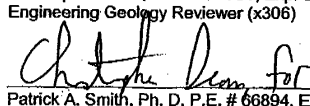
Please direct questions regarding this review sheet to City Geotechnical staff listed below.

Engineering Geology Review by:

  
Christopher Dean, C.E.G. #1751, Exp. 9-30-06  
Engineering Geology Reviewer (x306)

10/25/05  
Date

Geotechnical Engineering Review by:

  
Patrick A. Smith, Ph. D, P.E. # 66894, Exp. 9-30-06  
Geotechnical Engineering Reviewer

10/25/05  
Date

This review sheet was prepared by City Geotechnical Staff  
contracted with Fugro as an agent of the City of Malibu.

**FUGRO WEST, INC.**

4820 McGrath Street, Suite 100  
Ventura, California 93003-7778  
(805) 650-7000 (Ventura office)  
(310) 456-2489, x306 (City of Malibu)





# City of Malibu

- GEOTECHNICAL -

## NOTES FOR BUILDING PLAN-CHECK

The following standard items should be incorporated into Building Plan-Check submittals, as appropriate:

1. One set of swimming pool plans, incorporating the Geotechnical Consultant's recommendations and items in this review sheet, must be submitted to City geotechnical staff for review. Additional review comments may be raised at that time that may require a response.
2. Show the name, address, and phone number of the Geotechnical Consultant(s) on the cover sheet of the Swimming pool plans.
3. Include the following note on the Foundation Plans: *"All foundation excavations must be observed and approved by the Geotechnical Consultant prior to placement of reinforcing steel."*
4. The Foundation Plans for the proposed project shall clearly depict the embedment material and minimum depth of embedment for the foundations in accordance with the Geotechnical Consultant's recommendations.
5. Foundation setback distances from descending slopes shall be in accordance with Section 1806.5 of the Malibu Building Code, or the requirements of the Geotechnical Consultant's recommendations, whichever are more stringent. Show minimum foundation setback distances on the foundation plans, as applicable.
6. Please contact the Building and Safety Department regarding the submittal requirements for a drainage plan review.

Guidelines for geotechnical reports (dated February 2002) are available on the City of Malibu web site:  
<http://www.ci.malibu.ca.us/index.cfm?fuseaction=nav&navid=30>

Fugro Project #: 3399.001

**CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 06-23**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 05-162,  
INSTALLATION OF A SWIMMING POOL ON THE REAR OF A  
DEVELOPED PROPERTY WITH AN EXISTING, 3,965 SQUARE FOOT,  
SINGLE-FAMILY RESIDENCE, LOCATED ON APPROXIMATELY 0.0587  
ACRES WITHIN THE SINGLE-FAMILY RESIDENTIAL-MEDIUM  
DENSITY (SF-M) ZONING DISTRICT, LOCATED AT 31858 SEA LEVEL  
DRIVE (LERNER)**

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

Section 1. Recitals.

A. On September 26, 2005, an application was submitted by applicant/property owner Moses Lerner [Coastal Development Permit (CDP) No. 05-162] to the Planning Division to permit installation of an eight-foot by 15-foot by 39-inch swimming pool at the rear of a developed property with an existing, 3,965 square-foot, single-family residence and associate development.

B. On February 17, 2006, the application was deemed complete for processing.

C. On March 9, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on March 8, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

D. On March 20, 2006, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, oral and written public comment, and related information.

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 (Classes 1 and 3) 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).

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### 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 (LIP), the Planning Commission hereby adopts the findings in the staff report and the findings of fact below, and approves Coastal Development Permit No. 06-162.

The proposed project has been reviewed by the City Geologist, City Environmental Health Specialist, City Biologist, and City Public Works Department, as well as the Los Angeles County Fire Department. According to the City of Malibu Cultural Resources Sensitivity Maps, the site has a low potential for containing archeological resources. Subject to the approvals and conditions contained herein, the project is consistent with the LCP's zoning, grading, water quality, and onsite wastewater treatment requirements. The Planning Commission has determined this project 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 (see Table 2). As discussed throughout this report, the project, as proposed and/or conditioned, conforms to the certified City of Malibu LCP.

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

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

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

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project would result in less than significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements of the LCP and the Malibu Municipal Code (M.M.C.) as well as view corridor requirements.



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

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

The subject parcel is located in an ESHA zone and near a stream, as designated in the Malibu Local Coastal Program LIP. The project has been reviewed by the ESHA Specialist and is determined to have no impact upon environmentally sensitive habitat, since it is to be developed upon an existing pad.

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

The subject parcel is located in the ESHA Overlay Map; however, the project will not result in impacts to sensitive resources, significant loss of vegetation or wildlife; or encroachments into ESHA. The City Biologist has reviewed the project and determined that it is consistent with the LCP. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

#### **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. No native trees exist on the subject property. Accordingly, the findings in the Native Tree Protection Ordinance 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 prefabricated pool to be installed at grade to the rear of an existing single-family residence. Staff conducted an analysis of the project's visual impact from public viewing areas through a site reconnaissance and an investigation of the character of the surrounding property and determined that the project will result in a less than significant visual impact to public views relative to coastal resources. As proposed, the project will not interfere with views of the Santa Monica Mountains from the beach or other designated scenic areas, nor will the project obstruct views of the Pacific Ocean from Pacific Coast Highway or other designated scenic areas.

The swimming pool is at grade, located outside the view corridor, and is not prominent when viewed from other LCP designated scenic areas or parkland and similar development exists on abutting property. No potentially significant impacts on scenic and/or visual resources are anticipated. Therefore, according to LIP Section 6.4, the scenic resource findings are not applicable.

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

Pursuant to Section 7.2 of the LIP, 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 a land division or multi-family development. Therefore, LIP Chapter 7 does not apply.

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

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood, and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Staff has determined that the project will not create adverse impacts upon site stability or structural integrity, based upon applicant-provided reviews. The project is located in a high fire hazard area; however, it is a water feature and will not create adverse impacts by increasing plant materials or by presenting a potential fire safety risk. Pool equipment will be installed within an enclosed structure. The Los Angeles County Fire Department, in its project review of August 9, 2005, requires a Fire Department Check of the project.

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

The project was analyzed by staff for the hazards listed in LIP Section 9.2.A. (1-7). Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City Geologic Data maintained by the City; 2) Geotechnical Engineering reports prepared by Feffer Geological Consulting dated September 7, 2005.

Based on staff's review of the above referenced information, it has been determined that:

1. slope stability analysis, calculated using reasonable sheer strengths, indicate that the safety factor is greater than 1.5;
2. the terrace material is not subject to slope creep;
3. the pool is located at a sufficient distance from the slope that design of the pool does not need to include consideration of slope stability;
4. location of the pool is approximately 30 feet above sea-level and could be subject to hazards from wave action and tsunami hazard; and
5. the project site is in the vicinity of extreme fire hazard areas.

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

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#### Liquefaction Hazard

The site soils consist primarily of medium density, slightly clayey sand and rock fragments, located approximately 11-feet above bedrock. Liquefaction is not reviewed as a significant issue for this proposed eight-foot by 15-foot by 39-inch lap pool. As noted above, the project site achieves more than the required 1.5 factor of safety for slope stability.

#### Wave Up rush/Tsunami Hazard

The project site is located 30-feet above sea level. Although subject to impacts of tsunamis, staff considers that the proposed pool would not be significantly damaged due to tsunamis.

#### Flood/Fire Hazard

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

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

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

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

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

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

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

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

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

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

Potential impacts to the stream were identified as an issue of concern to an adjacent neighbor. Since the proposed pool will be installed on a previously graded pad, approved in California Coastal Commission (CCC) Permit Nos. 5-89-1037 and 5-89-325, stream preservation issues have already been addressed. CCC permits require any further improvements to be reviewed, but specifically identify grading as a reviewable activity.

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

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

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

The proposed project is located well landward of the ocean currents that carry sand along the beach. The City Geotechnical Reviewer has reviewed and conditionally approved the project; the proposed project will not have a significant adverse impact upon public access, shoreline sand supply or other resources due to project design location on the site or other reasons. Two sets of final swimming pool plans, approved by Environmental and Building Safety, incorporating Feffer Geological Consulting's recommendations and items included in the City Geologist's review, must be reviewed, wet stamped and manually signed by the Project Engineering Geologist and Project Geotechnical Engineer. The City Geotechnical Reviewer will review the project for conformance with the Project Geotechnical Consultant's recommendations and items identified by the City Geotechnical Reviewer during plan check.

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

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

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

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

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

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

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

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

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

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

Section 12.5 of the LIP provides that, unless it is established that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources, an offer to dedicate an easement or grant of easement for public access be required as a condition of approval of a coastal development permit application for any new development described below:

1. New development on any parcel or location specifically identified in the Land Use Plan or in the LCP zoning districts as appropriate for or containing a historically used or suitable public access trail or pathway.
2. New development between the nearest public roadway and the sea.
3. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a bluff top trail or an inland trail acquired through use or a public right of access through legislative authorization.
4. New development on any site where a trail, bluff top access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.

In evaluating whether this project will adversely affect the ability of the public to reach and use public tidelands and coastal resources, the applicable factors identified in Section 12.8.2 of the LIP are discussed below.

- A. Project effects on demand for access and recreation - The subject site is located between the first public road and the sea, along Lechuza Beach on the ocean side of Sea Level Drive. The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; however, LIP Section 12.6 states that public access is not required when adequate access exists nearby and the findings addressing LIP Section 12.8.3 can be made. The following findings satisfy this requirement. Analyses required by LIP Section 12.8.2 are provided herein, and in geotechnical and coastal engineering reports referenced elsewhere in this report. Bluff top, trail, and recreational accesses are not applicable. The proposed project does not intrude into view corridors from Sea Level Drive. No issue of public prescriptive rights has been raised.

Since existing access to coastal resources is adequate, and the project site is located on a private street that is not accessible to the public, no legitimate governmental or public interest would be furthered by requiring access at the project site.

#### *Bluff Access*

Due to the relatively minor scope of the project, 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, 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. Due to the relatively minor scope of the project, 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. No impacts to military security or to fragile coastal resource have been identified. Due to the relatively minor scope of the project, 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.*

Due to the relatively minor scope of the project, 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 located both east and west of the project site. The project as proposed does not block or impede access to the ocean. The project site is located on a private lot and is not accessible to the public. 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, and the project site is located on a private lot that is not accessible to the public, 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 on the Trails Master Plan; and therefore, no condition for trail access is required by the Local Coastal Program.

#### *Recreational Access*

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

#### *Lateral Access*

As indicated on the LCP Public Access Map 1, the project is located along a private road and does not provide access to a public beach. El Matador State Beach is located less than one mile to the west, which is accessible from a public road, Pacific Coast Highway. A vertical access document is also recorded at Lechuza Point, as indicated on LCP Public Access Map 1. Consistent with LIP Section 12.6, due to the ability of the public, through other reasonable means to reach nearby coastal resources, an exception for lateral access has been determined to be appropriate for the project and no condition for lateral access has been required.

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

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

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

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

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

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

#### *Vertical Access*

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

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

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

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



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

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

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

The proposed project is located on the north side of Sea Level Drive, adjacent to the Pacific Ocean in the vicinity of Lechuza Point, in an existing, developed neighborhood. The proposed project involves the demolition of two, existing, single-family residences and the construction of one new one across merged lots and is not anticipated to result in negative impacts to existing public access and recreation opportunities or affect the capacity of major coastal roads. The intensity of the land will be reduced from the perspective of a reduction in the number of homes and buildable lots compared to the existing situation. Similarly, the project will not affect the demand or need for increased coastal access and recreational opportunities for the public because the number of households will be reduced as a result of the proposed lot merger.

- A. Shoreline processes - The project does not include development along the shoreline. The property is not subject to wave action and the project does not include a shoreline protective device.
- B. Historic public use - There is no evidence that an historic public use exists on the subject property, therefore, this factor is not applicable to the subject property.
- C. Physical obstructions - Establishment of the proposed project would install a pool at grade on an existing graded pad. No portion of the project would block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources to the shoreline.
- D. Other adverse impacts on access and recreation - The proposed project is not anticipated to diminish the public's use of tidelands or lands committed to public recreation.

Although the project is located between the nearest public roadway and the sea, an analysis of the factors identified in Section 12.8.2 A thru E of the LIP does not indicate that the project will result in adverse

impacts to public access of tidelands and/or coastal resources. Therefore, an offer to dedicate an easement or grant of easement for public access is not required as a condition of approval of the subject coastal development permit application.

#### **I. Land Division (LIP - Chapter 15)**

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

#### **Section 4. Conditions of Approval**

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 05-162, subject to the conditions listed below:

##### Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow installation of an 8-foot by 15-foot by 39-inch swimming pool at the ocean side of the existing building pad. No grading is proposed, although pool installation will require the removal of less than 20 cubic yards of earth. Subsequent submittals for this project shall be in substantial compliance with the plans date stamped September 26, 2005. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
3. Pursuant to LIP Section 13.18.2 (page 237), this permit and rights conferred in this approval shall not be effective until the property owner signs 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 days of this decision and prior to issuance of any development permits.
4. This resolution and department review sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
5. The CDP shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two

- weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
6. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
  7. All structures shall conform to all requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Specialist, City Biologist, Los Angeles County Water District No. 29, and Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
  8. 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.
  9. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. Final approval 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.
  10. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Thereafter, the procedures contained in Chapter 11 of the LCP and those in Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code (M.M.C.) shall be followed.
  11. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
  12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
  13. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights there under.
  14. All conditions required for California Coastal Commission Permits 5-89-1037 and 5-89-325 shall remain in effect.
  15. The CDP runs with the land and binds all future owners of the property.

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16. 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 appeal, 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.

#### **Site Conditions**

17. 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.
- a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones.
18. No construction activities or site disturbance is permitted on the bluff face or the beach, unless approved by future City action.

#### **Lighting**

19. 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 restrictions.

#### **Geology**

20. 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.

21. 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.

#### **Water Quality**

22. 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.
23. 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.
24. 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.

#### **Hazards**

25. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.
26. The property owner is required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. Said deed restriction shall be submitted to the Planning Division for approval prior to recordation. The deed restriction shall also acknowledge that the intended purpose of the shoreline protection structure is solely to protect existing structures located on the site, in their present condition and location, including the onsite wastewater treatment system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure.

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

27. Prior to the 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 onsite facilities.

#### **Shoreline Protection**

28. Pursuant to LIP Section 10.4.C. Development on or near sandy beach or bluffs, including the construction of a shoreline protection device, shall include measures to insure that:
- a. No stockpiling of dirt or construction materials shall occur on the beach;
  - b. All grading shall be properly covered and sandbags, ditches, or other Best Management Practices (BMPs) shall be used to prevent runoff and siltation;
  - c. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work;
  - d. No machinery shall be allowed in the intertidal zone at any time unless authorized in the Coastal Development Permit;
  - e. All construction debris shall be removed from the beach daily and at the completion of development.

#### **Special Conditions**

##### **Site Requirements**

29. The pool shall be located nearer the existing residence to ensure that the proposed pool and any associated fencing are not located within the open space easement area.
30. During excavation for installation of the proposed pool, an archeological monitor shall be present to provide oversight should any items of cultural or archeological significance be uncovered.

##### **Lighting**

31. Any new proposed lighting shall be limited to 6 feet in height and be downcast such that no nighttime illumination of the ESHA area occurs. 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.

##### **Geology**

32. 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.

33. 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.

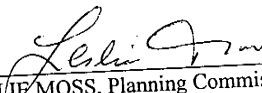
**Water Quality**

34. The project shall comply with all water service, metering and fees required by the Los Angeles County Waterworks district for 31858 Sea Level Drive on July 14, 2005.
35. The project shall comply with all final conditions required by the Public Works Department.

**Section 5. Certification.**

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 20<sup>th</sup> day of March 2006.

  
\_\_\_\_\_  
LESLIE MOSS, Planning Commission Chairman

ATTEST:

  
\_\_\_\_\_  
ADRIENNE FURST, Recording Secretary

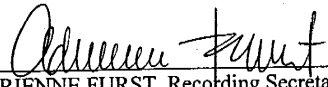
**LOCAL APPEAL** – Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and the filing fee of \$623.00, as specified by the City Council. Appeal forms may be found online at [www.ci.malibu.ca.us](http://www.ci.malibu.ca.us) or in person at City Hall, or by calling (310) 456-2489 ext. 245.

**COASTAL COMMISSION APPEAL** – An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at [www.coastal.ca.gov](http://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.

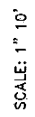
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I CERTIFY THAT THE FOREGOING RESOLUTION NO. 06-23 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on this 20<sup>th</sup> day of March 2006, by the following vote:

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

  
ADRIENNE FURST, Recording Secretary





**ORIGINAL**

**MOSES LERNER**  
31858 SEA LEVEL DRIVE  
MALIBU, CA 90265

LOT SIZE	11,733 S.F.
ALLOWABLE DMPR	2,938 S.F.
RESIDENCE	2,698 S.F.
SEPTIC & SETBACK	48 S.F.
POOL & SETBACK	160 S.F.
EXISTING PLUS POOL	2,988 S.F.

**Attachment 3**

DEC - 8 1989

GEORGE DEUKMEJIAN, Governor

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
 245 WEST BROADWAY, SUITE 380  
 LONG BEACH, CA 90802  
 (213) 590-3071

Page 1 of 6

Date: December 7, 1989

Permit Application No. 5-89-325



## NOTICE OF INTENT TO ISSUE PERMIT

On November 16, 1989, the California Coastal Commission granted to MOSES LERNER Permit 5-89-325, subject to the attached conditions, for development consisting of

Resubdivide 10 lots into three lots; demolish septic system on one additional lot, record certificates of compliance (lot line adjustments) for the three new lots; demolish single family house and septic system tennis court and other buildings, construct one single family house, garage, pool landscaping and septic system, remove trees.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 31842 Sea Level Drive; Malibu, CA.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1 - 7, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on December 7, 1989.

PETER DOUGLAS  
 Executive Director

By: Pam  
 Title: Staff Analyst

## ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-89-325, and fully understands its contents, including all conditions imposed.

Date

Permittee

Please sign and return one copy of this form to the Commission office at the above address.

EXHIBIT B

Exhibit 6
Appeal 4-MAL-06-043
CDP NOI 5-89-325 and
5-89-1037 (Lerner)

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 6  
Permit Application No. 5-89-325

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Lot line adjustment

Prior to issuance of the permit the applicant shall provide evidence that a lot line adjustment has been approved by the Executive Director and recorded with the County of Los Angeles that shows the following:

Parcel 1. Lot 157 shall be included within the boundaries of Parcel one.

Parcel 2 and 3. The applicant shall demonstrate to the satisfaction of the Executive Director that there is adequate space on each created parcel for a septic system and replacement system, or submit an enforceable easement, approved by the Los Angeles County Department of Health Services, over an adjacent parcel for the purposes of constructing a leach field and a replacement area.

This leach field and replacement area shall be set back no less than 50 feet from the ~~edge of the riparian area, defined in this case as the top of the ravine, shown as the break in slope of the ravine (where the slope becomes 2:1 or steeper), at approximately elevation 30 in present lots 161, 162, 163, 164, (parcels 2 and 3) and portion parcel 1) and elevation 25 in the southerly portion of parcel 1 (creek lot and lot 159).~~ The line is shown on Exhibit 2. AKB

## 2. Easement for Open Space and Habitat Protection:

Prior to transmittal of permit, the applicant shall map and record an irrevocable offer to dedicate to a public agency or private association acceptable to the Executive Director, an easement for open space, view preservation, and habitat protection/restoration. The right to enter, restore and maintain habitat on this easement shall be included in the offer. Pending acceptance of the offer, the responsibility of the easement shall be held by a homeowners association created by the applicant. The easement shall restrict the applicant and successors in interest from grading, clearance, development, removal of vegetation and placement of structures, decks or fences within the area described as "portion of parcel one", or as assessors parcel 4450-19-36, described in certificate of compliance 100463, and those portions of the newly created parcels that lie northerly of the line indicated on Exhibit 2. (the canyon lot and the mature cypress trees.) This easement shall not apply the the approved house footprint shown in Exhibit 2. The easement shall allow entry for educational and scientific observation and shall permit one controlled trail along the southern edge of the canyon, if developed with a coastal development permit. The easement shall be described in metes and bounds, following the line depicted in Exhibit 2. The easement shall permit and require revegetation with native plants and selective removal and replacement of trees consistent with a revegetation and habitat management plan and fuel modification plan required in condition number 3, or prepared by an accepting agency and submitted to the Commission as a Coastal Development Permit.

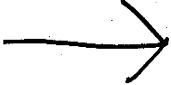
The easement shall be subject to the review and approval of the Executive Director in consultation with the Santa Monica Mountains Conservancy. The offer shall be recorded free of prior liens and encumbrances except for tax liens, and shall be binding on heirs, assigns and successors in interest. The offer shall run with the land in favor of the People of the State of California. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

## 3. Revegetation and Landscape Plans.

Prior to transmittal of permit the applicant shall submit for review and approval of the Executive Director, plans prepared by a wildlife biologist that show a plan for revegetation and preservation of ESHA and butterfly habitat (trees over 30 feet in height and the open space easement described above). The plan shall retain existing trees along the top of the ravine, and keep the stream bed clear of tree-like vegetation.

The plans shall provide for the staged removal of introduced ground cover plants and re-establishment of appropriate native Southern California Coastal riparian plants (as defined in standard reference texts or in or in the Nov 23 1988 California Native Plant society publication "Recommended Native Plant species for Landscaping Wildland Corridors in the Santa Monica Mountains".) The plan shall provide for replacement of trees removed by development, maintenance of the trees along the canyon edge and replacement of dead or diseased trees in the same location by trees of similar height and volume. The plan shall include a schedule of completion. The objective of the plan shall be to restore riparian habitat, , establish landscape cover for erosion control, provide wildlife cover, and preserve roosting spots for birds and Monarch butterflies. Pursuant to this no more than 15 percent of the plant cover and the no more than 15 percent of the present number of trees 30 feet or more in height may be removed at any one time. The next stage of restoration shall not begin until the replacement plants and trees are established in equivalent volume and and performing the function of the present vegetation in terms of cover and roosting. The plans shall reflect the requirements of the Los Angeles County Fire Marshall's fuel modification requirements.

#### 4. Future Improvements.



Prior to authorization of permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-89-325 is for the approved development only, and that any future additions or improvements to the property including clearing of vegetation and grading will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The deed restriction shall specify that all development, with the exception of the house shown on Exhibit 2 shall be located no less than 15 feet away from the easement established in condition 3. Decks at grade that do not require grading or excavation may also be permitted. The deed restriction shall be binding on all successors in interest, heirs and assigns, for the life of the improvement approved with this action. permit 5-89-325. It shall be recorded free of prior liens.

#### 5. Applicant's Assumption of Risk

Prior to transmittal of 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 fire, flood and wave damage and applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Revised Plans

Prior to issuance of a permit the applicant shall submit revised plans for the review and approval of the Executive Director. These plans shall show:

- a) Revised engineered grading plans for the site that show: ~~i) no grading or disturbance within the drip line of the viable cypress canopy shown in Exhibit 2. ii) If indicated in an archaeology report, engineering for capping the site for purposes of archaeological protection. The cap may be up to three feet in depth; approved septic systems and driveways may be constructed without capping.~~ *16721*
- b) ~~Revised house plans for the proposed single family house on parcel one showing the preservation of the three trees on the bluff top at the interface of the canyon and the beach. Such plans may show removal of the three trees identified as sick and damaged in the applicant's tree surgeon report. The house and all development except for decks and the pool shall maintain a set back of no less than 25 feet from the edge of the sea bluff. The dead and diseased trees cut down as part of this development shall be replaced with native trees 20 feet or more in height on a one to one basis.~~ *ARB*
- c) Revised foundation plans showing the depth of existing excavations. No additional excavation into the midden shall be required for the pool or for cellars. The house shall use pier or continuous footings instead of slabs.
- d) Plans showing no portion of the structure more than 35 feet above natural grade or the soil cap that has been placed on the midden.
- e) Revised plans for the septic systems showing location of all septic systems and the replacement areas no less than 50 feet from the break in slope at the arroyo established in condition one and no less than 25 feet from the edge of the coastal bluff.

7) An Archaeological Recovery and Protection Plan

Prior to transmittal of the permit the applicant shall provide for the review and approval of the Executive Director a phase II archaeological study, preservation and recovery plan for LAN 114. The plan shall include methods for capping the site and for recovery, study and monitoring of the portions of the site to be disturbed during construction, including the foundations, holes for tree planting and the leachfields. The Executive Director shall approve the study, preservation and recovery plan only after review by the ~~California State Office of Historic Preservation, by representatives of Native American groups identified by the Native American Heritage Commission as professional monitors, qualified to review work in Chumash sites in the Santa Monica Mountains portions of Los Angeles County, and by professional archaeologists who have published studies concerning the Santa Monica Mountains. The study shall be consistent with the Archaeological impact standards established by the State Office of Historic Preservation, and shall include a signed contract~~ *ATI*

for archaeological salvage that follows current professional practice. Before approving the plan, the Executive Director shall determine whether the study, recovery and preservation plan requires an amendment to the permit because it changes the basic scope of preservation or changes the location of development on the site.

**\*NOTE:** The documents needed to comply with Conditions 1 - 7 will be sent to you from our San Francisco Office AFTER THE Commission meeting. When you receive the documents, if you have any questions, please contact the Legal Department at (415) 543-8555.

0098M:PE/gf

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
2131 590-5071

Page 1 of 1

Date: May 17, 1990

Permit Application No. 5-89-1037



## NOTICE OF INTENT TO ISSUE PERMIT

On March 13, 1990, the California Coastal Commission granted to Moses Lerner Permit 5-89-1037, subject to the attached conditions, for development consisting of:

Demolition of a tennis court and removal of trees and the construction of two single family residences on two lots: a 5,813 sq. ft. single family residence, garage, decks, and septic system on a 11,720 sq. ft. lot, and a 5,430 sq. ft. single family residence, garage, deck and septic system on a 10,724 sq. ft. lot.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 31858 and 31862 Sea Level Drive, Malibu

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1-3, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on March 13, 1990.

PETER DOUGLAS  
Executive Director

By: Gary J. Ponder for Bill Ponder  
Title: Staff Analyst

## ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-89-1037, and fully understands its contents, including all conditions imposed.

5/22/90  
Date

Moses Lerner  
Permittee

Please sign and return one copy of this form to the Commission office at the above address.



NOTICE OF INTENT TO ISSUE PERMIT

Permit Application No. Page 2 of 3  
5-89-1037

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Revegetation and Landscape Plans.

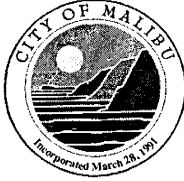
Prior to the issuance of the coastal development permit, the applicant shall submit a detailed revegetation plan indicating the type, size, extent and location of all plant materials, any proposed irrigation system and other landscape features to revegetate the portion of lots 1 and 2 between the proposed residences on each lot and the top of the creekbank on each lot. The plans shall provide that a minimum of 70% of this area will be revegetated with suitable plants and other replacement roosts for the butterflies as part of the revegetation process of these disturbed sites, similar to what the Commission is requiring the applicant to do as part of the revegetation of the creekbanks that comprise the open space area approved in coastal development permit no. 5-89-325. The plans shall provide for the staged removal of introduced ground cover plants and re-establishment of appropriate native Southern California Coastal riparian plants (as defined in standard reference texts or in or in the Nov 23 1988 California Native Plant society publication "Recommended Native Plant species for Landscaping Wildland Corridors in the Santa Monica Mountains".) The plan shall provide for replacement of trees removed by development, maintenance of the trees along the canyon edge and replacement of dead or diseased trees by trees of similar height and volume. Said plan shall be submitted to, reviewed by and approved in writing by the Executive Director.

2. Revised Plans.

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised building plans indicating the height of the pitched roofs of both residences which are the subject of this permit will extend no higher than 28 feet above existing grade.

3. Prior Permit.

All special conditions and provisions of the previously-approved coastal development permit, CDP# 5-89-325, are binding and remain in force.



# City of Malibu

23815 Stuart Ranch Road ! Malibu, California ! 90265-4804  
(310) 456-2489 ! Fax (310) 456-0539

RECEIVED  
APR 18 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

## Fax Cover Sheet

To: Moses Lerner

From: Melody Gillette *M. Gillette* Ext.: 234

Fax: (310) 589-0899

Pages: 1 (including cover sheet)

Phone: ( )

Date: Thursday, March 16, 2006

Re: CDP 05-162 - 31858 Sea Level Drive cc:

☒ Urgent ☐ For Review ☐ Please Comment ☒ Please Reply

Mr. Lerner

After our discussion on March 13, regarding the easements and restrictions identified on your property, the Planning Manager and I discussed the information provided on the topographic study submitted for this project.

Staff is requesting a wet-stamped ACSM (American Congress of Surveying and Mapping) survey on your property, with accurately drawn and labeled easements. We note that the title report lists three easement dedications (Instruments 91-44455, 94-1364546, 95-1503151), as well as terms and conditions of an agreement with the City of Los Angeles (Instrument 95-1891393). Staff will need to review this survey, and, if it is available by tomorrow, March 17, 2006, will attempt to address the issue at the Planning Commission meeting on March 20, 2006.

If a survey cannot be made available by tomorrow for staff review, the application will be continued at the Planning Manager's discretion to a date indeterminate, to allow you time to develop the appropriate survey and for staff to review it and public notice the hearing for the required 21 day period.

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this copy please notify us immediately by telephone and return the original message to us at the U.S. Postal Service. Thank you.

Exhibit 7  
Appeal 4-MAL-06-043  
City correspondence  
regarding easements