

CALIFORNIA COASTAL COMMISSION

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

**ADDENDUM**

DATE: June 11, 2007
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 23a, Thursday, June 14, 2007
Appeal No. A-4-MAL-05-084 (Greene)

The purpose of this addendum is to make the following corrections to:

- A) Special Condition No. One (1) on page 3 of the staff report for the subject appeal (deletion shown in ~~strikethrough~~):

1. Offer to Dedicate Lateral Public Access

In order to implement the applicants' proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicants agree to complete the following *prior to issuance of the coastal development permit*: the landowners shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to 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 ambulatory mean high tide line landward to the dripline of the proposed lower deck. The dripline of the lower deck is illustrated on the surveyed site plan prepared by Quiros Surveying, received in the Commission office on July 25, 2005 (**Exhibit 5**).

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. The recording document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of both the applicants' entire parcel and the easement area. ~~This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.~~

- B) Special Condition No. Four (4) on page 4 of the staff report for the subject appeal (addition shown in underline).

4. Shoreline Protective Structure

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

- A. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective structure approved pursuant to Coastal Development Permit No. A-4-MAL-05-084 shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. The applicants expressly waive any rights to such activity that may exist under Public Resources Code Section 30235, as incorporated as a policy in the Malibu LCP.
- B. The intended purpose of the shoreline protective device is solely to protect the onsite wastewater treatment system approved pursuant to Coastal Development Permit No. A-4-MAL-05-084. Any future development on the project site landward of the shoreline protection structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure. If off-site wastewater treatment is provided to this property in the future, the owner shall remove the shoreline protective device. The owner shall submit a plan for removal of the shoreline protective device for the review and approval of the Executive Director within 60 days of the installation of offsite wastewater treatment.

CALIFORNIA COASTAL COMMISSION

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

Appeal Filed: 7/19/05
49th Day: 9/6/05
Substantial
Issue Found: 8/10/05
Staff: D. Christensen
Staff Report: 5/24/07
Hearing Date: 6/14/07

**STAFF REPORT: APPEAL**
DE NOVO REVIEW

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-MAL-05-084

APPLICANT: Terry Greene

APPELLANTS: Commissioners Caldwell and Kruer

PROJECT LOCATION: 21934 Pacific Coast Highway, Malibu, Los Angeles County

PROJECT DESCRIPTION: Demolition of existing 1,418 sq. ft. residence and construction of a new 2,626 sq. ft. single family residence with 400 sq. ft. garage, alternative on-site wastewater treatment system, and bulkhead on a beachfront parcel.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for City of Malibu Coastal Development Permit No. 04-014/Variance No. 05-014; City of Malibu Planning Commission Resolution No. 05-18; "Preliminary Geotechnical Engineering Report" by Earth Systems, dated January 31, 2003; "Addendum 1 to Geotechnical Engineering Report" by Earth Systems, dated January 8, 2004; "Coastal Engineering Report" by David C. Weiss Structural Engineer & Associates, Inc., dated January 16, 2003; City of Malibu LCP Amendment 1-06, certified April 10, 2007.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with twelve (12) special conditions regarding offer to dedicate lateral public access, geotechnical engineering recommendations, construction responsibilities and debris/excavated material removal, shoreline protective structure, assumption of risk, public view corridor, erosion control, drainage and polluted runoff, on-site wastewater treatment system, deed restriction, sign restriction, and exterior lighting. As conditioned, the proposed development will be consistent with all applicable policies and standards of the City of Malibu Local Coastal Program and the recreation and access policies of the Coastal Act.

The project site is on a 7,840 square foot beachfront lot located in the Carbon Beach area of the City of Malibu. The proposed project includes demolition of an existing, 1,418 sq. ft. residence, septic system and bulkhead, and construction of a new, 2,626 sq. ft. residence with alternative on-site wastewater treatment system and bulkhead. The development will be located landward of the mean high tide line and is consistent with the applicable stringlines.

Continued on next page

The entire residence will be supported on a concrete pile and grade beam foundation system bearing into competent bedrock. However, since the majority of the project site is subject to wave uprush, the proposed bulkhead is necessary to protect the on-site wastewater treatment system from wave uprush and erosion.

The Commission previously found that this appeal raised substantial issue with respect to the project's consistency with the applicable public access, visual, and water quality policies of the LCP. The standard of review for the de novo review of the project is whether the proposed development is in conformity with the certified City of Malibu Local Coastal Program. Additionally, because the project site is located between the sea and the first public road, the project must also conform to the recreation and access policies of the Coastal Act. During the De Novo hearing, testimony may be taken from all interested persons.

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. A-4-MAL-05-084 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development on the ground that the development is located between the sea and the first public road nearest the shoreline and will conform with the policies of the certified Local Coastal Program for the City of Malibu and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act since feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. These permits are not valid and development shall not commence until copies of the permits, signed by the permittee or authorized agent, acknowledging receipt of the permits and acceptance of the terms and conditions, are returned to the Commission office.

2. Expiration. If development has not commenced, the permits will expire two years from the date on which the Commission voted on the de novo appeal of the permits. Development shall be pursued in a diligent manner and completed in a reasonable

period of time. Application(s) for extension of the permit(s) must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permits may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permits.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject properties to the terms and conditions.

III. SPECIAL CONDITIONS

1. Offer to Dedicate Lateral Public Access

In order to implement the applicants' proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicants agree to complete the following *prior to issuance of the coastal development permit*: the landowners shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to 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 ambulatory mean high tide line landward to the dripline of the proposed lower deck. The dripline of the lower deck is illustrated on the surveyed site plan prepared by Quiros Surveying, received in the Commission office on July 25, 2005 (**Exhibit 5**).

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. The recording document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of both the applicants' entire parcel and the easement area. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

2. Plans Conforming to Geotechnical Engineer's Recommendations

By acceptance of this permit, the applicants agree to comply with the recommendations contained in the submitted geotechnical and coastal engineering reports ("Preliminary Geotechnical Engineering Report", dated January 31, 2003, prepared by Earth Systems; "Addendum 1 to Geotechnical Engineering Report", dated January 8, 2004, prepared by Earth Systems; and "Coastal Engineering Report", dated January 16, 2003, prepared by David C. Weiss Structural Engineer & Associates, Inc.). These recommendations, including recommendations concerning foundations, grading, septic system, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultants prior to commencement of development.

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

3. Construction Responsibilities and Debris/Excavated Material Removal

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

4. Shoreline Protective Structure

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

- A. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective structure approved pursuant to Coastal Development Permit No. A-4-MAL-05-084 shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. The applicants expressly waive any rights to such activity that may exist under Public Resources Code Section 30235.
- B. The intended purpose of the shoreline protective device is solely to protect the onsite wastewater treatment system approved pursuant to Coastal Development Permit No. A-4-MAL-05-084. Any future development on the project site landward of the shoreline protection structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection

structure. If off-site wastewater treatment is provided to this property in the future, the owner shall remove the shoreline protective device. The owner shall submit a plan for removal of the shoreline protective device for the review and approval of the Executive Director within 60 days of the installation of offsite wastewater treatment.

5. Assumption of Risk

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

6. Public View Corridor

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

- a. No less than 20% of the lineal street frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean. The view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side of the proposed building.
- b. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street (Pacific Coast Highway).
- c. Fencing within the public view corridors shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials).
- d. Vegetation within the public view corridors shall be limited and maintained to be low-lying vegetation that will not block or obscure bluewater views.

7. Erosion Control, Drainage and Polluted Runoff Control Plans

Prior to issuance of the Coastal Development Permit, the applicants shall submit for the review and approval of the Executive Director: a) a ***Local Storm Water Pollution Prevention (SWPPP) Plan*** to control erosion and contain polluted runoff during the construction phase of the project; and b) a ***Stormwater Management Plan (SWMP)*** for the management and treatment of post-construction storm water and polluted runoff. The plans shall be certified by a California Registered Civil Engineer or Licensed

Architect and approved by the City's Department of Public Works, and include the information and measures outlined below.

a) **Local Storm Water Pollution Prevention Plan (SWPPP)**, for the construction phase of the project, shall include at a minimum the following:

- Property limits, prior-to-grading contours, and details of terrain and area drainage
- Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations
- Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)
- Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed
- Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction.
- Details for the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.
- Information on potential flow paths where erosion may occur during construction
- Proposed erosion and sediment prevention and control BMPs, both structural and non-structural, for implementation during construction, such as:
 - Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
 - Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.
 - Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
 - Prevent blowing dust from exposed soils.

- Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:
 - Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials.
 - Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies.
 - Provide sanitary facilities for construction workers.
 - Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.

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

downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;

- Constructing necessary off-site storm drain improvements to satisfy the above, or;
- Other measures accomplishing the goal of mitigating all offsite/downstream impacts.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. On-site Wastewater Treatment System

Prior to the receipt of the certificate of occupancy for the proposed residence, the applicant shall submit for the review and approval of the Executive Director verification that they have obtained a valid Standard Operating Permit from the City for the proposed OSTs. This permit shall comply with all of the operation, maintenance and monitoring provisions applicable to OSTs contained in policies 18.4 and 18.9 of the Malibu LIP.

9. Deed Restriction

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

10. Sign Restriction

By acceptance of this permit, the applicants acknowledge and agree that no signs shall be posted on the project site unless authorized by a CDP or an amendment to this CDP. No signs which restrict public access to State tidelands, public vertical or lateral access

easement areas, or which purport to identify the boundary between State tidelands and private property shall be permitted.

11. Exterior Lighting Restriction

By acceptance of this permit, the applicants acknowledge and agree that the only exterior, night lighting that is allowed on the site is the following:

- 1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas, on the site. This lighting shall be limited to fixtures that are directed downward, and use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Executive Director.
- 2) Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.
- 3) The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

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

12. Invasive Plants

By acceptance of this permit, the applicants agree that no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed in any landscaping or planter areas, or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The applicants propose the demolition of an existing one-story, 1,418 sq. ft. single-family residence with septic system and bulkhead, and construction of a new 2,626 sq. ft., 28-ft. high, two-story single-family residence with 400 sq. ft. garage, alternative on-site wastewater treatment system, and bulkhead on a 7,840 sq. ft. beachfront parcel located at 21934 Pacific Coast Highway in the Carbon Beach area of Malibu. (**Exhibits 1-4**). The applicant's proposal also includes a 20% public view corridor that is split to accommodate a 10% view corridor on each side of the residence, and an offer-to-

dedicate lateral public access easement over the southern beachfront portion of the site.

The subject parcel is located at the eastern end of Carbon Beach, between Pacific Coast Highway and the Pacific Ocean. The area surrounding the project site is characterized as a built-out portion of Malibu consisting of residential development. The subject site is currently developed with an existing 1,418 sq. ft. single-family residence, septic system, and bulkhead protecting the septic system from wave uprush.

The proposed project includes the demolition of all existing development on the subject site, including the existing bulkhead, and the construction of a new, larger residence. The proposed development will be constructed entirely on a raised concrete platform supported by a concrete pier and grade beam foundation. Although no shoreline protective devices are necessary to protect the proposed residence, a new bulkhead is necessary to protect the proposed alternative on-site wastewater treatment system on the project site. The proposed septic system will be located in the most landward position feasible, as will the protective bulkhead.

The applicant has submitted evidence of review of the proposed project by the California State Lands Commission (CSLC), dated April 9, 2003, which indicates that the CSLC presently asserts no claims that the project is located on public tidelands. The CSLC does, however, reserve the right to any future assertion of state ownership or public rights should circumstances change.

Although the project site is a beachfront parcel and the applicant is not proposing any landscaped areas, it is possible that planter areas may be incorporated into the project. To ensure that invasive plant species are not used for landscaping on the project site, which may negatively impact the local beach environment, staff recommends that **Special Condition No. Twelve (12)**, prohibiting the use of invasive plant species on the site, be required.

B. Background

Local Government Action and Filing of Appeal

On June 20, 2005, the City of Malibu Planning Commission approved Coastal Development Permit 04-014 and Variance 05-014 for the demolition of existing 1,418 sq. ft. residence and construction of a new, 2,626 sq. ft. single-family residence with 400 sq. ft. garage, alternative onsite wastewater treatment system, and bulkhead. Variance 05-014 was also approved in order to allow the required 20% contiguous view corridor to be split into two 10% view corridors on each side of the proposed building. The Coastal Development Permit was approved subject to 15 standard conditions and 13 special conditions (**Exhibit 7**).

The Notice of Final Local Action for the project was received by Commission staff on July 7, 2005. A ten working day appeal period was set and notice provided beginning

July 8, 2005, and extending to July 21, 2005. An appeal of the City's action was filed by Commissioners Caldwell and Kruer on July 19, 2005, during the appeal period. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeals and requested that the City provide its administrative record for the permit. The administrative record was received on July 25, 2005.

The City's action was appealed by Commissioners Caldwell and Kruer. The appeal is attached as **Exhibit 6**. The appeal contended that the approved project was not consistent with the policies of the certified LCP with regard to several of the public access and recreation, visual, and water quality policies of the certified City of Malibu Local Coastal Program (LCP) and applicable policies of the Coastal Act as incorporated by reference into the certified LCP. The appeal was scheduled for a substantial issue determination at the Commission's August 2005 hearing. On August 10, 2005, the Commission found that Appeal No. A-4-MAL-05-084 presented a substantial issue with respect to the grounds on which the appeal was filed under §30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan. The appeal was continued for the Commission's de novo review of the project. The hearing on this appeal has been held open since the August 2005 substantial issue determination hearing due to the fact that the applicant wished to wait for the Coastal Commission to act upon the City of Malibu LCP Amendment No. 1-06, that included proposed changes to the public view corridor policy, which would favorably effect the proposed project's consistency with the visual resource protection policies of the LCP. This issue is further discussed below.

The subject appeal alleged that that approved project was not consistent with several of the Water Quality, Public Access and Recreation, and Visual Resource policies of the certified LCP, as described below.

Water Quality

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

Public Access and Recreation

The Commissioners' appeal alleged that the project was not consistent with Public Access Policies 2.63 and 2.64 of the Malibu Land Use Plan (LUP), as well as Chapter 12 of the Malibu Local Implementation Plan (LIP). Policy 2.64 of the LUP requires that an Offer to Dedicate an easement for lateral public access be provided for all new oceanfronting development that would result in potential adverse impacts to public access along the shoreline. Specifically, Policy 2.64 requires that "such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development, i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff." In this case, the findings of the City's staff

report states that the “applicant has agreed to provide an offer to dedicate the required lateral access subject to project approval.” The special condition of approval imposed by the City requires that the applicant record an offer to dedicate a lateral public access easement across the subject property from the “mean high tide line landward to ten feet from the approved deck drip line.” However, Policy 2.64 of the LUP requires that such easements “shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development” which in this case would be the approved dripline of deck. The Commission found at the substantial issue determination hearing on the subject appeal that the reduced easement that would be provided by the City’s condition is not consistent with the applicable policy of the LUP and would result in potential loss of public access along the beach. Commission staff has since spoken with the project applicant regarding this issue and the applicant agrees to provide an offer-to-dedicate a lateral public access easement as required and specified by the LCP.

Visual Resources

Lastly, the appeal alleged that the proposed project does not meet Visual Resource Policy 6.18 of the LUP or Section 6.5(E)(2) of the LIP. The LCP requires that new development on beachfront lots include the provision and maintenance of a contiguous view corridor that is 20 percent of the width of the parcel in order to “maintain an ocean view throughout the project site.” However, in the case of the proposed project, the City approved a variance to allow the public view corridor to be split, providing 10 percent of the width of the parcel on either side of the residence. The subject parcel is 40 ft. in width (as measured in total lineal frontage along Pacific Coast Highway) and therefore, in order to comply with the requirements of Policy 6.18 of the LUP, an 8 ft. wide contiguous view corridor must be provided as part of the City’s approval of any new structures on site. However, instead, the City granted Variance No. 05-014 to only provide for two smaller 4ft. wide view corridors on either side of the new proposed residence rather than the required 8 ft. contiguous view corridor.

As discussed previously, the hearing on the subject appeal has been held open since the August 2005 substantial issue determination hearing due to the fact that the applicant wished to wait for the Coastal Commission to act upon the City of Malibu LCP Amendment No. 1-06, that included proposed changes to the LCP’s public view corridor policy.

City of Malibu LCP Amendment No. 1-06

On October 12, 2006, the Commission approved LCP Amendment No. 1-06 submitted by the City of Malibu with suggested modifications. On February 12, 2007, the Malibu City Council formally acknowledged receipt of the Commission’s certification of the LCP Amendment and accepted all modifications suggested by the Commission. On April 10, 2007, the Commission determined that the City’s action was legally adequate to satisfy the terms and requirements of the Commission’s certification of the LCP Amendment, thereby effectuating the certification. One of the changes included in the City’s LCP Amendment No. 1-06, that was certified by the Commission in April 2007, was a

modification to the public view corridor policy (Policy 6.18 of the LUP or Section 6.5(E)(2) of the LIP) that allows relief from the contiguous corridor element of the policy for lots with a lineal frontage width of 50 feet or less. Lots with a width of 50 feet or less must still provide a 20% view corridor, but it may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. Since the Commission has certified the amendment to the LCP view corridor policy, the proposed project's view corridor is now consistent with what is required by the LCP, as further discussed in the Visual Resource section of this staff report.

C. Shoreline Development and Hazards

The proposed development is located on a sandy beachfront property along the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu/Santa Monica Mountains coastal area include storm waves, wave run-up, erosion and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. By nature, coastal beach areas are subject to erosion from sheet flow from impervious surfaces on the beach such as residentially related development and from wave action along the sandy beach and particularly the developed landward areas of the sandy beach.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and shoreline development that are applicable to the proposed development.

Section 30235 of the Coastal Act, which is incorporated as part of the Malibu LCP, states:

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

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states:

New development shall:

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

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

- **4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.**
 - **4.24 All proposed development on a beach or along the shoreline, including a shoreline protection structure, 1) must be reviewed and evaluated in writing by the State Lands Commission and 2) may not be permitted if the State Lands Commission determines that the proposed development is located on public tidelands or would adversely impact tidelands unless State Lands Commission approval is given in writing.**
- 4.30 In existing developed areas where new beachfront development, excluding a shoreline protective device, is found to be infill (see definition) and is otherwise consistent with the policies of the LCP, a new residential structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the enclosed area of the nearest existing residential structures on either side of the subject lot. Similarly, a proposed new deck, patio, or other accessory structure shall not extend seaward of a stringline drawn between the nearest adjacent corners of the nearest deck, patio or accessory structure on either side. All infill development shall be setback a minimum of 10 feet landward from the most landward surveyed mean high tide line on the parcel. Whichever setback method is most restrictive shall apply. The stringline method shall apply only to infill development and where it will not result in development which would require a shoreline protection structure at any time during the life of the project.**
- 4.31 “Infill Development” shall apply to a situation where construction of a single-family dwelling and/or a duplex in limited situations on a vacant lot or the demolition of an existing residential dwelling and construction of a new dwelling is proposed in an existing, geographically definable residential community which is largely developed or built out with similar structures. When applied to beachfront development this situation consists of an existing linear community of beach fronting residences where the vast majority of lots are developed with residential dwellings and relatively few vacant lots exist. Infill development can occur only in instances where roads and other services are already existing and available within the developed community or stretch of beach. Infill development shall not apply to the construction of a shoreline protection device.**
- 4.33 All new beachfront and blufftop development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development.**

- 4.35 All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.**
- 4.36 New development on or along the shoreline or a coastal bluff shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.**
- 4.37 Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible.**
- 4.39 All shoreline protection structures shall be sited as far landward as feasible regardless of the location of protective devices on adjacent lots. In no circumstance shall a shoreline protection structure be permitted to be located further seaward than a stringline drawn between the nearest adjacent corners of protection structures on adjacent lots. A stringline shall be utilized only when such development is found to be infill and when it is demonstrated that locating the shoreline protection structure further landward is not feasible.**
- 4.42 As a condition of approval of development on a beach or shoreline which is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, the property owner shall be required to execute and record a deed restriction which acknowledges and assumes said risks and waives any future claims of damage or liability against the permitting agency and agrees to indemnify the permitting agency against any liability, claims, damages or expenses arising from any injury or damage due to such hazards.**
- 4.43 As a condition of approval of a shoreline protection structure, or repairs or additions to a shoreline protection structure, the property owner shall be 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. The restrictions shall also acknowledge that the intended purpose of the subject 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.**

The Malibu LCP policies require that new development be sited and designed to minimize risks, assure stability and structural integrity, and neither create nor contribute significantly to erosion or require the construction of protective devices that would substantially alter the natural landforms along bluffs and cliffs. Section 30235 of the Coastal Act allows the construction of shoreline protective devices where existing

development is threatened from erosion and when designed to eliminate or mitigate impacts on shoreline sand supply.

The Malibu shoreline consists of a series of rocky headlands and narrow crescent shaped beaches, vulnerable to erosion and wave up-rush. Unlike many other coastal communities in the State, a large portion of the beachfront property in Malibu was subdivided and developed prior to 1973, before the effective date of the California Coastal Zone Conservation Act. Most of this development occurred without the benefit of planning or mitigation to minimize impacts from wave hazards and to coastal resources. Largely as a result of the pre-existing pattern of development in Malibu, development along the shoreline continues to be permitted, placing more property at risk. To reduce the risk to private beachfront development, armoring of the shoreline has often occurred in the form of vertical seawall and rock revetments. Many of these structures have been placed on the beach as emergency actions during or immediately following winter storms, often without permits or adequate planning relative to placement, design, and impacts to adjacent properties and shoreline processes and public recreation. Loss of beach and, therefore, public access is too often the result of the construction of protective structures such as seawalls and revetments.

The cumulative loss of shoreline and public recreational resources from the encroachment of armoring on sandy beaches is an important coastal management issue. Shoreline armoring can exacerbate erosion by fixing the back beach and eliminating the influx of sediment from coastal bluffs. The City has found that over 60 percent of the bluffs are blocked from the erosive forces of wave action by some form of development, including Pacific Coast Highway, vertical seawalls and revetments. Armoring also causes localized scour in front or at the end of the seawall or revetment.

The certified LCP, in recognition of the adverse effects to beach areas that results from the use of shoreline protection devices to protect development, includes several policies that limit the use of such devices. Policy 4.37 of the LCP, consistent with Section 30235 of the Coastal Act which is incorporated in the certified LCP, states that shoreline protection devices shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel.

The proposed project includes demolition of an existing, pre-Coastal Act residence, septic system, and bulkhead, and the construction of a new residence, alternative on-site wastewater treatment system, and vertical bulkhead to protect the wastewater treatment system, which is located partially within the estimated wave uprush zone for the project site. The proposed bulkhead would be located beneath the residence approximately 25 feet seaward of Pacific Coast Highway and would be subject to periodic wave action. The proposed wastewater treatment system and bulkhead are located as far landward as feasible.

Since the proposed development involves a new shoreline protective device that has the potential to adversely impact natural shoreline processes, it is necessary to analyze

the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

1. Site Shoreline Characteristics

The proposed project site is located on the eastern end of Carbon Beach in the City of Malibu. Carbon Beach is characterized as a relatively narrow beach which has been developed with numerous single family residences located to the east and west of the subject site. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Carbon Beach is exposed to recurring storm damage because of the absence of a sufficiently wide protective beach.

2. Seaward Encroachment

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

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

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

In the case of the proposed project, the proposed residence includes an upper deck and lower deck attached to the seaward side of the first and second floors of the residence. This development scheme is similar to that of the adjacent residences that lie to the east and west of the subject parcel. The applicant has submitted a surveyed site plan that show both a lower deck stringline and upper deck stringline across the subject property, originating at the nearest corner of the neighboring deck immediately upcoast (west) of the project site, and terminating at the nearest corner of the neighboring deck immediately downcoast (east) of the project site. The applicant's surveyed site plan also shows a structural stringline drawn from the nearest adjacent corners of the adjacent

structures. The proposed residential structure and decks are located landward of their respective development stringlines (**Exhibit 5**).

As such, the Commission finds that the proposed project will not result in the seaward encroachment of development on Carbon Beach and will serve to minimize adverse effects to coastal processes consistent with the certified LCP.

3. Mean High Tide Line and Wave Up-Rush

The applicant's "Coastal Engineering Report," prepared by David C. Weiss, dated January 16, 2003, represents that the most landward known measurement of the ambulatory mean high tide line on the project site is approximately 130 feet seaward of the Pacific Coast Highway right-of-way line, recorded in 1928. The seaward most extension of the proposed development (the dripline of the proposed lower deck) will be located approximately 84 feet seaward of the Pacific Coast Highway right-of-way line (approximately 45 feet landward of the 1928 mean high tide line). The staff of the State Lands Commission has reviewed the proposed project and have stated that they presently assert no claim that the project intrudes onto sovereign lands or that it would lie in an area subject to the public easement in navigable waters. Based on the submitted information, the Commission notes that the proposed development will be located more than ten feet landward of the most landward recorded (1928) mean high tide line, and should not extend onto public tidelands under normal conditions.

Although the proposed residence will be located landward of the 1928 mean high tide line, the applicant's coastal engineering consultant indicates that the maximum wave uprush under the 100-year worst-case storm conditions at the subject site will occur approximately 11 feet seaward of the Pacific Coast Highway right-of-way line. The applicants' coastal engineering consultant has indicated that although the proposed residence will be constructed seaward of the maximum wave uprush limit, the residence will be supported by an elevated concrete pile and grade beam foundation system bearing into competent bedrock and will not require any form of shoreline protection to ensure structural stability. In addition, the proposed project includes the installation of a new alternative on-site wastewater treatment system that will provide secondary treatment of the residence's wastewater. The applicant's coastal engineering consultant has indicated that the proposed septic system is located as far landward as feasible. However, the seaward extent of the wastewater treatment system (located approximately 20 feet seaward of the Pacific Coast Highway right-of-way line) will still be partially within the wave uprush limit and will require a shoreline protection device to ensure the stability of the system. The Commission notes that inadequate space exists on the site landward of the maximum wave uprush limit and that, therefore, it is not possible to construct any type of wastewater treatment system that would not be subject to periodic wave action without the construction of some form of shoreline protection. Therefore, the Commission notes that the proposed bulkhead is necessary to protect the proposed wastewater treatment system from wave uprush and erosion.

Based on the above discussion, the Commission finds that the proposed bulkhead is required to protect the wastewater treatment system that will service the proposed residential development and will be located as far landward as feasible, consistent with Malibu LUP Sections 4.36, 4.37, and 4.39. The purpose of the shoreline protective device authorized by this permit is solely to protect the septic system on site and that no shoreline protective device is required to protect the residence authorized by this permit. If the septic system approved under this permit were replaced or abandoned, however, then the bulkhead approved under this permit to protect the septic system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating the shoreline protective device further landward. Additionally, any future improvements to the proposed seawall that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access.

Therefore, to ensure that the proposed project does not result in new future adverse effects to shoreline sand supply and public access and that future impacts are reduced or eliminated, **Special Condition No. Four (4)** prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device. **Special Condition Four (4)** also requires the applicant to obtain a new coastal development permit for the shoreline protection structure should any future development be proposed on the project site landward of the shoreline protection structure, unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure. If off-site wastewater treatment, such as a sewer system, is provided to this property in the future, Special Condition 4 requires the owner to remove the shoreline protective device. The owner shall submit a plan for removal of the shoreline protective device for the review and approval of the Executive Director within 60 days of the installation of offsite wastewater treatment.

In addition, the Commission finds that because there remains some inherent risk in building on properties on beachfront lots which are subject to the unforeseen possibility of liquefaction, storm waves, surges, erosion, landslide, wildfire, and flooding, such as the subject site, that the Commission can only approve the project if the applicant assumes the liability from the associated risks. Therefore, the Commission finds it necessary to require the applicant to agree to assume the risks of development as approved by this permit. **Special Condition No. Five (5)** requires the applicant to assume the liability from the associated risks of developing the subject site as noted above. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same, consistent with Policy 4.42 of the Malibu LUP.

The applicant's geotechnical and coastal engineering reports ("Preliminary Geotechnical Engineering Report" by Earth Systems, dated January 31, 2003; "Addendum 1 to

Geotechnical Engineering Report” by Earth Systems, dated January 8, 2004; and “Coastal Engineering Report” by David C. Weiss Structural Engineer & Associates, Inc., dated January 16, 2003) include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site and adjacent properties. The consultants have determined that the proposed development will serve to ensure geologic and structural stability on the subject site.

To ensure that the recommendations of the geotechnical and coastal engineering consultants have been incorporated into all proposed development, **Special Condition No. Two (2)** requires the applicant to comply with the recommendations contained in the submitted geotechnical and coastal engineering reports, and incorporate all recommendations into the final design and construction plans. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

In addition, the Commission finds that construction/demolition activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction/demolition site materials were discharged into the marine environment or left inappropriately/unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. To ensure that adverse effects to the marine environment are minimized, **Special Condition No. Three (3)** requires the applicant to ensure that stockpiling of construction materials shall not occur on the beach, no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, all grading shall be properly covered, and sand bags and/or ditches shall be used to prevent runoff and siltation.

Finally, **Special Condition No. Nine (9)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of Chapter 4 (Hazards and Shoreline/Bluff Development) of the Malibu LUP, including Sections 30235, and 30253 of the Coastal Act, which are incorporated as part of the LUP, and the applicable standards of Chapter 10 (Shoreline Development) of the Malibu LUP.

D. Public Access

The Malibu Local Coastal Program (LCP) mandates the provision of maximum public access and recreational opportunities along the coast. The Malibu LCP incorporates Sections 30210, 30211, 30212, and 30220 of the Coastal Act applicable to new development along the beach. In addition to being incorporated as part of the LCP, the access and recreation policies of the Coastal Act are also a standard of review for appealed projects between the sea and the first public road that are considered de novo.

Section 30210 of the Coastal Act states:

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

Coastal Act Section 30211 states:

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

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

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

Section 30220 of the Coastal Act states:

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

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

- 2.5 *New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency***

has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.

- 2.40** *For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement may be recorded instead of an offer to dedicate an easement, if a government agency or private association is willing to accept the grant of easement and is willing to operate and maintain the trail or public beach accessway.*
- 2.41** *For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a private association that seeks to accept the offer. Any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement. The City shall approve any private association that submits a management plan that indicates that the association will open, operate, and maintain the easement in accordance with terms of the recorded offer to dedicate the easement.*
- 2.63** *Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.*
- 2.64** *An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. Such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff.*

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

The proposed project is located on the eastern end of Carbon Beach, near to open vertical public coastal access ways both up-coast (22126 PCH) and down-coast from the subject property. Furthermore, there are several lateral public access easements located on lots near the project site. The applicant has offered to dedicate a lateral public access easement as part of the proposed project.

The State of California owns tidelands, which are those lands located seaward of the mean high tide line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts the use of

sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

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

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

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

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately, to the extent and availability of tidelands. For these reasons, the Commission must also consider whether a project will have indirect effects on public ownership and public use of shorelands, as required by Policy 2.64 of the LUP.

As stated previously, the proposed project includes the construction of a bulkhead that will be located 25 feet seaward of the Pacific Coast Highway right-of-way line. The interference by a shoreline protective device has a number of adverse effects on the

dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, which result from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand, as shore material is no longer 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 that this has on the public is a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline, eventually affecting the profile of a public beach. Fourth, if not sited as far landward as possible, in a location that ensures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate wave energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

The preferred alternative to avoid any such impacts to public access is to construct a beachfront project such that no shoreline protection device is required. In this case, no protection will be required for the residence itself. However, it is not feasible to construct a wastewater system on the project site without shoreline protection. As described above, Policies 4.37 and 4.39 of the Malibu LUP require that new shoreline protection devices to be located as far landward as possible in order to reduce adverse effects on sand supply and public access from the development. In the case of the proposed project, the new bulkhead and septic system will be located as far landward as possible. However, any future improvements to the proposed bulkhead that might result in the seaward extension of the shoreline protection device would result in increased adverse effects to shoreline sand supply and public access. Therefore, to ensure that the proposed project does not result in new future adverse effects to public access, **Special Condition No. Four (4)** requires the applicants to acknowledge that any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit will be prohibited if such activity extends the seaward footprint of the subject shoreline protective device. The purpose of the shoreline protective device authorized by this permit is solely to protect the onsite wastewater treatment system proposed as part of the project and that no shoreline protective device is required to protect the residence authorized by this permit. If the on-site wastewater treatment system approved under this permit were replaced or abandoned, then the bulkhead approved under this permit to protect the on-site wastewater treatment system might no longer be necessary and the adverse impacts of the shoreline protective device on public access could be eliminated through its removal or by locating it further landward. As a result, **Special Condition No. 4** requires the

applicants to acknowledge that a plan for removal of the shoreline protective device authorized by this permit shall be submitted to the Executive Director within 60 days of the installation of an off-site wastewater treatment system if the proposed on-site wastewater treatment system is replaced or abandoned for any reason (including the installation of a sewer system along Pacific Coast Highway). **Special Condition No. 9** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Furthermore, the Commission must also consider whether a project affects any public right to use shorelands that exist independently of the public's ownership of tidelands. In addition to a new development's effects on tidelands and on public rights which are protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of the ownership underlying the land on which the public use takes place. Generally, there are three additional types of public uses, which are identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and State common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five year period, and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

These use rights are implicated when the public walks on the wet or dry sandy beach below the mean high tide 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, which is why the effects of structures constructed on the beach are of particular concern.

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

For all new development between the nearest public roadway and the sea, including the construction of new single family residences or shoreline protection devices, the Malibu LCP requires that lateral public access along the beach be provided in order to mitigate adverse effects the proposed development will have on the public's ability to access and use public tidelands and coastal resources. The applicant is proposing an offer-to-dedicate a lateral public access easement, consistent with what is required by the Malibu LCP, that would provide for public access along the entire beach under all tidal

conditions as measured seaward from the deck dripline to the ambulatory mean high tide line. In order to ensure that the applicants' offer-to-dedicate a lateral public access easement is recorded prior to the issuance of the coastal development permit, **Special Condition No. One (1)** is required.

Further, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. LUP Policy 2.81 requires that no signs on beachfront property shall be posted unless authorized in a CDP and prohibits signs that restrict public access. Section 3.13.3(X) of the Malibu LIP (Prohibited Signs) states that: "Signs which restrict public access to State tidelands, public vertical or lateral access easement areas, or which purport to identify the boundary between State tidelands and private property shall not be permitted". The Commission finds, therefore, that to ensure that the applicant clearly understands that such postings are not permitted, it is necessary to impose **Special Condition No. Ten (10)** to ensure that similar signs are not posted on or near the proposed project site. The Commission finds that, if implemented, **Special Condition No. 10** will protect the public's right of access to the sandy beach below the mean high tide line. **Special Condition No. 9** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For all of the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of Chapter 2 (Public Access and Recreation) of the Malibu LUP, the standards of Chapter 12 (Public Access) of the Malibu LIP, and the recreation and public access policies of the Coastal Act (Sections 30210, 30211, 30212, and 30220).

E. Visual Resources

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The Malibu LCP requires that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures. In addition, development is required to preserve bluewater ocean views by limiting the overall height and siting of structures where feasible to maintain ocean views over the structures. Where it is not feasible to maintain views over the structure through siting and design alternatives, view corridors must be provided in order to maintain an ocean view through the project site.

Section 30251 of the Coastal Act, which is incorporated as part of the Malibu LCP, requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. Section 30251 of the Coastal Act states that:

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

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

- 6.1 *The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.***
- 6.2 *Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.***
- 6.3 *Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:***
 - *Pacific Coast Highway***
 - *Decker Canyon Road***
 - *Encinal Canyon Road***
 - *Kanan Dume Road***
 - *Latigo Canyon Road***
 - *Corral Canyon Road***
 - *Malibu Canyon Road***
 - *Tuna Canyon Road***
- 6.4 *Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or***

existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.

- 6.5 *New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.*
- 6.6 *Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.*
- 6.15 *Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.*
- 6.18 *For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:*
- *Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.*
 - *The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots with a width of 50 feet or less. Lots with a lineal frontage of 50 feet or less shall provide 20% of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10% of the lot width on each side. For lots greater than 50 feet in width, the view corridor may be split to provide a contiguous view corridor of not less than 10 percent of the lot width on each side, provided that each foot of lot width greater than 50 feet is added to the view corridor. On irregularly shaped lots, the Planning Manager shall determine which side yards shall constitute the view corridor in order to maximize public views. Sites shall not be designed so as to provide for parking within these designated view corridors.*
 - *No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.*
 - *Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.*
 - *In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 80 percent maximum of the total lineal frontage of the overall project site and that the remaining 20 percent is maintained as one contiguous view corridor.*

- 6.23 *Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.***

Section 30251 of the Coastal Act, which is incorporated as part of the Malibu LCP, requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

The project site is located on Carbon Beach, a built-out area of Malibu primarily consisting of residential and commercial development. The Commission notes that the visual quality of the Carbon Beach area in relation to public views from Pacific Coast Highway have been significantly degraded from past residential and commercial development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential and commercial related development between Pacific Coast Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels that have not yet been developed. As such, the Commission notes that such development, when viewed on a regional basis, will result in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

In this case, the proposed project will involve the demolition of an existing one-story residence and the construction of a new, two-story residential structure on a beachfront parcel. There are existing, two-story residential structures located to the west and east of the subject site. As stated above, Coastal Act Section 30251, as incorporated into the Malibu LCP, requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The Commission notes that the construction of new residential development provides for the opportunity to enhance public views, where such views have been significantly degraded by past development, through the creation and maintenance of public view corridors, consistent with the visual resource policies of the Malibu LCP, including Section 30251 of the Coastal Act. In certifying the Malibu LCP, the Commission found that new residential development, such as the proposed project, should be designed to provide for a public view corridor of no less than 20 percent of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway. Policy 6.18 of the LUP

requires that buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site, the remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor, except on lots 50-feet or less in width, in which case the view corridor may be split to provide a contiguous view corridor of no less than 10% of the lot width on each side. Further, this policy requires that no portion of any above-ground structure shall extend into the view corridor and that any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.

Staff notes that prior to the certification of the Malibu LCP, as amended by LCPA 1-06, Policy 6.18 did not include any provision for splitting the view corridor on narrower beachfront parcels. The fact that the approved project included splitting the 20-percent view corridor was one of the bases for the subject appeal. Now that the Commission has certified the LCP, as amended by LCPA 1-06, the certified Policy 6.18 must be applied.

In the case of the proposed project, the subject site is 40 feet in width and a public view corridor of 20 percent of the width of the site's lineal frontage would be 8 feet. Since the subject parcel is less than 50 feet in width, the proposed project includes two public view corridors on each side of the project site that are each 4 feet in width, which is 10 percent of the lot width on either side. The project plans show that no structures will be constructed within the required view corridors. No landscaping is proposed within the view corridors. Finally, the applicant proposes the installation of glass gates within each view corridor, at the front property line. The use of glass gates will ensure that views across the site are not blocked, while providing security to the property. As such, the proposed project is consistent with the requirement to provide ocean views across the site.

To ensure that public coastal views will be protected in the future, **Special Condition No. Six (6)** requires the applicants to agree that no less than 10 percent of the lineal frontage of the project site shall be maintained as two contiguous public view corridors on either side of the proposed residence. Development within the public view corridor shall be limited to fencing of visually permeable designs and materials, such as wrought iron or non-tinted glass materials. The Commission notes that certain types of visually permeable fencing, including certain types of glass walls, may be allowed within a public view corridor if such structures do not interfere with public views of the beach and ocean from Pacific Coast Highway. In addition, **Special Condition No. 6** also limits any future vegetation within the public view corridor to low-lying vegetation that will not obscure or block bluewater ocean views.

In addition, Policy 6.23 of the Malibu LCP specifically restricts exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area in order to eliminate the adverse individual and cumulative visual impacts associated with the lighting of such areas visible from public areas. In order to mitigate any potential future visual and

environmental impacts of the proposed project, the Commission finds it necessary to require that exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas such as Pacific Coast Highway or the beach and ocean area, as specified in **Special Condition No. Eleven (11)**.

Special Condition No. 9 requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In summary, the proposed project, as conditioned, will not result in any significant adverse impacts to scenic public views or the character of the surrounding area in this portion of Malibu. In addition, the project, as conditioned is the least environmentally damaging alternative and there are no alternatives that would lessen any significant adverse impact on scenic and visual resources. Thus, the Commission finds that the proposed project is consistent, as conditioned, with applicable policies of the Malibu LCP.

F. Water Quality

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

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

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

Further, the following LUP water quality policies are applicable:

3.100 *New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.*

- 3.102 *Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.*
- 3.110 *New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.*
- 3.111 *New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.*
- 3.125 *Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.*
- 3.126 *Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.*
- 3.127 *OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.*
- 3.128 *New development shall be sited and designed to provide an area for a backup soil absorption field in the event of failure of the first field.*
- 3.130 *Subsurface sewage effluent dispersal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath nonporous paving or surface covering.*
- 3.131 *New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and should avoid the use of garbage disposals to minimize hydraulic and/or organic overloading of the OSTs.*
- 3.132 *New development may include a separate greywater dispersal system where approved by the Building Safety Department.*

- 3.133** *The construction of private sewage treatment systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage treatment system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.*
- 3.138** *New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems.*
- 3.141** *Applications for a coastal development permit for OSTs installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTs on groundwater level, quality of nearby surface drainages, and slope stability. Where it is shown that the OSTs will negatively impact groundwater, nearby surface waters, or slope stability, the OSTs shall not be allowed.*

As described above, the proposed project includes demolition of an existing residence and the construction of a new, larger single family residence, septic system, and protective bulkhead on a beachfront parcel in the Carbon Beach area of Malibu. The construction of impervious surfaces, such as the proposed residential development, allows for less infiltration of rainwater into the soil, thereby increasing the rate and volume of runoff, causing increased erosion and sedimentation. Additionally, the infiltration of precipitation into the soil allows for the natural filtration of pollutants. When infiltration is prevented by impervious surfaces in beachfront areas, pollutants in runoff are quickly conveyed to the ocean. Thus, new development can cause cumulative impacts to the coastal water quality by increasing and concentrating runoff and pollutants.

As such, the proposed project will result in an increase of impervious surface on site, which in turn decreases the infiltrative function and capacity of existing permeable land and sand on the project site. The Commission finds that this reduction in permeable surface leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak water discharge is increased and the peak occurs much sooner after precipitation events. Additionally, grading, excavations and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion of disturbed soils and in sedimentation of the ocean.

In addition, pollutants commonly found in runoff associated with new development include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter;

fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use; nutrients from wastewater discharge, animal waste and crop residue; and bacteria and pathogens from wastewater discharge and animal waste.. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation which provides food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the preparation of a Storm Water Management Plan (SWMP) for all projects that require a Coastal Development Permit or a Water Quality Mitigation Plan (WQMP) for new residential developments on beachfront parcels that involve result in the creation or addition or replacement of 2,500 sq. ft. or more of impervious surface. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to minimize or prevent adverse effects of the project on water quality. A WQMP requires treatment control (or structural) BMPs, in addition to site design and source control BMPs that are required for a SWMP, to minimize or prevent the discharge of polluted runoff from a project site. In this case, the project involves the replacement of more than 2,500 sq. ft. of impervious surface area on a beachfront site. Therefore, pursuant to the requirements of the Malibu LCP, and to ensure the proposed project will not adversely impact water quality or coastal resources, the Commission finds it necessary to require the preparation of a WQMP for the subject site, that utilizes site design, source control and treatment control BMPs, as specified in **Special Condition No. Seven (7)**.

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from runoff during construction. The Malibu LCP requires that a Local Storm Water Pollution Prevention Plan (SWPPP) be prepared for all development that requires a Coastal Development Permit and a grading or building permit, and it shall apply to the construction phase of the project. The SWPPP includes measures and BMPs to prevent erosion, sedimentation and pollution of surface and ocean waters from construction and grading activities. In this case, the proposed project does involve grading and construction that requires grading and building permits. Therefore, pursuant to the Malibu LCP and to ensure the proposed development does not adversely impact water quality or coastal resources during the construction phase of the project, the Commission finds it necessary to require the

applicant to submit a Local SWPPP for the subject site, consistent with the requirements specified in **Special Condition No. Seven (7)**.

Finally, the proposed development includes the construction of a new, alternative on-site wastewater treatment system (OSTS) to serve the residence. The Malibu LCP includes a number of policies and standards relative to the design, siting, installation, operation and maintenance of OSTs to ensure these systems do not adversely impact coastal waters. The proposed OSTs was previously reviewed and approved in concept by the City of Malibu Environmental Health Department, determining that the system meets the requirements of the plumbing code.

In addition, in order to ensure the OSTs is maintained and monitored in the future to prevent system failures or inadequate system performance, the Malibu LCP includes policies and standards requiring the regular maintenance and monitoring of the OSTs. Therefore, the Commission finds that it is necessary to require the applicant to submit verification that they have obtained a monitoring, operation and maintenance permit from the City, as outlined in **Special Condition No. Eight (8)**.

The Commission finds that based on the above findings the proposed project, as conditioned, will not result in adverse impacts to water quality and is consistent with the applicable policies of the Malibu LCP.

G. California Environmental Quality Act

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

The Commission incorporates its findings on Local Coastal Program consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the policies of the Certified Local Coastal Program and the recreation and access policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

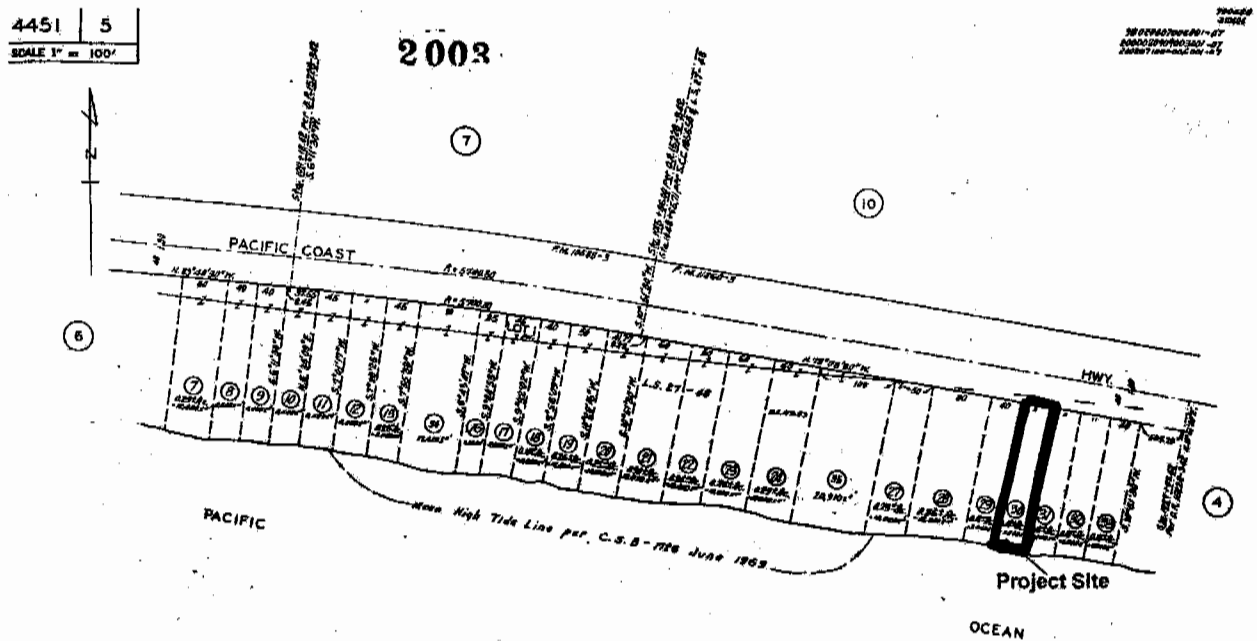
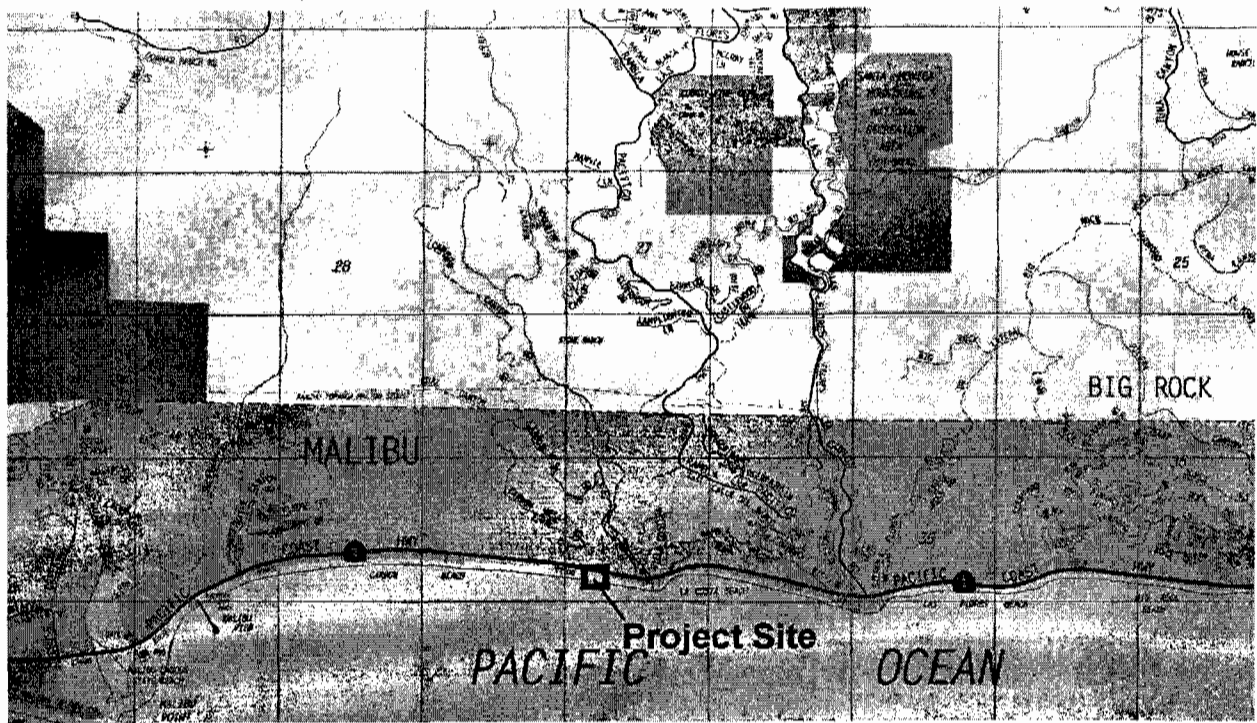
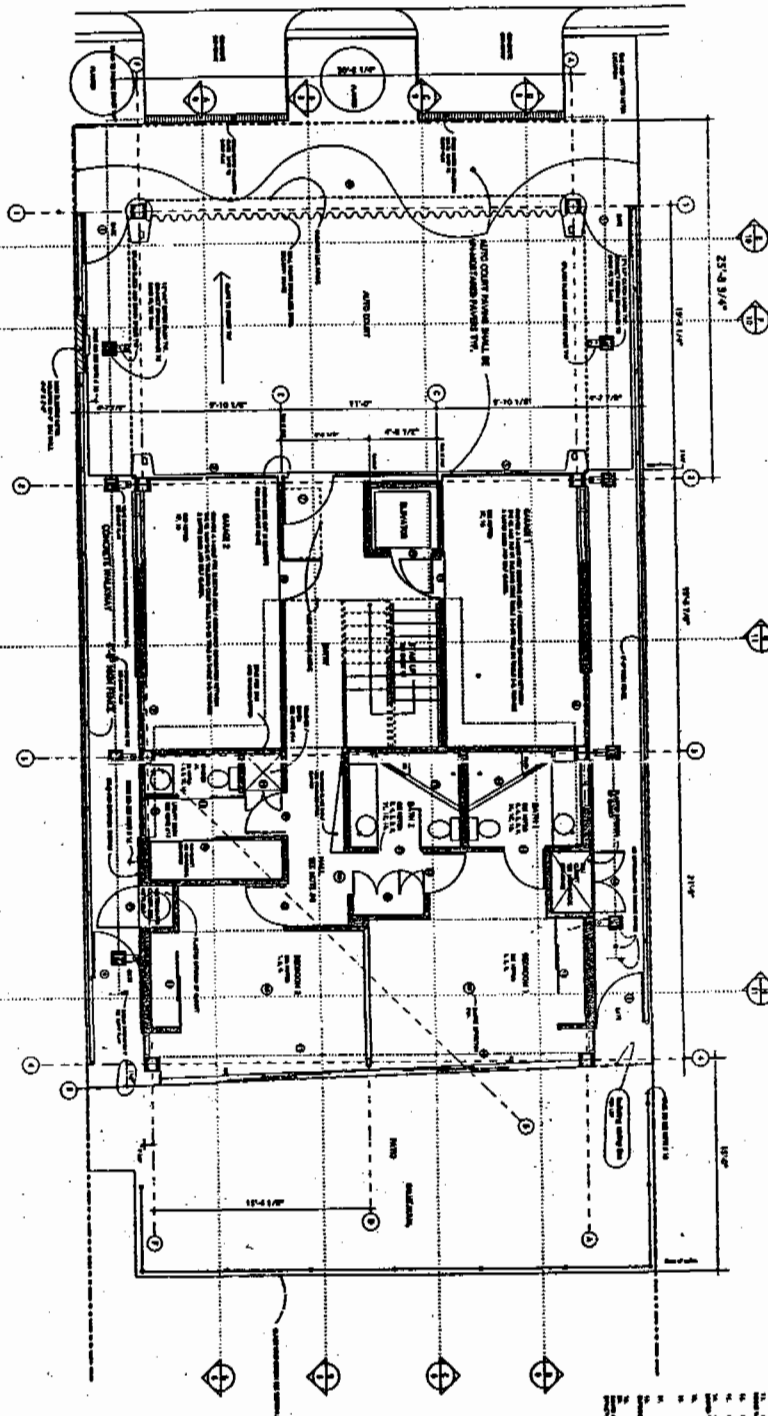


Exhibit 1
A-4-MAL-05-084
Vicinity and
Parcel Maps

PACIFIC COAST HWY

FIRST FLOOR PLAN
 ROOM AREA:
 RESIDENCE - 1,213 SQ. FT.
 GARAGE - 400 SQ. FT.



SEE FIRST FLOOR DIMENSION PLAN SHT. #5 FOR ADDITIONAL DIMENSIONS

FIRST FLOOR PLAN

1	2	3
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GREENE RESIDENCE
 21934 PACIFIC COAST HWY.
 MALIBU, CA. 90265

TYPICAL NOTES: PROVIDE THE STRONGEST
 1. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES OF THE CITY OF MALIBU AND THE STATE OF CALIFORNIA.
 2. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY ENGINEER.
 3. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS.
 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE.
 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY BONDS.
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SURETIES.
 7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY REFERENCES.
 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY REFERENCES.
 9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY REFERENCES.
 10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY REFERENCES.

EDWARD W. RILES ARCHITECT
 21934 PACIFIC COAST HWY.
 MALIBU, CALIFORNIA 90265
 (310) 457-0002

Exhibit 2
 A-4-MAL-05-084
 Site/Floor Plan

SECTIONS A & B

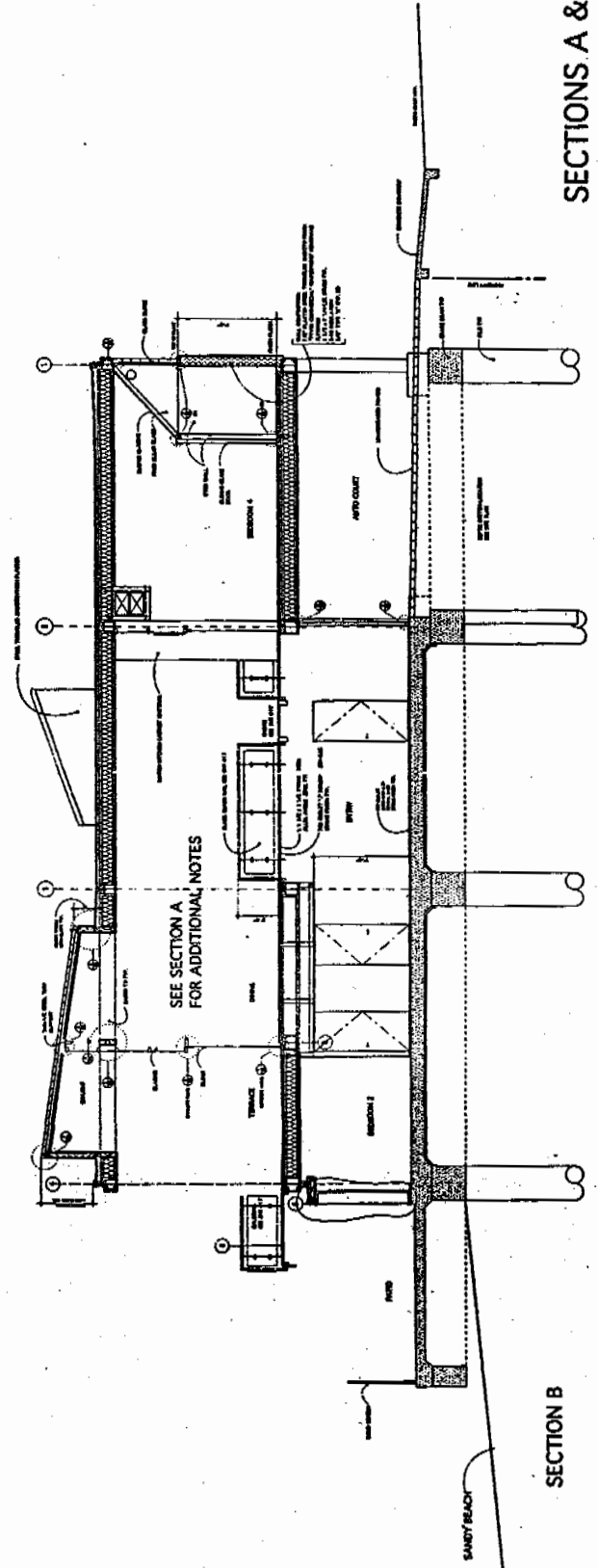
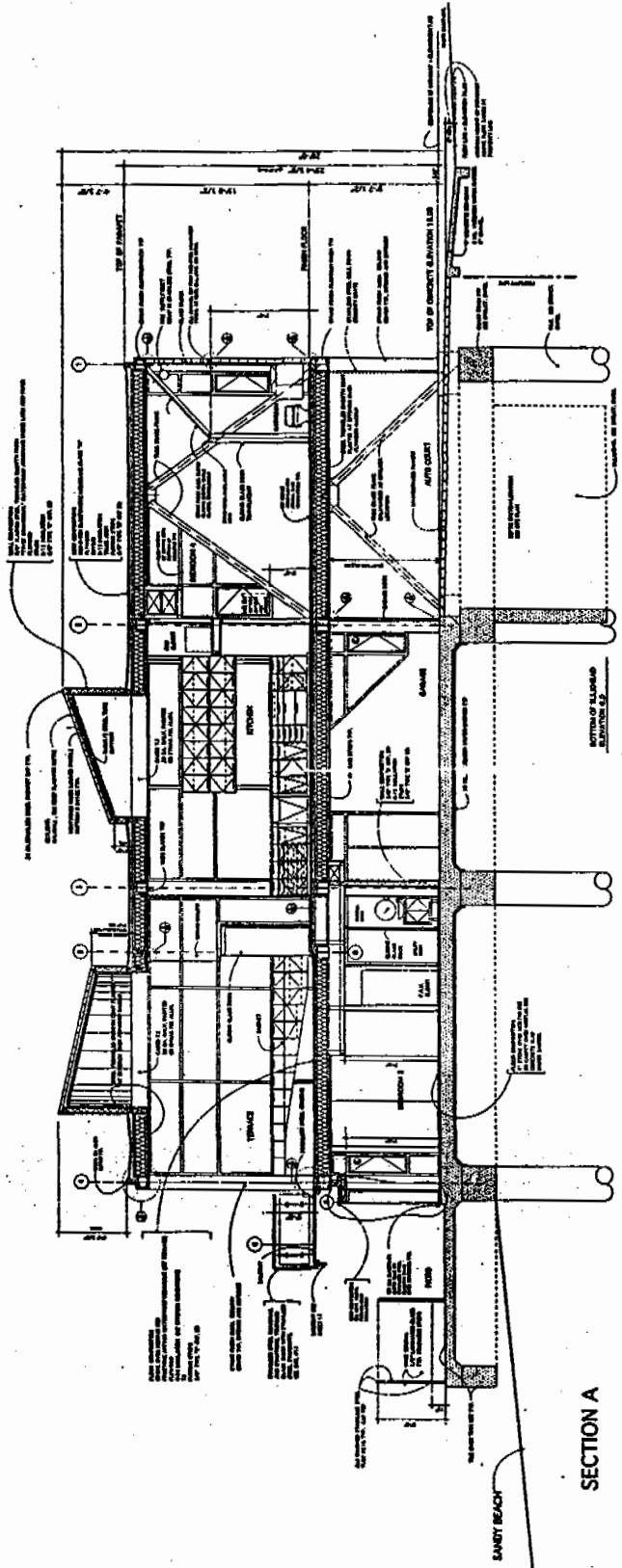
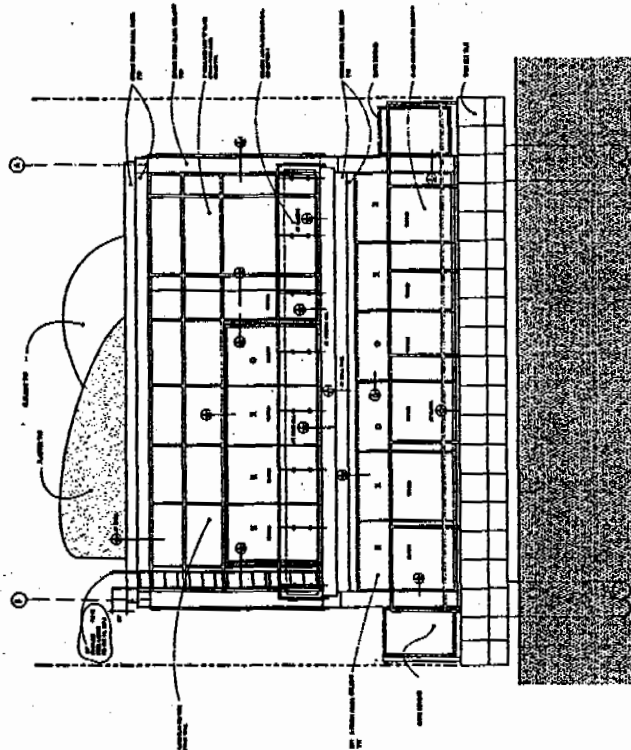


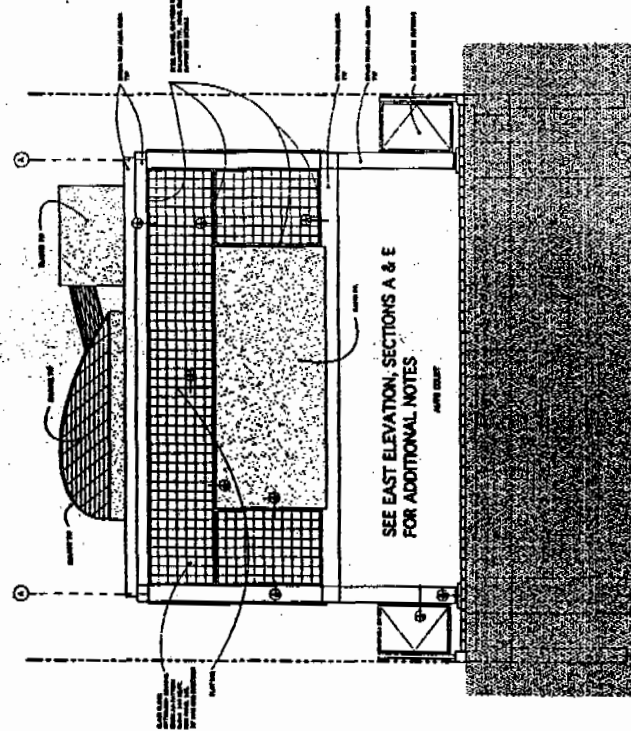
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A-4-MAL-05-084
Cross-sections



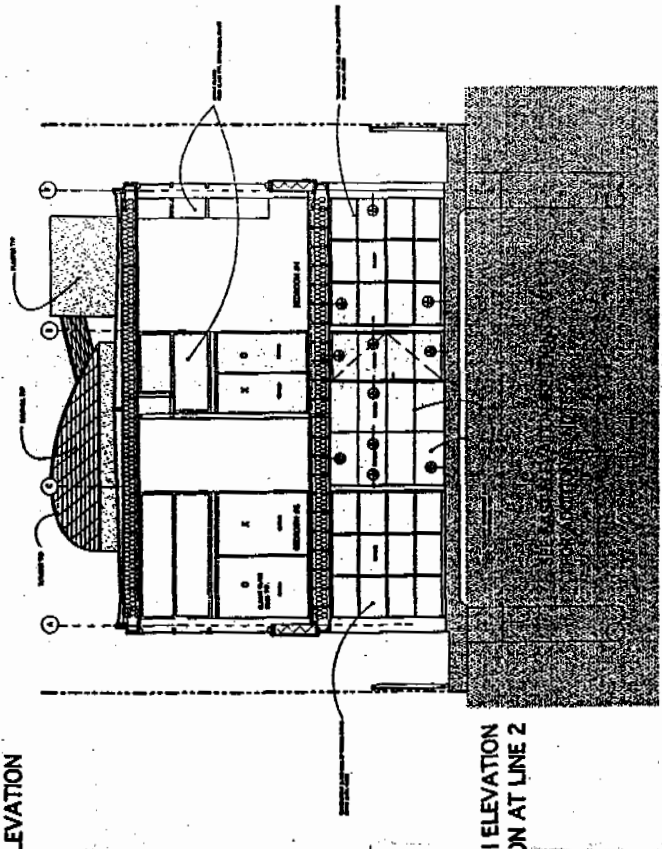
NORTH ELEVATION SEE EAST ELEVATION, SECTIONS A & E
FOR ADDITIONAL NOTES

- NOTES:
1. SEE EAST ELEVATION, SECTIONS A & E
FOR ADDITIONAL NOTES
 2. GLASS SPEC:
1" INSULATED GLASS, LOW "E", GREY TINT
ON OUT BOARD SHEET:
ALUMINUM FRAME KYNAR 500 FINISH
 3. EXTERIOR ALUMINUM PANELS:
KYNAR 500 FINISH ALUMINUM PANELS 1/8" MIN. THICKNESS
BRAIN METAL
KYNAR 500 FINISH ALUMINUM 1/8" MIN. THICKNESS
 4. FRT. ROOF:
KYNAR 500 FINISH AT EXTERIOR APPLICATIONS

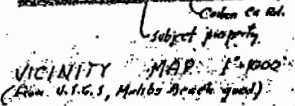
NORTH AND SOUTH ELEVATION



SOUTH ELEVATION SEE EAST ELEVATION, SECTIONS A & E
FOR ADDITIONAL NOTES



EAST ELEVATION
ON AT LINE 2



PACK 1000000
11 2000000
Pack 1000000

Journal of Management Studies, 19(6), 709-728.

beach

- 1. Internal and external influences may be considered dynamic and static.
- 2. Internal influences include personality and attitudes of the personnel.
- 3. Static are unavoidable influences on productivity of the personnel.
- 4. Dynamic influences are changeable and controllable.
- 5. Personnel, organizational and environmental factors influence the productivity of the personnel.
- 6. Personnel and organizational factors may be internal or external.
- 7. Personnel and organizational factors may be dynamic or static.
- 8. Personnel and organizational factors may be controllable or uncontrollable.
- 9. Personnel and organizational factors may be positive or negative.
- 10. Personnel and organizational factors may be direct or indirect.
- 11. Personnel and organizational factors may be primary or secondary.
- 12. Personnel and organizational factors may be independent or interdependent.
- 13. Personnel and organizational factors may be quantifiable or non-quantifiable.
- 14. Personnel and organizational factors may be measurable or non-measurable.
- 15. Personnel and organizational factors may be observable or non-observable.
- 16. Personnel and organizational factors may be documentable or non-documentable.
- 17. Personnel and organizational factors may be recordable or non-recordable.
- 18. Personnel and organizational factors may be traceable or non-traceable.
- 19. Personnel and organizational factors may be verifiable or non-verifiable.
- 20. Personnel and organizational factors may be reliable or non-reliable.
- 21. Personnel and organizational factors may be valid or non-valid.
- 22. Personnel and organizational factors may be useful or non-useful.
- 23. Personnel and organizational factors may be practical or non-practical.
- 24. Personnel and organizational factors may be feasible or non-feasible.
- 25. Personnel and organizational factors may be achievable or non-achievable.
- 26. Personnel and organizational factors may be possible or non-possible.
- 27. Personnel and organizational factors may be probable or non-probable.
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- 30. Personnel and organizational factors may be credible or non-credible.
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- 33. Personnel and organizational factors may be reputable or non-reputable.
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- 35. Personnel and organizational factors may be dignified or non-dignified.
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SCALE 1"=8'

PACIFIC OCEAN

SITE PLAN OF
 CITY OF MI
 SHOWING AS L
 222-49-100
 15-16-11

Exhibit 5 A-4-MAL-05-084 Site Map with Stringlines

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

JUL 19 2005

ARNOLD SCHWARZENEGGER, Governor



CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

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

Mailing Address: C/O California Coastal Commission, 89 South California Street, Suite 200

City: Ventura

Zip Code: 93001

Phone: 805 585-1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Demolition of existing 1,418 sq. ft. residence and construction of a new 2,626 sq. ft. single family residence with 400 sq. ft. garage, alternative onsite wastewater treatment system, and bulkhead on a beachfront parcel.

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

21934 Pacific Coast Highway, City of Malibu, Los Angeles County, Assessor's Parcel Number 4451-005-030

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-4-MAL-05-084

DATE FILED:

DISTRICT:

South Central Coast

Exhibit 6

A-4-MAL-05-084

Appeal Form

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

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

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

6. Date of local government's decision: June 20, 2005

7. Local government's file number (if any): CDP No. 04-014, Variance No. 05-014

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:

Terry Greene
C/O Lisa Niles and Ed Niles
29350 Pacific Coast Highway, #9
Malibu, CA 90265

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

(1)

(2)

(3)

(4)

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.

PUBLIC ACCESS

The approved project includes the applicant's offer to include a lateral access easement as mitigation for projected impacts to public access as required by Policies 2.63 and 2.64 of the Malibu LUP, as well as Chapter 12 of the Malibu LIP. The approved project includes construction of a vertical bulkhead to protect the approved septic system. With the provision of lateral access, the project was found not to impact public access. The City of Malibu did require the recordation of a lateral access offer to dedicate as a condition of approval of the coastal development permit (Condition No. 26). However, the language of the Special Condition describing the location of the easement OTD to be recorded does not conform to Section 12.7.7 of the Malibu LIP. Special Condition No. 26 states in part that: "Such easement shall be located along the entire width of the property (Assessor's Parcel Number 4451-005-030) from the ambulatory mean high tide line landward to ten feet from the approved deck drip line, not to exceed the width of the easements of the neighboring property owners". Section 12.7.7 of the LIP provides that lateral access easements extend from the mean high tide to the most seaward extent of the development, such as the deck dripline. The condition language does not reflect this provision. Additionally, the language: "not to exceed the width of the easements of the neighboring property owners" is not consistent with Section 12.7.7 of the LIP and is not sufficiently specific to be included in the recorded easement OTD.

VIEW CORRIDOR

As required by the LCP, the proposed project includes a view corridor that is 20 percent of the width of the parcel. However, this view corridor was not included in one contiguous corridor as required by Policy 6.18 of the LUP and Section 6.5(E)(2) of the LIP. Rather, the City approved a variance to allow the view corridor to be split, providing 10 percent of the width of the parcel on either side of the residence. The split view corridor is not consistent with the intent of the view corridor provisions. Additionally, the approved project does not include any condition of approval that would restrict any other future development (such as fencing or landscaping) within the view corridor.

WASTEWATER TREATMENT SYSTEM

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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

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

SECTION V. Certification

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

Signed: Meg Caldwell
Appellant or Agent

Date: 7/19/05

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

Signed: _____

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

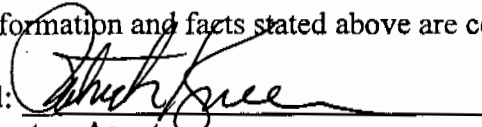
Page 3

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

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SECTION V. Certification

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

Signed: 

Appellant or Agent

Date: 7/19/05

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

Signed: _____

Date: _____



4-MAL-05-165

Amended¹ NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT**RECEIVED**

Date of Notice: July 6, 2005

JUL 07 2005

Notice Sent to (via FedEx Priority):
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Contact:
Stefanie Edmondson, Associate Planner
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265
(310) 456-2489 ext. 233

Please note the following **Final City of Malibu Action** for a coastal development permit application. All local appeals have been exhausted for this matter.:

Project Information

Application #: Coastal Development Permit No. 04-014 / Variance No. 05-014
Property Owner: Terry Greene
Applicant: Lisa Niles and Ed Niles, 29350 Pacific Coast Highway, #9, Malibu, CA 90265
Project Location: 21934 Pacific Coast Highway / APN 4451-005-030
Project Description: An application for a demolition of an existing single-family residence, construction of a new single-family residence, an alternative onsite wastewater treatment system, and associated development. This project is more specifically described in the attached documents.

Final Action Information

Final Local Action: ☐ Approved ☒ Approved with Conditions ☐ Denied
Final Action Body: Approved on June 20, 2005 by the Planning Commission

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: June 20, 2005 Item 6.H. Planning Commission Agenda Report		July 1, 2005
Adopted Findings: Revised Planning Commission Resolution No. 05-18	X	July 1, 2005
Adopted Conditions: Revised Planning Commission Resolution No. 05-18	X	July 1, 2005
Site Plans and Elevations		July 1, 2005
Addendum to Coastal Development Permit No. 04-014 – City of Malibu Planning Division Staff Response to Coastal Commission Comments dated June 17, 2005	X	

California Coastal Commission Appeal Information

This Final Action is:

☐ **NOT** appealable to the California Coastal Commission (CCC). The Final City of Malibu Action is now effective.

☒ **Appealable** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this final action. The final action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission South Central Coast District Office in Ventura, California; there is no fee for such an appeal. Should you have any questions regarding the California Coastal Commission appeal period or process, please contact the CCC South Central Coast District Office at 89 South California Street, Suite 200, Ventura, California, 93001 or by calling (805) 585-1800.

Copies of this notice have also been sent via first-class mail to: Property Owner/Applicant

Prepared by: Patricia Salazar, Department Specialist

¹On July 1, 2005, the City submitted the Notice of Final Action. Inadvertently, the incorrect version of Commission Resolution No. 05-18 was submitted. This amended Notice of Final Action includes the correct version of Planning Commission No. 05-18 including additional supporting documents.

Exhibit 7
A-4-MAL-05-084
Final Local
Action Notice

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 05-18

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 04-014; VARIANCE NO. 05-014 TO ALLOW FOR THE DEMOLITION OF AN EXISTING 1,418 SQUARE-FOOT BEACHFRONT SINGLE-FAMILY RESIDENCE AND CONSTRUCTION OF A NEW 2,626 SQUARE-FOOT SINGLE-FAMILY BEACHFRONT RESIDENCE INCLUDING A 400 SQUARE-FOOT GARAGE AND AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM. THE APPLICATION INCLUDES A VARIANCE REQUEST TO ALLOW RELIEF FROM THE OCEAN VIEW DEVELOPMENT STANDARD WHICH REQUIRES TWENTY PERCENT OF THE LINEAL FRONTAGE BE MAINTAINED AS ONE CONTIGUOUS VIEW CORRIDOR, THE PROPOSAL IS TO PROVIDE THE TWENTY PERCENT, BUT WITH TEN PERCENT ON EACH SIDE OF THE PROPOSED STRUCTURE. THE DEVELOPMENT IS PROPOSED IN A SINGLE-FAMILY MEDIUM DENSITY RESIDENTIAL (SF-M) ZONING DISTRICT LOCATED AT 21934 PACIFIC COAST HIGHWAY (GREENE)

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

Section 1. Recitals.

A. On February 6, 2003, an application was submitted by Lisa Nilcs [Plot Plan Review (PPR) No. 03-014] on behalf of property owner Terry Greene to the Planning Division for demolition of an existing one-story 1,418 square-foot single-family residence and attached 200 square-foot garage and construction of a new two-story, 28 feet in height, 2,626 square-foot single-family beachfront residence with an attached 400 square-foot garage, hardscape, and alternative onsite wastewater treatment system. The application was referred to and reviewed by the City Biologist, City Coastal Engineer, City Environmental Health Specialist, City Geologist, and the Los Angeles County Fire Department.

B. On April 30, 2003, a Notice of Decision was issued approving PPR No. 03-014. Staff received the Affidavit of Acceptance of Conditions from the applicant on November 7, 2003 and subsequently project plans were stamped approved in concept on November 17, 2003.

C. On August 26, 2004, an application for Coastal Development Permit (CDP) No. 04-014 was submitted by the applicant to the Planning Division for processing. On February 14, 2005, the application was deemed complete for processing. On March 17, 2005, a Notice of Application for CDP No. 04-014 was posted on the subject property.

D. On April 20, 2005, story poles were placed on the subject property to demonstrate the height of the proposed project and to analyze visual impacts. Staff visited the site on April 21, 2005, to ensure that the story poles were placed according to plan and to evaluate potential impacts. No comments from the public have been received.

E. On May 5, 2005, a Notice of Public Hearing was published in a newspaper of general circulation with the City of Malibu. In addition, on May 5, 2005, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the Planning Commission has analyzed the proposal as described above. The Planning Commission has found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment; therefore, shall be exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Section 15301 (I) – existing facilities – demolition and removal of a single-family residence and 15303 (a) new construction of small structures - a single-family residence. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B and 13.9 of the City Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission hereby adopts the findings in the staff report, the findings of fact below, and approves Coastal Development Permit No. 04-002.

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

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

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

The project, as conditioned, conforms to the certified City of Malibu Local Coastal Program (LCP) in that it meets the required development standards (see Table 2) with the exception of LIP Section 6.5(E) 2.b which requires that new development provide 20% of lineal frontage as one contiguous ocean view corridor. A variance has been requested to provide the 20% view corridor non-contiguously with 10% on each side of the proposed structure. The narrow lot width of the subject property is such that the strict application of the development standards including setbacks, fire code requirements, and the 20% contiguous view corridor requirement would result in a loss of 13 of the 40 foot lineal frontage. This would make 32.5% of the lot width unusable and a residence only 27 feet in width. Thereby, depriving the property owner of having a house of similar mass, bulk, and scale as allowed neighboring residences.

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 is 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 lateral access on the site to the east and 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 Malibu Municipal Code (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 Sections 15301 (I) – Existing Facilities – Demolition and removal of a single-family residence and 15303 (a) New Construction of a 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 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, and fire code restrictions, and Pacific Ocean to the rear of the property, shifting the proposed location of the house proved problematic as the City development standards and Los Angeles County Fire Department regulations do not allow for a zero lot line development. The house as proposed sits precisely within the required setbacks with the exception of the 20% contiguous view corridor. A variance has been requested to provide the view corridor with 10% on each side of the structure. Relocation of the project on the site is not the least damaging alternative.

3. Proposed Project - The subject site contains an existing single-family home and is situated among other single-family homes of similar mass, bulk and scales as the proposed home. The project is proposed to be constructed on piers with a bulkhead and will not be substantially different than the existing neighborhood scale. In addition, the proposed project provides public ocean corridors (although not contiguous) where none previously existed. 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 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. However, the applicant did submit a biological inventory dated October 15, 2004, which was conducted by Consulting Biologist, Rachel Tierney. The inventory was reviewed by the City Biologist who agreed with the determination that the site is not an ESHA.

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

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

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

The provisions of the Native Tree Protection Ordinance only apply to those areas containing one or more native Oak, California Walnut, Western Sycamore, Alder or Toyon tree, that has at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, 4 ½ feet from the ground. According to the biological inventory dated October 15, 2004, no native trees exist on the property. Therefore, according to Section 5.7, the findings in the Native Tree Protection Ordinance are not applicable.

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

The Scenic, Visual and Hillside Resource Protection Ordinance governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. This project is visible from a scenic road (PCH); therefore, the Scenic, Visual and Hillside Resource Protection Ordinance applies and the five findings set forth in LIP Section 6.4 are hereby made below.

In addition, LIP Section 6.5(E) 2.b requires that new development provide 20% of lineal frontage as one contiguous ocean view corridor. A variance has been requested to provide the 20% view corridor but to be non-contiguous with 10% on each side of the proposed structure.

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 adjoining properties. In addition, the proposed project is under the maximum development envelope allowed for the subject property. The use of non-metallic and non-glare siding, as required by the LCP will help minimize visual impacts upon viewing the subject site.

Staff conducted site visits on March 16, 2005, and May 16, 2005. Story poles were in-place to demonstrate potential visual impacts. The analysis of the project's visual impact from public viewing areas along PCH included site reconnaissance, view of the property from PCH, and review of the landscape and architectural plans. Staff determined that the proposed residence would result in a less than significant visual impact to public views from either the beach or from PCH.

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

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

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

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

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

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

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

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

E. Transfer Development Credits (LIP – Chapter 7)

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

F. Hazards (LIP - Chapter 9)

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) Preliminary Geotechnical Engineering report prepared by Earth Systems Southern California dated January 31, 2003, and the Addendum No. 1 Geotechnical Engineering Report dated January 8, 2004; and 3) a Coastal Engineering Report by David C. Weiss Structural Engineers & Associates dated January 16, 2003.

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 17 feet above sea level and is subject to hazards from liquefaction (LIP 9.2.A.4), wave action (LIP Section 9.2.A.5) and potential tsunamis (LIP Section 9.2.A.6).

The proposed site was analyzed for geologic and structural integrity hazards. Based on the reports by the applicant's geotechnical consultants (Earth Systems) 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 but is within liquefaction hazard zone. There is no hazard due to fault rupture from the Malibu Coast Fault across the building site.

Per Earth Systems Southern California's Preliminary Geologic Engineering Report page 6, "While the City of Malibu Guidelines require trench studies for sites close (500' or closer) to the Malibu Coast fault, the beach location renders trenching impractical because of young loose sandy soil and high groundwater." Analysis of the site and review of geologic literature reviewed suggest that the most active trace of the Malibu Coast fault zone is offshore and an active fault does not trend across the building site.

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

1. The project site could be subject to hazards from liquefaction;
2. The highest point of the project site is located approximately 11 feet above sea-level and could be subject to hazards from wave action and tsunami hazard;

3. The project site is in the vicinity of extreme fire hazard areas.

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

Liquefaction Hazard

The project site soils consist primarily of sandy beach deposits that are subject to liquefaction and erosion due to wave action. The proposed two-story wood frame structure will be supported by piles (piers) embedded into bedrock beneath the sandy soils. The building super-structure will be supported directly by the piers and the ground floor will consist of a structural deck also supported by the piers. 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 C. Weiss Structural Engineers & Associates dated January 16, 2003. The wave uprush studies indicated that an average wave uprush would be to an elevation of 11 feet from the PCH right of way line. The proposed bulkhead is at 25 feet from the right of way line and is of adequate height and depth to protect the sewage disposal system. The existing bulkhead has had no effect on coastal processes such as the littoral drift of sand along the beach. Furthermore, the proposed bulkhead is located well landward of the ocean currents that carry sand along the beach. The proposed bulkhead will have no effect on adjacent properties. This bulkhead is set much further landward than the long line of bulkheads to the east. There has been no adverse effect due to the other bulkheads in the immediate area in the past; there is no reason to believe that there will be in the future (Coastal Engineering Report dated January 16, 2003, Page 9). Based on the existing plans the bulkhead and alternative onsite wastewater treatment system have been located as far landward as feasible and are consistent with LIP Chapters 8 and 10.

Flood/Fire Hazard

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

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

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

As discussed previously, the project will not result in potentially significant environmental impacts because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen 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 any 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 G. 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 Los Angeles County Fire Department, the project will not have any significant adverse impacts on the site stability or structural integrity.

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

As stated in G. 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 Los Angeles County Fire Department, 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.

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 currently provides no public access but the applicant will be providing a lateral easement for public access subject to project approval. Therefore, the proposed project will have no significant adverse impacts on public access.

Per Coastal Engineering Report by David C. Weiss Structural Engineers & Associates dated January 16, 2003, the existing bulkhead has had no effect on coastal processes such as the littoral drift of sand along the beach. The proposed bulkhead is located well landward of the ocean currents that carry sand along the beach. The proposed bulkhead will have no effect on adjacent properties. This bulkhead is set much further landward than the long line of bulkhead to the east. There has been no adverse effect due to the other bulkheads in the immediate area in the past; there is no reason to believe that there will be in the

future (Coastal Engineering Report dated January 16, 2003, Page 9). Therefore, it is anticipated that shoreline sand supply or other resources will not be impacted by the proposed project.

The project as designed considers 100-year worst-case storm conditions and local studies have concluded that design for these conditions mitigates predicted tsunami impacts.

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 potentially significant impacts because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any potentially significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any potentially significant adverse impacts of the development on the environment. The project is the least environmentally damaging alternative.

Finding 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.

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. The determination on file for this project from the State Land Commission 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.”

The proposed shoreline protection structure (bulkhead) is located as far landward as feasible while maintaining building and plumbing code required setbacks.

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

H. Public Access (LIP - Chapter 12)

The subject site is located between the first public road on the ocean-side of PCH between Carbon Beach and La Costa Beach. The project involved the demolition of an existing single-family residence and reconstruction of a new (with more than 10% additional square footage) 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 resolution. Bluff top, trail, and recreational accesses are not applicable. No issue of public prescriptive rights has been raised.

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

Trail Access

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

Lateral Access

A lateral public access provides public access and use along or parallel to the sea or shoreline. The applicant has agreed to provide an offer to dedicate the required lateral access subject to project approval.

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, as shown on the Coastal Commission Public Access Map, vertical access is adequately provided for in the following locations:

- 22466 PCH, Carbon Beach -The “Access for All” easement is 10 feet wide and extends along the eastern property line boundary.

- 22126-22132 PCH, Carbon Beach – The “Access for All” easement is 9 feet wide and approximately 200 feet long. It runs along the western property line boundary.
- 21704 PCH, Carbon/La Costa Beach – The California Coastal Conservancy owns this parcel for the sole purpose of “providing visual and vertical public access to La Costa and Carbon Beaches, see Coastal Conservancy exhibit dated April 27, 2000.
- Directly across from Rambla Vista, adjacent to 21704 PCH, the State of California owns a stretch of beach approximately 200 feet in length which is currently used by the public to access the beach, see Coastal Commission Public Access Map for Los Angeles 1998

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, Section LIP Section 12.8.1 is not applicable.

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

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 public, through other reasonable means, can reach the same are 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 existing access to the ocean. Conditioning the project to provide a vertical public access would not provide additional access to coastal resources because adequate public access is provided nearby. As indicated on the Los Angeles County Public Access Map, there are four existing vertical access ways between Carbon Beach and La Costa Beach. No legitimate governmental or public interest would be furthered by requiring access at the project site because existing public access to coastal resources is adequate and the proposed project will not impact any existing public access way.

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. Variance (LIP - Chapter 13)

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. 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 size of the subject property is such that the strict application of the development standards requiring a 20% contiguous view corridor would result in a loss of 13 of the 40-foot lineal frontage. This is due to the combination of the City's setback requirements, Los Angeles County Fire Department requirements and LCP requirements. The M.M.C setback requirements are 10% (4 feet) on one side of the site and the 10% on the other side (4 feet), the Los Angeles County Fire Department requires that a minimum of five feet be open to the sky and unusable as an "approved access walkway" for life safety purposes (LACFD Code Section 902.31); and the LCP requires 20% (8 feet) be provided as a public view corridor. Thus, under this scenario, the applicant must provide 20% (8 feet) on one side and 12.5% (5 feet required by LACFD unless sprinklers are installed) for a total of 13 feet (32.5% of lineal frontage). Strict application of these requirements would require a residence 27 feet in width and deprive the property owner of having a house of similar mass, bulk, and scale as neighboring residences. A variance would ensure that the applicant is not deprived of the privileges enjoyed by other properties in the vicinity.

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. The granting of the requested variance will allow the subject property to be constructed and still provide a view corridor on both sides on the subject property. As stated previously, the proposed project has been reviewed and approved by the Los Angeles County Fire Department, the City Public Works Department, the City Geologist and 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 adjacent properties have been developed without the required 20% contiguous view corridor and that the applicant is providing the required view corridor development standard just 10% on each side. Since

the applicant is supplying the view corridor in an area where none currently exist, 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 granting of the variance is not contrary to or in conflict with the general purposes or intent of the Scenic Resources Chapter in that the requirement to "protect public ocean views" is achieved in that view corridors will be provided where none currently exists. The two 10% view corridors will provide an ocean view on a pedestrian level and provide visual relief to passing motorists. Given that this view corridor provides public views where none currently exists, 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 not associated with Stringline standards; therefore this finding is not applicable.

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 Zone. 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.

The granting of the variance will allow construction of a residence that is compatible with the surrounding built environment and still provide a view corridor where none currently exists. The subject site is physically suitable for the proposed variance in that the narrow lot width physically constrains proposed development of the site. Strict application of the development standards requiring a 20% contiguous view corridor would result in a loss of 13 feet of the 40-foot lineal frontage. Therefore, the subject site is physically suitable for the proposed variance.

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 Agencies.

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 requested variance is for relief from a specific development standard and does not involve the reduction or elimination of public parking.

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 04-014, subject to the conditions listed below:

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the project proposes the demolition of an existing one-story 1,418 square-foot single-family residence and attached 200 square-foot garage and construction of a new two-story 2,626 square-foot single-family residence with an attached 400 square-foot garage, hardscape, and alternative onsite wastewater treatment system on a 7,840 square-foot (40 feet wide by 196 feet in length) beachfront lot zoned SFM. A variance has been requested to allow relief from the ocean view development standard, which requires "20% of the lineal frontage shall be maintained as one contiguous view corridor. Subsequent submittals for this project shall be in substantial compliance with the following plans: Full set of Architectural plans stamped received February 14, 2005. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
3. The permit and rights conferred in this approval shall not be effective and no building permits shall be issued until the applicant signs, has notarized the affidavit accepting the conditions set forth below. The applicant and/or property owner shall provide the City of Malibu Planning Division the notarized affidavit within 30 days of the Planning Commission's decision, no later than July 20, 2005.
4. These Conditions of Approval shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of

Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).

5. The coastal development permit shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
6. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Division Manager upon written request of such interpretation.
7. All structures shall conform to all requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Specialist, City Biologist, and Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.
8. The applicant shall submit three complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
9. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this Coastal Development Permit. A temporary certificate of occupancy may be granted at the discretion of the Planning Division Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
10. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Division Manager can review this information. Thereafter, the procedures contained in Chapter 11 of the LCP and those in Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code shall be followed.
11. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
12. Minor changes to the approved plans or the conditions of approval may be approved by

the Planning Division Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.

13. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.
14. All conditions required for Plot Plan Review No. 03-014 shall remain in effect.
15. The Coastal Development Permit runs with the land and binds all future owners of the property.

Special Conditions

Site Requirements

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.

Site Conditions

- 18. The residence shall have an exterior siding of brick, wood, stucco, metal, concrete or other similar material. Reflective glossy, polished and/or roll-formed type metal siding is prohibited.

Geology

- 19. 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.
- 20. Final plans approved by the City Geologist shall be in substantial conformance with the approved Coastal Development Permit relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment of the Coastal Development Permit or a new Coastal Development Permit

Water Quality

- 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.
- 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.

Public Access

26. The applicant has agreed to provide an offer to dedicate (OTD) a lateral public access easement and passive recreational use along the shoreline as part of this project. In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of a building permit: the landowner shall execute and record a document, in a form and content acceptable to the City Attorney, irrevocably offering to dedicate to a public agency or private association approved by the City Attorney an easement for lateral public access and passive recreational use along the shoreline. Such easement shall be located along the entire width of the property (Assessor's Parcel Number 4451-005-030) from the ambulatory mean high tide line landward to ten feet from the approved deck drip line, not to exceed the width of the easements of the neighboring property owners.

The document shall be recorded free of prior liens that the City Attorney determines may affect the interest being conveyed, and free of any other encumbrances that may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions and graphic depiction of both the applicant's entire parcel and the easement area. This deed restriction shall not be removed or changed without a City-approved amendment to this coastal development permit.

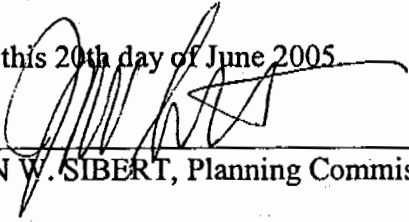
27. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims 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.
28. 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

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.

Section 5. Certification.

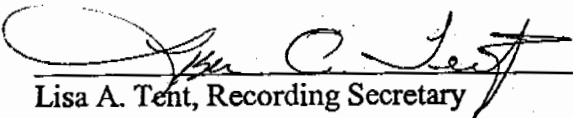
The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 20th day of June 2005



JOHN W. SIBERT, Planning Commission Chairman

ATTEST:



Lisa A. Tent, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and the filing fees as specified by the City Council (\$600.00 for the first finding and \$159.00 for each additional finding thereafter). Appeal forms may be found online at www.ci.malibu.ca.us <<http://www.ci.malibu.ca.us>> or in person at City Hall, or by calling (310) 456-2489 ext. 245.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 05-18 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 20th day of June 2005, by the following vote:

AYES:	5	Commissioners:	Randall, Moss, Anthony, Schaar and Sibert
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		



Lisa A. Tent, Recording Secretary