

**CALIFORNIA COASTAL COMMISSION**

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

Appeal Filed: 6/1/06  
49<sup>th</sup> Day: 7/20/06  
Staff: Barbara Carey  
Staff Report: 6/27/06  
Hearing Date: 7/12/06



# W 7b

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

**LOCAL GOVERNMENT:** City of Malibu  
**LOCAL DECISION:** Approval with Conditions  
**APPEAL NO.:** A-4-MAL-06-064  
**APPLICANT:** Jeff Stibel  
**APPELLANTS:** Daniel Alberstone/Lisa Ogawa  
**PROJECT LOCATION:** 27368 Escondido Beach Road, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construction of a new 3,578 sq. ft. single family beachfront residence including a 457 sq. ft. garage, bulkhead, and an alternative onsite wastewater treatment system.

**SUBSTANTIVE FILE DOCUMENTS:** Staff Report for City of Malibu Coastal Development Permit No. 04-038, Lot Merger No. 05-004, Variance No. 05-015; City of Malibu City Council Appeals 06-003 and 06-004; and City of Malibu City Council Resolution No. 06-30

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

Staff recommends that the Commission determine that **no substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the shoreline development, stringline, and neighborhood standards 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 Escondido Beach (Exhibit 1). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends to the first public road paralleling the sea, which in this case is Pacific Coast Highway. The proposed project site is within this appeal area. As such, the City's coastal development permit for the subject project is appealable to the Commission.

### **A. APPEAL PROCEDURES**

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

#### **1. Appeal Areas**

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

#### **2. Grounds for Appeal**

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

#### **3. Substantial Issue Determination**

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial

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

#### **4. De Novo Permit Hearing**

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

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

On January 6, 2006, the City of Malibu Planning Commission approved Coastal Development Permit 04-038, Variance 05-015, and Lot Merger No. 05-004 for the single family residence project. The City received two appeals of this permit to the City of Malibu City Council. The appeals were filed by: 1) Daniel Alberstone and Lisa Ogawa; and 2) Waverly Properties. The City Council denied Appeals Nos. 06-003 and 06-004 on May 11, 2005. The Notice of Final Action for the project was received by Commission staff on May 31, 2005. A ten working day appeal period was set and notice provided beginning June 1, 2006, and extending to June 13, 2006.

An appeal was filed by Daniel Alberstone and Lisa Ogawa during the appeal period, on June 1, 2006. 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 June 8, 2006.

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

**MOTION:**        *I move that the Commission determine that Appeal No. A-4-MAL-06-064 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 **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds **No Substantial Issue**, the Commission will not hear the application

de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-4-MAL-06-064 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

**III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION AND BACKGROUND**

The City of Malibu Planning Commission approved Coastal Development Permit (CDP) No. 04-038 (including Lot Merger 05-004, and Variance No. 05-015) for the construction of a new a new 3,578 sq. ft. single family beachfront residence including a 457 sq. ft. garage, bulkhead, and an alternative onsite wastewater treatment system.

The proposed residence will be located on the seaward side of Escondido Beach Road. The project site is located at the west end of this road. There is one additional house west of the site, although the road does not extend onto that site.

**Past Commission Actions on the Project Site**

The Commission has previously approved Permit 4-94-060 (Murphy O'Hara) for the construction of a 2,599 sq. ft., 28 ft. high from existing grade single family residence with 4-car garage, septic system, and vertical seawall on the subject project site. The permit included special conditions pertaining to assumption of risk, lateral access easement offer to dedicate, seaward encroachment, geology, and construction responsibilities. In approving this development, the Commission found that it was appropriate to limit seaward encroachment by drawing a stringline straight across the site, in line with the two residences to the east, rather than connecting it to existing structure on the parcel to the west that was located significantly further landward than other development in the area. The development approved in this permit was never constructed and the coastal development permit has since expired.

## B. APPELLANTS' CONTENTIONS

The City's action was appealed by Daniel Alberstone and Lisa Ogawa. This appeal (attached as Exhibit 3) contains three contentions. The first is that the City's approval of the lot merger is in violation of the LCP. Secondly, the appeal contends that the stringline variance should have been denied because it would confer a special privilege on the applicant. Finally, the appellants assert that the size and scope of the proposed development is not consistent with neighborhood standards and should have been reduced.

## C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants did not cite the public access policies of the Coastal Act as a ground for appeal.

The appeal raises no substantial issue with regard to the grounds on which the appeal has been filed, as discussed below.

### LOT MERGER

The appellants contend that the City's approval of a lot merger is not consistent with Section 10.4(R) of the Malibu LIP. The appeal (Exhibit 3) states that:

Section 10.4, subdivision R provides, in pertinent part, that land divisions (which by definition under Chapter 2.1 includes lot mergers) which create new beachfront lots ***shall not be permitted unless it can be shown that the lot created can be developed without requiring a shoreline protective structure at any time during the full 100 year economic life of the development.***

Here, the subject property sits on two parcels that individually could not practicably be developed in light of the size and odd shape of each lot. The Applicant's request proposes to merge these two unbuildable lots and to have both the dwelling and septic system be placed on the sandy beach protected by a shoreline protection device in violation of Section 10.4 R of the LCP.

Additionally, the appellants state that the lot merger is prohibited by the LCP because the resultant lot will not meet the minimum lot width required by the provisions of the Single Family Residential Zone District Standards.

The lot merger approved as part of the subject project involves the merging of two beachfront parcels that are approximately 4,360 sq. ft. (0.10-acre) and 2,180 sq. ft. (0.05-acre) in size into one parcel approximately 6,540 sq. ft. (0.15-acre) (staff would

note that these acreages are provided by the Los Angeles County Assessor Parcel Map and should be considered approximate).

As defined in the LCP, a merger is a land division. (Staff would note that merger of parcels is also governed by the requirements of the Subdivision Map Act). However, a merger is unique among land divisions in that the total number of parcels is decreased. All other forms of land divisions result in the creation of either the same number of parcels (lot line adjustment or redivision) or a greater number of parcels (subdivision, or certificate of compliance) in a different configuration than originally existed. The reduction of the total number of parcels achieved in a lot merger is recognized as generally reducing potential development impacts, by reducing the total number of individual residences (or other types of development as applicable) that could be developed. Mergers are recognized as having less potential to result in significant adverse impacts because the number of parcels is reduced.

This is indicated by the requirements for the various types of land divisions regulated by the LCP. Chapter 15 (attached as Exhibit 6), contains the land division requirements. Sections 15.2 and 15.3 of the LIP contains the findings that must be made by the City in approving a subdivision through a parcel map, tract map, grant deed, lot splits, redivisions of land, or certificate of compliance (except for such subdivisions that occurred prior to the effective date of the Coastal Act in compliance with all laws in effect at the time). These provisions recognize the potential impacts that can result from creating a greater number of parcels that can be developed with additional residences (or other types of development as applicable). The provisions require that these types of land divisions cannot be approved unless they are consistent with the maximum LUP density designation and slope density criteria, do not create parcels smaller than the average size of surrounding parcels, cluster development, minimize impacts to visual resources, provide for adequate access and an all-weather road, do not create parcels that consist of ESHA or ESHA buffer, do not create any parcel where a shoreline protective device would be necessary to protect development, etc.

Additionally, Section 15.5 contains the provisions that apply to the approval of lot line adjustments, which result in the creation of the same number of parcels with a new configuration. In recognition that lot line adjustments may result in additional or different impacts, LIP Section 15.5 provides that lot line adjustments may not be approved unless the City makes certain findings, including that the reconfigured parcels meet the LCP size standards, and the parcels can be developed consistent with all LCP policies and standards, that the lot line adjustment will not increase the amount of ESHA that would be impacted by development on any of the parcels, that the reconfiguration will not result in additional landform alteration, or that future development of the adjusted parcels will not result in additional visual impacts.

Section 15.4.1 of the LIP provides the provisions for the voluntary merger of parcels and states the following:

**15.4 MERGER OF PARCELS**

**15.4.1 Voluntary Merger**

A. Contiguous parcels under common ownership may be voluntarily merged if:

1. either a merger or lot tie is authorized or required pursuant to a term or condition of a coastal development permit; or
2. the City determines that the merger is not inconsistent with any policy or standard of the LCP that protects environmentally sensitive habitat areas and/or visual resources of the coastal zone. In this case, an administrative coastal development permit shall be approved for the merger if the requirements of Section 13.13 of the Malibu LIP are met.

B. An instrument evidencing the merger shall be recorded. The recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, and the new parcel that results after the merger. The instrument must be reviewed and approved by the City prior to recording. A copy of the recorded instrument shall be provided to the Los Angeles County Assessor's Office.

C. The fee for processing a voluntary merger of parcels shall not exceed \$50 (fifty dollars).

In contrast to the requirements pertaining to subdivisions, certificates of compliance, and lot line adjustments, the provisions for approval of a merger, as detailed in LIP Section 15.4.1 A2, require only that: "the City determines that the merger is not inconsistent with any policy or standard of the LCP that protects environmentally sensitive habitat areas and/or visual resources of the coastal zone..." This is in recognition of the fewer potential impacts to coastal resources that could result from the merging of existing parcels into one lot. These provisions do not require the resultant, merged parcel to meet the density, minimum lot size, or lot width standards of the LCP. Such a requirement would produce an illogical result in that substandard parcels could never be merged unless they met the minimum density or lot size standard. There is a clear benefit to reducing the total number of parcels, even if the resultant lots are closer to required standards, but are still undersized.

So, the appellants' contention that the City's approval of the lot merger associated with the subject project is not consistent with the provisions of the LCP regarding density and lot size standards does not raise substantial issue because such standards do not apply to mergers.

The appellants also state that the approved lot merger is not consistent with the shoreline development provisions of the LCP in that it would create a new lot where a shoreline protective device would be necessary for the construction of new development. Section 10.4 R of the Malibu LIP states that:

#### 10.4 DEVELOPMENT STANDARDS

...

R. Land divisions, including subdivisions, lot splits, lot line adjustments, and certificates of compliance which create new beachfront or blufftop lots, shall not be permitted unless the subdivision can be shown to create lots which can be developed without requiring a bluff or shoreline protection structure. No new lots shall be created that could require shoreline protection or bluff stabilization structures at any time during the full 100 year economic life of the development.

The language of LIP Section 10.4 R specifically lists those land divisions that are subject to its requirements as: “**subdivisions, lot splits, lot line adjustments, and certificates of compliance**”. So, while mergers are a type of land division, they are not subject to the provisions of LIP Section 10.4 R. As such, the City’s action to approve the lot merger and development, including a shoreline protective device, on the resultant parcel is not in conflict with LIP Section 10.4 R, because this provision does not apply to lot mergers.

Therefore, the Commission finds that the appellants’ contention that the approved lot merger is not consistent with the LCP does not raise substantial issue.

#### **STRINGLINE**

The appellants assert that the City’s approval of a stringline variance is not consistent with the LCP because it will confer a special privilege on the applicant, counter to the requirements of Section 13.26.5 C of the Malibu LIP. The appeal states that:

Staff, in preparing its report, completely ignored other properties in the “same vicinity and zone” in making its findings that there is no special privilege conferred. In fact, Appellants repeatedly urged staff to consider other homes in the same vicinity and zone that had been developed at a substantial angle to protect views of neighboring properties. Staff’s presentation at the hearing not only ignored these other homes, but also unfairly focused on certain homes, while disregarding others, to push through passage of the application.

The stringline provisions for beachfront development are found in both Section 3.6 G and Section 10.4 of the Malibu LIP.

3.6 G. Beachfront Yards/Setbacks. Notwithstanding the above requirements, the following yard requirements apply to beachfront lots:

...

3. Rear. Setbacks for infill development are determined by the stringline rule. Separate setback standards apply to dwellings and decks, as indicated below. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible.



- a. Dwellings. For a dwelling, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast dwelling. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast dwelling.
  - b. Decks and patios. For a deck or patio, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast deck or patio. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast deck or patio.
  - c. All infill development shall be set back a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. The location of the mean high tide shall be determined in consultation with the State Lands Commission.
4. Variance. Where the application of the stringline rule results in a stringline substantially inconsistent with adjacent development, the applicant may apply for a variance pursuant to Section 13.26 of the Malibu LIP.

...

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

Staff would note that the stringline provisions are intended to limit the seaward encroachment of beachfront development, both to minimize the risk of hazards on such development, and to minimize impacts on public access. The stringline is not intended to protect the views from adjacent or nearby existing private development. As detailed in LIP Section 3.6 G4, where the application of the stringline rule results in a stringline substantially inconsistent with adjacent development, the appropriate remedy is a variance.

In this case, the City determined that it was appropriate to grant a variance of the stringline provisions. The variance is to allow the stringline to be drawn straight across the site, extending from the nearest adjacent corner of the existing structure to the east (downcoast), but not connecting to the nearest adjacent corner of the structure to the west (upcoast). The residence on the parcel to the west of the subject site is an anomaly on this stretch of beach, because the road does not extend onto that site and the residence is not located seaward of the road, as is the case with the residences to the east. Connecting the stringline to the residence on the west would result in a

development that would be substantially inconsistent with adjacent development. Exhibit 7 is an oblique aerial photograph that shows the project site and surrounding development.

Section 13.26 of the Malibu LIP provides the findings that need to be made by the City when a variance is granted. In addition to the standard findings required for the approval of variances, Section 13.26.5 F specifically requires that the City find that the project provides maximum feasible protection to public access. Section 13.26.5 states that:

13.26.5 Findings

Following a public hearing, the Planning Commission shall record the decision in writing. The Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, only if it makes all of the following findings of fact supported by substantial evidence that:

- A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.
- B. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.
- C. The granting of the variance will not constitute a special privilege to the applicant or property owner.
- D. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.
- E. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.
- F. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.
- G. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property
- H. The subject site is physically suitable for the proposed variance.
- I. The variance complies with all requirements of state and local law.
- J. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The City made each of the applicable required findings in approving the stringline variance, including that the variance will not constitute a special privilege to the applicant. The Commission finds that the stringline variance, in this case, would not constitute a special privilege to the applicant, as the approved residence would extend no further seaward than existing development on the adjacent parcels to the east.

Further, although the residence on the parcel to the west is located a significant distance landward, there is also an existing detached deck structure on the parcel which extends seaward approximately in line with nearby residences. As such, the subject approved structure will not occupy area that would otherwise have been available for public access. The residence will be built on caissons, with a vertical bulkhead under the structure, which is designed only to protect the onsite wastewater treatment system, consistent with the requirements of the LCP. As such, the Commission concludes that impacts of the development on public access will be minimized.

Therefore, the Commission finds that the appeal does not raise substantial issue with regard to the granting of the stringline variance.

### **NEIGHBORHOOD STANDARDS**

The appellants contend that the size and scope of the proposed development is not consistent with neighborhood standards. The appeal does not cite any specific policy or provision of the LCP that requires such consistency.

The LCP contains many provisions that limit the size of development, including maximum square footage, height, setbacks, maximum permeable area, ESHA buffer, view corridor, etc. These development standards are primarily designed to ensure that new development is sited and designed to minimize impacts to coastal resources. Staff can identify no provisions of the LCP that limit the size of development to ensure consistency with the size of existing development in the surrounding area. There is one provision found in LIP Section 3.6L that allows for an increase in height, size, development area, or decreased setbacks (except ESHA or bluff setbacks, view corridors, or height restrictions to minimize impacts to visual resources), where such modifications do not exceed the neighborhood standards. However, the City did not apply this provision to the approved development. As described above, the City approved a variance from the stringline standards. The approved development was determined to be consistent with the other required development standards of the LCP.

As such, this contention raises no substantial issue with regard to consistency of the approved project with the policies and provisions of the certified LCP.

### **D. CONCLUSION**

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the City's certified LCP regarding shoreline development, stringline, or neighborhood standards. Therefore, the

Commission finds that the appeal does not raise a substantial issue as to the City's application of the policies of the LCP in approving the proposed development.

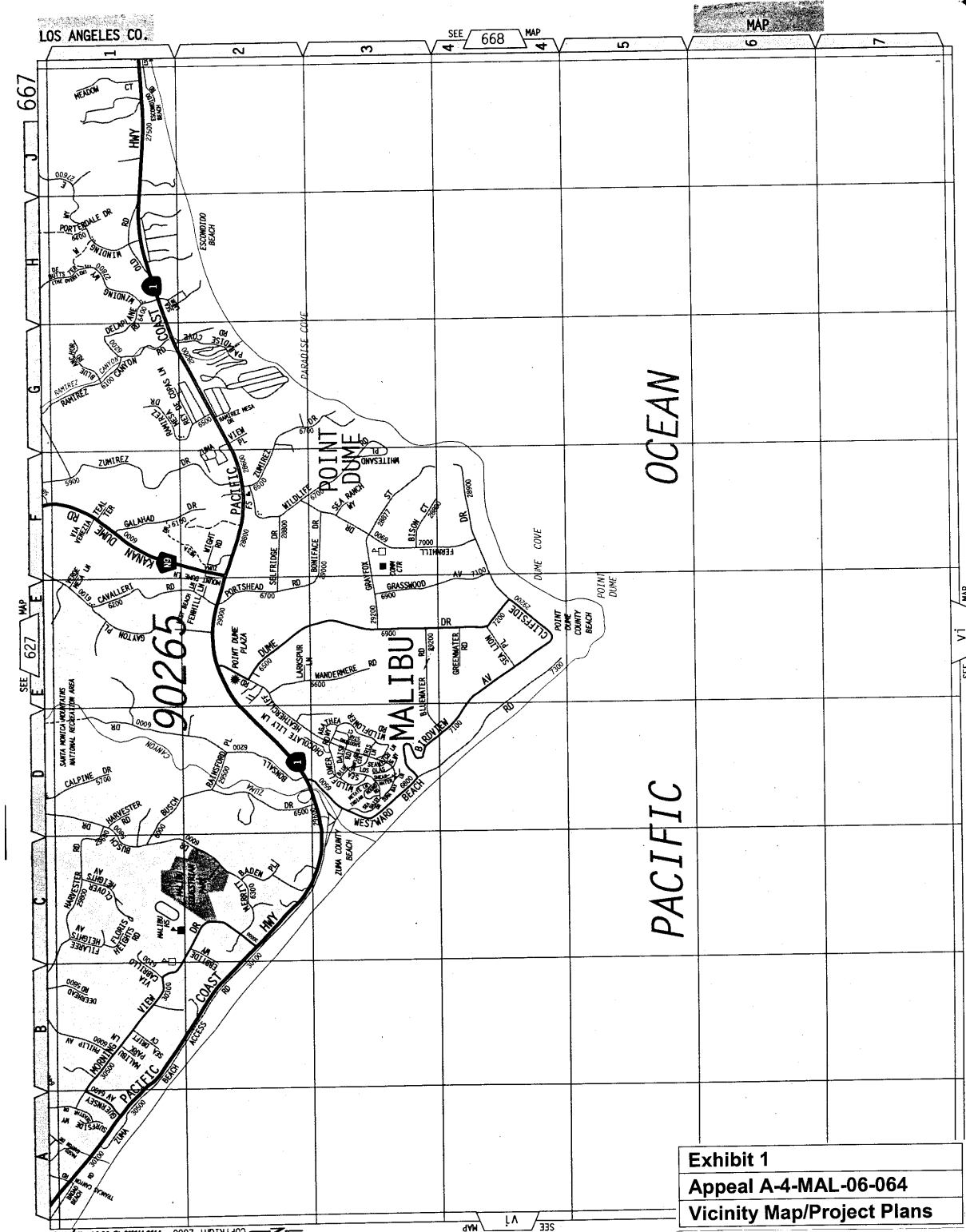


Exhibit 1  
Appeal A-4-MAL-06-064  
Vicinity Map/Project Plans

THOMAS BURN MAPS  
COPYRIGHT 2000



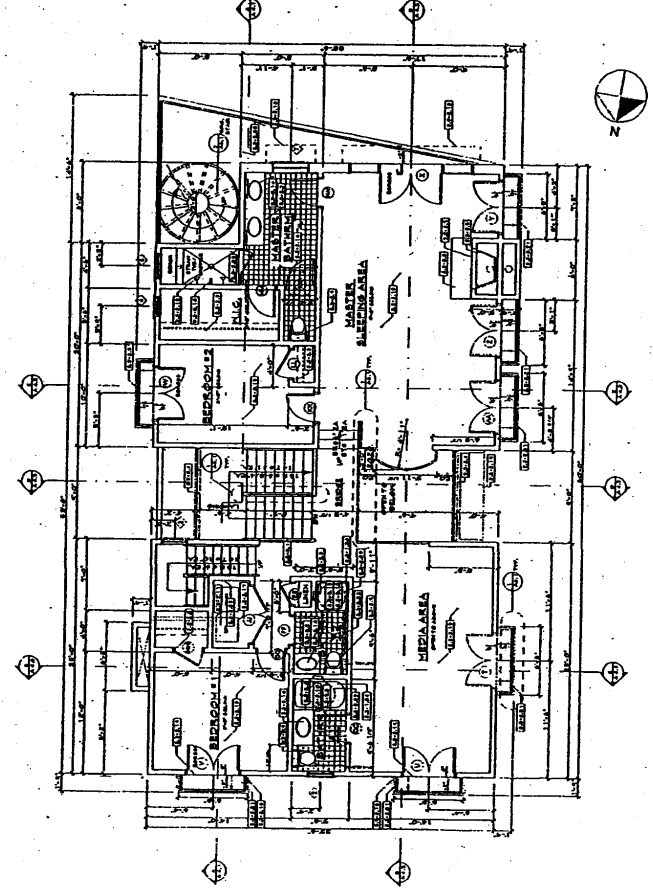






	STIBEL RESIDENCE 37902 BUCHHEIM ROAD MALDEN, CA 94028	194	SECOND FLOOR PLAN 10/11/06
	JOB ADDRESS:	194	REVISIONS 1 2 3 4 5 6 7 8 9 10

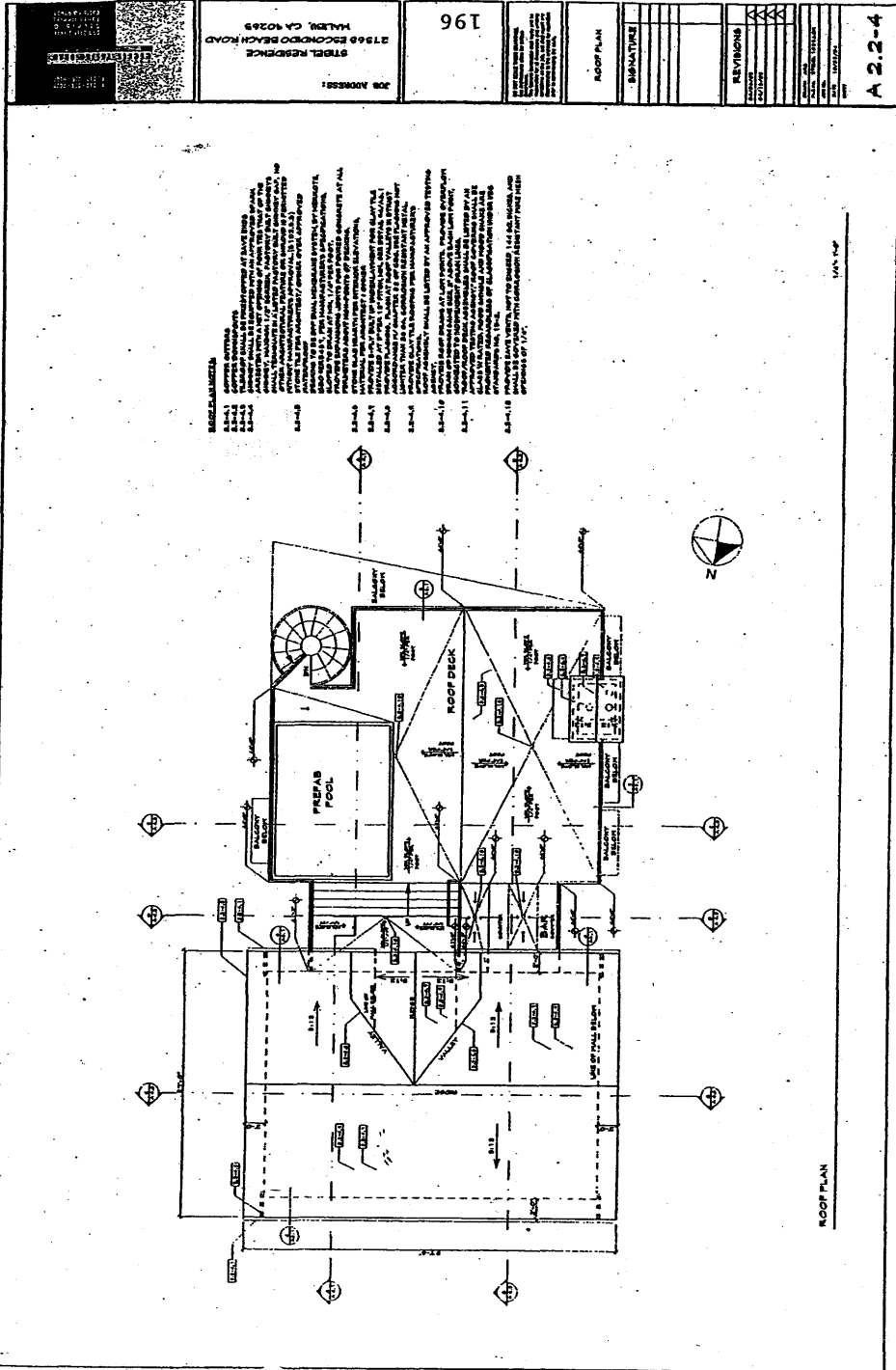
- REVISIONS**
- R-001: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-002: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-003: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-004: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-005: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-006: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-007: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-008: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-009: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-010: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-011: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-012: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-013: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-014: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-015: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-016: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-017: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-018: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-019: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.
  - R-020: REVISIONS TO THE SECOND FLOOR PLAN TO ADD A SECOND BATHROOM AND TO RELOCATE THE STAIRS TO THE REAR OF THE HOUSE.



SECOND FLOOR PLAN

A 2.2-2













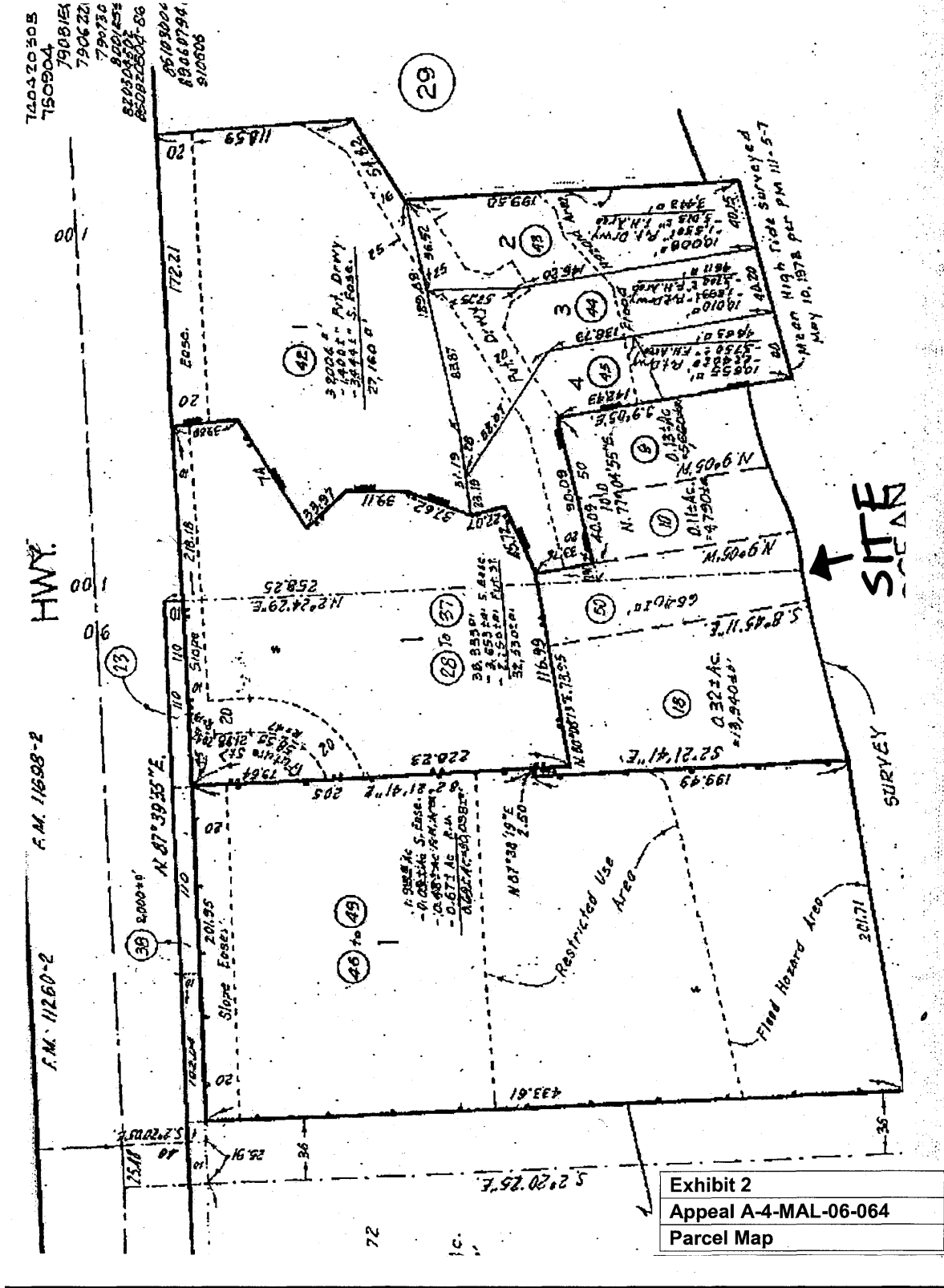


Exhibit 2
Appeal A-4-MAL-06-064
Parcel Map



STATE OF CALIFORNIA - THE RESOURCES AGENCY  
**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

RECEIVED  
JUN 01 2006



CALIFORNIA  
COASTAL COMMISSION

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

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

**SECTION I. Appellant(s)**

Name: Daniel Alberstone/Lisa Ogawa

Mailing Address: 5500 Shirley Avenue

City: Tarzana

Zip Code: 91356

Phone: (310)255-9158

**SECTION II. Decision Being Appealed**

1. Name of local/port government: City of Malibu
2. Brief description of development being appealed: Development of single-family residence in violation of LCP.
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
27368 Escondido Beach Road, Malibu, California 90265
4. Description of decision being appealed (check one.):
  - Approval; no special conditions
  - Approval with special conditions:
  - Denial

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

<b>TO BE COMPLETED BY COMMISSION:</b>	
APPEAL NO:	A-4-MAL-06-064
DATE FILED:	6/1/06
DISTRICT:	So. Central Coast

<b>Exhibit 3</b>
<b>Appeal A-4-MAL-06-064</b>
<b>Appeal</b>

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

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

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

6. Date of local government's decision: May 22, 2006

7. Local government's file number (if any): City Council Resolution N0:06-30

**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:

Jeff Stibel  
28910 Hampton Pl.  
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.

- |  |   |
|--|---|
| <p>(1) Alan Block, Esq.<br/>1901 Avenue of the Stars<br/>Suite 470<br/>Los Angeles, CA 90067-6006</p>                                | <p>(5) Stefanie Edmondson, AICP<br/>Associate Planner<br/>City of Malibu<br/>23815 Stuart Ranch Road<br/>Malibu, CA 90265</p> |
| <p>(2) James Eserts, A.I.A.<br/>Eserts Castro-Bran<br/>858 21st Street<br/>Studio D<br/>Santa Monica, CA 90403</p>                   |   |
| <p>(3) Escondido Beach Association<br/>Molly Novak<br/>27222 Escondido Beach Road<br/>Malibu, CA 90265</p>                           |   |
| <p>(4) John R. Fletcher, Esq.<br/>Fletcher, White &amp; Adair<br/>28925 Pacific Coast Hwy.<br/>Second Floor<br/>Malibu, CA 90265</p> |   |

---

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

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

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

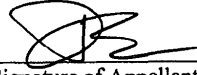
SEE ATTACHMENT 1

---

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

**SECTION V. Certification**

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



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

Date: May 31, 2006

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: \_\_\_\_\_

ATTACHMENT 1

1. The Commission's approval of the Applicant's request for a lot merger is in violation of the LCP.

Chapter 10 of the Local Implementation Plan for the City of Malibu Coastal Program ("LCP") expressly states, in part, that its purpose and intent is to ensure that "new development is sited and designed to not require the construction of a shoreline protection device that would create or contribute to shoreline erosion or alter natural landforms." (Section 10.1)

Section 10.2 of the LCP provides that all development requiring a coastal development permit, including residential structures and shoreline protective devices on any parcel of land that is located on or along the shoreline shall be governed by the policies, standards and provisions of Chapter 10 of the LCP in addition to any other policies or standards contained elsewhere in the certified LCP, which may apply. That section further provides that where any policy or standard provided in Chapter 10 conflicts with any other policy or standard, the policies, standards or provisions contained in Chapter 10 "shall take precedence."

Section 10.4, subdivision R provides, in pertinent part, that land divisions (which by definition under Chapter 2.1 includes lot mergers<sup>1</sup>) which create new beachfront lots *shall not be permitted unless it can be shown that the lot created can be developed without requiring a shoreline protection structure at any time during the full 100 year economic life of the development.*

Here, the subject property sits on two parcels that individually could not practicably be developed in light of the size and odd shape of each lot. The Applicant's request proposes to merge these two unbuildable lots and to have both the dwelling and septic system be placed on the sandy beach protected by a shoreline protection device directly in violation of Section 10.4 R of the LCP.

Prior to issuance of its report, Appellants informed staff of this violation. Nevertheless, staff completed its report and failed to address this violation therein. Prior to the hearing before the Planning Commission, Appellants communicated with staff to comment that the staff's report completely ignored this violation. Staff replied that "the definitions in Section 2.1 are not an exhaustive list and the LCP is not without inconsistency and vagueness. With that in mind, staff *suggests* that the term "merger" is not defined, but is listed logically under the definition "Land Division" because all items included in the definition are subject to the Subdivision Map Act." Staff further commented, without explanation, that a "lot merger" is not creating a new parcel.

At the Planning Commission hearing, despite Appellants' urging, the Commission members failed to address this issue at all.

---

<sup>1</sup> "LAND DIVISION-includes subdivision (through parcel map, tract map, grant deed or any other method), lot line adjustments, redivisions, *mergers* and certificates of compliance (except as provided in LUP Policy 5.40)." (emphasis added.)

Following the Planning Commission hearing, staff informed Appellants that there is no “formal” interpretation with regard to “land divisions.” Remarkably, when specifically confronted with the question “If there is no preexisting interpretation [of the term Land Divisions as relates to 10.4R of the LCP] then can you tell me on what basis the determination was made by staff that a lot merger does not create a new lot and that Land Divisions does not include lot mergers in 10.4R of the LCP”, staff replied “Please refer to the Subdivision Map Act for further information with regard to lot mergers.”

On appeal to the City Council, staff submitted proposed “Resolution No. 06-30”, which at Section 3, subdivision A titled Findings for Denial states, in part, that “[t]he appellant...asserted that the lot merger ‘creates’ a new parcel which then violates Section 10.4.R of the LCP and does not meet the minimum lot size standards of the SF-M zoning district. However, a lot merger is simply a lot line adjustment where the adjusted lot line is removed. There are no ‘new’ parcels created when the lots are combined. LCP Section 10.4.R states that ‘Land divisions, including subdivisions, lot splits, lot line adjustments, and certificates of compliance which create new beachfront or blufftop lots, shall not be permitted unless the subdivision can be shown to create lots which can be developed without requiring a bluff or shoreline protection structure.’ Lot mergers are not included in this listing because they do not create new lots. As no new lots are being created, the minim lot size requirements are not applicable. The merger brings two non-conforming lots closer to conformity.”

First, there is no question that the merger of two lots creates a new lot. In fact, in this particular instance each of the two lots originally had its own Assessor’s Parcel Number (“APN”) and now, being combined, have one APN. Staff’s conclusion is simply not supported by either the facts or controlling law. The definition of land divisions so as to include “lot mergers” should control in the interpretation of the statute unless expressly excluded. Here, there is no preexisting interpretation that has been relied upon by staff, and staff merely suggests that the term “merger” is not defined. Of course that “suggestion” completely ignores Section 10.4 R. Moreover, if the intent and purpose behind Section 10.4 R is to limit the amount of development on the shoreline, as the City Attorneys’ office suggests, in this instance allowing the lot merger would to allow development where it otherwise could not exist given the odd shape of each individual lot.

Second, the City’s conclusion that “a lot merger is simply a lot line adjustment where the adjusted lot line is removed actually works against the City’s conclusion. In that regard, the City has taken the position that the reason the term lot mergers is not expressly referenced in section 10.4.R is because “they do not create new lots.” Besides the fact that a lot merger does create a new lot as will be shown below, “lot line adjustments” are expressly included, and the City has found, as stated above that a lot merger is simply a lot line adjustment. Therefore, whether the section speaks in terms of lot line adjustments or lot mergers, the proposed development is expressly prohibited by the LCP.

Third, as alluded to above, a lot merger does, in fact, create a new lot. Chapter 2 of the LCP defines “Lot” as “a designated parcel, tract or area of land consisting of a contiguous quantity of land in one ownership established by plot, subdivision, or as otherwise permitted by law. “Lot Area” is defined as “the total area within the lot lines of a lot, excluding any street rights of way.” A lot merger is included under the definition of “Land Division.” Certainly, the

lot created by the merger falls within the above definitions. Moreover, there can be no dispute if a "lot split" was involved, that the result would be two new lots. Conversely, a new lot is created when two lots are merged resulting, as here with a new defined lot area, a new legal description, and a new APN.

Fourth, the final numbered paragraph of the proposed Resolution, paragraph 31, titled "Lot Merger" states that "[a]n instrument evidencing the merger shall be recorded. The recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, *and the new parcel that results after the merger*". Therefore, the City staff, although strongly advocating that a lot merger creates no new lot, actually presented the City Council with a resolution admitting that a new parcel is, in fact, created after the lot merger.

At the hearing before the City Council, Appellants raised this specific issue. In response, the City Attorney curiously informed the City Council, as well as all in attendance, that the Resolution would be changed, as it ultimately was, now reflecting that "[t]he recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, *and the altered but not "new" or additional parcel that results after the merger*". Besides impliedly conceding that if it is found that the lot merger, or lot line adjustment, creates a "new" parcel then development would be prohibited in this instance, the City of Malibu is simply wrong. A lot merger does not merely "alter" the parcels as the City suggests, it merges the two parcels resulting in a new lot, and its argument otherwise is belied by the facts and the controlling law. The City Attorney was simply attempting to make a square peg fit into a round hole. However, no amount of maneuvering by the City changes the fact that a lot merger creates a new lot and is subject to the restrictions of section 10.4.R of the LCP.

Finally, Chapter 3 of the LCP, which defines Single Family Residential as a distinct zone district, further prohibits the Applicant's request for a lot merger. That chapter makes no distinction between beachfront and non-beach front lots. *Section 33, subdivision B requires that all new lots within the Single Family Residential District have a minimum lot width of 80 feet.* Here, the proposed development is in violation of the LCP because it proposes a lot merger, which will create a single lot of merely 43 feet, well below the minimum requirements of Section 3.3, subdivision B of the LCP. The City Council, finding that no new lot was created, found that the minimum lot width requirement was not applicable. However, because a lot merger does, in fact, create or result in a new lot, the City Council's decision was in direct violation of both sections 10.4 R and 33 of the LCP.

2. **The Applicant's request for a stringline variance should be denied because it will confer a special privilege on the Applicant.**

Section 10.4, subdivision G of the LCP provides that in existing beachfront developed areas, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Here, the Applicant has proposed a stringline, which is clearly inconsistent with this mandatory rule. Both the Applicant and staff, as evidenced by Applicant's variance request (approved by staff), concede this fact.

Section 13.26 of the LCP provides that a variance shall not be granted which confers a

---

special privilege inconsistent with the limitations upon other properties in the same vicinity and zone in which the subject property is situated. Section 13.26.5, subdivision C requires a specific written finding *supported by substantial evidence in the record* that the granting of the variance will not constitute a special privilege to the applicant or property owner before the Planning Commission may approve an application for variance. Here, the record is devoid of the substantial evidence required.

Staff, in preparing its report, completely ignored other properties in the “same vicinity and zone” in making its findings that there is no special privilege conferred. In fact, Appellants repeatedly urged staff to consider other homes in the same vicinity and zone that had been developed at a substantial angle to protect views of neighboring properties. Staff’s presentation at the hearing not only ignored these other homes, but also unfairly focused on certain homes, while disregarding others, to push through passage of the application.

Moreover, at the hearing before the City Council staff attempted to counter Appellants arguments by suggesting for the first time (i.e. staff did not raise this issue before the Planning Commission) that the reason why these other homes were developed at a substantial angle was because they were in a flood zone. However, upon questioning by members of the City Council, that belated reason did not hold up to scrutiny. Moreover, Appellants informed the City Council that they had spoken with the developer of the lots who informed them that the homes were built at an angle to adhere to the stringline rule.

Finally, staff recommended approval for the stringline variance tied to a legal non-conforming pier-like deck maintained by the property owner immediately west of the subject lot. That pier-like structure is dilapidated and poses a serious safety risk to the beach-going public. Staff and some members of the Planning Commission and the City Council viewed first-hand the dangerous condition of this deck, but nevertheless “grandfathered” in that deck by tying the proposed stringline of the Applicant directly to the end of that deck. Appellants urged the City not to tie the stringline to this illegal structure but Appellants’ complaints were rejected.

3. **The size and scope of the proposed development is not consistent with neighborhood standards and should be reduced.**

The proposed development is for an approximately 4,000 square foot home (including a two car garage), 28 feet in height, with a pool on the roof. The lot is 43’ in width. The home, as proposed, towers over Appellant’s 1,200 square foot house, and is much larger than most homes on Escondido Beach Road in relation to their lot size. Moreover, despite Appellants complaints, the City approved the home with a myriad of large windows and balconies, looking directly into Appellants’ home and completely eliminating all rights of privacy for Appellants. The City also ignored these complaints. Based on the size and location of the lot, Appellants contend that the size of the home should be reduced and the windows and balconies facing directly into Appellants’ home should be eliminated entirely.



*Denning*

RESOLUTION NO. 06-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NOS. 06-003 AND 06-004 UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT PERMIT NO. 04-038, LOT MERGER NO. 05-004, VARIANCE NO. 05-015 TO ALLOW RELIEF FROM THE STRINGLINE SETBACK DEVELOPMENT STANDARD, AND A SITE PLAN REVIEW FOR CONSTRUCTION ON SLOPES GREATER THAN 3 BUT LESS THAN 2½:1 FOR THE CONSTRUCTION OF A NEW, 3,578 SQUARE FOOT, SINGLE-FAMILY BEACHFRONT RESIDENCE INCLUDING A 457 SQUARE FOOT GARAGE, A SHORELINE PROTECTIVE DEVICE (BULKHEAD), AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM OF TWO VACANT BEACHFRONT LOTS LOCATED AT 27368 ESCONDIDO BEACH, ALSO KNOWN AS 27368 PACIFIC COAST HIGHWAY (STIBEL)

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

Section 1. Recitals.

- A. On November 24, 1992, an application was submitted to the City for construction of a 3,550 square foot, single-family residence with the stringline drawn from the building's stringline to the east and the deck stringline to the west. The project was conditionally approved in December of 1992. On January 19, 1993, the project was appealed. On February 22, 1993, the appeal was considered by the City Council. The Council denied the appeal and conditionally approved construction of a single-family residence with the stringline as requested.
- B. On November 16, 1994, the California Coastal Commission (CCC) approved an application for the construction of a 2,599 square foot, 28 feet high single-family residence with a four-car garage (800 square feet), an alternative onsite wastewater treatment system (AOWTS), and bulkhead. The approval included the request to draw the stringline as proposed in the current application.
- C. On February 4, 2002, an application was submitted to the City for construction of a 3,299 square foot, two-story, single-family residence, a 599 square foot garage, and a bulkhead. The application received City approval on April 21, 2003.
- D. On August 31, 2004, a request was submitted to the City to revise the previously approved plans for the above referenced single-family residence to a 2,845 square foot, two-story beachfront single-family residence, a 740 square foot garage, and a bulkhead. A revised approval was issued by the City on October 7, 2004.
- E. On November 8, 2004, an application for Coastal Development Permit (CDP) No. 04-038, LM No. 05-004, VAR No. 05-015, and a site plan review (SPR) was submitted by Jim Eserts on behalf of the new property owner (Jeff Stibel) to the Planning Division for processing.

Exhibit 4
Appeal A-4-MAL-06-064
Malibu City Council Resolution

- F. On April 15, 2005, story poles were placed on the subject property to demonstrate the height of the proposed project and to analyze visual impacts. Subsequent to story pole placement, staff received calls and correspondence from the neighbor directly to the east (27360 Escondido Beach), Daniel Alberstone.
- G. On April 20, 2005, staff met with Mr. Alberstone at City Hall, discussed the proposed project and went over the submitted materials. On April 28, 2005, staff met Mr. Alberstone at the project site, discussed the proposed project and heard Mr. Alberstone's concerns regarding the proposed structure height, stringline variance, Fire Department access and septic tank location.
- H. On May 25, 2005, the City received a letter from Prince Stanislas Klossowski de Rola, adjacent property owner at 27408 Escondido Beach Road opposing the proposed project.
- I. On June 10, 2005, Mr. Alberstone submitted a letter outlining his concerns of the proposed project. His concerns included: (1) stringline determination; (2) location of the onsite wastewater treatment system; (3) fire hazards; (4) primary view corridor; (5) size of the project; (6) homeowners association position; and (7) impacts of construction.
- J. On November 28, 2005, Planning Division staff met with Mr. Alberstone and his attorney (John R. Fletcher) and provided an opportunity for review of the application and supporting documentation. Copies of requested materials were subsequently provided to Mr. Fletcher.
- K. On January 23, 2006, Planning Division staff received additional correspondence from Mr. Alberstone. He stated that lawsuits with regard to a shared easement had been filed against Mr. Stibel and requested that any action on the CDP application be deferred until the outcome of any court action. Staff advised Mr. Alberstone, that any matter with regard to easements is civil in nature and should not impact the proceedings for the CDP.
- L. On January 26, 2006, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on January 25, 2006, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- M. On February 6, 2006, the Planning Commission held a duly noticed public hearing and approved the project.
- N. On February 14, 2006, an appeal (Appeal No. 06-003) of the Planning Commission's decision was filed by Daniel Alberstone and Lisa Ogawa.
- O. On February 16, 2006, an appeal (Appeal No. 06-004) of the Planning Commission's decision was filed by Waverly Properties, Inc.
- P. On April 20, 2006, pursuant to Local Implementation Plan (LIP) Section 13.12.2 and 13.20.1(E), a 21-day Notice of City Council Public Hearing on Appeal Nos. 06-003 and 06-004 was published in a newspaper of general circulation within the City. On April 20, 2006, a public notice was mailed to the owners and tenants of the property within a radius of 500 feet of the property involved in the application.

P. On May 22, 2006, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, public testimony, and all related information.

Section 2. Appeal of Action

The appellants have appealed Planning Commission Resolution No. 06-08, contending that: (1) the findings or conditions are not supported by the evidence or the decision is not supported by the findings; (2) there was a lack of fair or impartial hearing; and (3) the decision was contrary to law. Additional information submitted with the appeal includes numerous statements to support the appeal and refers to a number of Local Coastal Program (LCP) sections referenced in the Planning Commission's approval.

The appeal letters cite four specific issues being appealed (lot merger, variance request, prescriptive easement, and neighborhood compatibility) which relate to General Coastal Development (LIP-Chapter 13) Finding A; Scenic, Visual and Hillside Resource Protection Ordinance (LIP-Chapter 6); and Variance (LIP-Chapter 13) Findings 3 and 4.

Section 3. Findings for Denial

Based on evidence in the record as a whole and in the Council Agenda Report for the May 22, 2006 City Council meeting, the City Council hereby makes the following findings of fact denying Appeal Nos. 06-003 and 06-004 and affirming that the proposed project was approved in accordance with the LCP and applicable State and local laws and (1) the required findings are supported by substantial evidence; (2) there was a fair hearing before the Commission; and (3) that the Planning Commission's decision was consistent with the law.

A. The appellant [Appeal (AP) No. 06-003] asserted that the lot merger "creates" a new parcel which then violates Section 10.4.R of the LCP and does not meet the minimum lot size standards of the SF-M zoning district. However, a lot merger is simply a lot line adjustment where the adjusted lot line is removed. There are no "new" parcels created when the lots are combined. LCP Section 10.4.R states that "Land divisions, including subdivisions, lot splits, lot line adjustments, and certificates of compliance which create new beachfront or blufftop lots, shall not be permitted unless the subdivision can be shown to create lots which can be developed without requiring a bluff or shoreline protection structure." Lot mergers are not included in this listing because they do not create new lots. As no new lots are being created, the minimum lot size requirements are not applicable. The merger brings two non-conforming lots closer to conformity.

B. The appellants (AP No. 06-003 and AP No. 06-004) asserted that granting a stringline variance confers a special privilege on the applicant and that the appropriate findings were not supported by substantial evidence in the record. A variance is appropriate where, because of circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. The stringline variance request has been analyzed and reviewed by the City and the California Coastal Commission on a number of occasions. Evidence in the record supporting the variance request includes the following:

- Aerial photo from 1972 showing that the requested stringline was well established in 1972.
- Aerial photo from June 2005, showing the proposed stringline and adjacent structures
- Site Plan Review No. 92-323 dated February 22, 1993
- California Coastal Commission staff report dated November 16, 1994

An excerpt from the Coastal Commission Staff Report states:

“The applicant proposed structure stringline extends from the nearest corner of the building immediately adjacent to the east straight across the proposed project site. The line does not connect to the existing structure on the lot immediately adjacent to the west. Staff notes that it is appropriate to draw the stringline in this manner. ... To connect the line to the existing structure which is located significantly further landward would deny the applicant the ability to construct a building in keeping with what currently exists on the beach.”

- Plot Plan Review (PPR) No. 02-019 approved February 4, 2002
- Notice of Determination approving revised PPR No. 02-019 on April 28, 2003
- Revised Notice of Decision re-approving PPR No. 02-019 dated October 7, 2004
- Email from Mr. Jack Ainsworth, Chief of Staff at the CCC's South Central Coast Office dated May 26, 2005
- Photographs of the site and adjacent properties included in the Planning Commission Agenda Report dated February 6, 2006

After considering the findings for the requested variance, the Planning Commission found that the proposed variance was necessary to preserve the rights of the property owner, and the project as proposed and conditioned would be consistent with all applicable policies of the Local Coastal Program. The Commission's findings are supported by substantial evidence in the record. Accordingly, the Planning Commission properly granted the variance.

C. The appellants (AP No. 06-004) asserted that since they have filed suit against the applicant over an alleged prescriptive easement, the applicant's CDP application should be deferred until there is a court ruling. Staff responded that the CDP application was complete and the applicant is entitled to a hearing. The easement area is not a part of the applicant's proposed development envelope and therefore, does not impact the City's review of the requested coastal development permit. The easement lawsuit is a civil issue.

D. The appellants (AP No. 06-003 and AP No. 06-004) assert that the size and scope of the proposed development is not consistent with the neighborhood and should be reduced.

LIP General Coastal Development Permit Finding C.3, states that “The subject property consists of vacant in-fill lots. The adjacent properties are developed with older single-story single-family residences. However, newer properties a few parcels away have been developed with larger homes of similar mass, bulk and scale as the applicant proposes for the subject property. The project is proposed to be constructed on caissons with a bulkhead and will not be constructed substantially different than the

newer residences in the neighborhood.”

LIP Scenic Visual and Hillside Resource Protection Ordinance Finding No. 1, states that “Due to the restrictive lot dimensions, there exists no alternative building site locations where development would not be visible. However, the project has been designed to avoid any adverse or scenic impacts by emulating the mass bulk and scale of other newly developed single-family residences along the beach. In addition, the proposed project is within the development envelope allowed for the subject site with the merged lots.”

The proposed project is within the development envelope allowed for the subject property and meets all required setbacks and building height standards.

Staff presented a slide at the Planning Commission hearing on February 6, 2006, which showed that the proposed project is consistent with recent development (since 1984) near the subject parcel. Staff has evaluated all development on Escondido Beach Road and can attest that recent development is considerably larger than that which was constructed in the 1940s through the 1960s. The average size for pre-1984 structures is 1,490 square feet, while the average size for post-1984 structures is 3,697 square feet. The complete breakdown of square footages for the Escondido Beach neighborhood is included as Attachment 6 of the City Council Agenda Report.

In reviewing the overall character of the neighborhood, staff looked at past development, existing development and the future development potential of the subject area. Staff notes that the 1972 aerial photo (see City Council Agenda Report Attachment 4) shows a large three-story apartment building two parcels down to the east from the subject property. The neighborhood character has been a mix of dwelling sizes since at least 1972, currently exists as a mix of dwelling sizes, and will most likely continue to be a mix of dwelling sizes until all lots are re-developed. The development trend on Escondido Beach Road, as on all beachfront property in Malibu, is to build out the lot to its maximum development potential due to the high cost of the property and so that property owners can maximize their investment. The development and redevelopment (“improvements”) can be perceived as a detriment to neighborhood character by some property owners or as a benefit by others in that it maintains or raises property values.

The required analysis has been done and is supported by substantial evidence in the record. The proposed development is not inconsistent with the neighborhood character.

E. The project otherwise was approved in accordance with the LCP and that the Planning Commission acted in such a manner that (1) the findings are supported by the evidence; (2) there was a fair and impartial hearing; and (3) that the decision was consistent with the law, as indicated in the Agenda Report and attachments for this appeal hearing.

Section 4. Findings of Fact for Approval of the Applications

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

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

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

The project, as conditioned, conforms to the LCP in that it meets the required development standards (see Planning Commission Agenda Report Table 2) with the exception of LIP Section 3.6(G) 3.a which requires that the rear yard setback for new development be determined by a stringline drawn from the nearest adjacent corner of the upcoast and downcoast dwelling. A variance has been requested to allow one stringline point to be drawn from the nearest downcoast deck instead of the edge of the landward dwelling.

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

The project is located between the first public road and the sea. However, the proposed project and related construction activities are not anticipated to interfere with the public's right to access the coast as the site offers no direct or indirect beach access. There is existing vertical public access directly to the west at 27420 - 27428 Pacific Coast Highway near Geoffrey's restaurant. In addition, the applicant has offered to provide a lateral access easement; therefore, the project conforms to the public access and recreation policies.

*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 not result in significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements of the LCP and the M.M.C. The proposed single-family residence and associated development is a permitted use within the Single Family Medium zoning classification of the subject property. The project will not result in potentially significant impacts on the physical environment. Due to size constraints of the subject property, the proposed location is the least environmentally damaging alternative.

The project as proposed has been found to be Categorical Exempt under CEQA Section 15303 (a) new construction of single-family residence. Therefore, the project as proposed has been determined to be consistent with CEQA.

There are three alternatives that were considered to determine the least environmentally damaging.

1. No Project – The no project alternative would avoid any change in the project site, and hence, any change in visual resources. However, the project site is zoned SF-M. Thus, prohibiting economic use of the property; the no project alternative is not a legally feasible alternative.

2. Different location on the site - Other locations on the site were considered but due to the narrow lot width, setback restrictions, and Pacific Ocean to the rear of the property, shifting the proposed location of the house proved problematic as the majority of the subject site is within the wave uprush zone and development would require to be built on caissons and protected by a bulkhead. The original proposal was to install the AOWTS in the existing street, which would have required excavation of the street, and general disruption of the ingress/egress of the neighbors. Future servicing of the AOWTS would require re-excavation of the street, and further disruption of the ingress and egress of the neighbors. This is not the least damaging alternative.

3. Proposed Project - The subject property consists of vacant in-fill lots. The adjacent properties are developed with older single-story single-family residences. However, newer properties a few parcels away have been developed with larger homes of similar mass, bulk and scale as the applicant proposes for the subject property. The project is proposed to be constructed on caissons with a bulkhead and will not be constructed substantially different than the newer residences in the neighborhood. In addition, the current project proposes an AOWTS to be located beneath the proposed single-family dwelling behind the shoreline protective device (bulkhead). This location provides a greater horizontal distance separation between the new AOWTS, and the existing conventional onsite wastewater treatment system serving Geoffrey's restaurant, and the existing single-family residence located at the end of Escondido Beach Road. Finally, the AOWTS requires further wastewater treatment than the systems of the adjacent existing residences. Therefore, the proposed project is the least environmentally damaging alternative.

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

The subject parcel is not located in or adjacent to an Environmentally Sensitive Habitat Area (ESHA), ESHA buffer zone or any streams as designated in the Malibu Local Coastal Program LIP and is not subject to review by the Environmental Review Board. In addition, the City Biologist has determined this project to be exempt from biological analysis subject to LIP Section 4.4.4 (E).

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

As discussed above, the subject parcel is not designated as ESHA and the City Biologist has determined that the project is not expected to result in any new biological impacts. Accordingly, the findings in the ESHA Overlay are not applicable.

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

The subject site does contain a Eucalyptus tree and a Yucca tree which will be removed as part of the project. Since, neither tree is considered a protected or native tree species but are prohibited Non-Native Invasive Plants per the City Biologist, the native tree findings from Section 5.7 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. This project is not visible from a scenic road (PCH) but is visible from public areas on the beach. Therefore, the Scenic, Visual and Hillside Resource Protection Ordinance apply and the five findings set forth in LIP Section 6.4 are hereby made below.

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

Due to the restrictive lot dimensions, there exists no alternative building site locations where development would not be visible. However, the project has been designed to avoid any adverse or scenic impacts by emulating the mass bulk and scale of other newly developed single-family residences along the beach. In addition, the proposed project is within the development envelope allowed for the subject site with the merged lots. The use of non-metallic and non-glare siding and windows, as required by the LCP will help minimize visual impacts upon viewing the subject site.

On April 28, 2005, Planning Division staff met Mr. Alberstone at the project site and discussed his concerns with regard to his potential loss of private views. He currently has a view over Mr. Stibel's property which includes views of Paradise Cove and Point Dume. Staff discussed with Mr. Alberstone that primary view determinations (M.M.C. Section 17.40.040.17) exclude the first 18 feet in height of any proposed residence and are only evaluated in relation to a site plan review (request for construction in excess of 18-feet in height). Since the proposed site falls under beachfront development standards it has an allowed height limits of 24-feet for a flat roof and 28-feet for a pitched roof without a site plan review request and therefore, is not subject to a primary view determination.

Staff conducted another site visit on May 6, 2005, to confirm that story poles were in-place and conducted a visual impact analysis. The analysis of the project's visual impact from public viewing areas included site reconnaissance, view of the property from the beach, and review of the architectural plans. Staff determined that the proposed residence would result in a less than significant visual impact to public views from scenic areas.

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

As discussed in D. Scenic Visual and Hillside Resource Protection Ordinance, Finding 1. above the project has been designed to avoid any adverse or scenic impacts.

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

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



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

As discussed in D. Scenic Visual and Hillside Resource Protection Ordinance, Finding 1. above the project has been designed to avoid any adverse or scenic impacts.

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

As discussed in D. Scenic Visual and Hillside Resource Protection Ordinance, Finding 1. above the proposed project will have less than significant scenic and visual impacts.

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

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

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

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 is located on a site or in an area where the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. Therefore, the requirements of Chapter 9 of the LIP are applicable to the project and the required findings are made below.

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

The project was analyzed by staff for the hazards listed in the LIP Section 9.2.A. (1-7). Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City geologic data maintained by the City; 2) California GeoSystems, Inc. report dated February 26, 1990; 3) Strata-Tech Engineering Geologic Investigation dated July 6, 1992; 4) Wave Uprush Analysis by David W. Skelly dated January 2001; 5) Geoplan, Inc. Consulting Engineering Report dated July 23, 1994 and update dated February 11, 2002; 6) Engineering Geologic Report by Geoplan, Inc. dated December 12, 2002; 7) Geotechnical Investigation and update report by Stratum Geotechnical Consultants dated January 24, 2003; and 8) Supplemental Geotechnical Letter by Stratum Geotechnical dated June 11, 2004.

The General Plan shows that the project site is in the vicinity of the Malibu Coast Fault. The Malibu Coast Fault Zone has not been recognized as an active fault by the State and no special study zones have

been delineated along its length. The General Plan also shows the project site is in the vicinity of extreme fire hazards areas.

The project is located approximately 18 feet above sea level and could be subject to hazards from liquefaction (LIP Section 9.2.A.4), wave action (LIP Section 9.2.A.5) and potential tsunamis (LIP Section 9.2.A.6). Therefore, the proposed site was analyzed for geologic and structural integrity hazards.

Based on the reports by the applicant's geotechnical consultants, as well as a review of the Seismic Hazards Zone Maps and Earthquake Fault Zone Maps, the site is not within earthquake-induced landslide hazard zone or liquefaction hazard zone. In addition, per Geoplan, Inc.'s Engineering Geologic Report page 8, "Field exploration and examination of outcrops and exposures of bedrock confirm that the site is neither within nor is it affected by an active fault."

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

1. The project site has a low potential to be subject to liquefaction hazards;
2. The highest point of the project site is located approximately 18 feet above sea level and could be subject to hazards from wave action and tsunami hazard; and
3. The project site is in the vicinity of extreme fire hazard areas.

The City Coastal Engineer, the City Geologist, City of Malibu Public Works Department, City Environmental Health Specialist, and Los Angeles County Fire Department (LACFD) 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 project site soils consist primarily of existing fill and littoral sands that are subject to liquefaction and erosion due to wave action. The proposed two-story wood frame structure will be supported by caisson and grade-beam foundation system embedded into bedrock beneath the sandy soils. The building super-structure will be supported directly by the caissons and the ground floor will consist of a structural deck also supported by the caissons. Any exterior concrete slab-on-grade construction would be supported by compacted soils. The proposed structure foundations will extend into the bedrock which is not susceptible to liquefaction thus mitigating seismically induced settlement and earth movement due to liquefaction hazards.

#### Wave Uprush Hazard

Wave uprush analysis can be found in the Coastal Engineering Report by David W. Skelly of Skelly Engineering dated January 2001. The wave uprush study recommended that the bulkhead be founded into the formational material and have a minimum elevation of 15-feet above mean sea level (MSL). It also recognized that the adjacent structures have been in place for over 30 years and have not been subject to wave runup damage and recommended that the finished floor of the proposed structure be the same as those adjacent (23-feet above MSL). These recommendations are based not only on the

potential for wave runup but on the surface water drainage for Escondido Beach Road.

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. On April 30, 2004, Chief Burciaga of the LACFD sent a letter to then property owner Kay Ferguson, recognizing the development constraints on the subject property. On January 12, 2006, Planning Division staff contacted Chief Jesus Burciaga and reconfirmed the Fire Department's position with regard to the subject property. Per Chief Burciaga, LACFD is aware of the constraints on the site and has required that the proposed residence be fitted with fire sprinklers to mitigate concerns.

*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 Coastal Engineer, City Geologist, City Public Works Department and the LACFD, the project will not result in 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 any potentially significant environmental impacts because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen and 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 potentially significant adverse impacts of the development on the environment. The project is the least environmental 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 Coastal Engineer, City Geologist, City Public Works Department and the LACFD, the project will not have any significant adverse impacts on the site stability or structural integrity.

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

As stated in F. Hazards Finding 1 above, the proposed project as designed, conditioned, and approved by the City Coastal Engineer, City Geologist, City Public Works Department and the LACFD, the project will not have any significant adverse impacts on the site stability or structural integrity. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the

LCP.

In addition, pursuant to LIP Section 4.42, the property owner will be required, as a condition of approval, to record a deed restriction acknowledging and assuming the hazard risk of development at the site. The deed restriction shall state that the proposed project is subject to wave action, erosion, flooding, landslides or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against liability, claims, damages or expenses arising from any inquiry or damage due to such hazards.

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

The project does include development of a parcel located on or along the shoreline, a coastal bluff or bluff top fronting the shoreline as defined by the Malibu Local Coastal Program. Therefore, in accordance with Section 10.2 of the Local Implementation Plan, the requirements of Chapter 10 of the LIP are applicable to the project and the required findings 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 project is located between the first public road and the sea. However, the proposed project and related construction activities are not anticipated to interfere with the public's right to access the coast as the site offers no direct or indirect beach access. There is existing vertical public access directly to the west at 27420 - 27428 Pacific Coast Highway near Geoffrey's restaurant. In addition, the applicant has offered to provide a lateral access easement; therefore, the proposed project will have no significant adverse impacts on public access.

Per the Coastal Engineering Report by David W. Skelly, dated December 2001, the location of the bulkhead is chosen so that it does not have a significant impact on coastal processes. The preferred location from a coastal engineering standpoint would be in line with the bulkhead on the properties on either side as proposed. The property to the west has a timber bulkhead and the property to the east has a masonry/concrete bulkhead. The bulkhead below the residence to the east is one to two feet further seaward than the bulkhead on the property to the west. The optimal location to minimize impacts of the bulkhead on the shoreline and on the adjacent properties is to align the bulkhead with the timber bulkhead to the west as the proposed project requests. Therefore, it is anticipated that shoreline sand supply or other resources will not be impacted by the proposed project.

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

As discussed previously, the project will not result in any potentially significant impacts because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen 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 potentially significant adverse impacts of the development on the environment. The project is the least environmentally damaging alternative.

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

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

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

As stated in G. Shoreline and Bluff Development Finding 1 above, as designed, conditioned, and approved by the City Geologist and City Geotechnical Engineer the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources. The proposed shoreline protection structure (bulkhead) is located as far landward as feasible while maintaining building and plumbing code required setbacks.

Per LIP 10.5 (c) (page 184), all applications for proposed development on a beach or along a shoreline, including a shoreline protection structure, shall contain written evidence of review and determination from the California State Lands Commission (CSLC) relative to the proposed project's location to or impact upon the boundary between public tidelands and private property. Attachment 14 of the Planning Commission Agenda Report contains the determination from the CSLC which indicates that "the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters or that it falls within the LCP's ten-foot setback requirement."

As discussed in A. General Coastal Development Permit, Finding C., the original proposal was to install the AOWTS in the existing street, which would have required excavation of the street, and general disruption of the ingress/egress of the neighbors. Future servicing of the AOWTS would require re-excavation of the street, and further disruption of the ingress and egress of the neighbors. The current project proposes an AOWTS to be located beneath the proposed single-family dwelling behind the shoreline protective device (bulkhead). This location provides a greater horizontal distance separation between the new AOWTS, and the existing conventional onsite wastewater treatment system serving Geoffrey's restaurant, and the existing single-family residence located at the end of Escondido Beach Road. Finally, the AOWTS requires further wastewater treatment than the systems of the adjacent existing residences. Therefore, the proposed project is the least environmentally damaging alternative.

In addition, the property owner will be required, as a condition of approval, to record a deed restriction waiving any right to extend the seaward footprint of the onsite structures (see Condition of Approval No. 29 of this resolution). The deed restriction shall state 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.

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

The subject site is located between the first public road and the sea, on the ocean-side of PCH at Escondido Beach. The project involves construction of a 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 in LIP Section 12.8.2 are provided herein, and in geotechnical and coastal engineering reports referenced earlier in this report. Bluff top, trail, and recreational accesses are not applicable. No issue of public prescriptive rights has been raised.

##### *Trail Access*

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

##### *Lateral Access*

A lateral public access easement provides public access and use along or parallel to the sea or shoreline. The applicant has agreed to provide an offer to dedicate a lateral access easement subject to project approval (Condition No. 30). Such Offer to Dedicate (OTD) shall include a site map that shows all easements, deed restrictions, or OTD and/or other dedications to public access and open space and provide documentation for said easement or dedication.

##### *Vertical Access.*

As indicated above, the project is located along the shoreline; however, adequate public access is available nearby at 27420 - 27428 Pacific Coast Highway near Geoffrey's Restaurant. 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. Nevertheless, the following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding vertical 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.*

Vertical access would not impact fragile coastal resources 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 above.

*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.*

Vertical access would not impact fragile coastal resources 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 above.

*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.*

The project as proposed does not block or impede access to the ocean. The project site is not located on a public beach or on a public road. Adequate public access is available nearby at 27420-27428 Pacific Coast Highway (near Geoffrey's Restaurant). No legitimate governmental or public interest would be furthered by requiring access at the project site because: a) existing access to coastal resources is adequate; b) the proposed project will not impact the public's ability to access the shoreline or other coastal resources; and c) 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, Chapter 15 of the LCP does not apply.

**J. Onsite Wastewater Treatment System (LIP - Chapter 18)**

LIP Chapter 18 addresses onsite wastewater treatment systems. LIP Section 18.7 includes specific siting, design, and performance requirements. The project includes an AOWTS, which has been reviewed by the City Environmental Health Specialist and found to meet the minimum requirements of the Malibu Plumbing Code, the City of Malibu Municipal Code, and the LCP/LIP. The subject system will meet all applicable requirements, and operating permits will be required. The system will incorporate a 3,436 gallon MicroSepTec ES12 with a ultra-violet disinfection unit. Secondary and tertiary treatment will be required. An operation and maintenance contract and recorded covenant covering such shall be in compliance with the City of Malibu Environmental Health requirements. In addition, conditions of approval have been included to require continued operation, maintenance and monitoring of onsite facilities.

**I. Variance (LIP - Chapter 13)**

Pursuant to LIP Section 3.6.G.4, an applicant may apply for a variance where the application of the stringline rule results in a stringline substantially inconsistent with adjacent development. Subsequently, pursuant to LIP Section 13.26.5, the Planning Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes ten (10) findings of

fact.

The applicant proposes to draw the deck stringline from the deck to east to the deck on the west and to draw the building stringline from the building to the east to the deck on the west. Staff believes the evidence in the record supports the requested variance and the following findings of fact are made below.

*Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.*

The dimensions of the subject parcels are narrow in width and long in length. However, the majority of parcel length extends into the ocean, is undevelopable and under the California State Lands Commission jurisdiction. The small remaining portion of these infill parcels is usable if built with a bulkhead and inline with existing development.

Pursuant to LIP Section 10.4.H, the subject property qualifies as infill development. Infill development shall apply to a situation where construction of a single-family dwelling and/or a duplex in limited situations on a vacant lot or the demolition of an existing residential dwelling and construction of a new dwelling is proposed in an existing, geographically definable residential community which is largely developed or built out with similar structures. When applied to beach front development this situation consists of an existing linear community of beach fronting residences where the vast majority of lots are developed with residential dwellings and relatively few vacant lots exist. Infill development can occur only in instances where roads and other services are already existing and available within the developed community or stretch of beach.

The proposed development meets all the development standards of the LCP with the exception of the rear yard stringline. Pursuant to LIP Section 3.6.G.3, rear yard setbacks for infill development are determined by the stringline rule. Separate setback standards apply to dwellings and decks, as indicated below. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible.

- a. Dwellings. New construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast dwelling. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast dwelling.
- b. Decks and patios. For a deck or patio, new construction shall not extend seaward of a stringline drawn from a point on the closest upcoast and downcoast deck or patio. The stringline point shall be located on the nearest adjacent corner of the upcoast and downcoast deck or patio.
- c. All infill development shall be set back a minimum of ten feet landward from the most landward surveyed mean high tide line on the parcel. The location of the mean high tide shall be determined in consultation with the California State Lands Commission.



Strict application of these requirements would deprive the property owner of having a house of similar mass, bulk, and scale that exist in this largely developed beachfront residential community. To further support this finding, the previous application approved by the City in 1993 and subsequently by the CCC in 1994 all had a similar stringline variance request. The following text is excerpted from a CCC staff report dated October 31, 1994, page 17,

“The applicant proposed structure stringline extends from the nearest corner of the building immediately adjacent to the east straight across the proposed project site. The line does not connect to the existing structure on the lot immediately adjacent to the west. Staff notes that it is appropriate to draw the stringline in this manner. The adjacent structure to the west is located significantly further landward than the project site. The seaward extent of this existing structure is at approximately the same point as the seaward edge of the access road to the proposed residence. Additionally, the adjacent parcel does contain a detached deck seaward of the house. The currently proposed residence will be in line with the maximum seaward extent of the existing deck. To connect the line to the existing structure which is located significantly further landward would deny the applicant the ability to construct a building in keeping with what currently exists on this beach. The existing structures on the two lots to the east are in line with the seaward extent of the subject proposed residence. As such, the proposed residence will not extend development seaward. The applicant’s plans also depict a deck stringline which connects the existing deck on the structure to the east with the existing deck to the west. However, the applicant does not propose any decks which would extend any further seaward than the proposed structure. Finally, the proposed seawall would be located beneath the proposed structure, connecting to an approved rock revetment to the west. As such, the bulkhead will not extend development further seaward. Therefore, the Commission finds that the proposed project will be consistent with Sections 30210, 30211, 30251, and 30253 of the Coastal Act as they apply to the seaward encroachment.”

A variance would ensure that the applicant is not deprived of the privileges enjoyed by other properties in the vicinity and that stringlines are not substantially inconsistent among adjacent development.

*Finding 2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.*

The granting of the requested variance will allow the construction of a single-family residence in an area that has been determined to be appropriate for such use, and will not be detrimental to the public’s interest, safety, health or welfare or detrimental or injurious to the property or improvements in the same vicinity and zone as the subject property. As stated previously, the proposed project has been reviewed and approved by the LACFD, the City Public Works Department, the City Geologist, and the City Coastal Engineer. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies.

*Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.*

---

The granting of the variance will not constitute a special privilege to the applicant or property owner in that most properties along Escondido Beach Drive have been developed to similar stringline (rear yard) setback standards. Since the applicant is requesting to develop to a similar stringline as allowed his neighbors, granting the variance does not constitute a special privilege to the property owner.

*Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.*

The purpose of the stringline development standard is to prevent the seaward encroachment of new development. Since the application does not seek the forward encroachment of existing development on either sides of the proposed project and meets the definition of infill development, there is no conflict in granting the variance. The LIP allows for this request specifically in Section 3.6.G.4 when the application of the stringline rule results in a stringline substantially inconsistent with adjacent development. Given this, the proposed project with the variance meets the intent of this Chapter.

*Finding 5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.*

The subject variance is not associated with environmentally sensitive habitat area buffer; therefore; this finding is not applicable.

*Finding 6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.*

The requested variance is associated with a stringline standard but has no impacts on existing public access. Public Access exists vertically within 200 feet of the subject property and will be provided laterally along the beachfront of the subject property; therefore, providing the maximum feasible protection to public access.

*Finding 7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.*

The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the Single Family – Medium Zoning District. The proposed project is a new single-family residence, which is permitted in the zone.

*Finding 8. The subject site is physically suitable for the proposed variance.*

As stated in Variance Finding 1, given the constraints on the site, strict application of the rear yard stringline setback requirements would deprive the property owner of having a house of similar mass, bulk, and scale that exist in this largely developed beachfront residential community.

*Finding 9. The variance complies with all requirements of State and local law.*

---

The variance complies with all requirements of State and local law. Construction of the proposed improvements will comply with all building code requirements and will incorporate all recommendations from applicable City Departments.

*Finding 10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.*

The application does not request a variance for elimination of public parking for access to the beach, public trails or parklands and is not applicable.

**J. Site Plan Review for construction on slopes of 3:1 to 2½:1 (LIP Section 13.27.1.4))**

The LCP requires that the City make four findings in the consideration and approval of a SPR for construction on slopes of 3:1 to 2½:1. Based on the foregoing evidence contained within the record and pursuant to LIP Section 13.27, the four required findings are made below.

*Finding 1. The project is consistent with policies and provisions of the Malibu LCP.*

As discussed herein, the project has been reviewed for all relevant policies and provisions of the Malibu LCP (see Planning Commission Agenda Report Tables 1 and 2). Based on submitted reports, visual impact analysis from scenic areas, and review of the architectural plans, the project is consistent with all the policies and provisions of the LCP in that the area proposed for construction on slopes in excess of 3:1 but not greater than 2½:1 is unavoidable and does not impact any sensitive resources and is consistent with development along Escondido Beach Road.

*Finding 2. The project does not adversely affect neighborhood character.*

The project is compatible with other development in the adjacent area in that the neighborhood is residentially developed with homes of similar mass, bulk and scale in a variety of architectural styles. Constraints on the site necessitate construction of the sloping beach area and is has been integrated into the design of the residence. Due to design and placement, the proposed development will not adversely affect neighborhood character.

*Finding 3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.*

Staff conducted another site visit on May 6, 2005, to confirm that story poles were in-place and conducted a visual impact analysis. The analysis of the project's visual impact from public viewing areas included site reconnaissance, view of the property from the beach, and review of the architectural plans. Staff determined that the proposed residence would result in a less than significant visual impact to public views from scenic areas.

*Finding 4. The proposed project complies with all applicable requirements of state and local law.*

The proposed project has been reviewed for conformance with LCP by the Planning Division staff, the City Biologist, City Environmental Health Specialist, City Geologist, City Coastal Engineer, City Public Works Department, and the LACFD. Staff has determined that, subject to the proposed conditions of approval, the project conforms to the LCP. It must also be approved by the LACFD and the City of Malibu Environmental and Building Safety Division, prior to issuance of City building permits. The project complies with all applicable requirements of State and local law.

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

This project does not involve a division of land as defined in LIP Section 15.1; however, the proposed lot merger is subject to the requirements of LIP Section 15.4, Merger of Parcels. The requirements for a voluntary merger (applicant requested) are identified as follows:

A. Contiguous parcels under common ownership may be voluntarily merged if:

1. Either a merger or lot tie is authorized or required pursuant to a term or condition of a coastal development permit; or
2. The City determines that the merger is not inconsistent with any policy or standard of the LCP that protects environmentally sensitive habitat areas and/or visual resources of the coastal zone.

The parcels are under common ownership and the application is for a voluntary merger. Staff has determined in the Findings previously stated in this report that the proposed merger is not inconsistent with any policy or standard of the LCP that protects environmentally sensitive habitat or visual resources of the coastal zone.

B. An instrument evidencing the merger shall be recorded. The recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, and the new parcel that results after the merger. The instrument must be reviewed and approved by the City prior to recording. A copy of the recorded instrument shall be provided to the Los Angeles County Assessor's Office.

Said instrument is required as Condition of Approval No. 31. Upon submittal, the document shall be reviewed and approved by the City Engineer and forwarded to the Los Angeles County Recorder's office for recordation. In addition, Condition of Approval No. 32 requires that the applicant supply proof that the recorded document was submitted to the Los Angeles County Assessor's Office.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 04-038, Lot Merger No. 05-004, Variance No. 05-015, and site plan review, subject to the conditions listed below:

Section 5 Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the City Council hereby denies the requested Appeals Nos. 06-003 and 06-004 and upholds the Planning Commission's approval of CDP No. 04-038, LM 05-004, VAR No. 05-015, and site plan review, subject to the conditions listed below:

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for construction of the project described herein. Subsequent submittals for this project shall be in substantial compliance with the plans date stamped October 13, 2005. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the Planning Commission Agenda Report for this project. In the event the project plans conflict with any condition 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 the referral sheets attached to the Planning Commission 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 Coastal Engineer, 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. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this Coastal Development Permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
  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 thereunder.
  14. The CDP runs with the land and binds all future owners of the property.
  15. 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.
  16. 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.
-

- b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
- c. All windows shall be comprised of non-glare glass.

**Lighting**

17. 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**

18. 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.

19. 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 Service Condition**

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

---

**Water Quality**

21. 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.

22. 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.

23. 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.

**Demolition/Solid Waste**

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

25. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.

**Hazards**

26. 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.

27. 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 septic disposal 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**

28. 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**

29. 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.

**Public Access**

30. In order to effectuate the property owner's offer to dedicate lateral access, prior to the issuance of any building, grading or other development permits, the property owner shall execute and record a document in a form and content acceptable to the Coastal Commission, an irrevocable offer to dedicate (or grant an easement) free of prior liens and any other encumbrances that may affect the interest being conveyed, an easement to a public agency or private agency association approved by the Coastal Commission, granting the public the permanent right of lateral public access for the right to pass and repass. The easement shall extend along the entire width of the property from the mean high tide line to the dripline of the most seaward projecting structure. The recorded document shall include legal descriptions and a map drawn to scale of both the subject parcel and the easement area. The offer to dedicate or grant of easement shall run with the land in favor of the People of the State of California, binding all successors and assignees,

**Lot Merger**

31. An instrument evidencing the merger shall be recorded. The recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, and the altered, but not "new" or additional parcel that results after the merger. The instrument must be reviewed and approved by the City Planning Division and City Engineer prior to recording.

32. The applicant shall supply proof that the recorded Certificate of Compliance was provided to the Los Angeles County Assessor's Office.

**Special Conditions**

33. Constnction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturday from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Federal, State and Local holidays.

34. Construction related trucks, equipment and materials shall be located in such a manner as to ensure homeowner and emergency vehicle access at all time. An onsite construction monitor shall be required to observe that this condition is strictly adhered.

35. The construction monitor's phone number will be provided to the City, adjacent neighbors, and the homeowners association and will be accessible during all construction hours.

36. A construction staging plan shall be reviewed and approved by Planning staff prior to plan check submittal.

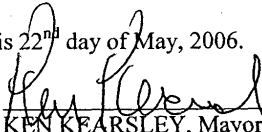
Section 6. Affirmation of Planning Commission Consideration of CDP No. 04-038, LM No. 05-004, VAR No. 05-015 and Site Plan Review.

Based on evidence in the record and the findings in Section 3 of this Resolution, the City Council hereby denies Appeal Nos. 06-003 and 06-004 and affirms the Planning Commission's approval of CDP No. 0-038, LM No. 05-004, VAR No. 05-015, and site plan review subject to all conditions of approval in this Resolution.


Section 7. Certification.

The City Clerk shall certify the adoption of this Resolution.

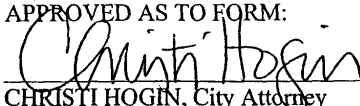
PASSED, APPROVED AND ADOPTED this 22<sup>nd</sup> day of May, 2006.

  
KEN KEARSLEY, Mayor

ATTEST:

  
LISA POPE, City Clerk  
(seal)

APPROVED AS TO FORM:

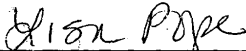
  
CHRISTI HOGIN, City Attorney

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

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 06-30 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 22<sup>nd</sup> day of May, 2006, by the following vote:

AYES:	5	Councilmembers:	Barovsky, Conley Ulich, Stern, Jennings, Kearsley
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		

  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION  
SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., 2ND FLOOR  
VENTURA, CA 93001  
(805) 641-0142

Filed: 10/17/94  
49th Day: 12/5/94  
180th Day: 4/15/95  
Staff: CAREY *[Signature]*  
Staff Report: 10/31/94  
Hearing Date: 11/15-18/94  
Commission Action:



STAFF REPORT: REGULAR CALENDAR

**W9F**

APPLICATION NO.: 4-94-060

APPLICANT: Erin Murphy O'Hara

AGENT: Land and Water Company

PROJECT LOCATION: 27368 Escondido Beach Road, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a 2,599 sq. ft., 28 ft. high from existing grade single family residence with 4-car garage, septic system, and vertical seawall on a beach-front lot.

Lot area:	5,461 sq. ft.
Building coverage:	1,972 sq. ft.
Pavement coverage:	1,200 sq. ft.
Landscape coverage:	None
Parking spaces:	4
Ht abv fin grade:	28 ft.

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept

SUBSTANTIVE FILE DOCUMENTS:

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with Special Conditions regarding assumption of risk, lateral access, seaward encroachment, geology, and construction responsibilities and debris removal.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of

Exhibit 5
Appeal A-4-MAL-06-064
Past Commission Action

4-94-060 (O'Hara)

Page 2

1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

## II. Standard Conditions:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. Special Conditions.

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

Prior to issuance, 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 storm waves, erosion or flooding and the 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 hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

4-94-060 (O'Hara)

Page 3

3. Lateral Public Access.

Prior to the issuance of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line landward to the dripline of the structure.

(a) Privacy Buffer

The area ten (10) feet seaward from the outer edge of the structure shall be identified as a privacy buffer. The privacy buffer shall be restricted to pass and repass only, and shall be available only when no other dry beach areas are available for lateral public access.

(b) The remaining area shall be available for passive recreational use.

The document shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.

4. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree not to store any construction materials or waste where it is subject to wave erosion and dispersion. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach and seawall area any and all debris that result from the construction period.

5. Geology

All recommendations contained in the Soils Engineering and Engineering Geologic Investigation, dated 9/19/90, prepared by RSA Associates, Inc., Soils Engineering and Engineering Geologic Investigation, dated 7/6/92, prepared by Strata-Tech, and Engineering Geologic Memorandum and Update, dated 7/22/92, prepared by Geoplan, Inc., shall be incorporated into all final design and construction including excavation grading and foundations and all plans must be reviewed and approved by the consultants prior to commencement of development.

Prior to permit issuance, the applicant shall submit evidence to the Executive Director of the consultant's review and approval of all final design and

4-94-060 (O'Hara)

Page 4

construction plans. The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to excavation grading and foundations. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

6. Wild Fire Waiver of Liability

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

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description.

The applicant proposes the construction of a 2,599 sq. ft., 28 ft. high from existing grade single family residence with 4-car garage, septic system, and vertical concrete seawall. The 5,461 sq. ft. project site is located at Escondido Beach on Pacific Coast Highway in the City of Malibu. The LUP designates the site Residential IIIA which allows 2 to 4 dwelling units per acre.

B. Shoreline Protection Devices/Access/Seaward Encroachment.

Protective Devices

The Coastal Act policies related to construction of shoreline protective devices are as follows:

Section 30235.

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

Section 30253.

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

4-94-060 (O'Hara)  
Page 5

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

1. There is an ongoing debate over the effects of seawalls on shoreline stability. The proposed project involves a shoreline structure which will affect the configuration of the shoreline and the beach profile and have an adverse impact on the shoreline. The precise impact of shoreline structures on the beach is a persistent subject of controversy within the discipline of coastal engineering, and particularly between coastal engineers and marine geologists. Much of the debate focuses on whether seawalls or other factors are the primary cause of shoreline retreat. This debate tends to obscure the distinction between the long-term trends of the shoreline, and the effects of seawalls on those long-term trends, and the shorter term effects that might not be permanent but may significantly alter the width and utility of a beach over the course of a year. The long-term and short-term effects of seawalls will be discussed separately below.

The Coastal Act recognizes that protective devices may be needed to protect existing structures, that such structures may alter shoreline processes, and that those alterations should be minimized and mitigated. The ongoing debate in the literature does acknowledge that seawalls have some effect, at least on the supply of sand. A succinct statement of the adverse effects of seawalls, and the viewpoint of coastal geologists that view beach processes from the perspective of geologic time, is contained in Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography) which was signed by 94 experts in the field of coastal geology (page 4):

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

It is widely recognized that large structures such as groins and breakwaters will have significant and obvious impacts on sand supply and beach profiles, but even a relatively small structure such as the one proposed can have an impact on the site and the adjoining area. As stated in a publication by the State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976) (page 30):

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the



4-94-060 (O'Hara)

Page 6

downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.

This impact is reiterated in the paper, "Economic Profiling of Beach Fills" by Herman Christiansen which is contained in the proceedings of Coastal Sediments '77 (November 1977). It states (page 1047):

Observations at some of the investigated beaches have shown that an optimal profile becomes unstable, if structures, such as rocks, groins, revetments, piles, stairs etc., are placed within the wave action zone of a beach. Steady erosions, caused by complex high turbulent surf currents, lead to heavy sand losses.

In contrast to the perspective of coastal geologists, a number of coastal engineers argue that seawalls are symptoms of coastal erosion rather than causes. At least in part, the perspective of coastal engineers reflects their perspective of a time scale that involves the life of a structure. This viewpoint is perhaps best expressed by the renowned expert in beach processes R. G. Dean, who attributes changes in beach profiles to erosion rather than structures, in this discussion from "Coastal Sediment Processes: Toward Engineering Solutions" in Coastal Sediments '87 (page 22):

Placed along a shoreline with an erosional trend, armoring can perform the intended function of upland stabilization while the adjacent shoreline segments continue to erode. The resulting offset between stabilized and unstabilized segments may be interpreted incorrectly that the armoring has caused the adjacent erosion.

Dean's article goes on to acknowledge potential adverse effects and the responsibility for mitigation of those effects (page 23):

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

If armoring is deemed warranted to protect a threatened structure and if rational assessment concludes that installation of the armoring would adversely affect the shoreline, mitigation in the form of periodic additions of beach quality sediment should be considered.

Research on the effects of seawalls continues, and many of the results are not yet available. Much of the research is anecdotal, with diminished beach width evident, but the major causes not clearly identified. The potential role of seawalls remains disturbing, as noted in the conclusion to "Coastal Erosion on the Barrier Islands of Pinellas County, West-central Florida", by William O. Sayre, also in Coastal Sediments '87 (page 1049):

In two years of surveying, beach erosion and recovery on the barrier islands of Pinellas County has been measured. An undeveloped island's beach recovered quickly after winter-time and

4-94-060 (O'Hara)  
Page 7

hurricane-caused erosion. A highly developed beach without a seawall and near a jetty fared almost as well, recovering more slowly, but showing no net erosion over the two year period. The two other sites, on highly developed barriers and backed by seawalls, have suffered greatly. One narrow beach was completely destroyed by a hurricane and only partially recovered. The other was reduced by at least a quarter and was artificially nourished.

The Commission notes the continuing debate over the effects of seawalls, the lack of convergence in the literature, and the strong identification of viewpoints with the disciplines of coastal engineering and marine geology. The Commission does not believe that it is entirely accidental that this debate has arisen between disciplines with such fundamentally different perspectives on the time scale involved in analyzing physical processes. The Commission believes that more information can be shed on this subject through explicit consideration of long-term and short-term processes active on a beach.

2. The effects of a protective device on an eroding shoreline. The location of a proposed shoreline structure on the seasonal profiles of a beach (that is, the proximity of the structure to the waves), and the overall erosion pattern of a beach, are two key factors that determine the impact of seawalls. Although debate persists as to whether a shoreline structure is the cause or merely a symptom, it is generally agreed that where a beach is eroding, a seawall will come to define the boundary between the sea and the upland. H.V. McDonald and D.C. Patterson state, in "Beach Response to Coastal Works Gold Coast, Australia" in Coastal Engineering 1984 (page 1537):

On the persistently eroding beaches at North Kirra and Palm Beach, the receding beachline has effectively placed the seawall progressively further and further seaward on the beach profile until no beach exists at all in front of the wall. Clearly, the establishment of fixed seawall alignments on persistently eroding sections of beach will lead eventually to loss of the beach as a useful recreational amenity.

Whether or not the seawall or erosion leads to the loss of the beach continues to be debated in the literature, but the distinction does not alter the result: when the beach in front of the structure disappears over time the natural shoreward migration of the beach is blocked by the structure. The net effect is documented in a recent National Academy of Sciences Study "Responding to Changes in Sea Level, Engineering Implications" (1987), which provides (page 74):

A common result of sea wall and bulkhead placement along the open coastline is the loss of the beach fronting the structure. This phenomenon, however, is not well understood. It appears that during a storm the volume of sand eroded at the base of a sea wall is nearly equivalent to the volume of upland erosion prevented by the sea wall. Thus, the offshore profile has a certain "demand" for sand and this is "satisfied" by erosion of the upland on a natural beach or as close as possible to the natural area of erosion on an armored shoreline...

While the experts continue to discuss the exact manner in which seawalls

4-94-060 (O'Hara)

Page 8

affect shoreline processes, the Commission must make decisions about specific projects. The Commission notes that the debate focuses on the cause of erosion rather than the loss of the beach, and begs the critical factual question of whether or not the beach disappears.

On an eroding shoreline fronted by a beach, a beach will be present as long as some sand is supplied to the shoreline. As erosion proceeds, the entire profile of the beach also retreats. However, this process stops when the retreating shoreline comes to a seawall. While the shoreline on either side of the seawall continues to retreat, shoreline retreat in front of the seawall stops. Eventually, the shoreline protected by the seawall protrudes into the water, with the winter MHT fixed at the base of the structure. The Commission is led inexorably to the conclusion that if the seawall works effectively on a retreating shoreline, it results in the loss of the beach, at least seasonally. If the shoreline continues to retreat, however slowly, the seawall will be where the beach was, and where the beach would be absent the presence of the seawall. This represents the loss of a beach as a direct result of the seawall. The Commission has observed this phenomena up and down California's coast, where a seawall has successfully halted the retreat of the shoreline, but only at the cost of usurping the beach. Although this may occur only slowly, the Commission concludes that it is the inevitable effect of constructing a seawall on an eroding shoreline. For such areas, even as erosion proceeds, a beach would be present in the absence of a seawall.

The Commission's previous observations about the effects of seawalls on access have been upheld in previous decisions. In the case of Whalers' Village Club v. Cal. Coastal Commission (1985) 173 Cal.App.3d 240, 259-261 [220 CR 2], Cert. Denied 106 S.Ct. 1962 (1986), the Court of Appeal analyzed in the following terms the legal sufficiency of the adverse impacts discussed in these findings to justify a lateral access dedication:

Respondent challenges the nexus between the Commission's finding that the revetment imposes a burden on the public which justifies imposition of the access condition and the evidence in the record. [Citation omitted.] In point, respondent argues that the Commission found a public "burden" because seawalls in general tend to cause additional sand scour on any historically eroding beach but did not find that this particular revetment cause such damage. [Emphasis in original.]

...

There is substantial evidence in the administrative record to support the staff's conclusion that seawalls and revetments tend to cause sand loss from beach areas in front of and adjacent to them even if they protect immediate structures. Studies cited in staff reports...confirm the staff's finding that "by artificially building up the slope of the shore area, seawalls and revetments of this type tend to cause a landward retreat of the mean high tide line,...."

...

Staff reports...referred to surveys of the Army Corps of Engineers and other experts concerning shoreline erosion along the California coast and, in particular, beach erosion in Ventura County. The Commission [thus] had

sufficient information before it to conclude that, due to construction of this revetment and others up and down the coast, the erosive nature of the beaches in Ventura County coupled with the tendency of seawalls and revetments to increase the sand loss on beaches with a tendency to recede constitutes a cumulative adverse impact and places a burden on public access to and along State tide and submerged lands for which corresponding compensation by means of public access is reasonable. [Emphasis in original; citations omitted.]

3. The effects of shoreline structures on an "equilibrium" shoreline. The term equilibrium cannot accurately be applied to a feature that varies as much as a shoreline. Almost all California beaches vary dramatically in profile between winter and summer; the variation in the width of beach that can accompany that seasonal change can be over 200 feet. The persistent analytical problem in dealing with shore processes in California is to try to discern long-term trends in shoreline change from the normal, seasonal variation. The term "dynamic equilibrium" has come into use and has been applied to beaches that vary seasonally in width, but are approximately the same when summer (or winter) profiles are compared over a number of years. Essentially, a beach in dynamic equilibrium is one where the supply and loss of sand are in approximate balance (See Griggs and Jones, 1984). This term must be used with some caution, as there will be some variation in width even seasonally, shown graphically by J. W. Johnson in "Seasonal Bottom Changes, Bolinas Bay, California", Proceedings of the Twelfth Coastal Engineering Conference, September 13-18, 1970. That variability can mask long-term changes (either erosion or accretion) unless sufficient data is available to detect a clear direction. This discussion will be equally applicable to shorelines that are truly in "dynamic equilibrium", that is, not eroding on the long-term, and to shorelines that are eroding at a relatively slow rate so that seasonal changes are approximately the same when viewed in the time frame of a few years.

The question of the effects of seawalls on shorelines that are in 'dynamic equilibrium' is more complicated, and research on the effects is even more anecdotal. At the same time, because the short-term effects may be of great importance, much more rigorous data collection is required in order to establish any clear effects. The Corps of Engineers has begun funding research efforts into the effects of seawalls through their Coastal Engineering Research Center (CERC). One of the research efforts funded by CERC is that of Professor Gary Griggs of UC Santa Cruz. Professor Griggs is monitoring the profiles of beaches in Monterey Bay over the course of several years, and comparing the profiles of beaches with seawalls to control beaches without seawalls. Professor Griggs has completed work during the relatively storm-free winter of 1985-86, and presented his results on October 30, 1987 before the 1987 Conference of the California Shore and Beach Preservation Association. Professor Griggs is the author of various popular and technical works on beach processes and recently chaired a technical discussion of the effects of seawalls on beaches at "Coastal Sediments '87", a specialty engineering conference in coastal sediment processes. Griggs' work appears to establish two distinct effects of seawalls. First, beach profiles in front of seawalls differ from profiles along the control beaches selected during the process of beach erosion. Although the beach profiles are similar at their most accreted (summer profile) stage and at their most eroded (winter profile) stage, the beaches monitored were narrower and steeper in front of seawalls

4-94-060 (O'Hara)

Page 10

during the period when the beach was eroding from the summer profile to the winter profile. This difference represents a temporal loss in beach width in the short term, even where the time series is of too short a duration to detect erosion patterns on the beach. Second, beach profiles at the end of a seawall are further landward than natural profiles. This effect appears to extend for a distance of about 6/10 the length of the seawall. This effect represents both a spacial and temporal loss of beach width directly attributable to seawall construction. Dr. Griggs' own conclusion about the effects of seawalls, in a manuscript submitted to the Journal of Coastal Restoration titled "The Impacts of Seawalls on Beaches" is:

Based on 12 months of surveying at 4 locations in northern Monterey Bay (including a winter of only mild or moderate wave conditions) where seawalls or revetments abut unprotected beaches, some consistent seasonal beach changes have been documented. These changes or differences in beach profiles are a result of greater wave reflection from the protective structures than from the adjacent control beaches. All of these changes observed in this study appear to be temporary or seasonal in nature and are best developed in the fall and winter months during the transition from summer swell to winter storm conditions.

The seasonal effects documented include:

- 1) Loss of the summer berm sooner in front of all seawalls relative to adjacent unprotected control beaches.
- 2) Erosion of the berm in front of a vertical impermeable seawall (due to greater wave reflection) before berm loss on an adjacent beach backed by a permeable sloping revetment.
- 3) A lack of significant difference in winter beach profiles seaward of seawalls or revetments and adjacent control beaches.
- 4) Loss of beach up to 150 m downcoast from seawalls due to reflection from end of structure.
- 5) Late spring/summer berm rebuilding takes place independently of any protective structure leaving a uniform alongshore berm crest.

The Commission concludes from this information that seawalls have serious adverse effects on the width of the beach, even when examined over a relatively short period on a beach that might not be eroding. Although the beach profile at its widest and narrowest may not differ significantly, the beach width and utility will differ markedly during the period when the beach is changing from summer to winter profile. These effects have been observed by the Commission's staff over the years, and can lead to a situation where there is a narrow but usable beach on an unprotected portion of the beach, while the adjacent, protected beach is not passable.

The 1981 statement signed by 94 respected coastal geologists indicates that important public interests in shoreline resources can be harmed through the introduction of shoreline defense structures. Thus, in evaluating an individual project, the Commission must assume that the principles reflected

4-94-060 (O'Hara)  
Page 11

in that statement are applicable. To do otherwise would be inconsistent with the Commission's responsibilities under the Coastal Act to protect the public's interest in shoreline resources.

#### Mechanisms of Impact.

The applicant is proposing a vertical concrete seawall along the entire width of the project site which is 43 feet wide. The applicant has submitted a Wave Uprush Study regarding the project site and the design of the proposed bulkhead prepared by David C. Weiss.

Concern about adverse impacts on sand supply particularly apply to vertical seawalls because they reflect most wave energy. This is a well known impact of vertical seawalls. For example, the generally accepted "standard" for designing shoreline structures, the U.S. Army Corps of Engineers' Shore Protection Manual (1983) has several references to the proficiency of vertical seawalls to reflect wave energy and as a result scour the beach it fronts (see pages 1-16, 2-113, 5-4, 6-15). This impact can be lessened somewhat by the placement of rock (or rubble) at the base of the wall, but nevertheless, the wall will still cause scour and steepening of the beach profile.

Although they do not have as great an impact as smooth, vertical seawalls, rock revetments, have effects on the beach sand in front of and around the structure. A rock seawall operates on the principle that the wave's energy is dissipated within the voids of the wall, therefore producing less reflected wave energy. However, the rock seawall will still reflect enough energy to change the beach profile, steepen the beach, and cause accelerated erosion of the downcoast area. One mechanism that accounts for rock walls' impact on beaches is stated in "The Role of Wave Reflection in Coastal Processes" in Coastal Sediments '77 by Richard Silvester (page 653):

Rubble-mound structures can reflect long period wave components with little dissipation and hence short-crested phenomena [waves] in front of and downcoast from them should be considered in design and maintenance.

Moreover, the literature on coastal engineering repeatedly warns that unprotected properties adjacent to the seawall may experience increased erosion. A rock wall very often protrudes seaward from development and exacerbates this situation. Field observations have verified this concern, see for example the paper by Gerald G. Kuhn of the Scripps Institution of Oceanography entitled "Coastal Erosion along Oceanside Littoral Cell, San Diego County, California" (1981). In this paper, it is written and pictorially illustrated that erosion on properties adjacent to rock seawall is intensified when wave run-up is high. This subject is presently being researched by scientists at Oregon State University. The preliminary results of that work was reported in "Laboratory and Field Investigations of the Impact of Shoreline Stabilization Structures on Adjacent Properties" by W.G. McDougal, M.A. Sturtevant, and P.D. Komar in Coastal Sediments '87. These researchers are investigating the length of shoreline affected by heightened erosion adjacent to seawalls. Their conclusion is (page 972):

Results to date indicate that erosion at the ends of seawalls increases as the structure length increases. It was observed in both

4-94-060 (O'Hara)  
Page 12

the experimental results and the field data of Walton and Sensabaugh (1978) that the depth of excess erosion is approximately 10% of the seawall length. The laboratory data also revealed that the along-coast length of excess erosion at each end of the structure is approximately 70% of the structure length.

A discussion of the physical processes of wave run-up on a natural shore will help establish the effects of seawalls on shoreline processes. Sandy beaches are dynamic systems, the individual grains of sand adjust quickly to reflect both the overall supply of sediment and the ongoing forces of waves. A typical non-storm profile of the beach has adjusted to a low-energy wave environment, reflecting the short period, low energy waves that strike the beach. When attacked by longer period, higher energy waves, the beach adjusts by changing its profile. First, higher wave energy erodes material from the foreshore and deposits the material off-shore in a bar. Second, the shoreline profile flattens to absorb the greater amount of wave energy, even with waves breaking on the bar. These adjustments are fundamental to the shore's adjustment to high wave energy. The migration of the material to an energy dissipation far from the inland extent of the beach. The dynamic process of eroding material from the foreshore enables the shoreline to absorb wave energy.

This process goes on continuously, if a given shore profile is not sufficient to absorb wave energy without further erosion, additional material is moved from the shore to the bar to increase the distance between the bar and the inland extent of the wave uprush. The value of the bar cannot be over-emphasized, it is on the bar that winter waves break, and the dynamic processes of the actual shoreline are affected by wave uprush, not actual breaking waves.

When a seawall is installed, there are dramatic effects on the shoreline. Material formerly available to nourish the bar is now unavailable because it is either behind the seawall, or has been replaced by the seawall. As a result, the bar receives less nourishment. This makes the bar less effective in causing waves to break offshore, and results in greater wave energy reaching the shoreline. That energy is then dissipated by uprush and reflection against the face of the seawall. However, since more energy comes on-shore, more energy is reflected and sand is scoured from the base of the revetment.

The Commission concludes from the opinion of experts and from an analysis of the process of shoreline dynamics that placement of a seawall within the areas of a shore affected by those processes adversely affects shoreline processes in front of the seawall as well as property on either side of the seawall. Obviously the impact of a seawall is greater the more often it is exposed to wave attack, and seawalls located far up the beach have less impact than seawalls lower on the beach.

If this proposed vertical seawall increases beach erosion, or the force of erosion during periodic storms, it could force other property owners along this beach to install new or improved existing seawalls as well. The Commission finds that the probable negative impacts of this concrete seawall must be weighed against the property owner's need to protect the proposed residences behind it. The Commission recognizes that the seawall may change

4-94-060 (O'Hara)

Page 13

the beach by steepening it and increasing beach erosion around it; this in turn will interfere with and decrease the amount of sandy beach available for public access. Based on Coastal Act Sections 30250(a) and 30253, the Commission has approved permits similar in nature to the subject application for development on beachfront lots where the proposed structure is located in an existing developed area, and is designed to minimize and/or mitigate adverse impacts on coastal resources and access.

Past Commission action also approved shoreline protection devices similar to that proposed by the applicant only if the device served coastal-dependent uses, protected existing structures, or protected new structures which were infill development, provided that they tied into adjacent devices to minimize impacts on adjacent properties. The proposed bulkhead is located approximately 12 feet landward of the proposed structure.

The proposed vertical seawall and residence will extend into an area exposed to wave attack, flooding, and erosion hazards that in the past have caused significant damage to development along the California coast, including the Malibu coastal zone and the beach area nearby the subject property. The Coastal Act recognizes that new development, such as the seawall and residence, may involve the taking of some risk. The applicant's engineer states that:

The owner should realize that there will always be certain risks associated with living on the beach. The results and recommendations set forth in this report meet current minimum County of Los Angeles Building Department standards. Because of the unpredictability of the ocean environment, these results are meant to minimize storm wave damage and not to eliminate it. Tsunami or hurricane generated waves were not analyzed in this report because of the extreme low probability of these events happening to this part of the California Coast. However, the possibility of these major events producing damage to the subject property does exist...

Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

The Commission finds that due to the unforeseen possibility of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciated the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development. Additionally, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks. Through the waiver



4-94-060 (O'Hara)  
Page 14

of liability the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Only as conditioned can the Commission find the proposed development consistent with Section 30253 of the Coastal Act.

Public Access.

As proposed this project would extend out onto sandy beach in an area previously available for shoreline access and public use. All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. Based on the access, recreation and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in this permit is the occupation of sand area by a structure, in contradiction of Coastal Act policies 30211 and 30221. Section 30211 requires that development shall not interfere with access:

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

Section 30221 requires that development providing public recreational opportunities are preferred to increased commitment of the coastline to private use:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Interference by the proposed seawall could have a number of effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect of this on the public are again a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and seawalls cumulatively affect public access by causing greater erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. Finally, revetments and seawalls interfere directly with public access by their occupation of beach area.

4-94-060 (O'Hara)

Page 15

Due to the aforementioned adverse impacts of shoreline protective structures on public access, the proposed seawall must be judged against the public access and recreation policies of the State Constitution, Sections 30210, 30211, 30220, and 30211 of the Coastal Act. Along the California coast, the line between land and ocean is complex and constantly moving. This dynamic environment has introduced uncertainty into questions about the location of public and private ownerships as well as rights of public use. It is generally accepted that the dividing line between public tidelands and private uplands, or the tidal boundary, in California is the mean high tide line (MHTL), essentially the same as the ordinary high water mark or line. What is not well-settled as a legal matter is how that line translates into an on-the-ground location.

The courts have not fully resolved the question of the extent to which the location of the tidal boundary in California changes as the profile of the shoreline changes. Where there has not been a judicial declaration of a reasonable definite boundary based upon evidence in a specific case, or where the upland owner has not entered into an agreement with the state fixing the boundary, uncertainty remains.

Nevertheless, despite this legal uncertainty, as a practical matter the actual dividing line between sea and land moves constantly, and this gives rise to issues involving protection of public rights based on use, rather than ownership. These use rights arise as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicated that attendance of recreational sites will continue to significantly increase over the coming years. While the Commission cannot determine if prescriptive rights exist on the subject property, it must protect those potential public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. Here, there will be a permanent loss of sandy beach over time as a result of both the direct placement of the seawall on the beach, the change in the beach profile or steepening which is likely to result overtime, and the presence of the residential structure out over sandy beach. Presently, this shoreline remains open and can be used by the public for lateral access and general recreational activities.

The proposed residence will not extend further seaward than existing structures on this beach, but will devote a previously undeveloped parcel to residential use. The applicant has submitted a letter from the State Lands Commission stating that they do not have sufficient information to make a determination as to whether the project involves State lands or not. However, they do state that they will not require a lease at this time and that they reserve the right to require a lease or permit at some time in the future. Irrespective of a boundary determination, the possibility exists that the mean high tide line may be compromised by the proposed seaward encroachment of the development, given the amount of coastal erosion and shoreline retreat that

4-94-060 (O'Hara)  
Page 16

has occurred along the southern California coast during the past several decades the area of public beach.

The proposed project, would generate adverse individual and cumulative impacts on sand supply, beach profile, and ultimately, public access of the type normally associated with shoreline protective devices. The seawall will be subject to wave uprush and will, in all probability, affect the configuration of the shoreline and beach profile and have an adverse impact on the shoreline. Previous permits for projects involving shoreline protective devices have diagrammatically and narratively explained the physical processes of wave run-up on shorelines in order to help establish the effects of seawalls on shoreline processes and public access (5-87-694, Shapiro; 5-87-695, Condon; 5-87-1020, Lachman).

Because the project even as conditioned, will result in the reduction of sandy beach area in the winter and summer, the Commission finds that this project would reduce existing public access that has been historically and is presently utilized. Furthermore, the development will contribute to the erosion process of the beach. The Commission finds, therefore, that the proposed concrete seawall conflicts with the public access and recreation policies of the Coastal Act and the LUP and that to partially mitigate these impacts the applicant must make an offer to dedicate lateral beach access across the width of his property seaward of the proposed structure. The Commission recognizes that the seawall will probably change the beach profile by steepening it and increasing beach erosion around it. This in turn will interfere with and decrease the amount of sandy beach available for public access. Therefore, the Commission finds that it is necessary to require as a special condition a lateral public access easement. As conditioned, the Commission finds the project consistent with Sections 30211 and 30221 of the Coastal Act.

#### Seaward Encroachment

As a means of controlling seaward encroachment of residential structures on a beach in order to insure maximum access, protect public views and minimize wave hazards as required by Sections 30210, 30211, 30251 and 30253 of the Coastal Act, the Commission has developed the "stringline" policy to control the seaward extent of buildout in past permit actions. As applied to beachfront development, the stringline limits extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks.

The Commission has applied this policy to numerous past permits involving infill on sandy beaches, and has found it to be an effective policy tool in preventing further encroachments onto sandy beach. In addition, the Commission has found that restricting new development to building and deck stringlines is an effective means of controlling seaward encroachment to insure maximum public access as required by Sections 30210 and 30211 and to protect public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

The applicant proposes to construct a new 2,599 sq. ft. single family residence on a currently vacant parcel. The applicant's agent has submitted a stringline map for the project site. The proposed structure stringline extends

4-94-060 (O'Hara)

Page 17

from the nearest corner of the building immediately adjacent to the east straight across the proposed project site. The line does not connect to the existing structure on the lot immediately adjacent to the west. Staff notes that it is appropriate to draw the stringline in this manner. The adjacent structure to the west is located significantly further landward than the project site. The seaward extent of this existing structure is at approximately the same point as the seaward edge of the access road to the proposed residence. Additionally, the adjacent parcel does contain a detached deck seaward of the house. The currently proposed residence will be in line with the maximum seaward extent of the existing deck. To connect the line to the existing structure which is located significantly further landward would deny the applicant the ability to construct a building in keeping with what currently exists on this beach. The existing structures on the two lots to the east are in line with the seaward extent of the subject proposed residence. As such, the proposed residence will not extend development seaward. The applicant's plans also depict a deck stringline which connects the existing deck on the structure to the east with the existing deck to the west. However, the applicant does not propose any decks which would extend any further seaward than the proposed structure. Finally, the proposed seawall would be located beneath the proposed structure, connecting to an approved rock revetment to the west. As such, the bulkhead will not extend development further seaward. Therefore, the Commission finds that the proposed project will be consistent with Sections 30210, 30211, 30251, and 30253 of the Coastal Act as they apply to seaward encroachment.

### C. Geologic Stability

Section 30253 of the Coastal Act states that new development shall:

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

The applicant proposes the construction of a 2,599 sq. ft., 28 ft. high from existing grade single family residence with 4-car garage, septic system, and vertical seawall. The 5,461 sq. ft. project site is located at Escondido Beach on Pacific Coast Highway in the City of Malibu. The applicant states that no grading will be necessary to complete the project. The applicant has submitted a Soils Engineering and Engineering Geologic Investigation, dated 9/19/90, prepared by RSA Associates, Inc., a Soils Engineering and Engineering Geologic Investigation, dated 7/6/92, prepared by Strata-Tech, and Engineering Geologic Memorandum and Update, dated 7/22/92, prepared by Geoplan, Inc. The geology report prepared by RSA Associates examines the stability of the slope on the north portion of the site. Their calculations determined that this slope had a factor of safety of less than 1.5. This report states that:

If the slope ascending to the north is stabilized, our findings indicate that the proposed structures, if built according to our recommendations, will be safe against the hazards of landsliding, settlement or slippage

4-94-060 (O'Hara)  
Page 18

per Section 309 and such construction will not adversely affect adjacent properties.

The soils engineer, Strata-Tech, reviewed the the RSA Associates report and were in general agreement with its results with the exception of the slope stability calculations. Strata-Tech determined that the previous calculations were in error. Their own calculations showed that the northern slope had a factor of safety in excess of 1.5. This report states that:

Strata-Tech is accepting Geotechnical Engineering responsibility of the proposed project and in accordance with Section 309 it is concluded that the proposed site is buildable and that it will be unaffected by landslide, slippage or settlement, provided construction is conducted in accordance with the recommendations of the project consultants and the constraints of the applicable section of the building code. No adverse affect upon adjoining properties will result.

Further, the applicant submitted an Update report which states that:

Geoplan concludes from its review of the RSA report, its own records and from the site inspection that there has been no significant change in conditions at the site since 9-19-90 and that construction of a dwelling on this site is feasible.

Finally, the applicant has submitted an approved City of Malibu Geologic Review Sheet which indicates that the consultant's reports meet the City's standards. Based on the recommendations of the consulting geologist and the soils engineer, the Commission finds that the development will be consistent with the applicable Coastal Act Sections so long as the consultants' recommendations regarding the grading and foundations and drainage are incorporated into project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting Engineering Geologist and the consulting Coastal Engineer as conforming to their recommendations. The Commission finds that as conditioned, the proposed development is consistent with the relevant geology and natural hazard policies of the LUP, and Section 30253 of the Coastal Act.

D. Septic System

Section 30231 of the Coastal Act states that:

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

The applicant is proposing the placement of a septic system under the road on the landward side of the proposed residence with a reserve leach field under the

4-94-060 (O'Hara)  
Page 19

proposed residence and behind the proposed vertical seawall. The applicant has submitted approval of the proposed septic system from the City of Malibu which indicates that it complied with all minimum requirements of the health and plumbing codes. Therefore, the Commission finds that, the proposed septic system is consistent with Section 30231 of the Coastal Act.

E. Local Coastal Program.

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

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. However, on March 28, 1991 the City of Malibu was legally incorporated. Therefore, the previously certified County of Los Angeles Malibu/Santa Monica Mountains LUP is no longer legally binding within the City of Malibu and is therefore, no longer used within the City as a guidance document.

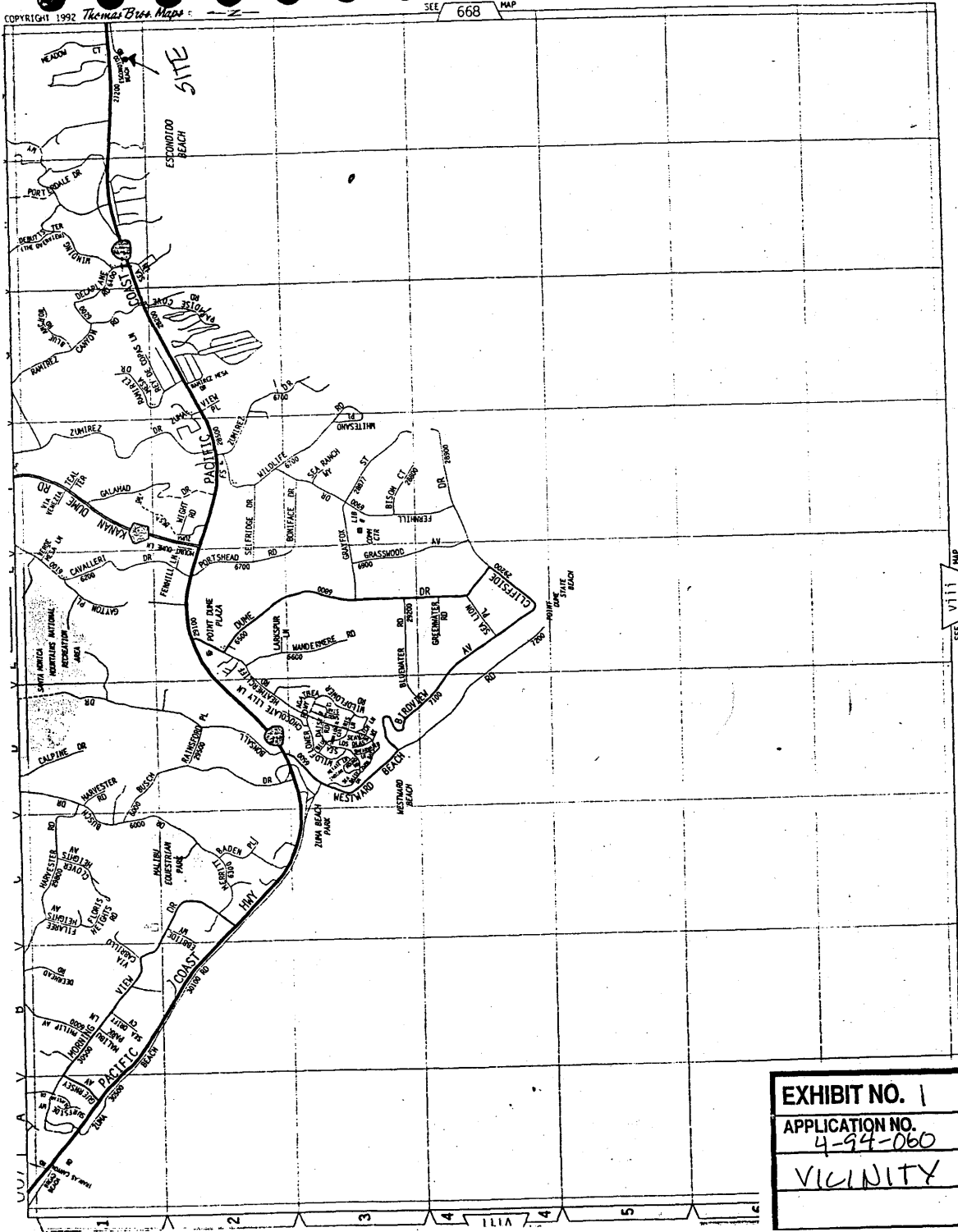
The proposed development as conditioned will not create adverse impacts and is consistent with Chapter 3 policies of the Coastal Act. The Commission finds that approval of this project will not prejudice the ability of the City of Malibu to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act, and is therefore consistent with Section 30604 (a) of the Coastal Act.

F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As proposed, there appear to be no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

1321M  
BJC

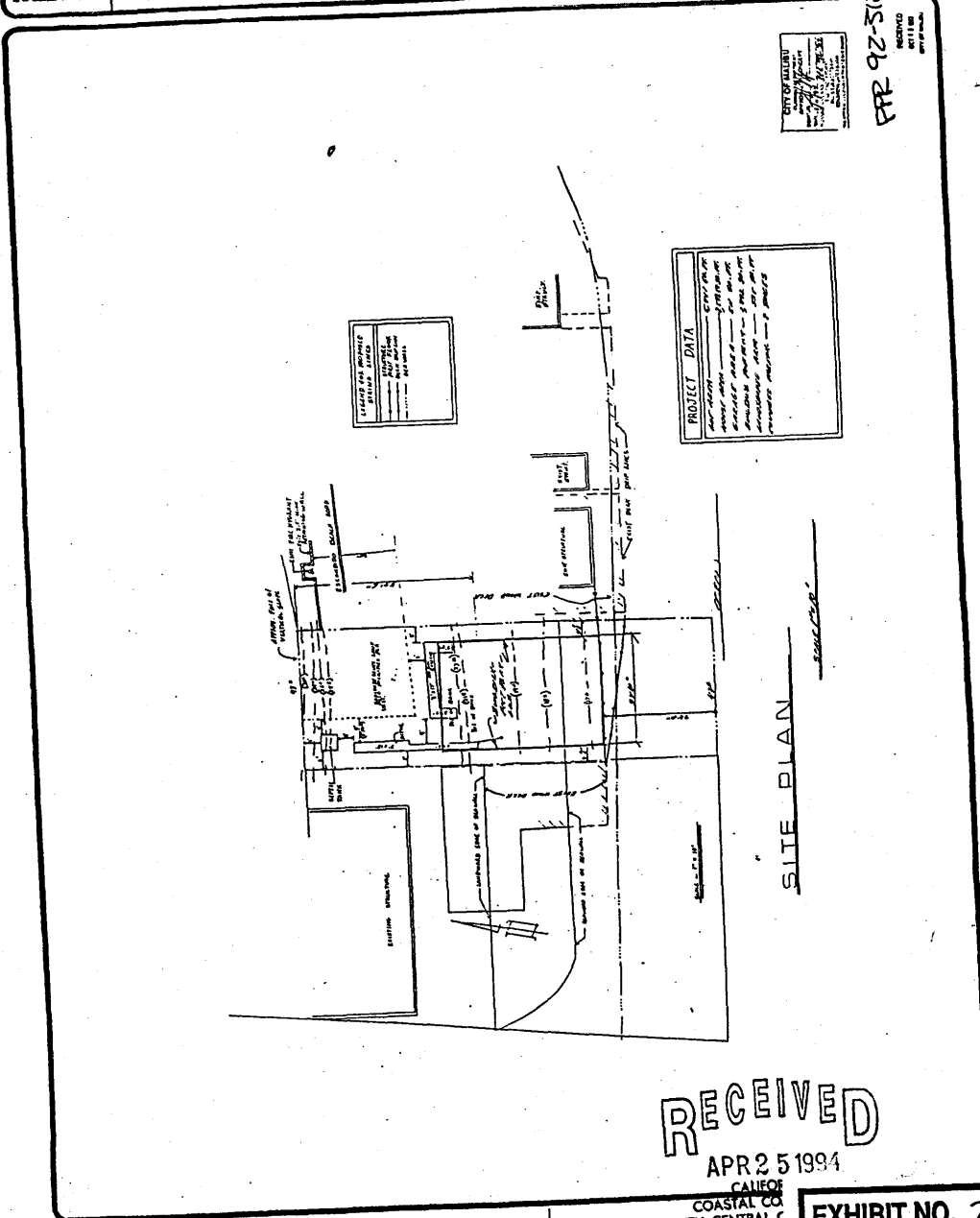


<b>EXHIBIT NO. 1</b>
APPLICATION NO. 4-94-060
VICINITY

050-56-1

**mm** Morrell & Associates  
CIVIL ENGINEERS AND ARCHITECTS  
1000 WEST 10TH AVENUE, SUITE 100  
DENVER, COLORADO 80202  
TEL: 303-733-1100 FAX: 303-733-1101

NO.	DATE	DESCRIPTION
1	10/15/93	PRELIMINARY
2	11/15/93	REVISED
3	12/15/93	REVISED
4	01/15/94	REVISED
5	02/15/94	REVISED
6	03/15/94	REVISED
7	04/15/94	REVISED



CITY OF ALLIUM  
PROJECT NO. 4-94-060  
DATE: 4/25/94  
DRAWN BY: [Signature]  
CHECKED BY: [Signature]

LEGEND FOR SYMBOLS  
SYMBOL DESCRIPTION  
--- PROPOSED SIDE OF ROAD  
--- EXISTING SIDE OF ROAD  
--- EXISTING DRIVE

PROJECT DATA  
OWNER: [Name]  
PROJECT: [Name]  
LOCATION: [Address]  
DATE: [Date]  
DRAWN BY: [Name]  
CHECKED BY: [Name]

SITE PLAN

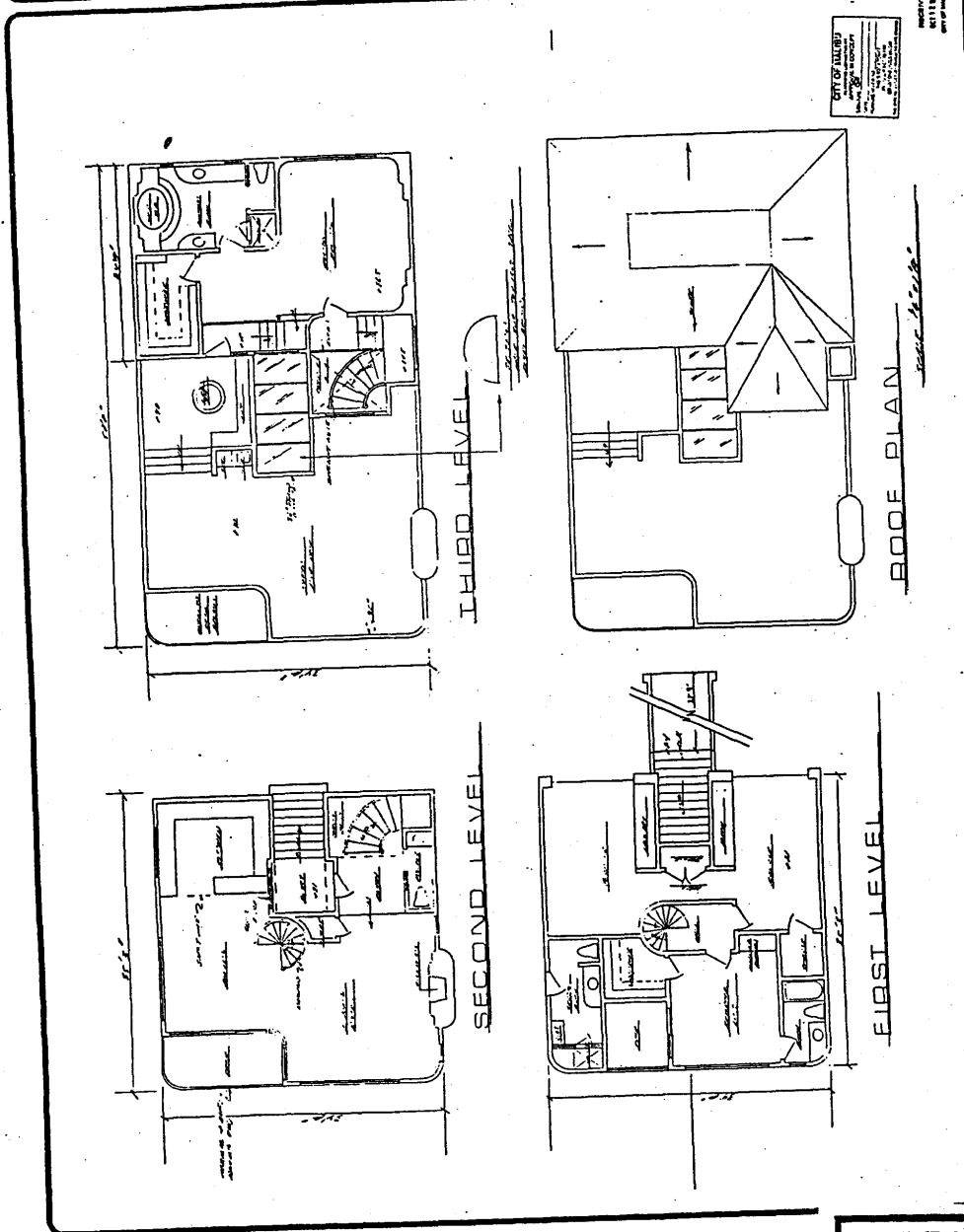
RECEIVED  
APR 25 1994

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL C

EXHIBIT NO. 2
APPLICATION NO. 4-94-060
SITE PLAN



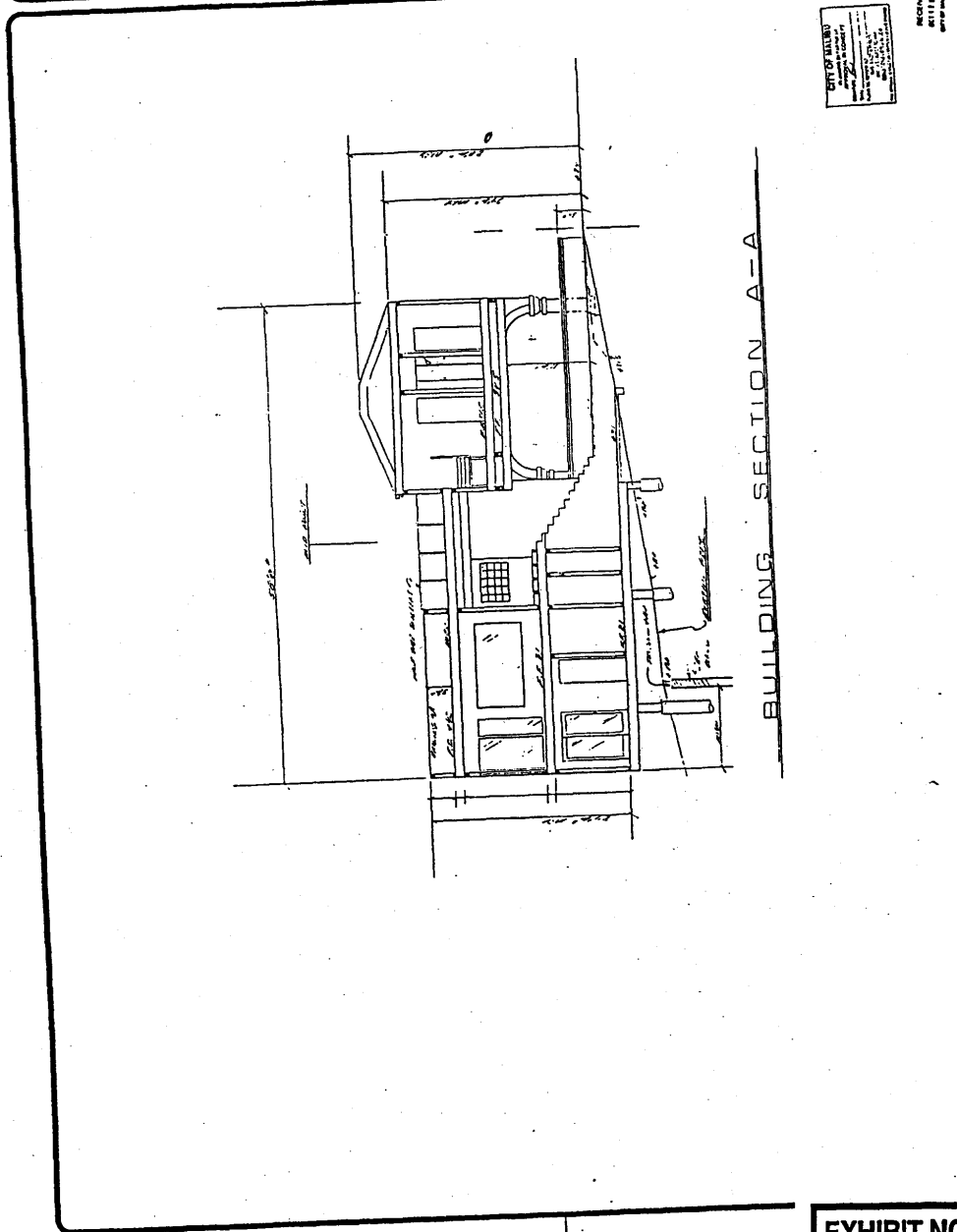
	4100 BROADWAY - SUITE 200 NEW YORK, NY 10018 TEL: (212) 692-1234 FAX: (212) 692-1235 WWW: WWW.MRMA.COM	PROJECT NO. 4-54-060 SHEET NO. 2 DATE: 11/11/06
	4100 BROADWAY - SUITE 200 NEW YORK, NY 10018 TEL: (212) 692-1234 FAX: (212) 692-1235 WWW: WWW.MRMA.COM	PROJECT NO. 4-54-060 SHEET NO. 2 DATE: 11/11/06



CITY OF ALABAMA  
 REGISTERED ARCHITECT  
 STATE OF ALABAMA  
 NO. 11118  
 DATE OF EXPIRATION: 11/11/06

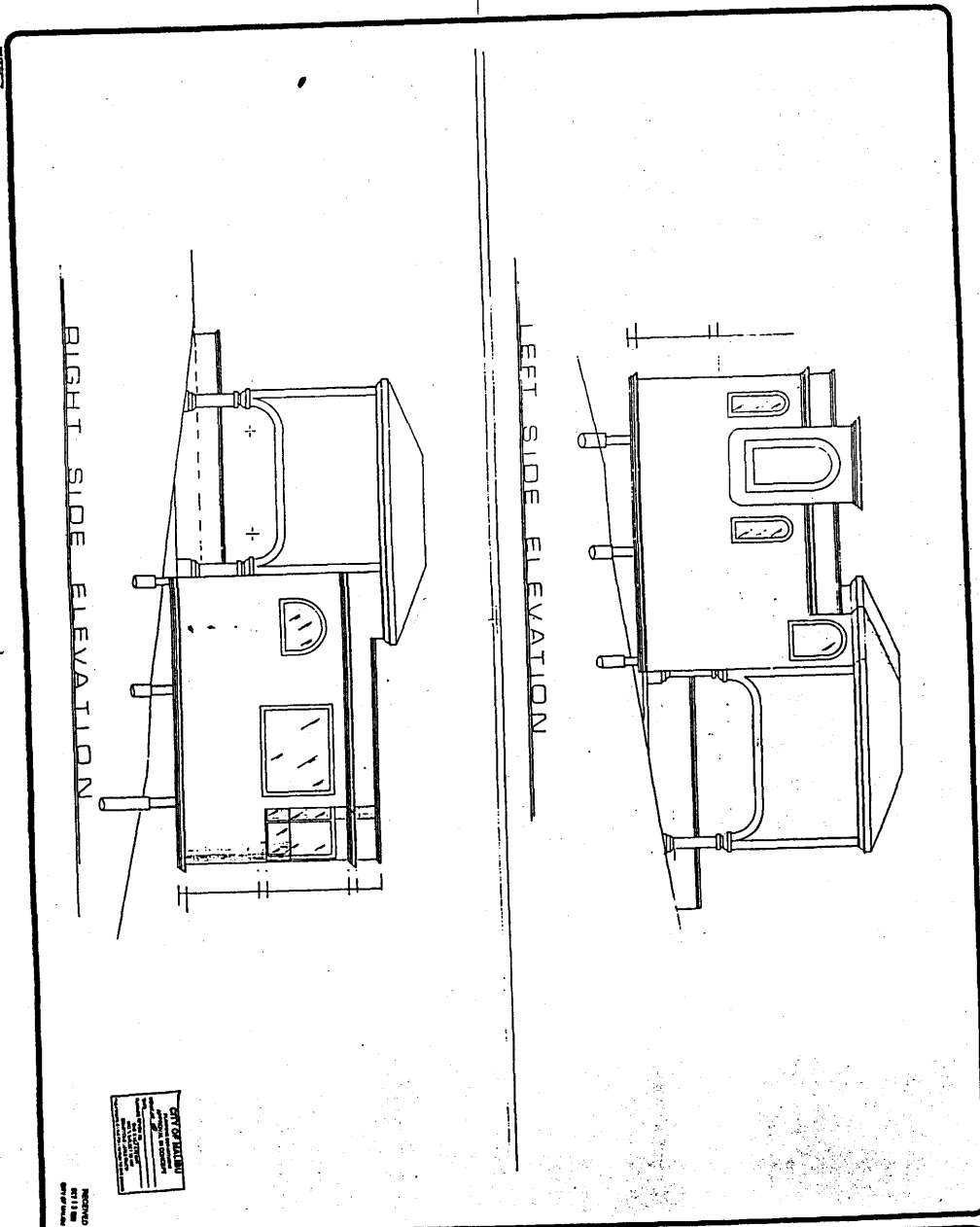
EXHIBIT NO. 3
APPLICATION NO. 4-54-060
FLOOR PLAN

<b>MP</b> Morelli & Associates 1000 BROADWAY - SUITE 1000 NEW YORK, N.Y. 10018 TEL: (212) 691-1000 FAX: (212) 691-1001	DATE: 10/11/00	PROJECT: STIBEL	NO.:
	SCALE: AS SHOWN	BY: [Signature]	CHECKED: [Signature]



CITY OF MILWAUKEE  
RECEIVED  
OFFICE OF THE CLERK  
MAY 14 2001

EXHIBIT NO. 4
APPLICATION NO. 4-94-060
SECTION

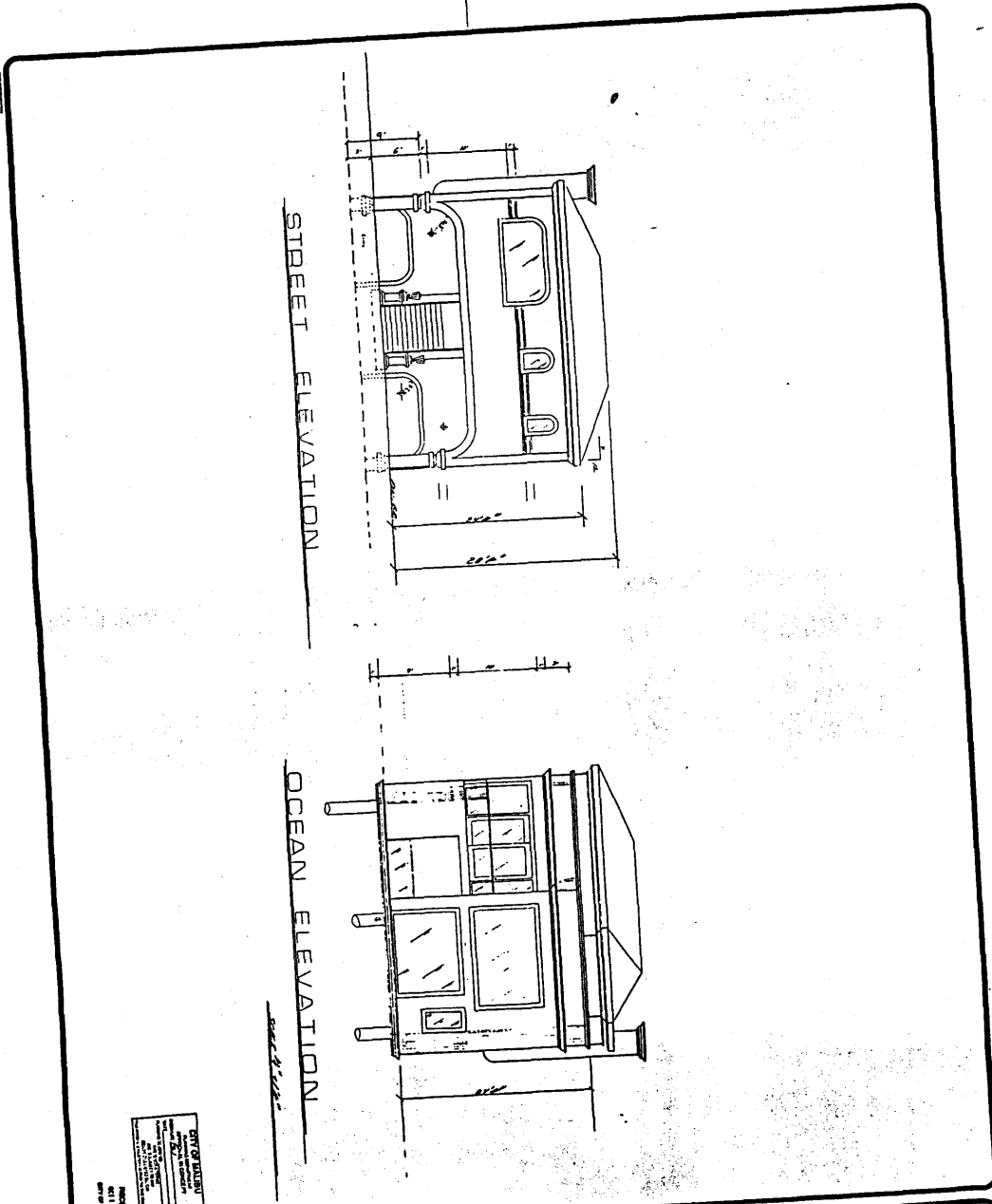


NOT TO SCALE  
 SEE PLAN  
 CHANGING

SHEET NO. 5 OF 5	PROJECT NO. 2006-001	DATE 10/10/06	DRAWN BY [Signature]	CHECKED BY [Signature]	APPROVED BY [Signature]
	PROJECT NAME [Signature]	PROJECT ADDRESS [Signature]	PROJECT CITY [Signature]	PROJECT STATE [Signature]	PROJECT ZIP [Signature]

**m** Moretti & Associates  
 6415 BONHALL DRIVE • MALIBU, CALIFORNIA 90263  
 (310) 317-0100 • FAX (310) 317-0110

THIS DOCUMENT IS THE PROPERTY OF MORETTI & ASSOCIATES. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF MORETTI & ASSOCIATES.

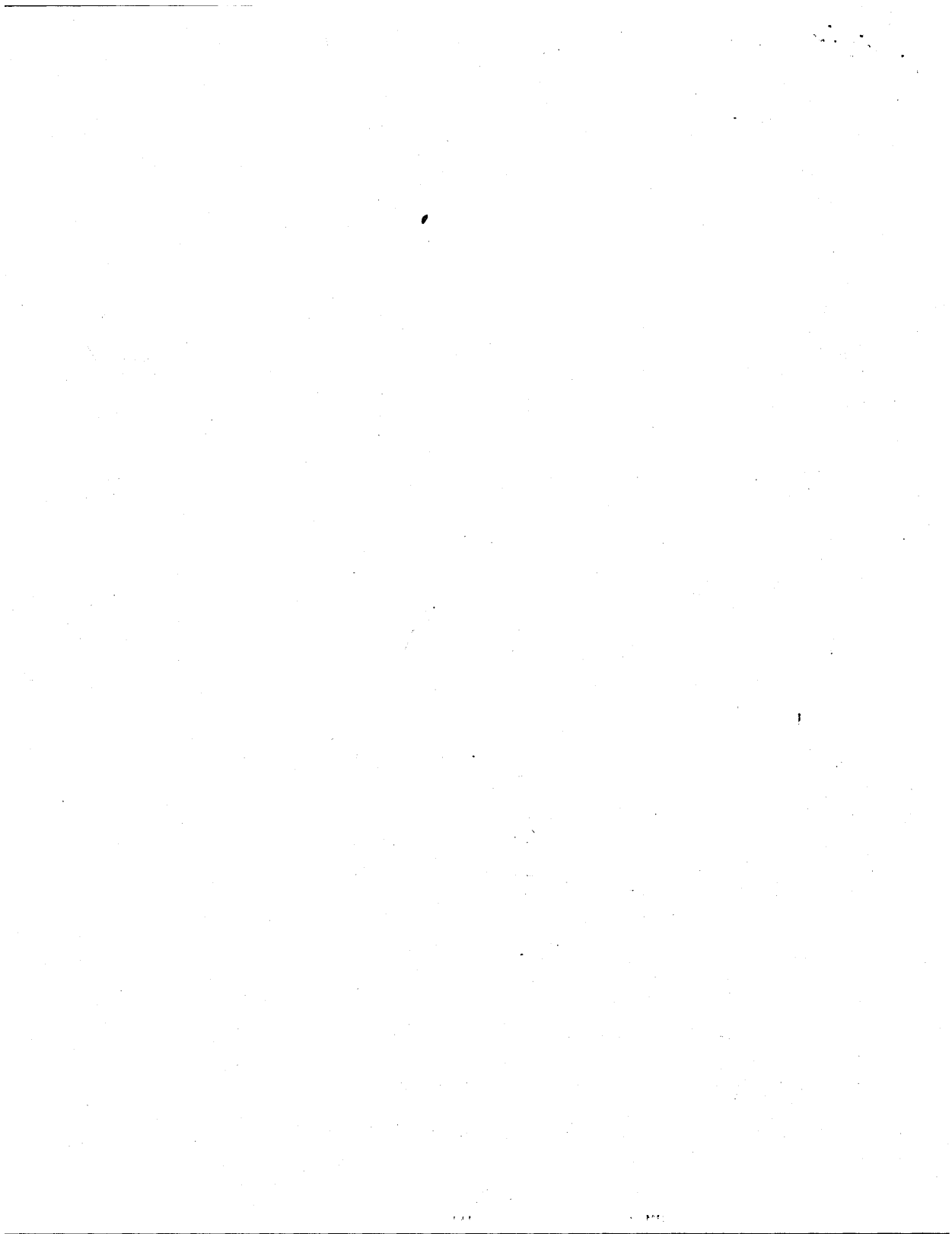


DATE: 11/11/06  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 PROJECT: [Project Name]

NO.	DATE	DESCRIPTION	BY	CHECKED
1	11/11/06	ISSUED FOR PERMIT	[Signature]	[Signature]
2				
3				
4				
5				
6				
7				
8				
9				
10				

**m** Moretti & Associates  
 614 SCHWAB DRIVE • MALIBU, CALIFORNIA 90263  
 (310) 457-4148 • FAX (310) 457-4115

These drawings are the property of Moretti & Associates, Inc. and are not to be reproduced, copied, or used in any way without the written consent of Moretti & Associates, Inc. The drawings are prepared for the specific project and site shown. Any use of these drawings for any other project or site is strictly prohibited. Moretti & Associates, Inc. is not responsible for any errors or omissions in these drawings.



---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 249**

**CHAPTER 15 - REQUIREMENTS FOR LAND DIVISIONS**

**15.1 APPLICABILITY**

Land divisions that are subject to the requirements of Section 15.2 and 15.3 of the Malibu LIP shall include subdivisions through a parcel map, tract map, grant deed, or any other method; lot splits; redivisions of land; and issuance of a certificate of compliance, unless the land division occurred prior to the effective date of the Coastal Act and complied with all state laws and local ordinances in effect at the time. Mergers are subject to the requirements of Section 15.4 of the Malibu LIP. Lot line adjustments are subject to the requirements of Section 15.5 of the Malibu LIP.

**15.1A PROCESSING OF PROPOSED LAND DIVISIONS**

Proposed land divisions shall be processed in accordance with all other applicable City ordinances that do not conflict with the requirements of this Chapter and shall, in addition, be evaluated and approved only if in compliance with the requirements of this Chapter.

**15.1B APPROVAL OF SUBSEQUENT DEVELOPMENT**

Subsequent development on a parcel created through a land division shall conform to all provisions of the approved coastal development permit that authorized the land division, or any amendments thereto.

**15.2 FINDINGS REQUIRED FOR APPROVAL OF LAND DIVISION.**

A. A land division shall not be authorized unless it is approved in a coastal development permit. A coastal development permit authorizing a land division shall not be approved unless the evidence shows, and the City makes findings, that the proposed land division complies with the requirements of this Section (15.2). Such findings shall address the specific project impacts relative to the applicable standards identified below. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record.

B. A land division shall not be approved unless the City finds that the proposed land division:

1. Does not create any parcels that do not contain an identified building site that:
  - a. Could be developed consistent with all policies and standards of the LCP,
  - b. Is safe from flooding, erosion, geologic and extreme fire hazards,
  - c. Is not located on slopes over 30% and will not result in grading on slopes over 30%.

<b>Exhibit 6</b>
<b>Appeal A-4-MAL-06-064</b>
<b>Malibu LIP Chapter 15</b>



---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 250**

All required approvals certifying that these conditions are met shall be obtained;

2. Is designed to cluster development, including building pads, if any, to maximize open space and minimize site disturbance, erosion, sedimentation and required fuel modification;
  3. Does not create any parcels where a safe, all-weather access road and driveway cannot be constructed that complies with all applicable policies of the LCP and all applicable fire safety regulations; is not located on slopes over 30% and does not result in grading on slopes over 30%. All required approvals certifying that these conditions are met shall be obtained;
  4. Does not create any parcels without the legal rights that are necessary to use, improve, and/or construct an all-weather access road to the parcel from an existing, improved public road;
  5. Is designed to minimize impacts to visual resources by complying with the following:
    - a. Clustering the building sites to minimize site disturbance and maximize open space;
    - b. Prohibiting building sites on ridgelines;
    - c. Minimizing the length of access roads and driveways;
    - d. Using shared driveways to access development on adjacent lots;
    - e. Reducing the maximum allowable density in steeply sloping and visually sensitive areas;
    - f. Minimizing grading and alteration of natural landforms, consistent with Chapter 8 of the Malibu LIP;
    - g. Landscaping or revegetating all cut and fill slopes and other disturbed areas at the completion of grading, consistent with Section 3.10 of the Malibu LIP;
    - h. Incorporating interim seeding of graded building pad areas, if any, with native plants unless construction of approved structures commences within 30 days of the completion of grading.
  6. Avoids or minimizes impacts to visual resources, consistent with all scenic and visual resources policies of the LCP;
  7. Does not create any additional parcels in an area where adequate public services are not available and will not have significant effects, either individually or cumulatively, on coastal resources;
-

---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 251**

8. Does not create any parcels without the appropriate conditions for a properly functioning septic system or without an adequate water supply for domestic use. All required approvals certifying that these requirements are met must be obtained;
9. Is consistent with the maximum density designated for the property by the Land Use Plan map and the slope density criteria (pursuant to Section 15.6 of the Malibu LIP).
10. Does not create any parcels that are smaller than the average size of surrounding parcels;
11. Does not subdivide a parcel that consists entirely of ESHA and/or ESHA buffer or create a new parcel that consists entirely of ESHA and/or ESHA buffer;
12. Does not create any new parcels without an identified, feasible building site that is located outside of ESHA and the ESHA buffer required in the LCP and that would not require vegetation removal or thinning for fuel modification in ESHA and/or the ESHA buffer;
13. Does not result in construction of roads and/or driveways in ESHA, ESHA buffer, on a coastal bluff or on a beach;
14. Does not create any parcel where a shoreline protection structure or bluff stabilization structure would be necessary to protect development on the parcel from wave action, erosion or other hazards at any time during the full 100 year life of such development;
15. If located on a beachfront parcel, only creates parcels that contain sufficient area to site a dwelling or other principal structure, on-site sewage disposal system, if necessary, and any other necessary facilities without development on sandy beaches or bluffs;
16. Includes the requirement to acquire transfer of development credits in compliance with the provisions of the LCP, when those credits are required by the Land Use Plan policies of the LCP.

**15.3 CERTIFICATES OF COMPLIANCE**

A. For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was created in compliance with state law and local ordinances in effect at the time of its creation and the parcel(s) has not subsequently been merged or otherwise altered, the City shall not require a coastal development permit. However, if

---



---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 252**

the originally created parcel was subsequently merged or recombined with another parcel(s), a certificate of compliance shall not be issued for the originally created parcel, unless the City finds that creation of the parcel complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, and the City issues a coastal development permit authorizing the land division.

B. To determine whether parcels were created in compliance with state law and local ordinances in effect at the time of its creation, and whether they were subsequently merged or otherwise altered, the applicant shall submit a complete title history, including all documentation necessary to determine how the parcels were created; what additional parcels were created from the same parent parcel either at the same time, prior to and/or after creation of the parcel; and what other grants, land divisions, mergers or transactions occurred involving the parcel after the initial creation of the parcel.

C. For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred prior to the effective date of the Coastal Act, where the parcel(s) was not created in compliance with state law and local ordinances in effect at the time of its creation, or the parcel has subsequently been merged or otherwise altered, the certificate of compliance shall not be issued unless a coastal development permit that authorizes the land division is approved. In such cases, the City shall only approve a coastal development permit in the following situations:

- (1) the land division complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, or
  - (2) the permit is conditioned to prohibit development on the affected parcels, unless and until compliance with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, has been achieved; or
  - (3) if (a) prior to certification of the LCP, the Coastal Commission approved a coastal development permit authorizing construction of a residence on one or more of the parcels that were created from the same parent parcel as the parcel for which the COC is requested and (b) the owner of the parcel for which the COC is requested does not also own the parcel referred to above on which the Coastal Commission authorized construction of a residence, and (c) the owner of the parcel for which the COC is requested acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved if it is conditioned to prohibit construction on the subject parcel unless it complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except the minimum parcel size; or
-

---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 253**

- (4) if (a) the parcel that is the subject of the request for a COC is not in common ownership with any other contiguous parcels that were created from the same parent parcel and (b) the current owner of the subject parcel acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved if it is conditioned to prohibit construction on the subject parcel unless it complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except the minimum parcel size.

In each of the above cases, the permit shall also require transfer of development credits pursuant to Chapter 7 of the Malibu LIP.

D. For issuance of a certificate of compliance pursuant to Government Code Sec. 66499.35 for a land division that occurred after the effective date of the Coastal Act, the certificate of compliance shall not be issued unless a coastal development permit that authorizes the land division is approved. In such cases, the City shall only approve a coastal development permit in the following situations:

- (1) the land division complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions; or (2) if (a) prior to certification of the LCP, the Coastal Commission approved a coastal development permit authorizing construction of a residence on one or more of the parcels that were created from the same parent parcel as the parcel for which the COC is requested and (b) the owner of the parcel for which the COC is requested does not also own the parcel referred to above on which the Coastal Commission authorized construction of a residence, and (c) the owner of the parcel for which the COC is requested acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved if it is conditioned to prohibit construction on the subject parcel unless it complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except the minimum parcel size; or
- (2) if (a) the parcel that is the subject of the request for a COC is not in common ownership with any other contiguous parcels that were created from the same parent parcel and (b) the current owner of the subject parcel acquired it prior to certification of the LCP and is a good-faith, bonafide purchaser for value. In such a case, a coastal development permit authorizing the land division may be approved if it is conditioned to prohibit construction on the subject parcel unless it complies with all policies and standards of the LCP, including the requirements of Section 15.2 of the Malibu LIP for approval of land divisions, except the minimum parcel size.
-

---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 254**

In each of the above cases, the permit shall also require transfer of development credits pursuant to Chapter 7 of the Malibu LIP.

If the requirements of Sections 15.3 (D)(1), 15.3 (D)(2) or 15.3 (D)(3) of the Malibu LIP are not met, a coastal development permit for the proposed land division shall be denied.

**15.4 MERGER OF PARCELS**

**15.4.1 Voluntary Merger**

A. Contiguous parcels under common ownership may be voluntarily merged if:

1. either a merger or lot tie is authorized or required pursuant to a term or condition of a coastal development permit; or
2. the City determines that the merger is not inconsistent with any policy or standard of the LCP that protects environmentally sensitive habitat areas and/or visual resources of the coastal zone. In this case, an administrative coastal development permit shall be approved for the merger if the requirements of Section 13.13 of the Malibu LIP are met.

B. An instrument evidencing the merger shall be recorded. The recorded instrument shall contain a legal description of the contiguous parcels prior to the merger, and the new parcel that results after the merger. The instrument must be reviewed and approved by the City prior to recording. A copy of the recorded instrument shall be provided to the Los Angeles County Assessor's Office.

C. The fee for processing a voluntary merger of parcels shall not exceed \$50 (fifty dollars).

**15.4.1A Merger Initiated by City**

A parcel may be merged with a contiguous parcel held by the same owner if the following requirements are satisfied:

- A. At least one (1) of the affected parcels is undeveloped with any structure for which a building permit was issued, or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.
- B. With respect to any affected parcel, the existing subject lots must each have been legally created parcels as specified in the Subdivision Map Act.
- C. A merger of parcels shall also conform to the procedural requirements of the Subdivision Map Act.

For a merger initiated by the City, the procedural requirements for merger of parcels set forth in the Subdivision Map Act shall be complied with. A merger of parcels shall

---

---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 255**

become effective when the City records with the County recorder, a notice of merger, specifying the name of the record owner and particularly describing the property merged.

**15.5 LOT LINE ADJUSTMENTS**

A. A lot line adjustment shall not be authorized unless it is approved in a coastal development permit. A coastal development permit authorizing a lot line adjustment shall not be approved unless the evidence shows, and the City makes findings, that the proposed lot line adjustment complies with the requirements of this Section (15.5). Such findings shall address the specific project impacts relative to the applicable standards identified below. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record.

B. A lot line adjustment shall not be approved unless the City finds the following:

1. All the parcels involved in lot line adjustment are legal parcels;
  2. The lot line adjustment complies with the applicable provisions of the Subdivision Map Act;
  3. The reconfigured parcels comply with the LCP size standards and the parcels can be developed consistent with all LCP policies and standards or, if the existing parcels do not meet this requirement, then the reconfigured parcels can accommodate development that does not have greater conflicts with the LCP policies and standards than would have occurred from development on the existing parcels;
  4. If environmentally sensitive habitat is present on any of the parcels involved in the lot line adjustment, the lot line adjustment will not increase the amount of environmentally sensitive habitat that would be damaged or destroyed by development on any of the parcels, including any necessary road extensions, driveways, and required fuel modification;
  5. As a result of the lot line adjustment, future development on the reconfigured parcels will not increase the amount of landform alteration (including from any necessary road extensions or driveways) from what would have been necessary for development on the existing parcels;
  6. As a result of the lot line adjustment, future development on the reconfigured parcels will not have greater adverse visual impacts from a scenic road, public trail or trail easement, or public beach than what would have occurred from development on the existing parcels;
-

---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 256**

- B. If there is a conflict between Sections 15.5 (B)(5) or 15.5 (B)(6) and 15.5 (B)(4) of the Malibu LIP, then protection of environmentally sensitive habitat as required in Section 15.5 (B)(4) of the Malibu LIP shall be given preference.

**15.6 SLOPE/DENSITY CRITERIA**

In order to address the impacts associated with hillside development, the slope/density criteria shall be applied to subdivisions of parcels within the rural residential zone districts, with the intent to limit the potential intensity of development as the topography becomes steeper. Subdivision requests in these districts shall be subject to the following slope/density requirements to determine the adjusted, or actual minimum lot size requirement for the subject parcel of land.

**15.6.1 Applicability**

The following zoning districts shall be subject to the slope/density criteria provisions of this section. Each zoning district indicates the minimum lot size requirement. However, this minimum lot size requirement is subject to change pursuant to Section 15.6.3 of the Malibu LIP, as it relates to the topography of the subject site. Following is a list of the zoning districts and their "base" lot size requirements.

Minimum Lot Size Requirements:

RR-40: 40 acres per lot  
RR-20: 20 acres per lot  
RR-10: 10 acres per lot  
RR-5: 5 acres per lot  
RR-2: 2 acres per lot  
RR-1: 1 acre per lot)

**15.6.2 Formula for Determining the Average Slope**

To determine the applicable slope/density factor, the average slope of the subject parcel shall be determined by a registered engineer based on the following formula:

$$S = \frac{IL \times 100}{A}$$

S = Average percent slope  
I = Contour line elevation interval in feet  
L = Sum of the length of all contour lines across the parcel  
A = Net area of parcel in square feet

- A. Measurements shall be made at contour intervals not to exceed 10N on a horizontal map scale where 1" equals 200N or less.
- B. When more than one zoning designation exists on a parcel which is proposed to be subdivided, the density limit for the entire property shall be determined by calculating the allowable number of units within each separately zoned area (fractional numbers shall be rounded down to the nearest whole number) and taking the sum total of these densities.
-

---

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 257**

**15.6.3 Slope Density Factor**

Based on the average percent slope for the property, the following table shall determine the slope/density factor for the subject property.

<u>Average Percent Slope</u>	<u>Slope/Density Factor</u>
0 - 10	1.0
10.1 - 15	1.1
15.1 - 20	1.3
20.1 - 25	1.5
25.1 - 33	1.7
33. - over	1.95

To determine the adjusted, or actual minimum lot size for a parcel, this slope/density factor shall be multiplied by the "base" minimum lot size requirement specified for that zoning district in which the subject parcel is located. The resulting figure is the actual minimum lot size requirement which must be met for any proposed subdivision of the subject parcel of land.





Exhibit 7
Appeal 4-MAL-06-064
Aerial Photo