

**CALIFORNIA COASTAL COMMISSION**

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

**W 9a**



**ADDENDUM**

**DATE:** August 30, 2007  
**TO:** Commissioners and Interested Parties  
**FROM:** South Central Coast District Staff  
**SUBJECT:** Agenda Item 9a, Wednesday, September 5, 2007  
Appeal No. A-4-MAL-07-095 (Margolis)

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Staff received the attached two-part letter on August 29, 2007 from an anonymous member of the public, in opposition to the proposed project.

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AUG 29 2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

W9a

To California Coastal Commissioners

regarding Coastal appeal \_\_\_ W9a

appeal location \_\_\_ Eureka, Ca.

appeal date \_\_\_\_\_ sept. 5 2007

address of Development

23405 Malibu Colony Malibu, Ca.

A

I am a bit confused

on how all this is supposed to work

so may I take a moment of your time

to ask a question

is all this supposed to be getting better or worse

should the coastal zone

be getting better or worse

which is it

and just what is better

and could I take

another moment of your time

and maybe discover which

now to begin you guys were like kids once

you were children      you grew up somewhere

can you remember that place

can you remember the places you liked

can you remember the places  
    you could go to as a kid

can you remember the places  
    you would walk to

can you remember the places  
    you would ride your bicycle to

have you been back to that place . . . lately

back to those places public  
    where you could play with friends

back to those places private  
    to be yourself

    just a kid full of wonder and mystery

all those places that began your adventure of life

that gave you a beginning

    to discover who you are

that allowed you to start becoming a person

were those places of your childhood  
that influential  
could childhood play that big a part  
does that seem a bit of a stretch  
does that sound a bit silly  
sound too simplistic  
could your childhood be that important  
could those childhood places  
full of discovery and stumbles  
be responsible for what you now appreciate  
for how you find your enjoyment  
responsible for the perspectives you have gathered  
be responsible for how you navigate life  
could those places . . . those initial adventures . . .  
have laid the foundation for your life  
have those experiences come to be your wisdom

well if you went back today

what would your old neighborhood be like

any chance it is as you remember

any chance there are places

a kid can still go to

what are the chances that the planning dept.

allowed Developers to come in

what are the chances

the Developers used your community

for a selfish agenda

would it be better if local govt.

didn't side with Developers

would it be a better

if we could turn back the clock

and reverse what Developers have done

to our communities

would it be better

not to be crowded

not be congested

not to have over-crowded schools

not to be stuck in traffic

so why are Developers more important  
than the community  
than the coastal zone  
than you and me

why does local govt. make our towns un-pleasant  
why does local govt. make our cities congested  
what is goin' on with politicians and Developers  
when did Developers become royalty

if you ask your local politicians  
if you ask your planning dept.

they will tell you it "had" to happen  
they will tell you it was 'inevitable'  
we 'had' to become 'modern'

it was 'necessary' for our communities  
to become crowded  
to become congested  
to crawl in traffic

they will tell you it is all for the better

'we' just don't know it  
'we' just don't appreciate it

'we' just don't know what is good for us

it has been 35 years since the Coastal Commission  
was voted into existence

if one were to go back  
through those 35 years  
and look at what the Coastal Commission has done

if one were to make a list  
of each of the Coastal commission's accomplishments  
the remarkable decisions

a list of those significant decisions  
that angered the local politicians  
and their planning dept's.

and caused Developers to curse your very birth

and then think what if the citizens of calif.  
had not voted for the Coastal Act

had not voted for protecting the california Coast  
had not voted to have a Coastal Commission

if one were paying attention  
only shock would reverberate  
of what would have happened to the coast

for it is not possible to imagine  
what the local politicians and Developers  
would have done to us

to the beauty of the coast  
the sustainability of nature  
destroyed all the spots we used to enjoy

of how the Developers would have  
wiped-out the concept  
that California could be scenic

the concept that California could be a sight to see

of how they would have plastered

the coast with their asphalt and cement

only shock at how

the california coast would have been slaughtered

without the Coastal Commission

the Developers would have attacked the coast  
exactly how they have attacked every community

mutating each of our pleasant towns  
into a traffic-clogged congested chaos  
into a big lump of asphalt and cement

thus without the Coastal Commission  
the Coast would now be  
butchered beyond recognition  
by developers who seem to loath  
anything pleasant scenic natural

if those who have served on the Coastal Comm.  
had not been persons of character  
had not been willing . . . brave enough

to think of the coast  
to think of the big picture  
to think of the birdies and fishies

had not the character to stand up  
to the business as usual malice  
of the local politicians and planning dept's.

who's vision is limited  
only to the luster of development dollars  
to the Developers who's only loyalty  
is to greed

had not thought of the vast majority of people  
who will NEVER be able to afford  
to live in the california Coast

and so can only visit

so you guys are in a tuff spot

buffeted by the winds  
of those who hate to care

lashing out at your every decision

disgust toward this changing consciousness

that demands us  
to start considering

something other than our short-sighted compulsions



I think that maybe something is missing

what might be missing is what is going to happen  
the future a picture of the future

has any one ever contemplated the future  
like what could / should the coastal zone be in the future  
what could / should the coastal zone be when we are done

what could / should the coastal zone look like  
when we decide to develop no more  
when we are finished with the asphalt and cement

just what are we striving for

so the Coastal Comm. is in a most awesome position

a most intriguing dilemma a most precarious spot

and maybe the moment has arrived  
for taking some time and contemplate  
just what kind of world do you want to live in

where does one start when envisioning a future  
well there are only three lands  
that you can travel to  
the present the future the past

well we know what the present is  
whether it be good bad or whatever  
it is to your perspective

the future is what you will determine

so that leaves the land of the past

take a moment to contemplate the past  
what was the coastal zone like  
about 500 years ago

I mean if we are going to help the coastal zone  
and our quality of life

we gotta have some idea a picture  
some idea of what we are striving for  
some idea of what might be appropriate  
some idea of what is possible

is there some plan  
is there some drawing that displays  
what will be left of the coastal zone  
when the Coastal commission has fulfilled their purpose

is there a drawing of the coastal zone

that displays how much development we will inflict  
displays whatever parts of nature  
we will have mercy upon

is there a drawing of the coastal zone  
that displays how much wetland we will save  
that displays how much wetland we won't

some plan that displays how much nature  
and how much asphalt and cement

how many dams  
or how many free - flowing creeks

displays how many shopping centers  
or how many camp grounds

displays how many houses or how many trees

how many birds      how many condors  
how many deer      how many hawks  
how many bear      how many mountain cats  
how many fishies      how many flowers

so you guys are in one hell of a situation

how do you decide on how much development  
how do you know when enough is enough  
and when might this be done

when will it be decided  
that the day has come  
to decide how much  
of the coast we shall leave be  
how much leniency we might sprinkle

can you imagine the coast 500 years ago  
ya know the good old days  
would it be better if the coast  
be like modern times  
or more like yesteryear

could we use 500 years ago  
as a guiding star  
as far as being appropriate  
as far as being considerate  
as far as being good guys

could the coast have something in common  
with the coast of 500 years ago  
maybe a little here or there

back 500 years ago  
when the environment was correct  
when the ecology was in-tune

is there a map of california 500 years ago  
a map of every wetland that existed  
before the coming of Europeans

something to take a peek at once in a while  
just to keep things in perspective  
so as to remember the possibilities

and what about the wildlife

just how much wildlife

was in the Malibu creek / lagoon area  
500 years ago

how many great herons were here

how many egrets hawks ospreys eagles

flew around this place

does anybody know

and pray tell where do the trees fit in

is there an understanding  
on how trees belong in all this

I mean how important are trees

how much of a difference do trees make

I guess we should ask the birds

or should we ask the Developers

I mean should we be looking at this

as a bird or as a Developer

I guess we have a good idea of what developers want  
asphalt and cement structures congestion traffic  
so that leaves the birds if you can imagine  
what do birds think upon seeing a tree  
how does a bird feel when they see a tree  
do you think they feel better  
when they see a tree  
or when they see a bunch of trees  
do you think that birds can get excited  
how many trees do birds need to have a 'decent' life  
anyway should we make how many . . . a big deal  
should we just let the ones that have a nest live  
and all the others we get rid of  
and what about this non-native question  
there are people making a big deal  
saying that if a tree ain't native  
it . . . should be eliminated  
but when I look  
I think that non-natives  
are a bit more native  
than asphalt and cement  
and the coastal zone has plenty of that stuff  
if you ask the birds they will inform you  
that there is -not a surplus of trees  
they will tell you there is a tragic deficiency of trees

they will tell about the 1,000's we have destroyed

they will tell you about the redwoods

so what policy will the Coastal Comm. create

will the Coastal Comm.

favor the scientists or the birds

will the Coastal comm.

also diminish the non-natives

both physically and in respectability

will the non-native trees

be eliminated because some say

the non-natives are icky

is that a bit short sighted

has any group stepped forward

to pay for and to replant

1,000 's of native trees

and if we get rid of all the non-natives

does this group have some magic pill

that will make the trees

grow super fast

so the birds do-not have to wait 50 years

why is it that these native-to-California trees  
are not worthy simply because  
they are here in so-cal  
instead of being a hundred miles north

do you think that the birds are bothered  
because science says  
this or that  
don't belong here or there

are these non-native trees going to be lessened  
will these 80 foot monterey cypress  
that have been growing for 60 years  
be erased  
because of a man-made technically

how many birds were here before white man came  
how many birds would you like to come back  
how many would be good  
how many trees should we let them have  
how many birds . .

will be determined by how many trees



that is our two cents on the trees

all that is left are the children

so what lies ahead for them

what shall we leave them

and what of your children's children

what kind of future will they find

will they be reduced to searching for softness

amongst the industrious-ness of progress

shall we leave them the spectacle of the many species

or the soulless-ness of Development

will their childhood be the harshness of asphalt and cement

or the wonder and mystery of nature

will they be blessed with the values of life itself

or the concerns of where might be found

a place for public use

will there be any places untouched by Developers

any places without driving a hundred miles

any places the kids can get to

the question is how much worse

will the coastal zone get

how much longer will Developing be the priority

how much longer till we decide to draw the line

the question is how much longer

will we allow a few

to make things worse for the majority

when will the vast majority become the priority  
nature the species those who visit

when will that majority

the 90 % of Californians

who can't afford to live within the coast

those who can only visit

when will they become the focus

will that majority have places to wander

places that await after a bicycle ride

places they can walk and hike

places to sit and gander

will there be places to call a time out

places that allow one to just be

will the coast become more developed

or will we draw the line

at some point there will come a day

when we will be forced to tame

this obsession of asphalt and cement

because by then even the Developers

will finally realize

we have gone to far

even the developers will know

that this delusion of mankind's lust

for over-powering nature

was the path of sadness and disgrace



how the Coastal comm. looks at what they do  
changes more than just the coast  
because what the Coastal comm. does  
the whole state will one day follow  
the Coastal comm. whether you know it or not  
is blazing the environmental trail  
for all of California  
the policies that the Coastal comm.. sets  
the decisions the Coastal comm.. makes  
will begin to allow  
the needed change to take place  
in every county in California  
your policies . . . . your decisions  
can be timid or  
can save a small part of the world  
can benefit a waiting majority  
so how will the Coastal comm. look at this  
will your focus . . your perspective  
be as people as Developers or as fishes and birdies  
the day will come when a decision has to be made  
one day the Coastal comm. will have to take a stand  
enduring the political forces  
a stand be it Development or the planet  
for this adversarial conflict Has to be decided  
for only one can be more important

this is not just about the birds and fishes  
this is not just about the coastal zone  
this is not just about the whole state  
for every decision you make will effect the whole planet  
will the birds the fishies all the species  
get the bare minimum  
or will they get what they deserve  
that is a most awesome question  
a question the Coastal comm.  
will have to face  
sooner or later  
so will this be about survival  
or could it be about sustainability  
will this be about  
surviving our relentless developing  
or can we somehow shoe-horn quality in to this  
that question by itself will keep the status quo  
or will turn the whole state upside down  
and the coastal zone right side up  
the possibilities are endless  
can we be brave  
can we at least try



the Coastal Act was passed in 1972

what would the California coast  
be like

if the Coastal Act had happened

had been passed

in 1962 or 1952

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

W9a

Coastal appeal \_\_\_ W9a

appeal date \_\_\_ September 5 2007

appeal location \_\_\_ Eureka , Ca.

address of development

23405 malibu colony

city of Malibu

Los Angeles county

B

this plan as designed approved and certified

by the city of malibu planning dept.  
with the guidance of the Malibu city council

as prepared by Reneika Brooks-mcclain \_ planner  
as certified by Dave Crawford \_ city biologist  
as by reviewed Victor Peterson \_ environmental director  
as approved by CJ Amstrup \_ planning manager

even knowing that this land has never been developed

even knowing that this land  
is part of the malibu Lagoon – Estuary  
because these two lands are as one  
with the chain link fence being the only blemish

even knowing the 80 foot trees

that are filled with Ospreys Herons and Egrets  
these trees are not given any mention  
or any respect on the plans  
and thus received zero consideration

even though this development needs an E.S.H.A. buffer

the planning dept. would not allow this development  
to go before the Environmental Review Board (E.R.B.)

Further even with only a chain-link fence

as the only imperfection  
in this E.S.H.A. area  
the Malibu planning dept.  
prevented the Calif. Environmental Quality Act (CEQA)  
from having any effect on this E.S.H.A. area development

thus the city of Malibu . . . decided

as it always does  
that Development comes first  
and will bend mutate or ignore  
the Coastal Act's environmental creed and spirit

and gave this development a free pass

to disrupt this E.S.H.A  
and destroy the trees  
used by Ospreys Herons and Egrets

it is hoped that in the future

the California Coastal Commission  
will move to deny the city of Malibu  
the ability to approve plans

with this development and it's approval  
the city of malibu has lost ALL fear  
of displaying their ' invincible'  
contempt for the Coastal Act  
voted into legal Importance by the People of California  
the malibu govt.'s complete disdain  
and shunning of the Coastal Commission  
of your involvement concerns and advice  
and their 'bull in a china shop'  
obsession for forcing Development . . .  
this Development brings up three basic facets  
E.S.H.A. Habitat Buffers  
that need to be explained to the Malibu politicians  
and to their planning dept.  
otherwise known as the  
"find a way to approve it" war - room  
is it time to tell malibu's govt.  
that the Coastal Commission  
has been empowered  
has been bestowed  
by the citizens of California  
to ensure that local govt.  
will put the environment first  
or at least not make things worst

the best moment that can happen

the most important thought

the Coastal Commission

can have today

is the decision

to tell malibu govt.

that the Coastal Act is the law

and that malibu govt. must follow it

that malibu govt. will follow it

that the Development that local govt.'s want

always leads to the end of our communities

as a nice pleasant places to live

and any respect for nature

that the result of Development

is always traffic traffic traffic

parking problems and standing in long lines

over-crowding and congestion

which automatically ruins ANY chance

of the Coastal area being a place

that Nature . . . can be

any chance that Wildlife

can have it's deserved existence

so the Coastal Commission

can try to explain to malibu's govt.

what is a wetland

what is habitat

what is an E.S.H.A.

what is an E.S.H.A. boundary

what is an E.S.H.A. buffer

and what is their importance

then add that 90+ % of wetlands have been destroyed

and it becomes clear

that any wetland area left

has to be deeded to nature

must automatically be deemed untouchable

and any land around an e.s.h.a.

becomes critical to the possibility

of the e.s.h.a. ever becoming practical

the Coastal Commission

can explain all it wants

but malibu's govt. will never listen

why . . . .

because the Coastal Act became law in 1972

that is about 35 years ago

35 years is a long time

to not listen      to not care      to belittle

if the malibu govt. is still ignoring . . . distaining  
the California Coastal Act . . after 35 years  
they always will  
unless the Coastal Commission  
decides enough is enough  
is it time for the Coastal Commission  
to stop being 'gentlemen'  
and start getting tough . . .  
the importance to save what is left  
to protect  
the most dynamic Creek / Lagoon / Estuary  
in los angeles country  
and thus maximize this opportunity  
to stop any more diminishment  
is something that malibu govt.  
will never tolerate  
hopefully you will not bend  
to the blatant belligerence  
that malibu govt. wants to force upon us  
and once and for all  
put an end to malibu govt's ability  
to war and defeat California's Coastal Act



we now live in an environmental culture

starting in and around the 1960's  
people . . . the Media have slowly become aware  
that the way govt. has allowed Development  
is not only destroying nature

but also our health  
and any chance of having  
a nice pleasant place to live

which lead to the passage of the 1972 Coastal Act

while at this point Development is still considered superior

to beauty health and quality of life  
in about 20 more years

it will become obvious to everyone  
that the environment has to be placed superior  
to the Govt. lust for Development

thus it will be decided that Development has to come to a stop

that there is enough Development  
there is enough asphalt and cement  
that there is enough congestion  
there are enough people

that streets and highways crawling with traffic  
that the impossibility of finding parking  
that standing in ever longer lines  
has to be stopped from becoming worse

which adds up to the end of Development

and the beginning of living pleasantly

then a new movement shall start

where by nature will take her place  
as being just as important as Development  
just as important as asphalt and cement

it is called equally

Equality implies the same amount

which translates into  
if you have a bunch of asphalt and cement  
then there has to also be a bunch of nature

so would demand that every where

the amount of asphalt and cement  
can-not be more than the surrounding land

so that the amount of asphalt and cement  
will be proportional to the amount of un-developed land

thus as we envision

since every city is absurdly out of proportion  
regarding the elimination of nature

vs. the onslaught of asphalt and cement

in order to bring out equality  
which involves the principle of balance

would entail that the amount of asphalt and cement  
would be required to be lessened

which simply put

could only be accomplished  
by the lessening  
of the amount of asphalt and cement

so our prediction for the future

is we will decide  
begin to dig up and remove  
the asphalt and cement

that has over-whelmed both us and nature

so that the world of nature

will take it's rightful place

as being at least equal

to that of asphalt and cement

so our prediction is that this equality

    this removal of the asphalt and cement  
    will begin to happen with in the next 20 years

when it does actually happen

    will be determined by the majority

but this moment could occur

    a bit earlier  
    if the enlighten ones  
    might broach the subject

this moment can also occur earlier

    if those in high places might mention  
    if the moment  
    to go in this direction  
    has arrived

thus you who have been bestowed

    to be upon the Coastal Commission

    those of you bestowed

    to be in an influential  
    social and culture affecting position  
    could contemplate this moment

thus with every thought

    thus with every question

    it is possible for you  
    to take a place in History  
    as a cultural beacon

    awakening the less fortunate

    to the concept of

insight

    forethought

    correctness



this property was purchased in late 2005

these environmental Laws Rules and Regulation

that are now imposed upon Development  
have been since 1972

part of the Development process in california

all these Laws Rules and Regulations

are meant to place Restrictions and Limitations  
upon one's wants and desires  
in an attempt to save the whole

thus anyone contemplating buying land in the coastal zone

has since 1972 been aware  
that these Restrictions and Limitations  
are in place

in an attempt to save our quality of life  
maybe even nature

thus anyone who chooses to purchase property

in the coastal zone  
willingly steps into a situation

where one's choices and desires  
will be deliberately Limited and Restricted

buying property as late as 2005

over 35 years after  
the Coastal Act became Law

means acknowledging and agreeing

to be severely limited  
by these Laws Rules and Regulations

as we all adhere to any of the laws  
that our communities are based on

so this Developer was fully aware of Coastal Act

this Developer was fully aware of the wetland

that this land is a part of

thus this Developer

is not entitled to cry or beg sympathy

so in the interest of the 90+ % of the wetlands

that mankind has destroyed  
with Development

we here today have no choice

but to adhere and stand steady  
to this chosen direction  
of extending a respectful hand to nature

adhere and stand steady

to this reasoned vision  
that will prevent Development  
making our communities less pleasant  
from making the E.S.H.A areas a lesser

adhere to what we are beginning to realize  
is the only path to take

this person made a gamble

a gamble that he could manipulate the Coastal act

that has been installed to prevent  
the very action that this person  
wishes to force upon us

why because he is a developer

every week of his life  
he works with government

why because he is an attorney

every week of his life  
he works with the law

thus . . . this person knowingly made this gamble

every week of his life

he goes into the building and planning depts.  
of cities here and there  
and dances with those who dwell there

and i am sure he dances very well

the proof of that is demonstrated  
by how he got the city of malibu  
to plan and approve this E.S.H.A. ignoring Development

how he got the city of malibu

to ignore water-down and bend  
the environmental laws rules and regulations  
that rightfully would prevent this Development

the right statement to make

the correct statement to declare

the proper statement to repeat

is that we are in an environmental culture now

a culture-change that is needed and necessary

a need that we can-not afford to turn away from

we are now spending 3,000,000 dollars

to make the malibu Creek / Lagoon / Estuary

a great place

a great place for wildlife to be  
a great place for wildlife to live

a great place for wildlife to continue their specie

a great place for wildlife to grow old

Let us today ensure that this area

that is called the malibu Creek - Lagoon - Estuary

is allowed to become a great place



now this Developer has and will continue to exhibit spasms

running the gamut of whimpering to bellyaching

about how he has spent a million or two  
and 'deserves' a fair return of his money  
so he should be allowed to do his thing

but if he actually cared about 'doing' his thing

this Developer would have  
brought land in Malibu  
where there were no E.S.H.A concerns

this person did just the opposite

because if he actually cared about doing his thing

he would have got land in Beverly hills  
where there is no environment  
where there is only asphalt and cement

instead of getting land entirely within the E.S.H.A. zone

this Developer did just the opposite

buying land that is part of the most visible dramatic and natural

wildlife filled E.S.H.A. in los angeles county

malibu Creek – Lagoon – Estuary

is simply shooting himself in the foot (and wallet)  
and displays that there is something amiss  
with how he thinks and maneuvers through Life

what we have is a developer

who does not care

about the place where he develops

does not care for California Nature wildlife

or you

and obviously does not care about his money



"where there is no other feasible alternative for sitting the development "

the question is how should these words affect this situation

maybe we can ask the Birds the Herons the Egrets the Ospreys

how much consideration is Wildlife worthy of

So, what is the situation ?

well, this situation was caused by the developer  
This land has always been left in a natural state

Every owner down thru the decades

has chosen to leave the land alone  
and enjoy the land's natural beauty  
while letting the Wildlife come and go

There were those, who came by wanting

to buy and develop the land  
but each time, always choose not to  
because after investigating the possibilities  
knew developing the land would be impractical

so this land has remained un-developed

and along with the Trees  
the 80 foot preeminent salutation  
that beckon the birds to the Malibu Lagoon - Estuary

has always been a favored and pleasant place  
for the wildlife that use or live  
in the malibu Creek / Lagoon / Estuary

if this person had owned the land for 30 20 10 or 5 years

we could understand his situation  
we could sympathize . . .

but he is only a Johnny come lately  
he bought this land a year ago  
only because the city of Malibu  
agreed to be his co-developer

so one person because of his arrogance

decided that he could sneak by get-around and ignore  
what the Coastal Act  
and all resulting Legislation  
has attempted to do and accomplish

this situation that all us are spending our time on

was caused by one person  
one person who thinks he is a smart guy  
one person who must think he is a bit clever  
one person who we guess always seems to get his way

All these environmental safeguards

that thousands of people have spent  
their time . . . their lives  
working tirelessly to bringing into existence

somehow should not be place upon him  
somehow the California Coastal Act  
should be ignored for him

somehow we California Wildlife

should become subservient  
to his gamble to manipulate the system

The environmental Effort by millions is necessary

because there are people who still don't get it  
who still believe in " Manifest Destiny "

this religion – inspired "gift of God "  
to dominate and bring into submission  
what some call Creation . . . others call Nature

so this whole ` environmental movement `

that government is begrudgingly dragging it's feet to  
because the government  
can't figure out how to tax nature . . .

is also up against the selfishness of some  
who do not want to let go of the old way  
of thinking only of the self

so how will those words

" where there is no other feasible alternative "  
affect this situation

one way would be to say

" sir, you looked before you leaped  
as a developer . . . as an attorney  
you investigated the environmental restrictions

so you knew the situation  
you created this situation

you intentionally put yourself into this situation

what you now complain about you invited

sir you are an Attorney  
therefore you know the Laws

sir you are a Developer  
therefore you know government

you knew there were environmental Laws  
you knew there were environmental Rules  
you knew there were environmental Regulations

sir you knew this land is part of . . .

an E.S.H.A. environmental area

the malibu Creek - Lagoon - Estuary

you saw the 80 foot Towering Trees  
Big enough Tall enough to be seen from miles away

yes the same trees you offered to buy  
so you could cut them all down

so those words

" where there is no other feasible alternative "  
will lead to a bit of disappointment

the only question is ..... who

will it be Planet Earth California the Ecology

Wildlife and All of us

or will it be this Johnny come lately the Developer

at no time      making no effort

did this Developer ever approach contact or engage

the Coastal Commission

(obvious a minor detail)

the absurd level of his arrogance and contempt

for the California Coastal Act

for this citizens initiative

for the millions of citizens who voted for it

draws us a person sickly alienated from the rest of us

someone lost in a 'house of mirrors' psychology

to a point that no one else exists

just bouncing off mirrors

twirling through this community

doing what he wants un-conscious oblivious

that there is anyone . . . anything to consider

even before buying this land

this developer had years to investigate

any and all environmental issues

he had 35 years of Coastal commission history

to realize to understand to know

all the conditions all the problems and all the laws

he had years to learn

because in the 80 year History

of the malibu colony

this is the first person

who has tried to develop this land

he had years to learn

because this is the only 'nut-case'  
in America who would be so obsessed  
with doing something that goes  
against all common sense

he had years to learn

what could be done and what could-not be done  
with this land in this area  
in this situation with these rules

he had years to learn

but even a superficial knowledge  
of environmental law  
has always been enough  
for any potential buyer to see  
this land was not practical to develop

he had years to learn

but years were not needed  
to know this land should be left alone

so this land has remained in a natural state

because even upon one's first look  
all the reasons are displayed

why this land as the birds alight  
has always been a part of the ecology

so " where there is no other feasible alternative "

is something that has always been available  
is something this person should have done a year ago

is something he could have done at any time  
is something this person can still do

and that is to do what every other person  
who thought about developing this land . . . did

simply walk away  
simply call his real estate agent  
and put the land back on the market

then go buy land that is NOT part of an E.S.H.A.

go buy land where there is no environment

go buy land where he can do what he wants

so he won't be bothered by any stupid birds  
so he won't be bothered by any stupid trees

then instead of building . . . and living

where he will always loath and resent

the environment he is being forced to tolerate

he can go and get non- E.S.H.A. land . . . .

and build a home where he could actually . . . be Happy



the Govt. is about to spend 3,000,000 dollars to re-do the Lagoon

they will change the whole look of the lagoon

they will change where the water will be

they will change where the habitat will be

they will plant plants..... everywhere

in the end the Lagoon will be very different

the Lagoon should be a more proper E.S.H.A.

This is the Moment to do what we can

to insure that Wildlife is Pleased with our attempt

to un-do some of what humans have done

to the other 90+ % of wetlands . . . that no longer exist

this 3 million Dollars is an attempt, to create, something . . . correct

a Wetland that provides Wildlife with what they Like

a wetland that really works

what is Wildlife going to Like

how about a place where they can

eat frolic rest sleep . . . . a home

a Place where wildlife can live

as if they were not living on a planet of humans

the Birds will be the most obvious Wildlife here

the Birds are what people will see

as they fly as they hunt as they rest

what can we give to the Birds

that will make the most visible difference

will show that the Lagoon is wildlife - appropriate

now when this Lagoon - Estuary gets re-designed . . . re-structured  
when the Lagoon / Estuary gets bulldozed and ripped up  
when all the wildlife is scared off and scattered away  
how long will it take for the wildlife to start to return  
how long will it take for the Birds to feel comfortable

what does this Wetland require

so that Wildlife will come back  
sooner rather than later

what will cause the birds to decide to stay  
at this Lagoon . . . rather than fly onward ?

do you think Wildlife knows what they need to live

where the Birds feel most comfortable

where the Birds feel most secure

where the Birds need to live are Trees

how much better is a wetland that has trees

how close can we come to giving Wildlife what they need ?

so you see we have no choice We have no alternative

is it possible for ALL of us Wildlife and people

to remember this moment

as the day Wildlife knew for the present and for the future

we humans have turned the corner

when the Trees are violated or taken down  
it's o-k it's not a big deal  
kind of like a couple brain cells dying

## CALIFORNIA COASTAL COMMISSION

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

Appeal Filed: 8/6/07  
49<sup>th</sup> Day: 9/24/07  
Staff: D. Christensen  
Staff Report: 8/23/07  
Hearing Date: 9/5/07



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

**LOCAL GOVERNMENT:** City of Malibu

**LOCAL DECISION:** Approval with Conditions

**APPEAL NO.:** A-4-MAL-07-095

**APPLICANT:** Colony House 1, LLC (Richard Margolis)

**AGENT:** Darren G. Domingue and Don Schmitz

**APPELLANTS:** Malibu Coalition for Slow Growth (Patt Healy) and Steve Littlejohn

**PROJECT LOCATION:** 23405 Malibu Colony Drive, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construction of a two-story, 5,200 sq. ft. single-family residence, with a 1,368 sq. ft. attached garage, pool, spa, alternative onsite wastewater treatment system, and minor modifications for reductions in front and side yard setbacks.

**SUBSTANTIVE FILE DOCUMENTS:** June 5, 2007 Staff Report for City of Malibu Coastal Development Permit No. 06-023, Minor Modification Nos. 06-049 and 07-016, and Initial Study/Negative Declaration No. 07-001; City of Malibu Planning Commission Resolution No. 07-29; July 23, 2007 Staff Report for Appeal No. 07-005 of CDP 06-023; City of Malibu City Council Resolution No. 07-37; Environmental Review Board Revised Recommendation dated March 15, 2007; "Delineation and Determination of Recommended Setback of a Single Family Residence to an ESHA", prepared by TeraCor, dated June 3, 2005; "Biological Study", prepared by TeraCor, dated December 5, 2006.

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

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the ESHA provisions of the certified Local Coastal Program (LCP). Motion and resolution can be found on **Page 4**.

## **APPEAL JURISDICTION**

The proposed project is located on a parcel situated between Malibu Colony Drive and Malibu Lagoon State Park within the Malibu Colony neighborhood of the City of Malibu (**Exhibit 1**). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends between the first public road (Pacific Coast Highway) and the sea. The subject parcel is located within this appeal area. In addition, the proposed development is located within 100 feet of a wetland/estuary (Malibu Lagoon). As such, the City's coastal development permit for the subject project is appealable to the Commission.

### **A. APPEAL PROCEDURES**

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

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

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

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

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

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

Section 30625(b)(2) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that the Commission find that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on the question of the existence of a substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of the Commissioners present at the hearing to find that no substantial issue is raised by the appeal.

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

If a substantial issue is found to exist, the Commission will consider the application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons. In this case, if the Commission finds a substantial issue, staff anticipates de novo permit consideration by the Commission at a future Commission hearing.

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

On June 5, 2007, the City of Malibu Planning Commission voted unanimously to adopt Resolution No. 07-29 approving Coastal Development Permit No. 06-023, Minor Modification Nos. 06-049 and 07-016, and Initial Study/Negative Declaration No. 07-001 for the proposed project. Prior to that, on December 20, 2006, the City's Environmental Review Board reviewed the proposed project, heard testimony, and forwarded a recommendation to the Planning Commission for consideration.

On June 15, 2007, Steve Littlejohn, representing adjacent property owner Bill Littlejohn, filed a local appeal (Appeal 07-005) of the Planning Commission's action on June 5, 2007, within the City's appeal period. The City of Malibu City Council denied Appeal 07-005 on July 23, 2007, upholding the Planning Commission's action.

The Notice of Final Action for the project was received by Commission staff on August 3, 2007. A ten working day appeal period was set and notice was provided beginning August 6, 2007. The final day of the appeal period was August 17, 2007. The Notice of Final Action identified the project as appealable to the Coastal Commission, since the project is located within the Commission's appeal jurisdiction. Appeals of the City's

action were filed by Patt Healy and Malibu Coalition for Slow Growth (August 6, 2007), and Steve Littlejohn (August 10, 2007), during the appeal period. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeals and requested that the City provide its administrative record for the permit. The administrative record was received on August 13, 2007.

## **STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

**MOTION:**        *I move that the Commission determine that Appeal No. A-4-MAL-07-095 raises NO substantial issue with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act.*

### **STAFF RECOMMENDATION:**

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

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

The Commission hereby finds that Appeal No. A-4-MAL-07-095 presents a **substantial issue** with respect to the grounds on which the appeals have been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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

The Commission hereby finds and declares:

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

The City of Malibu Planning Commission approved Coastal Development Permit (CDP) No. 06-023 for the construction of a two-story, 5,200 sq. ft. single-family residence, 1,368 sq. ft. attached garage, pool, spa, and alternative onsite wastewater treatment system at 23405 Malibu Colony Drive, Malibu (**Exhibits 1-10**). Minor modifications for a 47 percent reduction in the required front yard setback and a 20 percent reduction in the cumulative side yard setback (the total of both side yard setbacks) were also approved. The property lies within the City's Malibu Colony Overlay District, an overlay zoning district wherein certain development standards (including, building height, front, rear, and side setback standards) substitute for the general residential standards that apply City-wide. The subject 0.41-acre parcel is 167 feet deep by 50 feet wide and is bounded

by existing residential development to the west, a tennis court and residential development to the east, and Malibu Colony Drive to the south (**Exhibit 2**). Malibu Lagoon, a wetland/estuary environment that is mapped as an Environmentally Sensitive Habitat Area (“ESHA”) on the Malibu LCP ESHA maps, lies to the north of the property. A portion of the subject parcel is situated within the 100-foot ESHA buffer. The site is currently vacant and is comprised of ornamental landscaping, including two Monterey Cypress trees and two Ficus trees. Several mature Monterey Cypress trees exist on the adjoining property to the west, all of which are clustered along their shared property line (**Exhibits 2, 3**).

## **B. APPELLANTS’ CONTENTIONS**

As noted above, two appeals of the subject CDP were submitted within the appeal period by Patt Healy (Malibu Coalition for Slow Growth), and Steve Littlejohn. The contentions of each appellant are described separately below.

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

The appeal filed by Patt Healy and Malibu Coalition for Slow Growth is attached as **Exhibit 13**. The appeal contends that the approved project, as conditioned, does not meet the requirements of the Malibu LCP and gives the following grounds for the appeal. None of the contentions references specific policies or standards of the Malibu LCP. However each contention relates to the development’s proximity to ESHA.

- 1) a setback/buffer of 100 feet from upland wetland vegetation, as required by LCP, was not provided;
- 2) the roots and branches of the off-site Cypress trees that are on the applicant’s property may be ESHA, and if so, the applicant may only develop 25% of the parcel;
- 3) the City did not properly condition the project to protect migratory birds; and
- 4) Malibu Colony Overlay District development standards should not supersede ESHA standards, as the City contends.

### **Steve Littlejohn**

The appeal filed by Steve Littlejohn is attached as **Exhibit 14**. The appeal provides several grounds for appeal. None of the contentions references specific policies or standards of the Malibu LCP. However each contention relates to the development’s proximity to ESHA.

- 1) the City incorrectly claims that the Malibu Colony Overlay District 20-ft. rear yard setback standard takes priority over the LCP’s ESHA setback requirement of 100 feet;

- 2) the wetland ESHA boundary was mis-measured, then deemed irrelevant by City since they claim a 20-ft. rear yard setback prevails over a 100-ft. ESHA setback;
- 3) the grove of Cypress trees to the west of the development should be considered part of the ESHA due to their role in supporting species of special concern such as raptors who roost there, and as such, the 25% of parcel size development area rule should be applied;
- 4) the septic leach field and pool are located within ESHA buffer; and
- 5) the City did not consider viable alternatives to reduce impacts to ESHA, as required by LCP.

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

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellants did not cite the public access policies of the Coastal Act as a ground for appeal. However, should the Commission find Substantial Issue based on the grounds that are cited, the public access policies of the Coastal Act would be addressed in the de novo review of the project.

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

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

In this case, the appeal raises a substantial issue with regard to the grounds on which the appeals have been filed, as discussed below.

1. **Environmentally Sensitive Habitat**

A. ***Environmentally Sensitive Habitat Area Buffer***

Both appeals contend that the project does not provide an adequate setback or buffer between the approved development and Malibu Lagoon, a wetland environment that is an LCP-mapped Environmentally Sensitive Habitat Area (ESHA).

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

**4.6.1. Buffers**

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

**B. Wetlands**

**New development shall provide a buffer of no less than 100 feet in width from the upland limit of the wetland.**

The City's staff report (Exhibit 15) that was considered at the June 5, 2007 Planning Commission hearing states that:

A June 3, 2005 Wetland Delineation Study prepared by TeraCor Resource Management found that the upper limit of the Malibu Lagoon ESHA is 10 feet from the lagoon waterline recorded on May 22, 2005 by TeraCor's wetland specialists. The report further states that the upland limit of the wetland boundary is 65 [to 67] feet from the rear property line of the subject property. Chapter 4 of the LCP requires that new development be set back 100 feet from the delineated edge of an ESHA. The proposed new residence is set back 100 feet from the delineated edge of ESHA in conformance with the LCP and the findings of the referenced wetland delineation report. The City Biologist has reviewed the application and concurs with the TeraCor delineation.

The ESHA boundary, as determined by the applicant's biologist and the City, is located 65-67 feet from the rear property line. As such, 33 feet of the required 100 foot buffer is situated on the subject parcel. The applicant designed the project such that the proposed pool, spa, residence, and garage were all situated at least 33 feet from the rear property line that fronts the lagoon.

However, review of the proposed site plans indicate that a 493 sq. ft. subsurface dispersal field associated with the proposed alternative onsite wastewater treatment system is located within the ESHA buffer area on-site, adjacent to the rear property line (**Exhibit 4**). Septic system dispersal fields meet the definition of "development" under the LCP and are not a permitted use in an ESHA buffer pursuant to Section 4.5.4 of the

City's LIP. The City's staff report did not address the septic dispersal field's presence within the ESHA buffer. Although not specifically discussed in the staff report, the Malibu Planning Commission Resolution of approval does acknowledge that the OWTS (onsite wastewater treatment system) and dispersal field are located within the ESHA buffer (as determined by the City). The resolution states the following regarding alternatives: "...given the relatively small size of the subject property... and further, the limitations imposed by adherence to the required setback; there remain no feasible development alternatives to the proposed siting that would substantially reduce any impacts to ESHA". However there is no discussion of what siting and design alternatives, if any, were considered to avoid placement of the OWTS and dispersal field within the ESHA buffer. If it can be determined that there are no feasible alternatives to siting the OWTS and dispersal field outside the ESHA buffer, then the City may only permit the development if it complies with the maximum development standards contained in LIP Sections 4.7.1 through 4.7.4 in order to provide the owner with an economically viable use of the property. Section 4.7.1 limits the development area to 10,000 sq. ft. or 25% of the lot, whichever is less.

So, the Commission must conclude that, at a minimum, the location of the onsite wastewater treatment system aspect of the approved project presents a substantial issue with respect to whether it provides an adequate buffer from the Malibu Lagoon ESHA, as contended by the appellants.

As such, the Commission finds that the applicants' contentions raise a substantial issue regarding the conformity of the approved project with the ESHA buffer policies and provisions of the Malibu Local Coastal Program.

### **B. ESHA Delineation**

The appellants contend that the ESHA boundary was mis-measured by the applicant's biological consultant. The boundary of off-site ESHA is important in determining the extent of ESHA buffer on the subject property. As mentioned previously, a June 3, 2005 delineation of the off-site wetland prepared by TeraCor found that the upland limit of the off-site wetland ESHA was 65-67 feet from the rear property line of the subject parcel. The City Biologist concurred with this ESHA delineation and a 100-foot ESHA buffer that extends 33 feet onto the subject property was required by the City (**Exhibit 3**).

The wetland ESHA determination was based upon a wetland delineation conducted by the applicant's consulting biologist. The biologist's report, dated June 3, 2005, states that the delineation was prepared using the U.S. Army Corps of Engineers' Wetland Delineation Manual in conjunction with the wetland delineation provisions contained in the Malibu LCP (LIP Section 4.4.3), in which a wetland and its upland limit are defined as follows (in accordance with Public Resources Code Section 13577(b)(1)):

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of

frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

- A. the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;
- B. the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric
- C. in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

Based on that definition, if hydric soils or hydrophytic vegetation predominate, or if the relevant surface hydrology is present, then the area is considered part of the "wetland". In the case of the subject wetland delineation report, the biologists identified a 1-2 foot strip of unvegetated mudflat adjacent to the water's edge that was bordered by an approximately 10 foot wide strip of coastal salt marsh vegetation. It was determined that both the salt marsh and mud flat areas meet all three wetland parameters and are recommended by the biologist to be considered wetland ESHA (**Exhibit 11**).

The delineation report identifies the area upslope of the delineated salt marsh area as consisting of predominantly upland vegetation (a mosaic of saltbush, mulefat, and non-native grasses) and non-hydric soil (**Exhibit 11**). However, Commission staff biologist, Dr. Jonna Engel, reviewed the wetland delineation report and found that there are flaws in the biological consultant's analysis of the upslope area that indicate the delineated upland limit of the wetland may not be accurate.

Three separate vegetative communities are delineated within the area defined by the consulting biologist as upland: saltbush scrub, saltbush/mulefat scrub, and non-native grassland (see polygons on Exhibit 11). Six sampling plots were utilized to analyze vegetation, soils, and hydrology. The location of these plots are also indicated on Exhibit 11. In sampling plot #6 within the saltbush/mulefat scrub polygon, the data sheet indicates that saltbush, a dominant species within the plot, is an upland indicator species and since less than 50% of the dominant species within the plot are wetland indicators, it was concluded that the area was not wetland based on vegetation. However, saltbush is a wetland indicator species that is found 50% of the time in wetlands. With saltbush listed as a wetland indicator species, the majority of total vegetation within the plot are hydrophytic species. As such, this area should have been delineated wetland based on vegetation.

Also, the sampling plot location map indicates that no sampling was conducted within the polygon labeled saltbush scrub. Since saltbush is a wetland indicator species, the lack of any analysis of the soil and vegetation characteristics within this polygon is a significant omission in the study that raises an issue regarding the accuracy of where

the boundary between predominately wetland and predominately upland was delineated.

In addition, the subject upland area was not analyzed by the City or the biological consultant for inclusion as ESHA itself. The scope of the biological consultant's assessment was limited to discerning wetland ESHA. The biologist's ESHA report concludes that:

It is the opinion of TeraCor that the upper limit of the Malibu Lagoon wetland ESHA is 10 feet from the lagoon water line recorded on 22 May 2005 by TeraCor wetland specialists. It is also our opinion that the upland limit of the wetland boundary is 65-67 feet from the Margolis property line. A standard 100 foot structural setback to the wetland ESHA is recommended.

In Commission comment letters (dated November 6, 2006 and December 27, 2006) to the City of Malibu prior to the City's hearing on the proposed project, staff had suggested that the City address whether the upland portion of the adjacent wetland/lagoon was surveyed for habitat that meets the definition of ESHA (as opposed to wetland) since the area appeared to contain native transitional habitat. The applicant's biological reports addressed the delineation of the wetland ESHA, as described above. However, there is no discussion in these reports regarding the vegetation found in the area they define as "upland" as to whether this habitat itself meets the definition of ESHA. This issue was not specifically addressed in the City's staff report or findings.

Instead, in the City's staff report on the local appeal considered by the City Council on July 23, 2007 (Exhibit 16), the City made the argument (which may have been reflected at the Planning Commission's hearing but not in the Planning Commission staff report) that the ESHA buffer provisions of the LCP were not applicable in this case because the property lies within the Malibu Colony Overlay District, an area that possesses a unique set of development standards. The City claims that the overlay district development standards take priority over any inconsistent development standards found in the LCP, including ESHA standards. The rear yard setback requirement for non-beachfront lots in the Malibu Colony is twenty (20) feet, as measured from the property line to the wall of the structure. The City asserts that this setback is the only setback required for the rear yard of the subject parcel that fronts Malibu Lagoon, and a 100-ft. buffer from off-site ESHA is no longer required. Nonetheless, the applicant proposes to continue to maintain the proposed 33 foot setback from the rear property line, or 100 feet from the delineated wetland (as determined by the City to be the appropriate ESHA buffer).

As detailed in LIP Section 3.4.1, the Malibu Colony overlay provisions replace the City-wide residential development standards found in LIP Section 3.6. However, as stated in LIP Section 3.4: "All uses within the boundaries of an overlay zone shall comply with the provisions of the overlay zone in addition to applicable standards of the underlying zone, other provisions of this ordinance, and other provisions of law". So, it is clear that the Malibu Colony overlay standards do not override those of the ESHA Overlay. Furthermore, as provided in Malibu Land Use Plan (LUP) Policy 3.30:

Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.

The City staff reports refer to the “specific” standards of the Malibu Colony Overlay District as though they are distinct from the “general” development standards referred to by LUP Policy 3.30. However, the LCP makes no such distinction. Rather, it is clear that the standards contained in the Malibu Colony Overlay District are the same type of standard and substitute for the general development standards that apply City-wide. Moreover, in the first line of Policy 3.30, as quoted above, it refers simply to “other development standards,” with no reference to “general” or “specific.” Thus, neither the standards in the Malibu Colony Overlay District nor any other development standards in the LCP supplant the ESHA requirements.

Therefore, even if there were a conflict between the provisions of the Malibu Colony Overlay District and the ESHA policies and provisions, the more restrictive ESHA buffer standards must be applied. Interpreting the LCP otherwise, as the City has done in their findings for the subject CDP, would set an adverse precedent for future development proposals located within the City’s overlay zoning districts that are adjacent to ESHA.

In conclusion, there is lack of adequate analysis regarding the boundaries of the off-site ESHA and a misapplication of the LCP policies that raise a substantial issue in terms of the project’s conformance with the ESHA protection provisions of the Malibu LCP.

### **C. Alternatives Analysis**

Mr. Littlejohn’s appeal contends that the City did not consider viable alternatives to reduce impacts to ESHA as required by the LCP.

Policy 3.14 of the Malibu Land Use Plan states that:

**3.14** New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.

The City Planning Commission staff report contains the following findings regarding alternatives:

Given the relatively small size of the subject property (approximately 50 feet by 167 feet), as well as the limitations imposed by the required ESHA setback, there remain no feasible development alternatives to the project siting that would result in an environmentally superior project.

However, there is no discussion of the alternatives that were considered to minimize impacts. While the site does have certain constraints, the approved residence is large (5,200 sq. ft. plus a six-car garage). The record does not contain any discussion of reduced size alternative designs considered by the City or modified footprints that could allow for the onsite wastewater treatment system (OWTS) to be sited outside of the ESHA buffer, further away from Malibu Lagoon.

Additionally, the City Council appeal staff report, in responding to the appellants contention that project alternatives were not considered, refers to two Feasible Alternatives Reports prepared by the applicant's agent. These reports (**Exhibit 12**) primarily address the constraints (including a watermain and flood hazard area located on the project site) and the required setbacks. The alternatives discussed in these reports relate to the design of the residence and the minimum financially feasible square footage for the structure. These reports do not discuss alternatives with respect to minimizing environmental impacts or ensuring that the OWTS is not sited within the ESHA buffer, or why any such measures were considered but determined to not be feasible.

Therefore, the Commission finds that substantial issue is raised with respect to the appellant's contention that alternatives were not considered in the approval of the project as required by the ESHA protection policies and provisions of the certified Local Coastal Program.

#### ***D. Cypress Trees***

Lastly, the appellants contend that the grove of Cypress trees to the west of the development should be considered part of the delineated ESHA due to its role in supporting species of special concern and migratory birds.

The subject grove is essentially a windrow of approximately 14 mature Monterey Cypress trees that line the western property line of the subject parcel. One of the appellants, Steve Littlejohn, is the son of the neighboring property owner whose property contains the Cypress tree grove. While most of the tree trunks reside on the neighboring property, the tree roots and canopies extend over the west edge of the subject property (**Exhibit 10**).

A December 5, 2006 Biological Study prepared by TeraCor found that the trees were being utilized by Osprey, Great Egret, Black-crowned Night Heron, Great Blue Heron, Red-shouldered Hawk, Cooper's Hawk, Red-tailed Hawk, and Great-horned Owl. In particular, the herons and egrets roost in the trees when not actively feeding in the Malibu Lagoon estuary. The Osprey is a California Department of Fish & Game

“Species of Special Concern”. Great Egret is not a listed species, but they are uncommon in Southern California.

There is evidence in the record indicating concerns were raised throughout the City’s public review process for the subject CDP regarding the proposed project’s impact on the Cypress tree habitat and the birds that use it. The proposed 5,200 sq. ft. residential structure with attached 1,368 sq. ft., 6-car garage will be a maximum of 30 feet tall and be situated 5 feet from the west property line. The City approved a Minor Modification to reduce the required cumulative side yard setback from 12 feet, 6 inches to 10 feet (5 feet on each side instead of 6.25 feet on each side). The applicant proposes to prune several of the cypress trees to accommodate the proposed structure. In addition, the applicant modified the design of the structure foundation in order to minimize destruction to the root zones of the cypress trees, pursuant to concerns raised and a recommendation by the City’s Environmental Review Board.

The City’s March 19, 2007 Initial Study and Mitigated Negative Declaration for the proposed project states that due to the fact that the trees have not been documented as nesting sites for bird species, and none of the living trees are proposed to be removed entirely, and because the area has been already broadly disturbed by existing development, it was concluded that the proposed project would have no discernable effect to area habitat or wildlife. As such, no mitigation measures were required for biological resources. A California Department of Fish & Game comment letter on the Mitigated Negative Declaration, dated March 28, 2007, states that the cypress trees provide roosting habitat for herons and raptors, but nesting activity has never been documented there. The letter goes on to state that the project has the potential for impacting nesting native birds and provides six recommendations regarding construction avoiding the breeding bird season, bird surveys prior to disturbance activities, minimize tree pruning as feasible, native landscaping, and night lighting. Subsequently, the City’s resolution of approval (**Exhibit 17**) of the project includes special conditions to address foundation design, avoidance of construction during nesting season, replacement of cypress trees at a 1:1 ratio as mitigation for the death of any trees resulting from the construction, and limitation on night lighting. Since Monterey Cypress trees are not native to this region of California, they are not afforded protection under the City’s Native Tree Protection Ordinance (LIP Chapter 5). Yet, the trees were recognized by the City as possessing biological value that warrants the requirement of measures to minimize the project’s impact upon them.

However, the City’s staff report did not analyze, and neither the Planning Commission nor the City Council made any finding, as to whether the trees met or failed to meet the definition of an environmentally sensitive habitat area (ESHA). ESHA is defined in the Malibu LCP as:

ESHA is any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

There is substantial evidence in the record to indicate the trees provide a valuable role in the estuary ecosystem and could be easily disturbed by development. The trees contribute to the viability of the bird species that utilize them, one of which is a species of special concern in California, in that they provide roosting habitat near the areas where they forage in Malibu Lagoon estuary. According to correspondence in the record from the Santa Monica Bay Audubon Society, the subject Cypress trees are the only trees adjacent to the estuary that the birds find suitable to roost in. The height of the trees and the dense foliage provide protection from disturbance and predators.

Section 4.3 of the Malibu LIP states that the City shall determine the physical extent of habitat meeting the definition of “environmentally sensitive area” on the project site, based on the applicant’s site-specific biological study, as well as available independent evidence. Unless there is site-specific evidence that establishes otherwise, the following habitat areas shall be considered to be ESHA:

1. Any habitat area that is rare or especially valuable from a local, regional, or statewide basis
2. Any habitat area that contributes to the viability of plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law
3. Any habitat area that contributes to the viability of species that are designated “fully protected” or “species of special concern” under State law or regulations.
4. Any habitat area that contributes to the viability of species for which there is other compelling evidence of rarity, for example plant species eligible for state listing as demonstrated by their designation as “1b” (Rare or endangered in California and elsewhere) or designation as “2” (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society,
5. Any designated Area of Special Biological Significance, or Marine Protected Area.
6. Streams.

However, the City’s staff report did not analyze, and neither the Planning Commission nor the City Council made any finding as to, whether the trees met or failed to meet the definition of an environmentally sensitive habitat area (ESHA) in accordance with LIP Section 4.3. Therefore, the Commission finds that the appellants raise a substantial issue with respect to their contention that the approved project does not conform to the ESHA protection policies and provisions of the certified Local Coastal Program with regard to the Cypress trees.

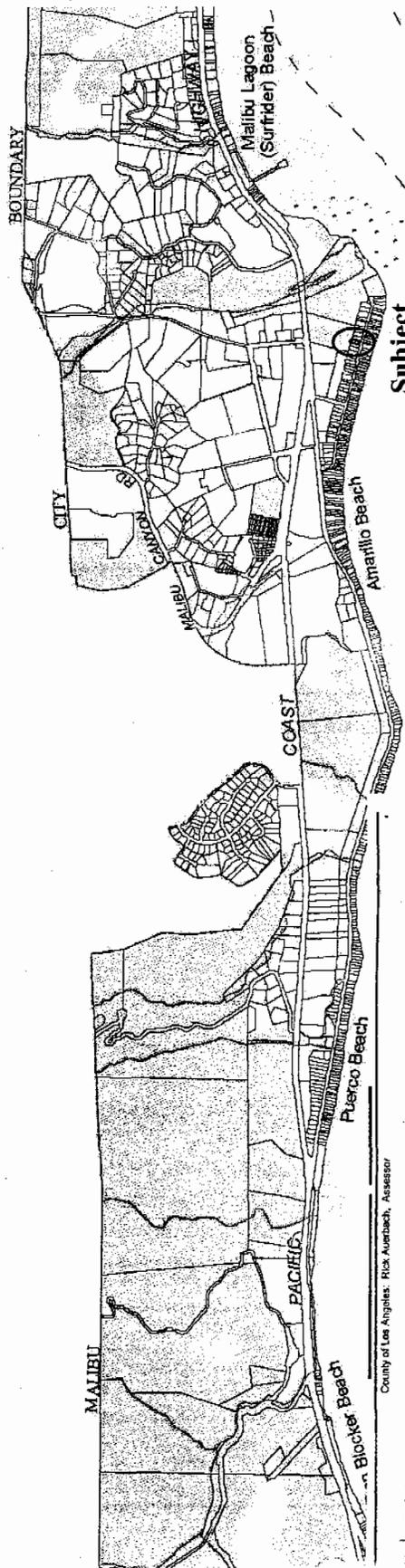
## **D. CONCLUSION**

For the reasons discussed above, the appeals raise substantial issues with respect to the consistency of the approved development with the policies of the City’s certified LCP regarding ESHA. Therefore, the Commission finds that the appeals raise substantial issue as to the City’s application of the policies of the LCP in approving the proposed development.

Local Coastal Program - City of Malibu  
**ESHA and Marine Resources Map 3:**  
**Dan Blocker to Malibu Pier**

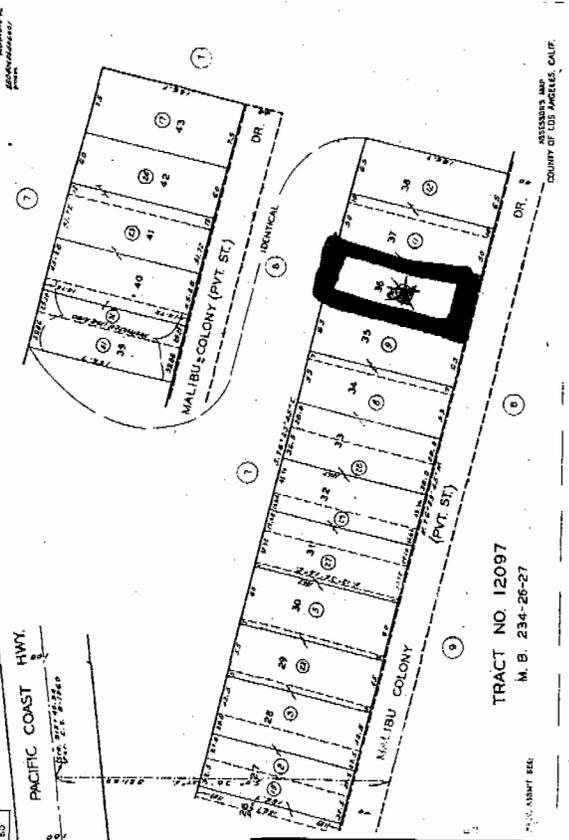
Match Line to Map 2

-  Environmentally Sensitive Habitat Areas  
Includes areas identified as coastal sage scrub and/or chaparral, riparian areas and wetlands.\*
-  Kelp Beds
-  Streams
-  Near Shore Shallow-water Fish Habitat
-  Clam Habitat



4452 10 50  
 SCALE 1" = 50'

1992  
 COUNTY OF LOS ANGELES, RICK AUSTBACH, ASSESSOR



**Exhibit 1**  
**A-4-MAL-07-095**  
**Vicinity / Parcel Maps**

O c e a n

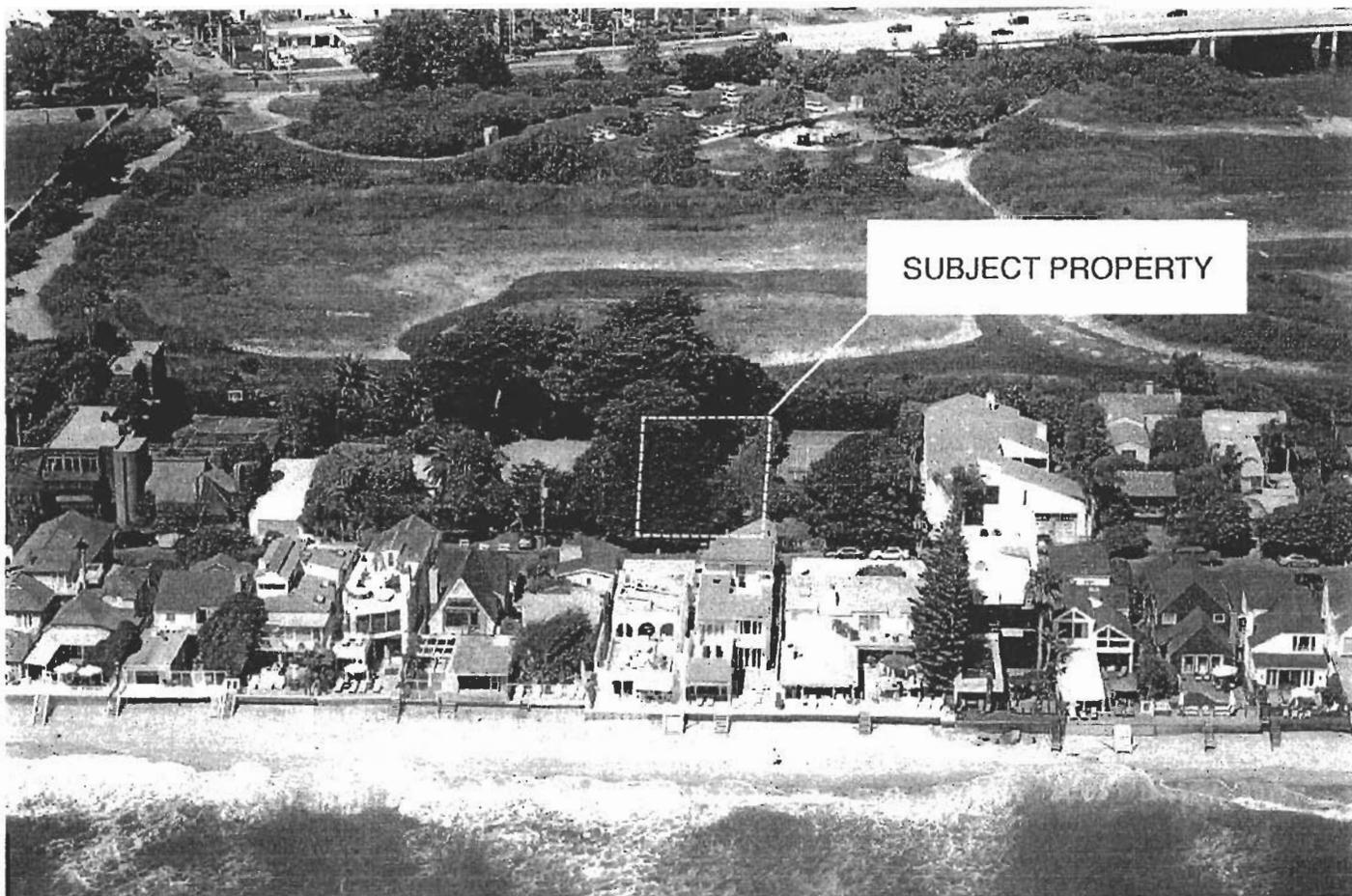
\*Boundaries of ESHAs may change location over time due to varying circumstances. This map is not intended to depict fixed boundaries of ESHAs or marine resources and may not include all areas that are ESHA. This map does not establish any final boundary lines or constraints on the Commission's ability to identify, map and regulate ESHAs and Marine Resources in the City of Malibu.

Sources: Malibu/Santa Monica Mountains Area Plan, Marine Resources map, LA County LCP, 1987, LA County Parks and Recreation, 1983, CCC Staff, 2001-2002.



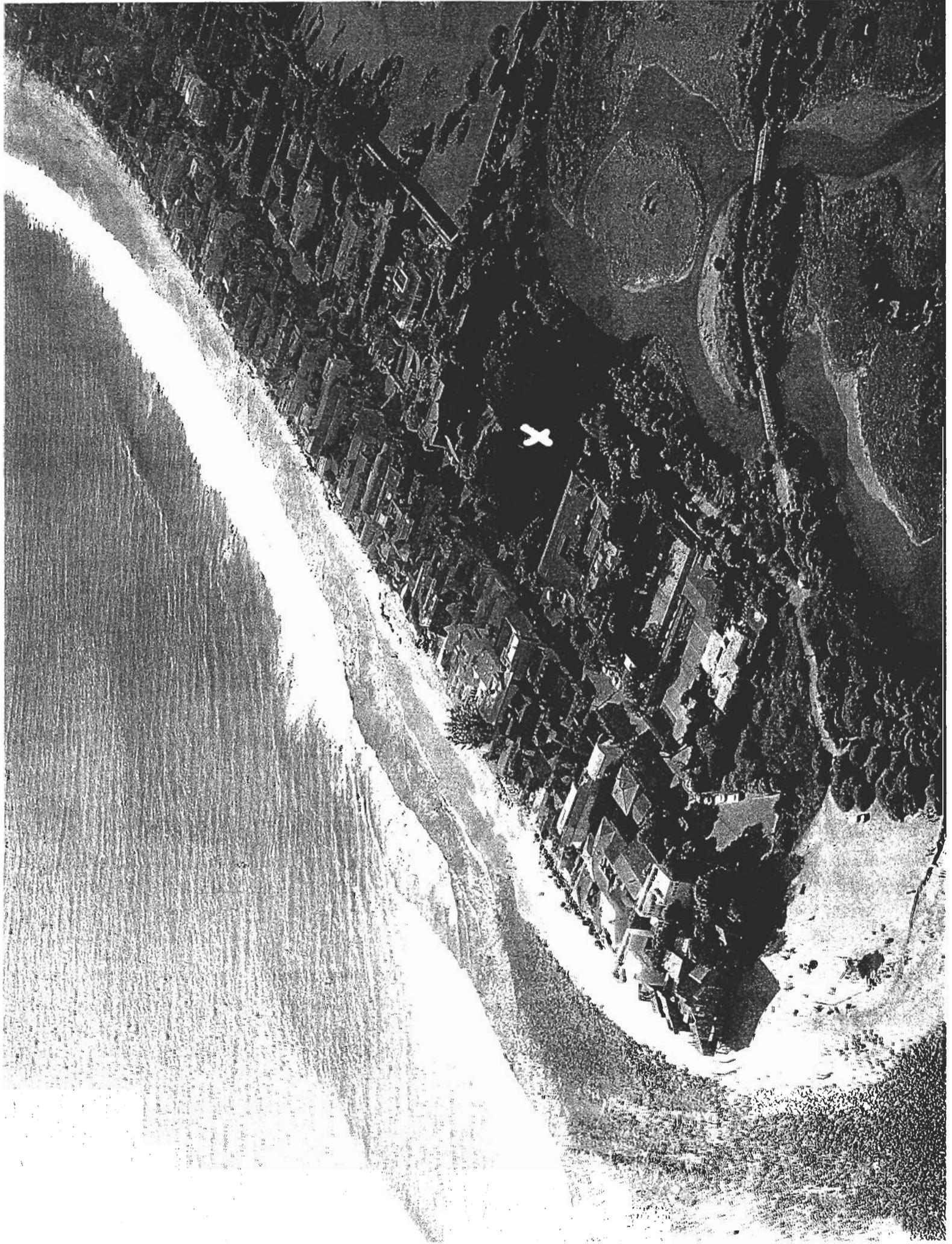
DSM, JWC Revised 9/02

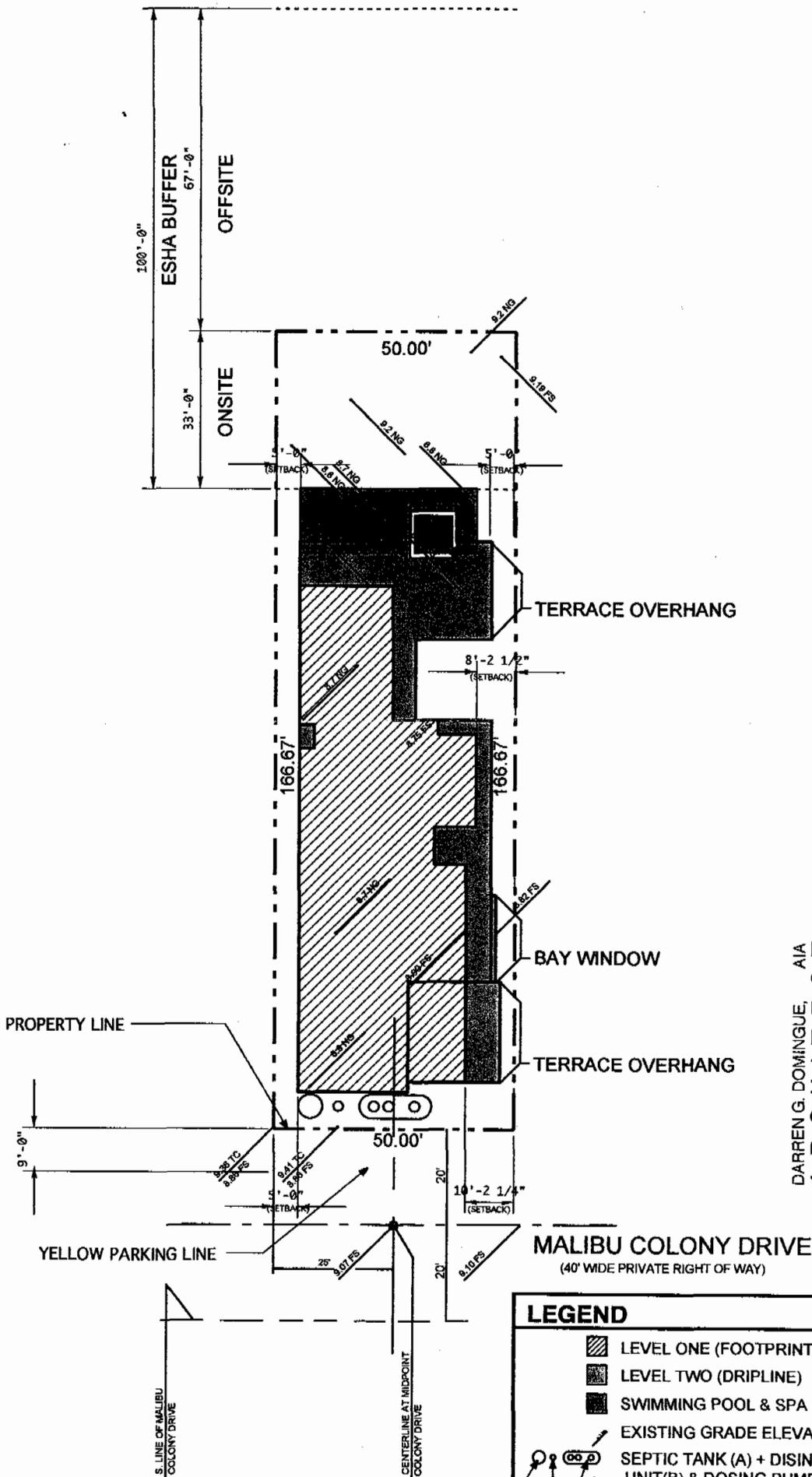
23405 MALIBU COLONY RD.



1) AERIAL PHOTOGRAPH

Exhibit 2
A-4-MAL-07-095
Oblique Aerial Views





SITE PLAN - SETBACK DIAGRAM  
INCLUDING EXISTING GRADE  
1" = 20'-0"

A RESIDENCE FOR MR. RICK MARGOLIS  
23405 MALIBU COLONY DR  
MALIBU, CALIFORNIA 90265

DARREN G. DOMINGUE, AIA  
ARCHITECT  
CALIFORNIA LICENSE C2-4891  
1201 GRANT STREET  
SANTA MONICA, CALIF 90405  
PHONE 310-452-9703  
FAX 310-452-9803  
EMAIL dgdco.archt@verizon.net

MALIBU COLONY DRIVE  
(40' WIDE PRIVATE RIGHT OF WAY)

**LEGEND**

- LEVEL ONE (FOOTPRINT)
- LEVEL TWO (DRIPLINE)
- SWIMMING POOL & SPA
- EXISTING GRADE ELEVATION
- SEPTIC TANK (A) + DISINFECTION UNIT(B) & DOSING PUMP VAULT(C)

**Exhibit 3**  
**A-4-MAL-07-095**  
**Site Plans**



23405 MALIBU COLONY DRIVE  
MALIBU, CA 90265

(APR 06-023)

S.F.D.:	4 Bedroom/66 FU (E)
SEPTIC/A.C. TANK:	3000 Gallon w/ Duplex Pump (N)
FILTER:	2 - OSI Advantex AX-20 (N)
DISINFECTION:	1 - Biokinetic BK2000CD (N)
ACTIVE:	1 - 493 sq ft drip dispersal field (N)
FUTURE:	N/A
PERC RATE:	Sand Category
LOADING RATE:	1.52 gpcf

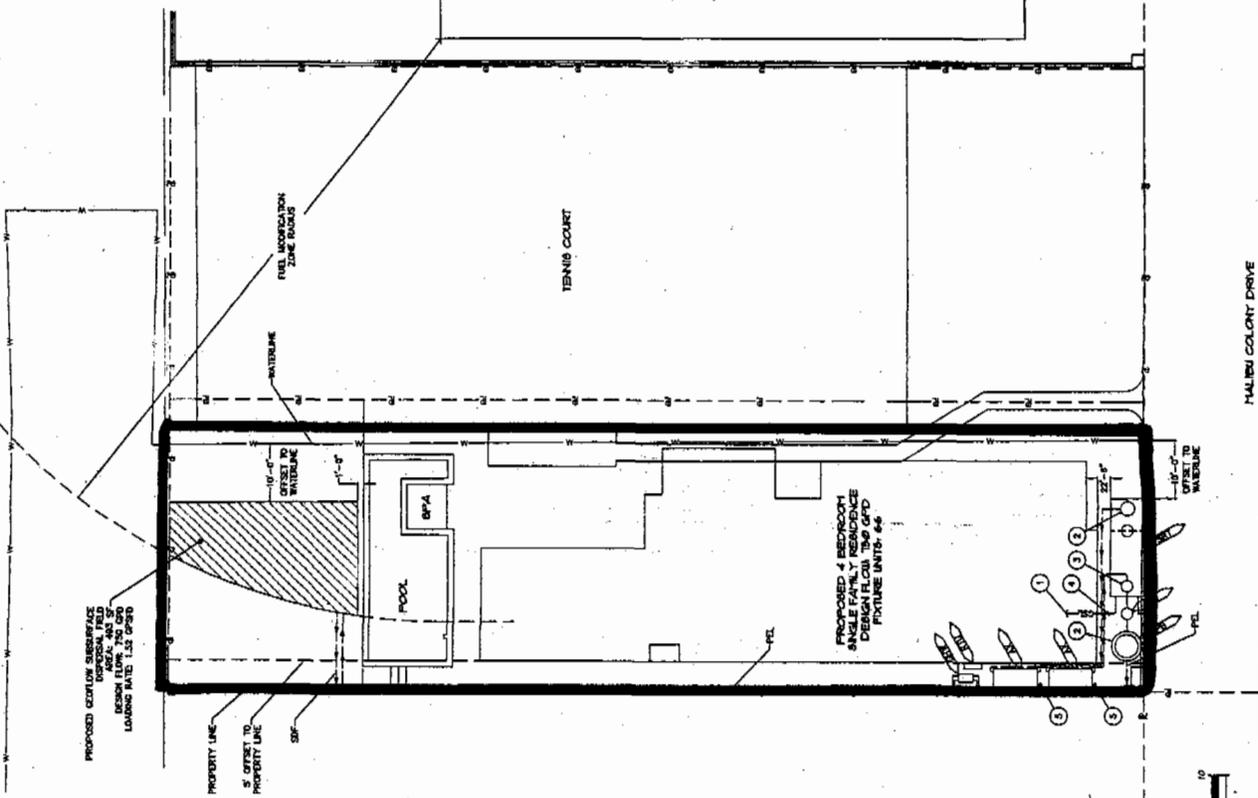
**NOTES:**

- This review is for a 4 Bedroom (66 fixture units) new single family residence. The new alternative onsite wastewater treatment system shown conforms to the requirements of the City of Malibu Plumbing Code (MPC), and the Local Coastal Plan (LCP).
- This review relates only to the minimum requirements of the MPC, and the LCP, and does not include an evaluation of any geological, or other potential problems, which may require an alternative method of wastewater treatment.
- This review is valid for one year, or until MPC, and/or LCP, and/or Administrative Policy changes render it noncomplying.

CITY OF MALIBU ENVIRONMENTAL HEALTH	
<b>CONFORMANCE REVIEW</b>	
JUL 10 2006	
SIGNATURE	<i>A. Shelton</i>
THIS IS NOT AN APPROVAL FINAL APPROVAL IS REQUIRED PRIOR TO THE ISSUANCE OF ANY CONSTRUCTION PERMITS	

**Exhibit 4**  
**A-4-MAL-07-095**  
**Septic System Plan**

- SEPTIC REGULATORY TANK (3000 GALLON, 2-COMPARTMENT PRECAST CONCRETE TANK)
- REMOTE TELEMETRY CONTROL PANEL
- ADVANCED AERATED TREATMENT UNIT BY OREKO
- BIOKINETIC BIOLOGICAL DISINFECTION UNIT BY MORWOOD
- PRECAST CONCRETE DOORING PUMP BASH BY ENSTU, INC.
- GEOWALL REINFORCEMENT



- CONNECTION TO EXISTING SEWER CONDUIT TO VERIFY EXISTING SLOPE FROM STRUCTURE TO CONNECTION POINT
- DUPLEX BROTHERS SCREENED PUMP VALVE
- REGULATING SPATTER VALVE
- CONCRETE TANK
- PRECAST CONCRETE DOORING PUMP BASH BY ENSTU, INC.

NOTE:  
1. EXISTING SEWER TANKS, INCLUDING ORIGINAL OR REPLACED, SHALL BE PUMPED, CURED AND FILLED WITH LOCAL FILL MATERIAL COMPACTED TO 95% OF ASTM D1557. SEWER PIPE SHALL BE GRADED IN ACCORDANCE WITH SPECIFICATIONS AND TEST METHODS PLUMBING CODE (MPC).  
2. ALL DIMENSIONS AND GRADES SHALL BE VERIFIED BY CONTRACTOR PRIOR TO START OF CONSTRUCTION. ALL DIMENSIONS SHALL BE ACCORDANCE WITH 1999 NATIONAL ELECTRIC CODE.  
3. A REGISTERED MECHANICAL ENGINEER, UNDER THE DIRECTION OF THE OWNER, SHALL DETERMINE IF THE WASTEWATER LOADINGS WILL CAUSE THE EXISTING SEWER SYSTEM TO BE OVERLOADED. THE ENGINEER SHALL BE RESPONSIBLE FOR THE STABILITY OF THE EXISTING SLOPE.  
4. ALL DIMENSIONS AND GRADES SHALL BE VERIFIED BY CONTRACTOR PRIOR TO START OF CONSTRUCTION. ALL DIMENSIONS SHALL BE ACCORDANCE WITH 1999 NATIONAL ELECTRIC CODE.  
5. ALL DIMENSIONS AND GRADES SHALL BE VERIFIED BY CONTRACTOR PRIOR TO START OF CONSTRUCTION. ALL DIMENSIONS SHALL BE ACCORDANCE WITH 1999 NATIONAL ELECTRIC CODE.  
6. ALL DIMENSIONS AND GRADES SHALL BE VERIFIED BY CONTRACTOR PRIOR TO START OF CONSTRUCTION. ALL DIMENSIONS SHALL BE ACCORDANCE WITH 1999 NATIONAL ELECTRIC CODE.

FINAL FOR APPROVAL  
NOT FOR CONSTRUCTION  
Printed  
10 April 2006





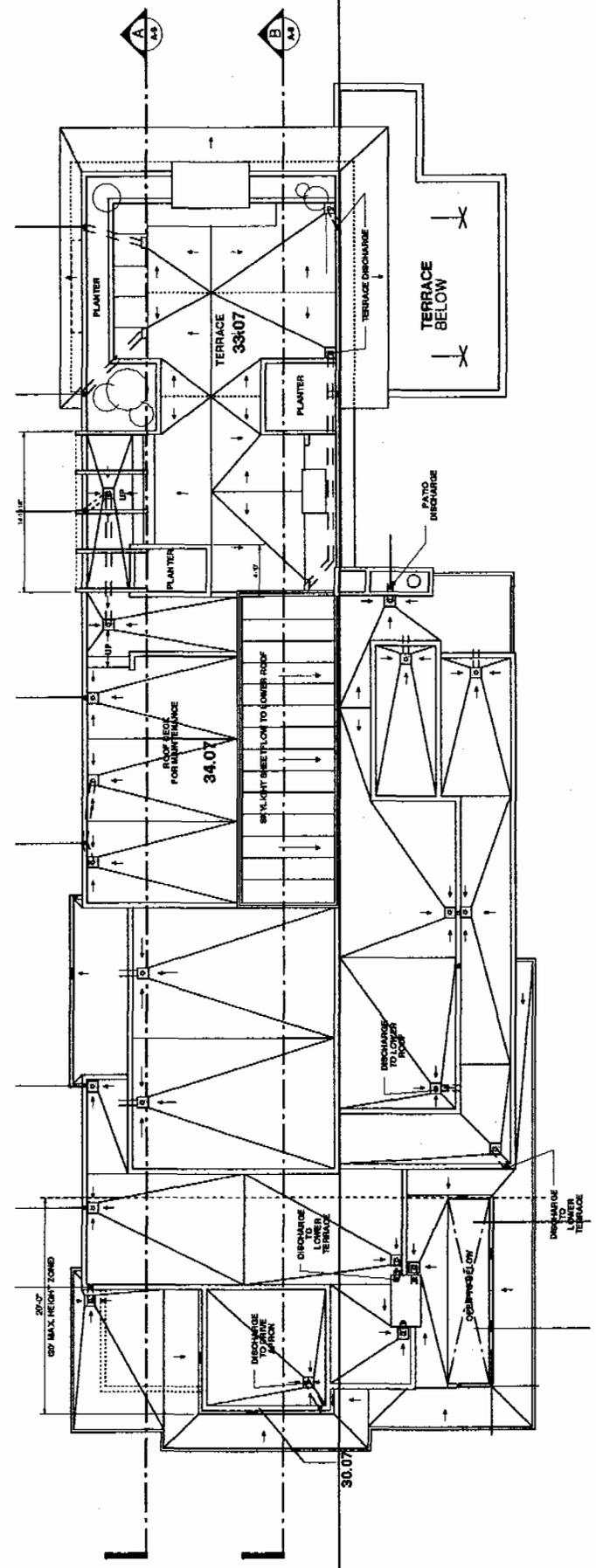
NO.	DATE	BY	REVISIONS

MARGOLIS RESIDENCE  
 23405 MALIBU COLONY DRIVE  
 MALIBU, CA 90265

OAMEN & DONNAGE, ARCHITECT  
 801 GRANT STREET  
 SANTA MONICA, CALIF. 90401  
 PHONE: (310) 311-1111  
 FAX: (310) 311-1112

DATE: 08/08/07  
 SCALE: 1/4" = 1'-0"  
 DRAWN: JWC  
 CHECKED: JWC  
 PROJECT: A-4-MAL-07-095

A-6



**ROOF PLAN**  
 1/4" = 1'-0"

Exhibit 7  
 A-4-MAL-07-095  
 Roof Plan

DATE	
BY	
CHECKED	
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PROJECT	
NO.	
SHEET	

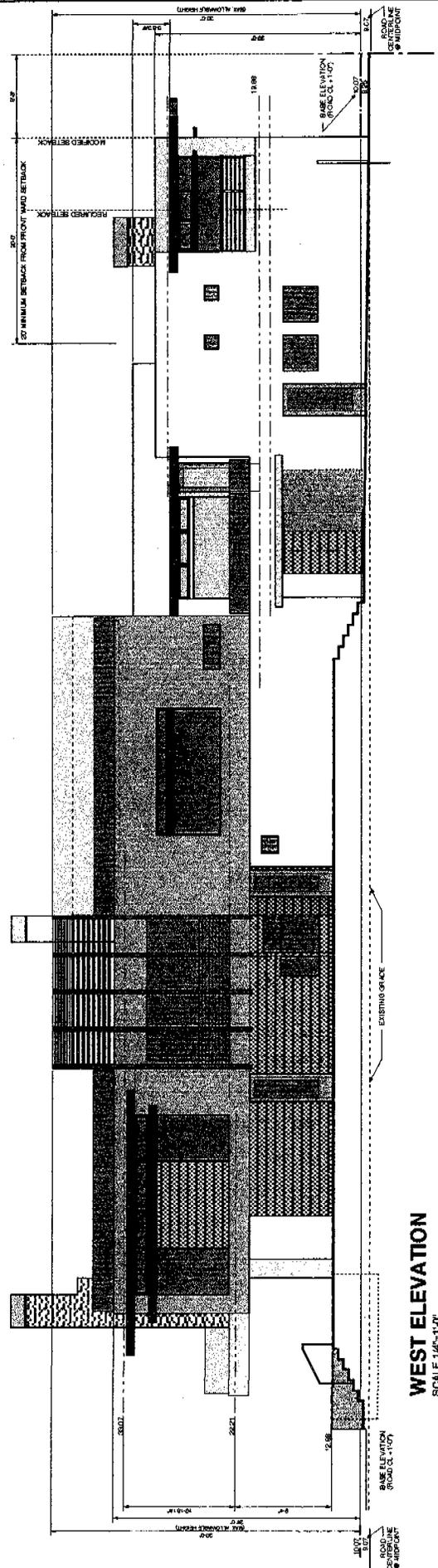
**MARGOLIS RESIDENCE**  
 23405 MALIBU COLONY DRIVE  
 MALIBU, CA 90265

**TERRON ELEVATIONS**  
 (TH / NORTH / WEST)

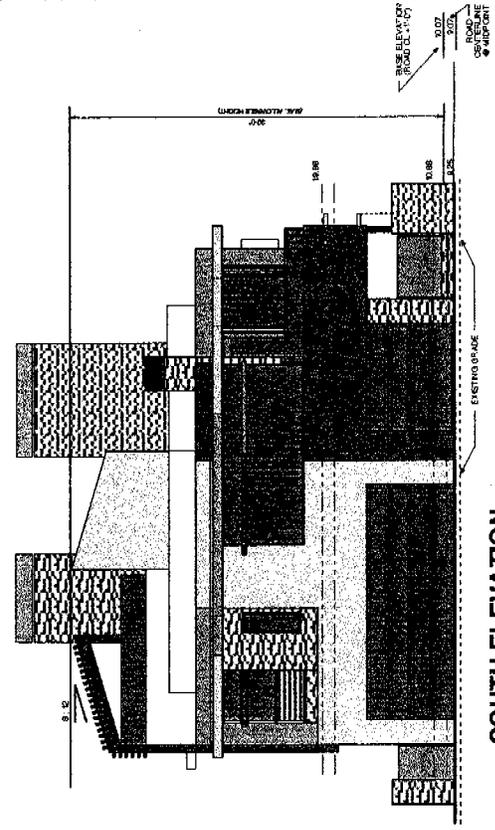
DARRIN G. CORNELL, AIA  
 ARCHITECT  
 1501  
 ORANT STREET  
 SANTA MONICA, CA 90405  
 (310) 318-3333  
 WWW.TERRON.COM

DATE: 08/09  
 SCALE: 1/4"=1'-0"  
 DRAWING NO.: 07-095  
 SHEET NO.: 07

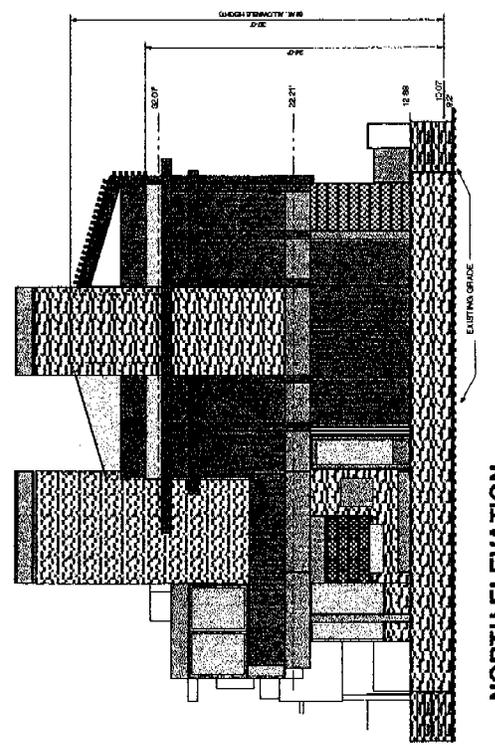
**A-7**



**WEST ELEVATION**  
 SCALE 1/4"=1'-0"



**SOUTH ELEVATION**  
 SCALE 1/4"=1'-0"



**NORTH ELEVATION**  
 SCALE 1/4"=1'-0"

**Exhibit 8**  
**A-4-MAL-07-095**  
**Elevations**

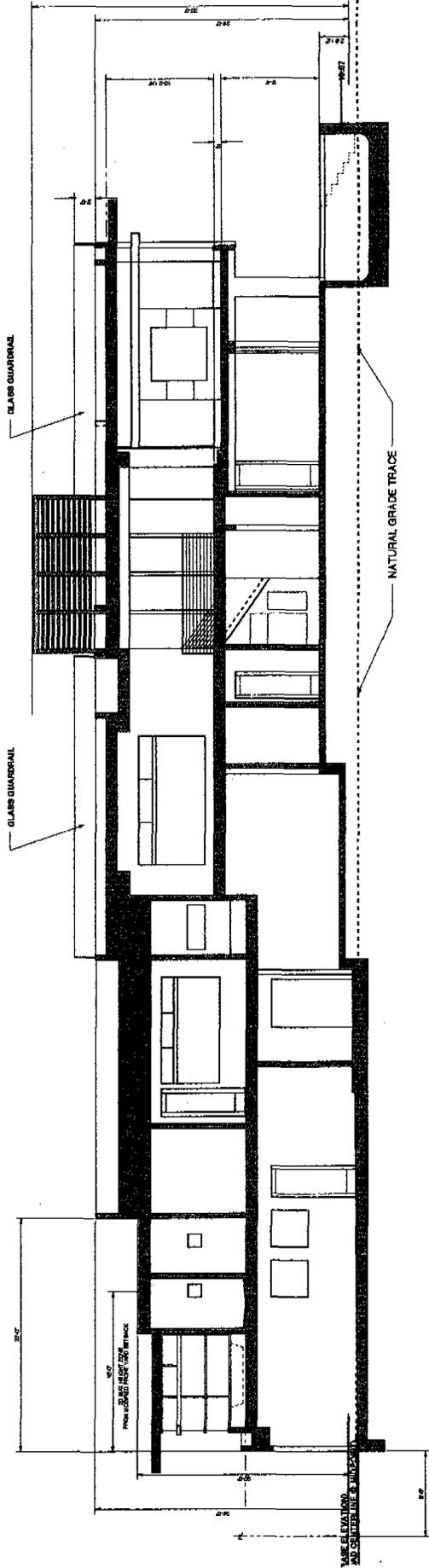
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**MARGOLIS RESIDENCE**  
 23405 MALIBU COLONY DRIVE  
 MALIBU, CA 90265

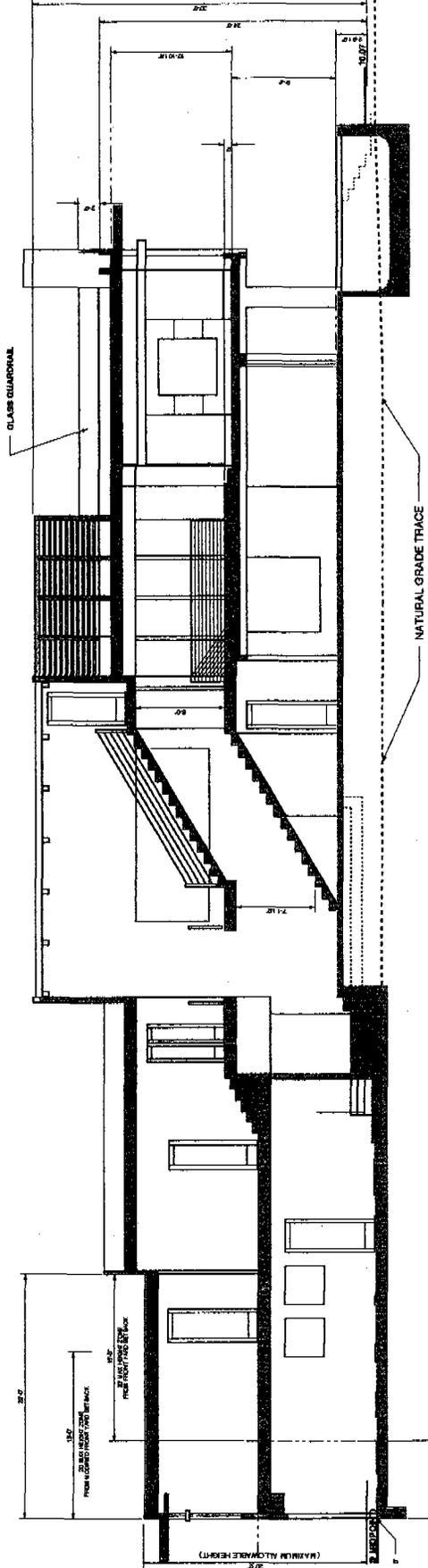
ORANGE COUNTY  
 ARCHITECT  
 1001  
 GRANT STREET  
 SANTA MONICA, CALIF 90405  
 TEL: 310-318-2828  
 FAX: 310-318-2829

DATE: 08/08/07  
 SCALE: 1/4"=1'-0"  
 DRAWN: JDT/BJ  
 JOB NO: 07-095

**A-9**



**SECTION A**  
 SCALE 1/4"=1'-0"

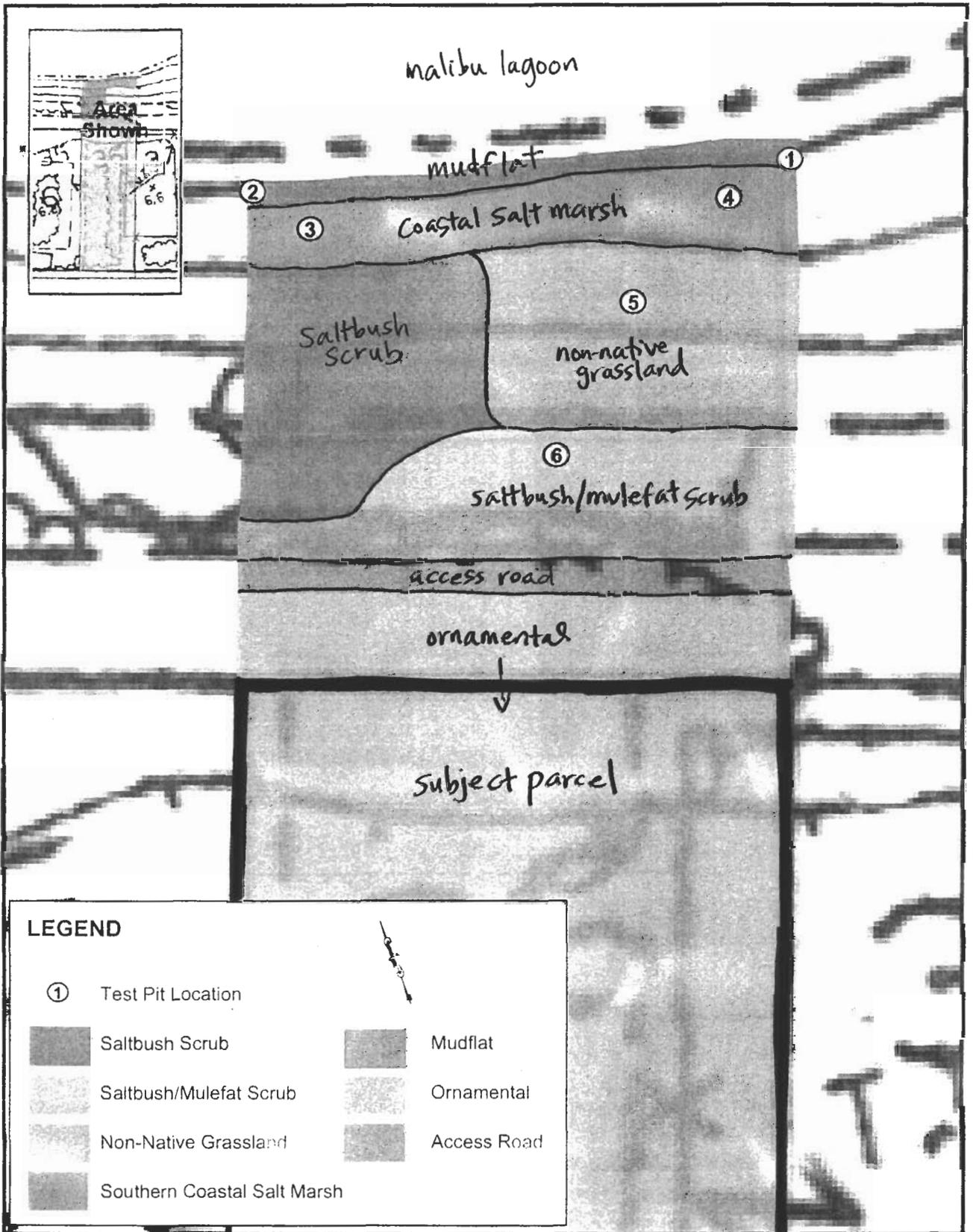


**SECTION B**  
 SCALE 1/4"=1'-0"

**Exhibit 9**  
**A-4-MAL-07-095**  
**Cross-sections**



Exhibit 10
A-4-MAL-07-095
Story pole photo



**LEGEND**

- ① Test Pit Location
- Saltbush Scrub
- Saltbush/Mulefat Scrub
- Non-Native Grassland
- Southern Coastal Salt Marsh
- Mudflat
- Ornamental
- Access Road

DARREN G. DOMINGUE, AIA  
A R C H I T E C T  
CALIFORNIA LICENSE C 24691  
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SANTA MONICA, CALIFORNIA 90405  
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fax 310.452.9803  
e-mail dado.arch@verizon.net

RECEIVED  
AUG 09 2006  
PLANNING DEPT.

Ranika Brooks-Mclain  
Associate Planner  
City of Malibu  
23815 Stuart Ranch Road

Feasible Alternatives Report  
CDP 06-023

The project which has been submitted for consideration is the most feasible alternative to emerge from the design process. There are no feasible alternatives to development that would avoid or lessen any possible adverse impacts. The following criteria was extracted from the initial site analysis and used as a roadmap towards a final design solution:

1. The property is subject to envelope restrictions which are dictated by Malibu Colony Overlay Standards. Specifically, the proposed building has height restrictions at the front yard designed to reduce building mass at the street.
2. The property is located within a F.E.M.A. designated flood hazard area which sets the minimum finished floor elevation. This necessarily elevates the structure several feet above the existing natural grade and reduces the overall potential building envelope height.
3. The proposed structure needs to incorporate the ESHA Buffer into the rear yard setback. The rear yard setback increased from 20'-0" to 33'-0".
4. A Water Main on the property occupies an existing easement on this narrow 50' wide lot. This reduces the width of the footprint at the ground floor level and increases the east side yard setbacks.

The above listed criteria, determined by biological requirements, City Codes, natural topography, existing easements and neighborhood standards, combined to create an envelope which allowed only minor adjustments to the physical location and massing of the home. Design alternatives which ignored any or all of our four criteria items were abandoned because they failed to lessen any possible adverse impacts.

Sincerely,

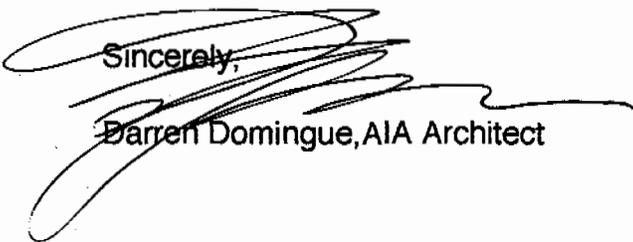
  
Darren Domingue, AIA Architect

Exhibit 12
A-4-MAL-07-095
Applicant's Alternatives Analysis

DARREN G. DOMINGUE, AIA  
A R C H I T E C T  
CALIFORNIA LICENSE C 24691  
1 2 0 1 GRANT STREET  
SANTA MONICA, CALIFORNIA 90405  
phone 310.452.9703  
fax 310.452.9803  
e-mail dado.arch@verizon.net

## FEASIBLE ALTERNATIVES REPORT

THE MALIBU COLONY PROPERTY HAS A NUMBER OF UNIQUE CHARACTERISTICS WHICH AFFECT THE FEASIBILITY OF DEVELOPMENT. THE PROPERTY CANNOT SIMPLY REPRODUCE SIMILAR ENVELOPES FOUND ON ADJACENT PARCELS. A NEW STRUCTURE MUST RESPOND TO CURRENT DEVELOPMENT GUIDELINES. THESE GUIDELINES CREATE SPECIFIC RESTRICTIONS WHICH REDUCE SETBACKS, HEIGHT, AND SQUARE FOOTAGE. THESE SPECIFIC RESTRICTIONS INCLUDE:

1. THE PROPERTY MUST RESPOND TO THE ESHA BUFFER WHICH OVERLAPS SUBSTANTIALLY INTO THE REAR YARD.
2. THE PROPERTY IS SUBJECT TO ENVELOPE RESTRICTIONS WHICH ARE DICTATED BY MALIBU COLONY OVERLAY STANDARDS. SPECIFICALLY THE PROPOSED BUILDING HAS HEIGHT RESTRICTIONS AT THE FRONT YARD DESIGNED TO REDUCE BUILDING MASS AT THE STREET.
3. THE PROPERTY IS LOCATED WITHIN A F.E.M.A. DESIGNATED FLOOD HAZARD AREA WHICH SETS THE MINIMUM FINISHED FLOOR ELEVATION, THUS REDUCING THE OVERALL VERTICAL ENVELOPE.
4. A WATERMAIN ON THE PROPERTY CREATES AN EASEMENT WHICH REDUCES THE WIDTH OF THE FOOTPRINT AT THE GROUND FLOOR LEVEL.

THE FIRST ENVELOPE CREATED WAS A TRADITIONAL LAYOUT, WITH THE GARAGE IN THE FRONT, AND A REAR YARD WITH A SWIMMING POOL. THIS LAYOUT WAS DETERMINED TO BE INEFFICIENT IN THAT THE MINIMUM FINANCIALLY FEASIBLE SQUARE FOOTAGE, AND LAYOUT OF THE PRIMARY ROOMS DID NOT LEAVE SPACE FOR A SWIMMING POOL. THE SITE SEEMED TO HAVE TOO MANY ISSUES TO BUILD A TRADITIONAL ENVELOPE AND

ENJOY THE SITE AS NEIGHBORING PROPERTIES DO. THE OWNER DID NOT WISH TO CHALLENGE EITHER THE MALIBU COLONY STANDARDS, NOR THE MALIBU LOCAL COASTAL PLAN IN ORDER TO CREATE A SCENARIO WHICH WAS FEASIBLE. THE HIGH TECH SEPTIC SYSTEM WAS DETERMINED TO BE THE ONLY FEASIBLE OPTION DESPITE ITS DISPROPORTIONATELY HIGH COST.

THE NEXT SCENARIO OPTED FOR A LESS TRADITIONAL SCHEME WHICH PLACED THE PRIMARY ROOMS ON THE SECOND LEVEL WITH CATHEDRAL CEILINGS. THIS SCENARIO LACKED APPEAL IN THAT IT ALLOWED THE PRIMARY ROOMS MORE SQUARE FOOTAGE ,HOWEVER, DID NOT HAVE A DIRECT CONNECTION TO THE LOWER LEVEL YARD.THE BEDROOMS WERE ALSO SPLIT BETWEEN THE FIRST AND SECOND LEVELS. THE SOLUTION SEEMED TO BE NEAR WITHIN THE CONFINES OF THE SITE WITHOUT BREAKING THE ENVELOPE.

THE FINAL SOLUTION WAS DESIGNED TO MAKE THE SECOND FLOOR ULTIMATELY APPEALING AS A PRIMARY OPTION, WITHOUT COMPROMISE. IN THIS SCHEME WE OPTED FOR THE FRONT YARD SETBACK REDUCTION WHICH DOES NOT SEEM TO CONTRADICT NEIGHBORHOOD STANDARDS.IT ALLOWS ENOUGH SQUARE FOOTAGE FOR THE PROGRAM. THE FIRST LEVEL IS CLEARLY DESIGNATED AS A SUPPORT LEVEL. THE ROOF WAS DEVELOPED AS A TERRACE TO ENHANCE THE OUTDOOR EXPERIENCE. A SECOND STAIR WAS ADDED TO ENCOURAGE FLOW TO THE LOWER LEVEL WHICH IS MORE SPECIFICALLY DEVELOPED AROUND THE SMALL SWIMMING POOL. THE CHALLENGES OF THE SITE HAVE BEEN ADDRESSED WITHOUT COMPROMISE OR EXCEPTION.

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-4508  
VOICE (805) 585-1800 FAX (805) 841-1732

RECEIVED  
AUG 03 2007



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: MALIBU COALITION For Slow Growth +/- or PATT HEALY  
Mailing Address: 403 SAN VICENTE BLVD  
City: SANTA MONICA CA Zip Code: 90402 Phone: 310 393.1818

**SECTION II. Decision Being Appealed**

1. Name of local/port government: City of Malibu
2. Brief description of development being appealed:  
Single family Residence adjacent to Malibu lagoon
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
23405 Malibu Colony Dr, Malibu
4. Description of decision being appealed (check one.):  
 Approval; no special conditions  
 Approval with special conditions:  
 Denial

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

<b>TO BE COMPLETED BY COMMISSION:</b>	
APPEAL NO:	A-4-MAL-07-095
DATE FILED:	8/3/07
DISTRICT:	So. Central Coast

Exhibit 13
A-4-MAL-07-095
Patt Healy Appeal

SECTION IV. Reasons Supporting This Appeal

**PLEASE NOTE:**

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

- 1.) Applicant didn't setback develop 100 ft from upland <sup>wetland</sup> vegetation as required by LCP -
- 2.) If Applicant's <sup>better</sup> measurement <sup>is</sup> determined to be accurate by commission, pool + spa are in setback area which is unallowable
- 3.) Monterey Cypress which roots and branches are on applicants property may rise to level of ESHA + 4 so applicant may develop 25% of parcel. (The city, Applicant all agree trees should be preserved) ~~XXXX~~
- 4.) City didn't properly condition project to avoid protecting MIGRATING BIRDS as required by <sup>Federal</sup> Migratory Bird Treaty Act. (See Fish + Game letter in city file)
- 5.) Request stronger mitigation not only for replacement trees ~~agreed~~ conditioned by City but for other living trees -
- 6.) City + Applicant contend that Colony Overlay Development standards supercede ESHA standards.

**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: 7.23.07

7. Local government's file number (if any): CDP 06-023

**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:

Darren E Domingue AIA  
1201 Grant Street  
Santa Monica, CA 90405

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) JOHN MAZZA  
6613 Zumerig  
Malibu CA 90265

(2)

(3)

(4)

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

**SECTION V. Certification**

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

John Healy on behalf of self + Mattin  
Signature of Appellant(s) or Authorized Agent *Coalition*  
Date: August 1, 2007 *for Star*  
*Growth*

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

**Section VI. Agent Authorization**

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

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

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

CALIFORNIA COASTAL COMMISSION

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

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AUG 10 2007



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Steve Littlejohn

Mailing Address: 23852 Pacific Coast Hwy #296

City: Malibu

Zip Code: 90265

Phone: 310-457-9198

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

A 6,568 sq ft single family residence with 6 car attached garage next to the ESHA of the Malibu Lagoon Park

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

23405 Malibu Colony Drive, Malibu, CA 90265.

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

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

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

TO BE COMPLETED BY COMMISSION:
APPEAL NO: A-4-MAL-07-095
DATE FILED:
DISTRICT: So. Central Coast

Exhibit 14
A-4-MAL-07-095
Littlejohn Appeal

**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

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COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

6. Date of local government's decision: 7/23/07

7. Local government's file number (if any): CDP No. 06-023

**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:

Colony House I, LLC (Richard Margolis - owner) 2910 Valmere Drive, Malibu, CA 90265  
Darren G. Dominique, AIA, 1201 Grant St, Santa Monica, CA 90405  
Don Schmitz, 29350 PCH Suite 12, 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) Frank Angel  
3250 Ocean Park Blvd, Santa Monica CA 90405

(2) Marcia Hanscom and Roy Van de Hoek  
Coastal Law Enforcement Action Network  
Managing director  
322 Culver Blvd, Suite 317  
Playa del Rey, CA 90293

(3) Patt Healey  
Malibu Coalition For Slow Growth  
403 San Vicente Blvd  
Santa Monica, CA 90402

(4) Bill Littlejohn  
98A Malibu Colony Dr  
Malibu, CA 90265

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

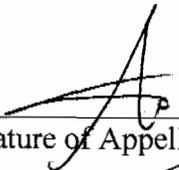
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local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

The City of Malibu continues to insist that the Malibu Colony Over Lay District rules in regards to a 20 foot rear yard set back has priority over the CCC's LCP ESHA rules requiring a 100 foot set back. The applicant has used a determination of ESHA boundry that is biased toward the applicant's needs and disregards the ESHA mapping and ESHA definitions under the Coastal Act. Additionally, the applicant has mis-measured from the point that he determined was the ESHA wetland and the City of Malibu has refused to come out to verify this fact. The City claims the Malibu Colony Overlay District rules allow the applicant to build within 20 ft of the back yard fence, so this mis-measurement "doesn't matter." However, the ESHA boundary appears to be the Park boundary and this house will thus need to have a 100 foot rear yard set back. In addition, it is likely the grove of Monterey Cypress trees immediately adjacent to the west of this development is likely to be determined as part of the ESHA due to their role in supporting species of special concern such as raptors who roost there. Since they are the tallest trees immediately adjacent to the water of the Malibu Lagoon this would make them part of the ESHA and should result in the implementation of the 25% rule. Yet, the City even approved a side yard MM that allows building closer to these trees. In addition, they have a septic leach field and pool within the required ESHA Buffer. In our appeal to the Malibu City council we asked to have the leach field moved away from the tree roots to an area in front of the house, that the pool be built above grade (as to not to dig out more tree roots), and to have the house built on a caisson/above grade beam foundation (again to avoid disturbing the tree roots). We also asked for a denial of the 2.5 foot granted by the side yard MM and for this room be given to the side with the trees. The City didn't give the appealants even one of these requests. We showed the City an alternative plot plan (about 4000 sq ft that is set back 100 feet from the rear property line) and yet in every staff report written by the City Planners they absurdly keep claiming that there were absolutely no alternatives to the design the applicant has presented. Yet they are required under the LCP to consider any viable alternatives. If the 25% rule is applied, the applicant will end up with what appears to be a large house in the 3600-4000 sq ft range (including an attached garage).

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

**SECTION V. Certification**

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

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

Date: 8/8/07

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

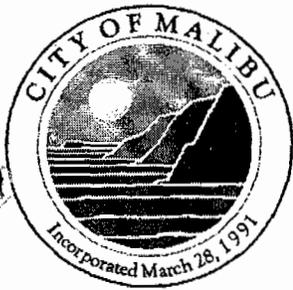
**Section VI. Agent Authorization**

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

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

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

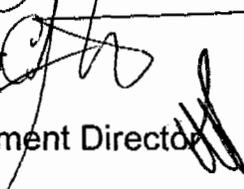
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SOUTH CENTRAL COAST DISTRICT



# Commission Agenda Report

To: Chair Randall and Planning Commission Members

Prepared by: Evan Langan, Assistant Planner (EL) 

Reviewed by: CJ Amstrup, AICP, Planning Manager 

Approved by: Victor Peterson, Community Development Director 

Date prepared: May 3, 2007 Meeting date: June 5, 2007

Subject: Coastal Development Permit No. 06-023, Initial Study No. 07-001, Negative Declaration No. 07-001 and Minor Modification Nos. 06-049 and 07-016 - An application to allow for the construction of a new, two-story, 6,568 square foot, single-family residence, including a 1,368 square foot, attached garage, pool and spa and a new alternative onsite wastewater treatment system; minor modifications are requested for a 47 percent reduction in the required front yard setback and a 17 percent reduction in the cumulative side yard setbacks.

Application Number: Coastal Development Permit No. 06-023  
Minor Modification Nos. 06-049 and 07-016  
Initial Study No. 07-001  
Negative Declaration No. 07-001

Application Filing Date: March 13, 2006

Applicant: Darren G. Domingue, AIA

Owner: Colony House I, LLC (Richard Margolis)

Location: 23405 Malibu Colony Drive, within the coastal zone

APN: 4452-010-010

Zoning: Single-Family – Medium Density (SF-M)

Overlay District: Malibu Colony Overlay District

**RECOMMENDED ACTION:** Adopt Planning Commission Resolution No. 07-29 (Attachment 1), adopting Negative Declaration No. 07-001 and approving Coastal Development Permit (CDP) No. 06-023 and Minor Modification (MM) Nos. 06-049 and 07-016; as well as adopting Initial Study No. 07-001 and Negative Declaration No. 07-001 for the construction of a new, two-story 6,568 square foot, single

including a 1,368 square foot, attached garage, pool and spa and new alternative onsite wastewater treatment system (AOWTS), as well as MM requests for reductions in the required front and cumulative side yard setbacks. The subject site is located at 23405 Malibu Colony Drive in the Malibu Colony Overlay District, and zoned as Single-Family Residential – Medium Density (SF-M) (Attachment 2 – Project Plans).

### **Chronology of Project**

On March 13, 2006, an application for Coastal Development Permit No. 06-023 was submitted to the Planning Division by Darren Domingue, AIA, on behalf of prospective property owner Colony House I, LLC (Richard Margolis).

On October 24, 2006, a Notice of Application for a coastal development permit was posted at the subject property.

The application was deemed complete on October 24, 2006.

On October 26, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on October 26, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

On November 7, 2006, the Planning Commission reviewed the subject project and received testimony from both the property owner and general public. Due to specific, outstanding concerns about potential impacts to vicinity foliage and wildlife, the Planning Commission directed the project be reviewed by the Environmental Review Board (ERB), and continued their review and decision to a date uncertain.

On December 20, 2006, the ERB reviewed the subject project and received testimony from both the property owner and general public. The ERB forwarded a single recommendation for consideration by the Planning Commission.

In accordance with relevant provisions of the California Environmental Quality Act (CEQA), Planning staff prepared an initial study and negative declaration. These documents were circulated to the California State Clearinghouse for agency and public comment (March 29 – April 27, 2007). A Notice of Intent to Adopt Initial Study No. 07-001/Negative Declaration No. 07-001 was published in a newspaper of general circulation on March 29, 2007. Four comment letters concerning the subject project were received during the review period and are included in the record (Attachment 3 – Initial Study No. 07-001/Negative Declaration No. 07-001 and Related Correspondence).

The revised application was deemed complete on May 8, 2007.

On May 24, 2007, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. On May 24, 2007, a Notice of Public Hearing was

mailed to all property owners and occupants within a 500-foot radius of the subject property.

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

The subject property lies within the Appealable Jurisdiction of the California Coastal Commission and as depicted on LCP Certification Permit and Appeal Jurisdiction Maps. The property is not designated Environmentally Sensitive Habitat Area (ESHA), however, a mapped ESHA (the Malibu Lagoon) does lie to the rear of the project site. The subject property is in the Malibu Colony neighborhood, an established community of single-family residences. The subject property is bordered to the west by existing single-family residential development, to the east by accessory development (tennis court), to the north by the Malibu Lagoon, and to the south by Malibu Colony Drive.

### **Project Description:**

The subject project proposes to construct a new, two-story 6,568 square foot single-family residence, including a 1,368 square foot, attached garage, pool and spa and new AOWTS on a vacant, approximately .41 acre (8,350 square foot) parcel at 23405 Malibu Colony Drive. Per the standards of the Malibu Colony Overlay, the residence at its highest point is proposed as 30 feet tall with a pitched roof. All grading proposed is exempt grading per the LCP (a total of approximately 1,978 cubic yards). The project includes requests for two minor modifications (Nos. 06-049 and 07-016) to permit an eight foot front yard setback where 15 feet is required, and a 10 foot cumulative side yard setback where 12 feet, six inches is required (Attachment 4 - Project Plans).

### **Local Coastal Program**

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

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

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

**Conformance Analysis**

The project was reviewed for conformance with the LCP by Planning Division staff, the City Biologist, Environmental Health Administrator, Geologist, Public Works Department, Los Angeles County Waterworks District 29 as well as the Los Angeles County Fire Department (LACFD). With the exception of the MM requests, the project is consistent with the LCP (Attachment 5 - Department Review Sheets).

**Zoning**

Table 1 below provides a summary of the lot dimensions and lot area of the subject parcel.

<b>Table 1 – Property Data</b>	
Lot Depth	167 feet
Lot Width	50 feet
Gross Lot Area (including driveway easements)	0.41 acres (17,837 sq. ft.)
*Net Lot Area	0.41 acres (17,837 sq. ft.)

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

Table 2 below provides a summary and indicates that the proposed project meets the property development and design standards as set forth under Section 3.5 and 3.6 of the LIP. As shown, and except for the MM requests, the proposed development complies with adopted development standards.

<b>Table 2 – LCP Zoning Conformance</b>			
<b>Development Requirement</b>	<b>Allowed</b>	<b>Proposed</b>	<b>Comments</b>
<b>SETBACKS</b>			
<i>Front Yard</i>	15'	8'-0"	<i>Minor Modification</i>
Rear Yard	20'	33'-0"	Complies
Side Yard (minimum) 10%	5'-0"	5'-0"	Complies
<i>Side Yard (cumulative)</i>	12'-6"	10'-0"	<i>Minor Modification</i>
<b>PARKING</b>	2 enclosed 2 unenclosed	6 enclosed	Complies
<b>HEIGHT</b>	20 feet for horizontal distance of 15 feet from the front and side yard setbacks, 15 feet in height for a horizontal distance of 15	20 feet for horizontal distance of 15' from the front and side yard setbacks, 15 feet in height for a horizontal distance of 15 feet from the rear yard setback, 24 feet (Flat) for remaining	Complies

Table 2 – LCP Zoning Conformance			
Development Requirement	Allowed	Proposed	Comments
	feet from the rear yard setback, 24 feet (flat) for remaining building envelope and 30 feet (pitched) for remaining building envelope	building envelope and 30 feet (pitched) for remaining building envelope	
NON-EXEMPT GRADING	1,000 cu. yds.	No non-exempt grading proposed	Complies
Fence/Wall Height	Allowed	Proposed	Comments
Front	42" impermeable 30" permeable	None proposed	Complies
Side(s)	6 feet	6 feet	Complies
Rear	6 feet	None proposed	Complies

### Grading

The grading proposed in the subject application meets the requirements as set forth under Section 8.3 of the LIP. The maximum quantity of non-exempt grading within a residential lot is limited to 1,000 cubic yards (total cut and fill). The project includes 1,978 total cubic yards of grading, all of which is exempt per the standards of the LCP.

Table 3 – LCP Grading Conformance						
	<i>Exempt</i>			<i>Non-Exempt</i>	<i>Remedial</i>	<b>Total</b>
	<i>R&amp;R</i>	<i>Understructure</i>	<i>Safety</i>			
Cut	731	None	None	None	None	731
Fill	731	516	None	None	None	1,247
<b>Total</b>	1,462	516	None	None	None	1,978
Import	None	516	None	None	None	516
Export	None	None	None	None	None	None

All quantities indicated shall be in Cubic Yards only.  
R&R = Removal and Recompaction

### Archaeological/Cultural Resources

Per the City's Cultural Resource Sensitivity Maps, the subject site has a low potential to contain archaeological resources; no further analysis is required.

## Findings

The subject project has been reviewed for conformance with the LCP by Planning Division staff, the City Geologist, Environmental Health Administrator, Biologist, Public Works Department, Los Angeles County Waterworks District 29, as well as the LACFD. Staff has determined that, subject to the conditions of approval, the project conforms to the LCP. The required findings are made below.

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

Pursuant to LIP Section 13.9 the following four findings need to be made on all coastal development permits.

***Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.***

The project has been reviewed for conformance with the LCP. As discussed herein, and as indicated in Table 2, the project, as proposed and/or conditioned, conforms to the LCP.

***Finding 2. If the project is located between the first public road and the sea, that the project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).***

The project is located between the first public road and the sea. However, the subject property fronts and is sited on the landward side of Malibu Colony Drive, a private street, and one that does not provide public access to the beach. Vehicular and pedestrian access into that neighborhood is possible only through a manned security gate, with entry limited to residents and approved guests. Public access to the ocean is available approximately 350 feet to the east at Malibu Lagoon (Surfrider Beach) State Park. The location of the proposed project and related construction activities will not interfere with the public's right or existing ability to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976.

***Finding 3. The project is the least environmentally damaging alternative.***

Per LCP ESHA Overlay Maps, the subject property itself is not mapped as ESHA; however a mapped ESHA (the Malibu Lagoon) does lie to the rear of the project site. The project incorporates a 100 foot setback of all structures from the delineated edge of ESHA, and as required by Chapter 4 of the LCP. Of the total required setback, 33 feet lies within the boundaries of the subject property. Given the relatively small size of the subject property (approximately 50 feet by 167 feet), as well as the limitations imposed by the required ESHA setback, there remain no feasible development alternatives to the

proposed siting that would result in an environmentally superior project. The subject project conforms to the standards of Chapter 4 of the LCP.

Per CEQA, this project is listed among the classes of projects that could be determined to not have a significant adverse effect on the environment and qualifies for a categorical exemption. However, Planning staff, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, undertook an initial study (IS No. 07-001) for the subject property. The findings yielded by that document resulted in a negative declaration (ND No. 07-001). The subject project would not result in significant adverse effects on the environment within the meaning of CEQA, and is the least environmentally damaging alternative.

***Finding 4. 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.***

On December 20, 2006, at its regular meeting, the ERB reviewed the subject project and received testimony from both the property owner and general public. The ERB made a single recommendation that the foundation for the proposed residence be designed to minimize impacts to offsite Cypress trees. The subject project has been further reviewed by the City Biologist and recommended for approval subject to conditions (Attachment 6 – ERB Recommendations Report).

**B. Minor Modification (MM) for Reduction in Front Yard Setback (LIP Section 13.27.5)**

The subject application includes requests for a MM (No. 06-049) reducing the front yard setback from 15 feet to eight feet (a reduction of 47 percent). Staff recommends that the MM request can be justified due to the size constraints of the subject property as well as the development restrictions imposed by the ESHA Overlay – specifically the required setback from the adjacent Malibu Lagoon ESHA.

Pursuant to Section 13.27.5 of the Malibu LIP, the Planning Commission may approve an application for a minor modification (up to 50 percent of the required front yard setback and up to 20 percent of the required side yard setback) provided that it makes all of the following findings of fact. Staff recommends approval of the proposed minor modification to the front yard setback, based on the findings of fact below:

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

The subject project has been reviewed for conformance with the LCP by City Planning staff, the City Biologist, Environmental Health Administrator, Geologist, Public Works Department and the LACFD and recommended for conditional approval. Per submitted technical reports, visual impact analysis and a site investigation, the project has been

determined consistent with all policies and provisions of the LCP. Prior to issuance of building permits the project must be approved by the City Building Safety/Division as well as the LACFD.

***Finding 2. That the project does not adversely affect neighborhood character.***

The proposed modification to the front yard setback is consistent with the generally shallow setbacks enjoyed by other development in the Malibu Colony neighborhood, and would not interfere with public or private views. Story poles were placed on the subject site to demonstrate the project's potential for change to the site relative to nearby properties. Staff visited the subject property after placement of the poles, and recommends that the addition of the proposed, new residence to the subject property will not adversely affect neighborhood character as the development conforms to the standards of the Malibu Colony Overlay District, and is similar in scale to neighboring structures.

***Finding 3. The proposed project complies with all applicable requirements of state and local law.***

The subject project complies with all applicable requirements of State and local law, and is conditioned to obtain final approvals from the Building/Safety Division as well as the LACFD prior to issuance of building permits.

**C. Minor Modification (MM) for Reduction in the Cumulative Side Yard Setback (LIP Section 13.27.5)**

The subject application includes a request for a MM (No. 07-016) reducing the required, cumulative side yard setback from 12 feet, six inches to 10 feet (a reduction of 17 percent). Staff recommends the MM request can be justified due to the size constraints of the subject property as well as the development restrictions imposed by the ESHA Overlay.

Pursuant to Section 13.27.5 of the Malibu LIP, the Planning Commission may approve an application for a minor modification (up to 50 percent of the required front yard setback and up to 20 percent of the required side yard setback) provided that it makes all of the following findings of fact. Staff recommends approval of the proposed minor modification based on the findings of fact below:

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

The subject project has been reviewed for conformance with the LCP by City Planning staff, the City Biologist, Environmental Health Administrator, Geologist, Public Works Department as well as the LACFD, and granted conceptual approval. Per submitted technical reports, visual impact analysis and a site investigation, the project has been determined consistent with all policies and provisions of the LCP. Prior to issuance of

building permits the project must be approved by the City Building Safety/Division as well as the LACFD.

***Finding 2. That the project does not adversely affect neighborhood character.***

The relatively small size of the subject property, coupled with a required setback from offsite ESHA, leaves fewer alternatives for the siting of development on the subject site. The requested MM of cumulative side yard setbacks would allow development on the subject property consistent with those setbacks enjoyed by other development in the Malibu Colony neighborhood, and would not interfere with public or private views. Story poles were placed on the subject site to demonstrate the project's potential for change to the site relative to nearby properties. Staff visited the subject property after placement of the poles, and recommends that granting the requested MM of cumulative side yard setbacks will not adversely affect neighborhood character as the resulting development conforms to the standards of the Malibu Colony Overlay District, and is similar in scale to neighboring structures.

***Finding 3. The proposed project complies with all applicable requirements of state and local law.***

The subject project complies with all applicable requirements of State and local law, and is conditioned to obtain final approvals from the Building/Safety Division as well as the LACFD prior to issuance of building permits.

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

The ESHA Overlay provisions apply to Coastal Development Permit applications where the proposed project site is designated as supporting environmentally sensitive habitat area on LCP ESHA Overlay Maps, in addition to those areas within 200 feet of a designated ESHA. The subject property is not mapped as ESHA per LCP Overlay Maps, but does lie adjacent to the Malibu Lagoon (a designated ESHA) and so the three, required findings set forth in LIP Section 4.7.6 are enumerated below.

***Finding 1. The application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel.***

A June 3, 2005 Wetland Delineation Study prepared by TeraCor Resource Management found that the upper limit of the Malibu Lagoon ESHA is 10-feet from the lagoon waterline recorded on May 22, 2005 by TeraCor's wetland specialists. The report further states that the upland limit of the wetland boundary is approximately 65 feet from the rear property line of the subject property. Chapter 4 of the LCP requires that new development be set back 100 feet from the delineated edge of an ESHA. The proposed, new residence is set back 100 feet from the delineated edge of ESHA in conformance with the LCP and the findings of the referenced wetland delineation report. The City

Biologist has reviewed the subject application, concurs with the TeraCor delineation and further determined that the project is consistent with the LCP.

***Finding 2. The use proposed by the applicant is consistent with the applicable zoning.***

The zoning for the project site is Single-Family – Medium Density (SF-MD). The subject application proposes the construction of a new single-family residence and accessory development – uses consistent with the property's zoning district.

***Finding 3. The project is consistent with all provisions of the certified LCP with the exception of the ESHA Overlay ordinance and it complies with the provisions of Section 4.7 of the Malibu LIP.***

The subject project, with the exception of the MM requests, meets or exceeds the requirements as set forth in the LCP. This determination is based on staff review, agency approvals, site visits, and the specific findings enumerated in this report.

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

The subject project has been reviewed for potential hazards by the City Geologist, Public Works Department, Environmental Health Administrator and the LACFD. Each of these specialists and/or agencies has determined the project to be consistent with all relevant policies and regulations regarding potential hazards. These experts have found that no substantial risks to life and/or property are anticipated provided that all recommendations and conditions for the project are followed. However, though no significant risks are anticipated, the required findings can be made, and are enumerated 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 subject site was analyzed for geologic and structural integrity hazards. Per reports submitted by the applicant's geotechnical consultant (Heathcote Geotechnical, Inc), as well as Seismic Hazards Zone Maps and Earthquake Fault Zone Maps, the site is not within earthquake-induced landslide or liquefaction hazard zone, nor is there a hazard due to fault rupture from the Malibu Coast Fault. The entire City of Malibu is located within a fire hazard zone and so no other alternatives were considered.

***Finding 2. The project, as conditioned, will have less than significant adverse impacts onsite stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.***

The subject site is not located in a geologic or flood hazard zone. The project has been reviewed by the City Geologist, Public Works Department and LACFD, and conditioned

to ensure that it will have less than significant adverse impacts on site stability or structural integrity.

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

Per LCP ESHA Overlay Maps, the subject property itself is not mapped as ESHA; however a mapped ESHA (the Malibu Lagoon) does lie to the rear of the project site. The project incorporates a 100 foot setback of all structures from the delineated edge of ESHA, and as required by Chapter 4 of the LCP. Of the total required setback, 33 feet lies within the boundaries of the subject property. Given the relatively small size of the subject property (approximately 50 feet by 167 feet), as well as the limitations imposed by the required setback, there remain no feasible development alternatives to the proposed siting that would result in an environmentally superior project. The subject project conforms to the standards of Chapter 4 of the LCP.

Per CEQA, this project is listed among the classes of projects that could be determined to not have a significant adverse effect on the environment and would qualify for a categorical exemption. However, Planning staff, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, undertook an initial study (IS No. 07-001) for the subject property. The findings yielded by that document resulted in a negative declaration (ND No. 07-001). The subject project would not result in significant adverse effects on the environment within the meaning of CEQA, and is the least environmentally damaging alternative.

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

The project is not anticipated to result in any significant impacts. There are no alternatives to development that would avoid or substantially lessen impacts to onsite 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.***

The project is not anticipated to result in any significant impacts. The project conforms to the sensitive resource protection policies contained in the LCP.

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

The subject site is located between the first public road and the sea. However, the project site lies on the landward side of Malibu Colony Drive, a private, gated and guarded street that does not provide public access to the ocean. Public vertical access

to the ocean will not be hindered through implementation of the subject project, either during short-term construction activities or through long-term operation of new structures.

The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; specifically, the project is considered "new development" for public access purposes because it will result in an increase in floor area greater than 10 percent from the property's existing, vacant state. Public access findings for lateral, vertical, bluff top, trail, and recreational access are not applicable, and so no findings are required. That stated, the findings for vertical access can be made, and are enumerated below. No issue of public prescriptive rights has been raised.

Lateral Access. The project is not located on or adjacent to a shoreline; no condition for lateral access is required by the LCP.

Vertical Access. As discussed previously, the project is located between the shore and the first public road. However, as the project proposes the infill of a single new residence on a vacant parcel within an existing neighborhood, no potential project-related or cumulative impact to vertical public access are anticipated. Nearby vertical access to the ocean is available at Malibu Lagoon (Surfrider Beach) State Park, approximately 350 feet to the east, and as the project site fronts a private street not accessible by the public; vertical access across the site is not appropriate. 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 1. 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 subject project proposes the infill of a single new residence on a vacant parcel within an existing neighborhood; no potential project-related or cumulative impacts to vertical public access are anticipated.

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

Vertical access would not impact fragile coastal resources 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 3. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.***

The subject project proposes the infill of a single new residence on vacant land within an existing neighborhood. No potential project-related or cumulative impacts to vertical public access are anticipated. Public access to vicinity coastal tidelands is available approximately 350 feet east of the project site. The project as proposed does not block or impede access to the ocean. The project site is located on a private street and is not accessible to the public. Conditioning the project to provide a vertical public access would not provide additional access to coastal resources because adequate public access is provided in the vicinity. No legitimate governmental or public interest would be furthered by requiring access at the project site.

Bluff Top Access. The project is not located on a bluff top; no conditions or findings for bluff top access are required.

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

Recreational Access. The project site is not adjacent to, does not include, nor holds any access ways to existing or planned public recreational areas. No conditions or findings for recreational access are required.

### **Environmental Review Board**

On December 20, 2006, at its regular meeting, the ERB reviewed the subject project and received testimony from both the property owner and general public. The ERB made a single recommendation that the foundation for the proposed residence be designed to minimize impacts to offsite Cypress trees (Attachment 6 – ERB Recommendations Report).

CORRESPONDENCE: Numerous items of correspondence (both in support and opposition to the proposed project) have been received by the Planning Division, and in the form of letters, email and phone-calls. For ease of reference, correspondence has been divided between that related to the general project, and that in response to the project initial study/negative declaration. Concerns in submitted correspondence were generally related to proposed/required setbacks from offsite ESHA, and the impact that the proposed project may have on adjacent, offsite Cypress trees as well as the birds that periodically roost in these trees. All of these issues were addressed in the project initial study, and resulted in changes to the design of the project including proposals for

alternative foundation designs that may minimize any possible impacts to the referenced Cypress trees.

ENVIRONMENTAL REVIEW: Pursuant to the authority and criteria contained in CEQA, the Planning Division has analyzed the proposal as described above. The Planning Division finds that the project is listed among the classes of projects that could be determined to not have a significant adverse effect on the environment and qualifies for a categorical exemption. However, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, Planning staff prepared an initial study and negative declaration pursuant to CEQA Guidelines Section 15300.2 (c). The project would not have a significant impact on the environment within the meaning of CEQA.

PUBLIC NOTICE: Pursuant to Malibu Local Coastal Program LIP Section 13.12.1, staff published the required 10-day public hearing notice in the Malibu Surfside News on May 24, 2007. In addition, a Notice of Public Hearing was mailed to property owners and occupants within a 500-foot radius of the subject property on May 24, 2007 (Attachment 8 - Public Hearing/Mailing Notice).

SUMMARY: The required findings can be made that the project complies with the LCP. Further, the Planning Division's findings of fact are supported by substantial evidence in the record. Per the analysis contained in this report, staff recommends for approval of the project subject to the conditions of approval contained in Section 4 of Planning Commission Resolution No. 07-29. The project has been reviewed and conditionally approved for conformance with the LCP by Planning Division staff, applicable City departments, as well as the LACFD.

ATTACHMENTS:

1. Planning Commission Resolution No. 07-29
2. Project Plans
3. Initial Study No. 07-001/Negative Declaration No. 07-001
4. Department Review Sheets
5. Total Grading Yardage Certificate
6. ERB Recommendations Report
7. Public Correspondence Related to Project in General
8. Public Hearing / Mailing Notice

**CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 07-29**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU ADOPTING NEGATIVE DECLARATION NO. 07-001 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 06-023 AND MINOR MODIFICATION NOS. 06-049 AND 07-016; AS WELL AS ADOPTING INITIAL STUDY NO. 07-001 AND NEGATIVE DECLARATION NO. 07-001 TO ALLOW FOR THE CONSTRUCTION OF A NEW, TWO-STORY, 6,568 SQUARE FOOT, SINGLE-FAMILY RESIDENCE, INCLUDING A 1,368 SQUARE FOOT, ATTACHED GARAGE, POOL, SPA, A NEW ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, AND MINOR MODIFICATIONS FOR REDUCTIONS IN THE REQUIRED FRONT AND CUMULATIVE SIDE YARD SETBACKS IN THE SINGLE-FAMILY RESIDENTIAL – MEDIUM DENSITY ZONING DISTRICT LOCATED AT 23405 MALIBU COLONY DRIVE (MARGOLIS)**

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

Section 1.      Recitals.

A. On March 13, 2006, an application for Coastal Development Permit No. 06-023 was submitted to the Planning Division by Darren Domingue, AIA, on behalf of prospective property owner Colony House I, LLC (Richard Margolis). On October 24, 2006, a Notice Application for a Coastal Development Permit was posted at the subject property. The application was deemed complete on October 24, 2006.

B. On October 26, 2006, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on October 26, 2006, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

C. On November 7, 2007, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record. Due to specific, outstanding concerns about potential impacts to vicinity foliage and wildlife, the Planning Commission directed the project be reviewed by the Environmental Review Board (ERB), and continued their review and decision to a date uncertain.

D. On December 20, 2006, the ERB reviewed the subject project and received testimony from both the property owner and general public, and forwarded a single recommendation for consideration by the Planning Commission.

E. Pursuant to the authority and criteria contained in CEQA, the Planning Division analyzed the subject project and found that it is listed among the classes of projects that could be determined to not have a significant adverse effect on the environment, and thereby qualifying for a categorical exemption. However, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, an initial study and negative declaration for the proposed project pursuant to CEQA Guidelines Section 15300.2 (c). The draft document was circulated for public/agency comment (March 29 – April 27, 2007).

F. The revised application was deemed complete on May 8, 2007.

G. On May 24, 2007, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. On May 24, 2007, a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

H. On June 5, 2007 the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

#### Section 2. Environmental Review.

Pursuant to the authority and criteria contained in CEQA, the Planning Division has analyzed the proposal as described above. The Planning Division finds that the project is listed among the classes of projects that could be determined to not have a significant adverse effect on the environment and qualifies for a categorical exemption. However, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, an initial study and negative declaration pursuant to CEQA Guidelines Section 15300.2 (c). The project would not have a significant impact on the environment within the meaning of CEQA

#### 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 adopts the findings in the staff report, the findings of fact below, and approves CDP No. 06-023 and MM Nos. 06-049 and 07-016 for the construction of the new single-family residence described herein.

The proposed project has been reviewed for conformance with the City of Malibu Local Coastal Program (LCP) by the Planning Commission, the City Geologist, Environmental Health Administrator, Biologist, City Public Works Department, as well as the Los Angeles County Fire Department. The subject site has been cleared of the potential to contain or affect prehistoric resources as defined in the LCP and elsewhere. The project as proposed or conditioned is consistent with the LCP's zoning, grading, water quality, onsite wastewater treatment requirements and all other applicable LCP codes, standards, goals, and policies.

**A. General Coastal Development Permit (LCP - Chapter 13)**

Pursuant to LIP Section 13.9 the following four findings need to be made on all coastal development permits.

*Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.*

The project has been reviewed for conformance with the LCP. The project, as proposed and/or conditioned, conforms to the LCP.

*Finding 2. If the project is located between the first public road and the sea, that the project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).*

The project is located between the first public road and the sea. However the subject property fronts and is sited on the landward side of Malibu Colony Drive, a private street and one that does not provide public access to the beach. The subject property itself is located on the landward-side of Malibu Colony Road and currently provides no beach access. Vehicular and pedestrian access into that neighborhood is possible only through a manned security gate, with entry limited to residents and approved guests only. Public access to the ocean is available approximately 350 feet to the east at Malibu Lagoon (Surfrider Beach) State Park. The location of the proposed project and related construction activities will not interfere with the public's right or existing ability to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976.

*Finding 3. The project is the least environmentally damaging alternative.*

Per LCP ESHA Overlay Maps, the subject property itself is not mapped as ESHA; however a mapped ESHA (the Malibu Lagoon) does lie to the rear of the project site. The project incorporates a 100 foot setback of all structures from the delineated edge of ESHA, and as required by Chapter 4 of the LCP. Of the total required setback, 33 feet lies within the boundaries of the subject property. While the project does propose to locate the required OWTS and associated dispersal field within this ESHA buffer, given the relatively small size of the subject property (approximately 50 feet by 167 feet), and further, the limitations imposed by adherence to the required setback; there remain no feasible development alternatives to the proposed siting that would substantially reduce any impacts to ESHA. The subject project conforms to the standards of Chapter 4 of the LCP.

Per CEQA, this project is listed among the classes of projects that could be determined to not have a significant adverse effect on the environment and qualifies for a categorical exemption. However, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, an initial study (IS No. 07-001) was prepared for the subject property. The findings yielded by that document resulted in a negative declaration (ND No. 07-001). The subject project would not result in significant adverse effects on the environment within the meaning of CEQA, and is the least environmentally damaging alternative.

*Finding 4. 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.*

On December 20, 2006, at its regular meeting, the ERB reviewed the subject project and received testimony from both the property owner and general public. The ERB made a single recommendation that the foundation for the proposed residence be designed to minimize impacts to offsite Cypress trees. The subject project has been further reviewed by the City Biologist and recommended for approval subject to conditions.

**B. Minor Modification (MM) for Reduction in Front Yard Setback (LIP Section 13.27.5)**

The subject application includes requests for a MM (No. 06-049) reducing the front yard setback from 15 feet to 8 feet (a reduction of 47%). The MM request can be justified due to the size constraints of the subject property as well as the development restrictions imposed by the ESHA Overlay – specifically the required setback from the adjacent Malibu Lagoon ESHA.

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

The subject project has been reviewed for conformance with the LCP by City Planning staff, the City Biologist, Environmental Health Administrator, Geologist, Public Works Department as well as the LACFD, recommended for conditional approval. Per submitted technical reports, visual impact analysis and a site investigation, the project has been determined consistent with all policies and provisions of the LCP. Prior to issuance of building permits the project must be approved by the City Building Safety/Division as well as the LACFD.

*Finding 2. That the project does not adversely affect neighborhood character.*

The proposed modification to the front yard setback is consistent with the generally shallow setbacks enjoyed by other development in the Malibu Colony neighborhood, and would not interfere with public or private views. Story poles were placed on the subject site to demonstrate the project's potential for change to the site relative to nearby properties. The addition of the proposed, new residence to the subject property will not adversely affect neighborhood character as the development conforms to the standards of the Malibu Colony Overlay District, and is similar in scale to neighboring structures.

*Finding 3. The proposed project complies with all applicable requirements of state and local law.*

The subject project complies with all applicable requirements of State and local law, and is conditioned to obtain final approvals from the Building/Safety Division as well as the LACFD prior to issuance of building permits.

**C. Minor Modification (MM) for Reduction in the Cumulative Side Yard Setback (LIP Section 13.27.5)**

The subject application includes a request for a MM (No. 07-016) reducing the required, cumulative side yard setback from 12 feet, six inches to 10 feet (a reduction of 17 percent). The MM request can be justified due to the size constraints of the subject property as well as the development restrictions imposed by the ESHA Overlay.

Pursuant to Section 13.27.5 of the Malibu LIP, the Planning Commission may approve an application for a minor modification (up to 50 percent of the required front yard setback and up to 20 percent of the required side yard setback) provided that it makes all of the following findings of fact. The minor modification request is approved based on the findings of fact below:

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

The subject project has been reviewed for conformance with the LCP by City Planning staff, the City Biologist, Environmental Health Administrator, Geologist, Public Works Department as well as the LACFD, and granted conceptual approval. Per submitted technical reports, visual impact analysis and a site investigation, the project has been determined consistent with all policies and provisions of the LCP. Prior to issuance of building permits the project must be approved by the City Building Safety/Division as well as the LACFD.

*Finding 2. That the project does not adversely affect neighborhood character.*

The relatively small size of the subject property, coupled with a required setback from offsite ESHA, leaves few alternatives for the siting of development on the subject site. The requested MM of cumulative side yard setbacks would allow development on the subject property consistent with those setbacks enjoyed by other development in the Malibu Colony neighborhood, and would not interfere with public or private views. Story poles were placed on the subject site to demonstrate the project's potential for change to the site relative to nearby properties. The requested MM of cumulative side yard setbacks will not adversely affect neighborhood character as the resulting development conforms to the standards of the Malibu Colony Overlay District, and is similar in scale to neighboring structures.

*Finding 3. The proposed project complies with all applicable requirements of state and local law.*

The subject project complies with all applicable requirements of State and local law, and is conditioned to obtain final approvals from the Building/Safety Division as well as the LACFD prior to issuance of building permits.

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

The ESHA Overlay provisions apply to Coastal Development Permit applications where the proposed project site is designated as supporting environmentally sensitive habitat area on LCP ESHA Overlay Maps, in addition to those areas within 200 feet of a designated ESHA. The subject

property is not mapped as ESHA per LCP Overlay Maps, but does lie adjacent to the Malibu Lagoon (a designated ESHA) and so the three, required findings set forth in LIP Section 4.7.6 are enumerated below.

*Finding 1. The application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel.*

A June 3, 2005 Wetland Delineation Study prepared by TeraCor Resource Management found that the upper limit of the Malibu Lagoon ESHA is 10-feet from the lagoon waterline recorded on May 22, 2005 by TeraCor's wetland specialists. The report further states that the upland limit of the wetland boundary is approximately 65 feet from the rear property line of the subject property. Chapter 4 of the LCP requires that new development be set back 100 feet from the delineated edge of an ESHA. The proposed, new residence is set back 100 feet from the delineated edge of ESHA in conformance with the LCP and the findings of the referenced wetland delineation report. The City Biologist has reviewed the subject application, concurs with the TeraCor delineation and further determined that the project is consistent with the LCP.

*Finding 2. The use proposed by the applicant is consistent with the applicable zoning.*

The zoning for the project site is Single-Family – Medium Density (SF-MD). The subject application proposes the construction of a new single-family residence and accessory development – uses consistent with the property's zoning district.

*Finding 3. The project is consistent with all provisions of the certified LCP with the exception of the ESHA Overlay ordinance and it complies with the provisions of Section 4.7 of the Malibu LIP.*

The subject project, with the exception of the MM requests, meets or exceeds the requirements as set forth in the LCP. This determination is based on review, agency approvals, site visits, and the specific findings enumerated in this report.

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

The subject project has been reviewed for potential hazards by the City Geologist, Public Works Department, Environmental Health Administrator and the LACFD. Each of these specialists and/or agencies has determined the project to be consistent with all relevant policies and regulations regarding potential hazards. These experts have found that no substantial risks to life and/or property are anticipated provided that all recommendations and conditions for the project are followed. However, though no significant risks are anticipated, the required findings can be made, and are enumerated 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 subject site was analyzed for geologic and structural integrity hazards. Per reports submitted by the applicant's geotechnical consultant (Heathcote Geotechnical, Inc), as well as Seismic Hazards Zone Maps and Earthquake Fault Zone Maps, the site is not within earthquake-induced landslide or liquefaction hazard zone, nor is there a hazard due to fault rupture from the Malibu Coast Fault. The entire City of Malibu is located within a fire hazard zone and so no other alternatives were considered.

*Finding 2. The project, as conditioned, will have less than significant adverse impacts onsite stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.*

The subject site is not located in a geologic or flood hazard zone. The project has been reviewed by the City Geologist, Public Works Department and LACFD, and conditioned to ensure that it will have less than significant adverse impacts on site stability or structural integrity.

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

Per LCP ESHA Overlay Maps, the subject property itself is not mapped as ESHA; however a mapped ESHA (the Malibu Lagoon) does lie to the rear of the project site. The project incorporates a 100 foot setback of all structures from the delineated edge of ESHA, and as required by Chapter 4 of the LCP. Of the total required setback, 33 feet lies within the boundaries of the subject property. While the project does propose to locate the required OWTS and associated dispersal field within this ESHA buffer, given the relatively small size of the subject property (approximately 50 feet by 167 feet), and further, the limitations imposed by the required setback; there remain no feasible development alternatives to the proposed siting that would substantially reduce any impacts to ESHA. The subject project conforms to the standards of Chapter 4 of the LCP.

Per CEQA, this project is listed among the classes of projects that could be determined to not have a significant adverse effect on the environment and qualifies for a categorical exemption. However, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, an initial study (IS No. 07-001) was prepared for the subject property. The findings yielded by that document resulted in a negative declaration (ND No. 07-001). The subject project would not result in significant adverse effects on the environment within the meaning of CEQA, and is the least environmentally damaging alternative.

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

The project is not anticipated to result in any significant impacts. There are no alternatives to development that would avoid or substantially lessen impacts to onsite 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.*

The project is not anticipated to result in any significant impacts. The project conforms to the sensitive resource protection policies contained in the LCP.

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

The subject site is located between the first public road and the sea. However, the project site lies on the landward side of Malibu Colony Drive, a private, gated and guarded street that does not provide public access to the ocean. Public vertical access to the ocean will not be hindered through implementation of the subject project, either during short-term construction activities or through long-term operation of new structures.

The project does not meet the definitions of exceptions to public access requirements identified in LIP Section 12.2.2; specifically, the project is considered "new development" for public access purposes because it will result in an increase in floor area greater than 10 percent from the property's existing, vacant state. Public access findings for lateral, vertical, bluff top, trail, and recreational access are not applicable, and so no findings are required. That stated, the findings for vertical access can be made, and are enumerated below. No issue of public prescriptive rights has been raised.

Lateral Access. The project is not located on or adjacent to a shoreline; no condition for lateral access is required by the LCP.

Vertical Access. As discussed previously, the project is located between the shore and the first public road. However, as the project proposes the infill of a single new residence on a vacant parcel within an existing neighborhood, no potential project-related or cumulative impact to vertical public access are anticipated. Nearby vertical access to the ocean is available at Malibu Lagoon (Surfrider Beach) State Park, approximately 350 feet to the east, and as the project site fronts a private street not accessible by the public; vertical access across the site is not appropriate. 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 1. 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 subject project proposes the infill of a single new residence on a vacant parcel within an existing neighborhood; no potential project-related or cumulative impacts to vertical public access are anticipated.

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

Vertical access would not impact fragile coastal resources 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 3. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.*

The subject project proposes the infill of a single new residence on vacant land within an existing neighborhood. No potential project-related or cumulative impacts to vertical public access are anticipated. Public access to vicinity coastal tidelands is available approximately 350 feet east of the project site. The project as proposed does not block or impede access to the ocean. The project site is located on a private street and is not accessible to the public. Conditioning the project to provide a vertical public access would not provide additional access to coastal resources because adequate public access is provided in the vicinity. No legitimate governmental or public interest would be furthered by requiring access at the project site.

Bluff Top Access. The project is not located on a bluff top; no conditions or findings for bluff top access are required.

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

Recreational Access. The project site is not adjacent to, does not include, nor holds any accessways to existing or planned public recreational areas. No conditions or findings for recreational access are required.

#### 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. 06-023 and Minor Modification Nos. 06-049 and 07-016, subject to the conditions listed below:

##### Standard Conditions

1. Approval of this application permits the construction of a new, two-story, 6,568 square foot single-family residence, including a 1,368 square foot attached garage, pool/spa and a new alternative onsite wastewater treatment system as well as minor modifications for reductions in the required front and cumulative side yard setbacks. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
2. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

3. Pursuant to LIP Section 13.18.2 (page 237), this permit and rights conferred in this approval shall not be effective until all permittees or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 working days of this decision.
4. This permit shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two (2) weeks prior to the expiration of the two-year period and shall set forth the reasons for the request.
5. This resolution shall be copied in its entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
6. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
7. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
8. Minor changes to the approved plans or the conditions may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
9. All structures shall conform to the City of Malibu Environmental and Building Safety Division, City Geologist, City Geotechnical Engineer, City Environmental Health Specialist, City Biologist, City Public Works Department, and the Los Angeles County Fire Department requirements, conditions and comments. Notwithstanding this review, all required permits shall be secured.
10. The applicant shall request a final planning inspection prior to final inspection by the Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this Coastal Development Permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
11. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
12. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Where, as a result of this evaluation, the Planning Manager determines that the project may have an adverse impact on cultural resources; a Phase II Evaluation of

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

13. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
14. When the framing is completed, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. The Planning Division shall sign off stating that said document has been received and verified.
15. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
16. The building pad and all other graded or disturbed areas on the subject site shall be planted within sixty (60) days of receipt of the Certificate of Occupancy for the residence.
17. Prior to issuance of a Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans. Any alterations from the final approved plans must be submitted to the City Biologist prior to installation. Any unauthorized vegetation may require removal prior to issuance of a Certificate of Occupancy.
18. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
19. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
20. New structures shall incorporate colors and exterior materials that are compatible with the surrounding landscape. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible. All windows shall be comprised of non-glare glass.
21. Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that includes grading on slopes greater than 4:1. Approved grading operations shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins,

grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1, unless the Planning Manager determines that completion of grading would be more protective of resources.

22. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
23. The non-exempt grading for the project shall not exceed 1,000 cubic yards of cut and fill.
24. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the raining season). The following elements shall be included:
  - a. Locations where concentrated runoff will occur.
  - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures.
  - c. Location and sizing criteria for silt basins, sandbag barriers, and silt fencing.
  - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.
25. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2.B.2.
26. This coastal development permit runs with the land and binds all future owners of the property.
27. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The coastal development permit is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the CDP approved by the City is void.
28. Construction hours shall be limited to Monday through Saturday from 7:00 a.m. to 7:00 p.m. No construction activities shall be permitted on Federal, State and Local holidays.
29. Construction related trucks, equipment and materials shall be located in such a manner as to ensure homeowner and emergency vehicle access at all time. An onsite construction monitor shall be required to observe that this condition is strictly adhered.
30. The construction monitor's phone number will be provided to the City and will be accessible during all construction hours.
31. A construction staging plan shall be reviewed and approved by Planning staff prior to plan check submittal.

## Other Conditions

### **Biology/Landscaping**

32. Grading shall be scheduled only during the dry season from April 1-October 31st. If it becomes necessary to conduct grading activities from November 1 –March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.

- a. All new development shall be set back no less than 100 feet from the Malibu Lagoon ESHA boundaries.
- b. Night lighting from exterior and interior sources shall be minimized.
- c. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
- d. No landscaping is proposed. As such none is permitted. Should the applicant intend to plant any new vegetation with a potential to exceed 6 feet in height (given consideration of future growth), a detailed landscape plan must be submitted to the City Biologist for review and approval prior to planting.

### Site Conditions

33. 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.

### **Lighting**

34. 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, including Pacific Coast Highway, public beaches, and/or the Pacific Ocean. 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 shall be prohibited.
- h. Prior to issuance of the CDP, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.

**Geology**

- 35. 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.
- 36. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require an amendment to this coastal development permit or a new coastal development permit.

**Public Works**

- 37. The project shall comply with all conditions of approval required by the City Public Works Department, including waste management conditions, as shown on the attached referral sheets

**Water Service**

Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of June 2007.

\_\_\_\_\_  
CAROL RANDALL, Planning Commission Chair

ATTEST:

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

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

COASTAL COMMISSION APPEAL – An aggrieved person may appeal the Planning Commission’s decision to the Coastal Commission within 10 working days of the issuance of the City’s Notice of Final Action. Appeal forms may be found online at [www.coastal.ca.gov](http://www.coastal.ca.gov) or in person at the Coastal Commission South Central Coast District office located at 89 South California



City Council Meeting  
07-23-07

**Item  
4.B.**

# Council Agenda Report

To: Mayor Jennings and the Honorable Members of the City Council

Prepared by: Evan Langan, Assistant Planner

Reviewed by: CJ Amstrup, AICP, Planning Manager  
Victor Peterson, Community Development Director

Approved by: Jim Thorsen, City Manager

Date prepared: July 2, 2007

Meeting date: July 23, 2007

Subject: Appeal No. 07-005 – Appeal of Planning Commission Resolution No. 07-29, Approving Coastal Development Permit No. 06-023, Initial Study No. 07-001, Negative Declaration No. 07-001 and Minor Modification Nos. 06-049 and 07-016 - An application to allow for the construction of a new, two-story, 5,200 square-foot, single-family residence, a 1,368 square-foot attached garage, a pool and spa and a new alternative onsite wastewater treatment system; minor modifications for a 47 percent reduction in the required front yard setback and a 20 percent reduction in the cumulative side yard setbacks

Appellant: Steven Littlejohn  
Appeal Filed: June 15, 2007  
Application Filing Date: March 13, 2006  
(Coastal Development Permit No. 06-023)  
Applicant: Darren Domingue, AIA  
Property Owner: Colony House 1, LLC (Richard Margolis)  
Location: 23405 Malibu Colony Road within the coastal zone

**RECOMMENDED ACTION:** Adopt Resolution No. 07-37 (Attachment 1) denying Appeal No. 07-005 and upholding the Planning Commission's adoption of Resolution 07-29 approving Coastal Development Permit (CDP) No. 06-023, Minor Modification (MM) Nos. 06-049 and 07-016, adopting Initial Study (IS) No. 07-001 and Negative Declaration (ND) No. 07-001.

FISCAL IMPACT: The project is being undertaken by a private party and will have no fiscal impact on the City.

DISCUSSION: The matter is an appeal (Appeal No. 07-005 – Attachment 2) of the aforementioned approval of CDP No. 06-023, MM Nos. 06-049 and 07-016 as well as Planning Commission adoption of IS No. 07-001 and ND No. 07-001 on June 5, 2007. Planning Commission Resolution No. 07-29 and the Planning Commission Agenda Report are included in Attachments 3 and 4.

The issue before the Council is whether the Planning Commission's decision is supported by the findings and whether those findings are supported by substantial evidence in the record.

### Project Description

The subject project proposes construction of a new, two-story, 5,200 square foot, single-family residence, a 1,368 square-foot attached garage, a pool and spa, and new alternative onsite wastewater treatment system (AOWTS) on a vacant, approximately .41 acre (8,350 square foot) parcel at 23405 Malibu Colony Drive. Per the standards of the Malibu Colony Overlay District, the residence at its highest point is proposed as 30 feet tall with a pitched roof. All grading proposed is exempt grading per the Local Coastal Program (a total of approximately 1,978 cubic yards). The project includes requests for two minor modifications (Nos. 06-049 and 07-016) to permit an 8-foot front yard setback where 15 feet is otherwise required, and a 10 foot cumulative side yard setback (second floor only) where 12 feet, six inches is otherwise required (Attachment 5 - Project Plans).

### Project History

On March 13, 2006, an application for Coastal Development Permit No. 06-023 was submitted to the Planning Division by Darren Domingue, AIA, on behalf of prospective property owner Colony House I, LLC (Richard Margolis).

On October 24, 2006, a Notice of Application for a coastal development permit was posted at the subject property.

The application was deemed complete on October 24, 2006.

On October 26, 2006, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on October 26, 2006, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

On November 7, 2006, the Planning Commission held a public hearing on the subject project and received testimony from both the property owner and general public. After the public hearing, the Planning Commission directed that the project be reviewed by the Environmental Review Board (ERB).

On December 20, 2006, the ERB reviewed the subject project and received testimony from both the property owner and general public. The ERB forwarded a single recommendation for consideration by the Planning Commission, recommending that the foundation for the proposed residence be designed to minimize impacts to offsite Cypress Trees.

On March 1, 2007, a Notice of Intent to Adopt Initial Study No. 07-001/Mitigated Negative Declaration No. 07-001 was published in a newspaper of general circulation. The documents were distributed to interested parties and relevant agencies (review period March 1, 2007 – March 30, 2007) including the California State Clearinghouse (review period March 6 – April 4, 2007).

On March 29, 2007, a Notice of Intent to Adopt Initial Study No. 07-001/Negative Declaration No. 07-001 was published in a newspaper of general circulation. The Initial Study dated March 1, 2007 was withdrawn. In accordance with relevant provisions of the California Environmental Quality Act (CEQA), Planning staff prepared a revised initial study and negative declaration which superseded the initial study/mitigated negative declaration dated March 1, 2007. The revised initial study/negative declaration was distributed to interested parties and relevant agencies including the California State Clearinghouse for agency and public comment (March 29 – April 27, 2007).

The revised application was deemed complete on May 8, 2007.

On May 24, 2007, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. On May 24, 2007, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

On June 5, 2007, the Planning Commission held a public hearing on the proposed project and received written and oral testimony. The Planning Commission voted unanimously to adopt Resolution No. 07-29 approving CDP No. 06-023 and MM Nos. 06-049 and 07-016 and adopting IS No. 07-001 and ND No. 07-001 for construction of the new single-family residence described herein and at 23405 Malibu Colony Road.

On June 15, 2007, Steven Littlejohn, representing adjacent property owner Bill Littlejohn, filed a timely appeal of the Planning Commission's approval of CDP No. 06-023, MM Nos. 06-049 and 07-016, as well as IS No. 07-001 and ND No. 07-001.

On July 12, 2007, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on July 11, 2007, a Notice of City Council Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

## **APPEAL**

The appeal submitted on June 15, 2007 alleges that the Planning Commission's decision was contrary to law, that the findings are not supported by the evidence in the record and that the hearing conducted was not fair and/or impartial. Appellant statements have been transcribed below, with staff responses following.

### **Appellant's Statement One:**

"The listed categorical CEQA exemptions do not apply.

The initial study/negative declaration fails to comply with CEQA's requirements of information disclosure and analysis (fails to describe project and its environmental setting; mischaracterizes relevant biological resources and fails to recognize impacts to them; fails to recognize inconsistencies with the Malibu's Local Coastal Program (LCP); etc.

CEQA requires an environmental impact report in these circumstances, which has not been prepared. The record contains substantial evidence of a fair argument that the project will have a significant impact on the environment, due primarily to inconsistencies with the Malibu LCP and the likelihood of significant impacts to biological resources and water quality. Thus an EIR is required.

The Malibu Colony Overlay provisions *do not* take precedence over the ESHA buffer provisions."

### **Staff response One:**

The subject project proposes the construction of a new, single-family residence on an infill lot in the largely developed Malibu Colony neighborhood. The Planning Division analyzed the project proposal and determined that the project is listed among those classes of projects that have been determined not to have a significant effect on the environment and are, therefore, exempt from the provisions of CEQA. Specifically, the Planning Division determined that project qualifies for both a Class 3 and a Class 32 CATEGORICAL EXEMPTION. Pursuant to the Class 3 exemption, the new construction or conversion of small structures is presumed not to have a significant effect on the environment. The project proposal, consisting of one single-family

residence in a residential zone together with accessory (appurtenant) structures, qualifies for this exemption pursuant to CEQA Guidelines section 15303, subparagraphs (a) and (e). Pursuant to the Class 32 exemption, infill development projects meeting the conditions described in CEQA Guidelines section 15332 are presumed not to have a significant effect on the environment. The Planning Division has determined that the project proposal meets all five conditions required for the Class 32 exemption.

The Planning Division also analyzed and considered each of the potential exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2 and determined that there is no evidence to support application of any of the exceptions to either the Class 3 or the Class 32 categorical exemptions.

There is substantial evidence in the record to support application of both the Class 3 and Class 32 exemptions. Furthermore, there is no substantial evidence in the record to support application of any of the recognized exceptions to either the Class 3 or Class 32 exemptions. Other than a conclusory allegation, the appellant has provided no evidence in support of his contention that neither categorical exemption is applicable. Consequently, there is no evidence to suggest that the Planning Commission failed to proceed in a manner required by law.

However, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, Planning staff prepared an initial study and negative declaration pursuant to CEQA Guidelines Section 15300.2 (c). Attachment 7 – Revised IS No. 07-001/ND No. 07-001

The subject Initial Study describes the project and environmental setting in accordance with the requirements and intent of CEQA. Under "Description of Project" (pages 3 and 4), the project Initial Study describes both the subject project and the parcel on which it is proposed; including the property's size, status as vacant and its proximity to the Malibu Lagoon. Under "Surrounding Land Uses and Setting" (page 4), the Initial Study details the subject property's location relative to the Pacific Ocean, as well as provides a description and status of existing, adjacent parcels. Furthermore, there was extensive discussion during the course of the public hearings as well as the ERB meeting regarding the environmental setting and the biological resources located in the vicinity of the project site.

All referenced biological studies were prepared by qualified experts, as required by the LCP. The Initial Study does not mischaracterize relevant biological resources. Again, aside from a conclusory allegation, the appellant does not cite or provide any substantial evidence in support of his contention that there is a fair argument that the project will have a substantial environmental impact. Without reference to any

supporting evidence, there is nothing for staff to specifically respond to. It is staff's position that the record does not contain any substantial evidence to support a fair argument of a potentially significant environmental impact. While there was speculation by some members of the public during the course of the Planning Commission hearing on the project, there was no credible supporting evidence provided.

The approved project is not inconsistent with the LCP. The subject project is proposed in the Malibu Colony, an established residential neighborhood, and for which specific development standards are set forth in the Malibu Colony Overlay District. Only *general* development standards are superseded by inconsistent ESHA development standards. As such, the specific development standards established for the Malibu Colony Overlay District take priority over all other inconsistent development standards found elsewhere in the LCP. [See LUP Policy 3.30, LIP § 3.4.1]

Accordingly, the specific provisions of the Malibu Colony Overlay District take priority over any inconsistent development standards found in Chapter Four (ESHA) of the LIP. Nevertheless, the project applicant voluntarily chose to meet the development requirements of Section 4.5 of the LCP and, specifically, set back the proposed residence 100 feet from the delineated edge of offsite ESHA. The subject project conforms to the development requirements of the LCP.

**Appellant's Statement Two:**

"Section 3(A): The applicant and his associates were given more time to speak at the hearing than the public, and the exclusive opportunity to answer questions after the close of the public hearing."

**Staff response Two:**

Time limits for the applicant and any interested members of the public are listed on every Planning Commission agenda. Those time limits were enforced by the Commission during the course of this hearing, as is the Commission's customary practice. It is not unusual for individual Commissioners to recall speakers to the podium throughout the course of a public hearing in order to ask them specific questions. This is a normal part of the information gathering process and is not contrary to law. There was nothing unusual about the Planning Commission hearing on this project and every interested member of the public who wished to address the Commission was afforded a full and fair opportunity to be heard before the Commission took its action.

### **Appellant Statement Three:**

"Section 3(A): Finding 1 incorrectly states that the project conforms with the Malibu LCP. The project is inconsistent with the LCP on several grounds, including violations of ESHA protection provisions, lack of analysis of project alternatives that would minimize ESHA impacts, and several agency approvals which are necessary prior to project approval and are not in the record."

### **Staff Response Three:**

As detailed above, the project is governed by the specific development standards of the Malibu Colony Overlay District, unless stated otherwise in the Overlay District portion of the LIP itself. Nevertheless, the project applicant voluntarily chose to meet the standards of Section 4.5, specifically setting back the proposed residence 100 feet from the delineated edge of offsite ESHA. The subject property itself does not contain ESHA. There is no evidence in the record to suggest that implementation of the subject project will result in any adverse impacts to the offsite ESHA.

The project applicant submitted two Feasible Alternative Reports in 2006, and both are contained in the record (Attachment 8 – Feasible Alternatives Reports). The reports discuss the limitations imposed by the small size of the subject parcel, its proximity to ESHA, as well as other constraints that dictated the design ultimately submitted to and approved by the Planning Commission.

Moreover site constraints and alternative sites for the proposed project were discussed under Finding C (2) of the project resolution as follows:

"The relatively small size of the subject property, coupled with the applicant's voluntary increase in the rear yard setback, leaves few alternatives for the siting of development on the subject site. The requested MM of cumulative side yard setbacks would allow development on the subject property consistent with those setbacks enjoyed by other development in the Malibu Colony neighborhood, and would not interfere with public or private views. Story poles were placed on the subject site to demonstrate the project's potential for change to the site relative to nearby properties. The requested MM of cumulative side yard setbacks will not adversely affect neighborhood character as the resulting development conforms to the standards of the Malibu Colony Overlay District, and is similar in scale to neighboring structures."

It is unclear which "several agencies" the appellant is referring to. No other agency approvals are required for this project. The subject project was reviewed by the City Biologist, Geologist, Environmental Health Administrator, Public Works Department, Los Angeles Water District 29, and the Los Angeles County Fire Department. Each of those divisions or agencies granted conceptual approval to the project prior to its

presentation to the Planning Commission on June 15, 2007. In addition, the project Initial Study was routed for review to the following agencies (Attachment 10 – Notice of Completion of Environmental Document Transmittal):

1. California Coastal Commission (CCC)
2. California Department of Fish and Game (CDFG)
3. California Department of Parks and Recreation (CDPR)
4. DWR
5. California Highway Patrol (CHP)
6. Caltrans, District No. 7
7. Water Quality Control Board, District No. 4
8. Native American Heritage Commission (NAHC)
9. California State Lands Commission (CSLC)

Of the referenced agencies above, comments were received only from CDFG. That agency forwarded five recommendations addressing the protection of onsite plant and wildlife. The project resolution includes conditions of approval that satisfy the recommendations of CDFG (Attachment 4 – Planning Commission Resolution No. 07-29).

**Appellants Statement Four:**

“Finding 3 incorrectly states that the project is the least environmentally damaging alternative. The record contains no analysis of project alternatives, and thus fails to analyze or disclose project alternatives which would have less negative environmental impact, as is required by the LCP. Further this finding is premised several inaccuracies, including a wetland delineation report which has been questioned and was possibly based on improper delineation technique, and an incorrect understanding of the LCP (the Malibu Colony Overlay *does not* rule over the ESHA buffer provisions).”

**Staff Response Four:**

As stated, the project applicant submitted two Feasible Alternative Reports in 2006, and both are contained in the record. The reports discuss the limitations imposed by the small size of the subject parcel, its proximity to ESHA, as well as other constraints that dictated the design ultimately submitted to and approved by the Planning Commission. Findings discussing why the subject project is the least environmentally damaging alternative can be found on pages 3 and 7 of the project resolution (Attachment 4 – Planning Commission Resolution No. 07-29). Furthermore, the wetland delineation report for the project was prepared by highly-qualified experts. The City Biologist agreed with the findings in the report. No substantial evidence was presented at the hearing to suggest that the conclusions in the report are unreliable.

### **Appellants Statement Five**

"Finding 4 incorrectly states that the project conforms with the recommendations of the Environmental Review Board (ERB). The ERB recommended that the project design be altered to minimize impacts to the Cypress trees straddling the subject property line, There is no evidence in the record that this has been done other than a blanket statement with no factual support, and the ERB meeting and findings itself are premised on an incorrect interpretation of the LCP (that the Malibu Colony Overlay rules over the ESHA buffer provisions), and thus the entire ERB review process was flawed and the project must be re-heard by the ERB. "

### **Staff Response Five:**

The ERB at its December 20, 2006 regular meeting forwarded the following recommendation for consideration by the Planning Commission:

1. The ERB recommends that the foundation for the proposed residence be designed to minimize impacts to offsite Cypress Trees.

Project Condition of Approval No. 36 addresses this recommendation by requiring adherence to the mat foundation design approved by Chris Dean, City Geologist, on June 4, 2007, and presented to the Planning Commission at the June 5, 2007 Planning Commission Hearing. The mat foundation was specifically designed to minimize disturbance to the root systems of existing vicinity Cypress Trees. (Attachment 4 – Planning Commission Resolution 07-29; Attachment 6 - May 10, 2007 letter from Grover Hollingsworth & Associates, Inc.)

As stated in Staff Response One, the subject project is proposed in the Malibu Colony, an established residential neighborhood, and for which specific development standards are set forth in the Malibu Colony Overlay District. Only general development standards are superseded by inconsistent ESHA development standards. As such, the specific development standards established for the Malibu Colony Overlay District take priority over all other inconsistent development standards found elsewhere in the LCP. [See LUP Policy 3.30, LIP § 3.4.1] Nevertheless, the project applicant has voluntarily designed the project to provide a 100-foot setback of the proposed residence from offsite ESHA.

### **Appellants Statement Six:**

"Section 3 (B): Finding 1 incorrectly states that the project is consistent with the policies of the Malibu LCP (see above)."

**Staff Response Six:**

As detailed above, the subject project is consistent with polices and standards of the LCP.

**Appellants Statement Seven:**

“Section 3(C): Finding 1 incorrectly states that the project is consistent with the policies of the Malibu LCP (see above).”

**Staff Response Seven:**

As detailed above, the subject project is consistent with polices and standards of the LCP.

**Appellants Statement Eight:**

“Section 3(D): Finding 1 incorrectly states that the project is consistent with the policies of the Malibu LCP (see above).”

**Staff Response Eight:**

As detailed above, the subject project is consistent with polices and standards of the LCP.

**Appellants Statement Nine:**

“Section 3(E): Finding 1 incorrectly states that the project is the least environmentally damaging alternative (see above).”

**Staff Response Nine:**

As detailed above, the subject project is consistent with polices and standards of the LCP. The project applicant submitted two Feasible Alternative Reports in 2006, and both are contained in the record. The reports discuss the limitations imposed by the small size of the subject parcel, its proximity to ESHA, as well as other constraints that dictated the design ultimately submitted to and approved by the Planning Commission. Findings discussing why the subject project is the least environmentally damaging alternative can be found on pages 3 and 7 of the Planning Commission Resolution (Attachment 4 – Planning Commission Resolution No. 07-29).

**PUBLIC CORRESPONDENCE:** Since the receipt of the subject appeal, no correspondence has been received.

**SUMMARY:** The Planning Commission made the required findings in adopting Resolution No. 07-029. The Commission's findings are supported by substantial evidence in the record. The appellant has not provided any substantial evidence to support his contention that the Planning Commission's findings or conditions were not supported by substantial evidence in the record and/or that the Commission's decision was not supported by the findings.

Staff recommends the City Council adopt Resolution No. 07-37 denying Appeal No. 07-005 and upholding the Planning Commission's approval of CDP 06-023, and MM Nos. 06-049 and 07-016, as well as adoption of IS No. 07-001 and ND No. 07-001, permitting the construction of the new single-family residence described herein.

**PUBLIC NOTICE:** On July 12, 2007, pursuant to LIP Sections 13.12.1 and 13.20.1(E), a 10-day Notice of City Council Public Hearing on Appeal No. 07-005 was published in a newspaper of general circulation within the City. On July 11, 2007, a public notice was mailed to the owners and tenants of the property within a radius of 500-feet of the property involved in this application.

**ATTACHMENTS:**

1. City Council Resolution No. 07-37
2. Appeal No. 07-005

*The attachments listed below have been distributed to the City Council and are available on the City's website for review.*

3. June 5, 2007 Planning Commission Agenda Report
4. Planning Commission Resolution No. 07-29
5. Project Plans
6. May 10, 2007 letter from Grover Hollingsworth & Associates, Inc.
7. Revised IS No. 07-001/ND No. 07-001
8. Feasible Alternatives Reports
9. Public Hearing Notice
10. Notice of Completion of Environmental Document Transmittal

RESOLUTION NO. 07-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 07-005 AND UPHOLDING THE PLANNING COMMISSION'S ADOPTION OF RESOLUTION NO. 07-29 APPROVING COASTAL DEVELOPMENT PERMIT NO. 06-023, INITIAL STUDY NO. 07-001, NEGATIVE DECLARATION NO. 07-001 AND MINOR MODIFICATION NOS. 06-049 AND 07-016

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

Section 1. Recitals.

- A. On March 13, 2006, an application for Coastal Development Permit No. 06-023 was submitted to the Planning Division by Darren Domingue, AIA, on behalf of prospective property owner Colony House I, LLC (Richard Margolis).
- B. On October 24, 2006, a Notice of Application for a coastal development permit was posted at the subject property.
- C. The application was deemed complete on October 24, 2006.
- D. On October 26, 2006, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on October 26, 2006, a Notice of Planning Commission Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- E. On November 7, 2006, the Planning Commission held a public hearing on the subject project and received testimony from both the property owner and general public. After the public hearing, the Planning Commission directed that the project be reviewed by the Environmental Review Board (ERB).
- F. On December 20, 2006, the ERB reviewed the subject project and received testimony from both the property owner and general public. The ERB forwarded a single recommendation for consideration by the Planning Commission, recommending that the foundation for the proposed residence be designed to minimize impacts to offsite Cypress Trees.
- G. On March 1, 2007, a Notice of Intent to Adopt Initial Study No. 07-001/Mitigated Negative Declaration No. 07-001 was published in a newspaper of general circulation. The documents were distributed to interested parties and relevant agencies (review period March 1, 2007 – March 30, 2007) including the California State Clearinghouse (review period March 6 – April 4, 2007).
- H. On March 29, 2007, a Notice of Intent to Adopt Initial Study No. 07-001/Negative Declaration No. 07-001 was published in a newspaper of general circulation. The Initial Study dated March 1, 2007 was withdrawn. In accordance with relevant provisions of the

<b>Exhibit 17</b>
<b>A-4-MAL-07-095</b>
<b>City Resolution</b>

California Environmental Quality Act (CEQA), a revised initial study and negative declaration were prepared, and which superseded the initial study/mitigated negative declaration dated March 1, 2007. The revised initial study/negative declaration was distributed to interested parties and relevant agencies including the California State Clearinghouse for agency and public comment (March 29 – April 27, 2007).

- I. The revised application was deemed complete on May 8, 2007.
- J. On May 24, 2007, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu. On May 24, 2007, a Notice of City Council Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.
- K. On June 5, 2007, the Planning Commission held a public hearing on the proposed project and received written and oral testimony. The Planning Commission voted 5-0 to adopt Resolution No. 07-29 approving CDP No. 06-023 and MM Nos. 06-049 and 07-016 and adopting IS No. 07-001 and ND No. 07-001 for construction of the new single-family residence described herein and at 23405 Malibu Colony Road.
- L. On June 15, 2007, Steven Littlejohn, representing adjacent property owner Bill Littlejohn, filed a timely appeal of the Planning Commission's approval of CDP No. 06-023, MM Nos. 06-049 and 07-016, as well as IS No. 07-001 and ND No. 07-001.
- M. On July 12, 2007, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on July 11, 2007, 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 and Negative Declaration.

Pursuant to the authority and criteria contained in CEQA, the City Council finds that the proposed project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and, therefore, the proposed project is exempt from the provisions of CEQA. Specifically, the City Council finds that the project qualifies for both Class 3 and Class 32 categorical exemptions. Pursuant to the Class 3 exemption, the new construction or conversion of small structures is presumed not to have a significant effect on the environment. The proposed project, consisting of one single-family residence in a residential zone together with accessory (appurtenant) structures, qualifies for this exemption pursuant to CEQA Guidelines section 15303, subparagraphs (a) and (e). Pursuant to the Class 32 exemption, in-fill development projects meeting the conditions described in CEQA Guidelines section 15332 are presumed not to have a significant effect on the environment. The City Council finds that the project proposal meets all five conditions required for the Class 32 exemption. The City Council has also considered each of the potential exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2 and finds that there is no evidence to support application of the exceptions to either the Class 3 or the Class 32 categorical exemptions.

Nevertheless, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, the Planning Division has undertaken an initial study of the proposed project. The initial study confirmed that the project does not have the potential to result in a significant impact on the environment. Consequently, a negative declaration has been prepared. The negative declaration prepared for this project reflects the City's independent judgment and analysis. Without waiving the right to rely on the above-referenced categorical exemptions, the City Council upholds the Planning Commission's adoption of Initial Study 07-001/Negative Declaration No. 07-001.

Section 3. Appeal of Action.

- A. On June 15, 2007, Steven Littlejohn, representing adjacent property owner Bill Littlejohn, filed a timely appeal of the Planning Commission's approval of CDP No. 06-023, MM Nos. 06-049 and 07-016, as well as IS No. 07-001 and ND No. 07-001. Mr. Littlejohn (the appellant) contends that: 1) decision was contrary to law, 2) that the findings are not supported by the evidence in the record and 3) that the hearing conducted was not fair and/or impartial. The information submitted includes numerous statements to support the appeal and refers to a number of Local Coastal Program (LCP) Land Use Plan (LUP) and Local Implementation (LIP) sections referenced in the Planning Commission's approval.
- B. The subject appeal contends that the proposed project fails to comply with the requirements of the California Environmental Quality Act (CEQA), does not conform to the development standards of the LCP, that scientific studies prepared for the subject project were inaccurate, and that the applicant and his associates were given more time to speak at the public hearing for the project than the public.

Section 4. Findings Denying Appeal No. 07-005.

Based on evidence in the record as a whole and in the associated Agenda Reports, the City Council hereby makes the following findings of fact denying Appeal No. 07-005 and upholding the Planning Commission's approval of CDP No. 06-023, MM Nos. 06-049 and 07-016, as well as adoption of IS No. 07-001 and ND No. 07-001, affirming that the approval was in accordance with the LCP and applicable State and local laws, the findings and conditions are supported by substantial evidence in the record, and the decision is supported by the findings.

- A. The appellants allege the listed categorical CEQA exemptions do not apply, that the initial study/negative declaration fails to comply with CEQA's requirements of information disclosure; fails to recognize inconsistencies with the Malibu's Local Coastal Program (LCP); etc. The appellant contends that the Malibu Colony Overlay provisions do not take precedence over the ESHA buffer provisions (of Local Implementation Plan Chapter 4). The appellant contends that the record contains substantial evidence of a fair argument that the project will have a significant impact on the environment, due primarily to inconsistencies with the Malibu LCP and the likelihood of significant impacts to biological resources and water quality. The appellant contends that an environmental impact report (EIR) should be prepared for the subject project.

The subject project proposes the construction of a new, single-family residence on an infill lot in the largely developed Malibu Colony neighborhood. The Planning Division analyzed the project

proposal and determined that the project is listed among those classes of projects that have been determined not to have a significant effect on the environment and are, therefore, exempt from the provisions of CEQA. Specifically, the Planning Division determined that project qualifies for both a Class 3 and a Class 32 CATEGORICAL EXEMPTION. Pursuant to the Class 3 exemption, the new construction or conversion of small structures is presumed not to have a significant effect on the environment. The project proposal, consisting of one single-family residence in a residential zone together with accessory (appurtenant) structures, qualifies for this exemption pursuant to CEQA Guidelines section 15303, subparagraphs (a) and (e). Pursuant to the Class 32 exemption, infill development projects meeting the conditions described in CEQA Guidelines section 15332 are presumed not to have a significant effect on the environment. The Planning Division has determined that the project proposal meets all five conditions required for the Class 32 exemption.

The Planning Division also analyzed and considered each of the potential exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2 and determined that there is no evidence to support application of any of the exceptions to either the Class 3 or the Class 32 categorical exemptions.

There is substantial evidence in the record to support application of both the Class 3 and Class 32 exemptions. Furthermore, there is no substantial evidence in the record to support application of any of the recognized exceptions to either the Class 3 or Class 32 exemptions. Other than a conclusory allegation, the appellant has provided no evidence in support of his contention that neither categorical exemption is applicable. After reviewing the entire record, the City Council finds there is no substantial evidence in the record to support the application of any of the exceptions to either the Class 3 or Class 32 categorical exemptions. Consequently, there is no evidence to suggest that the Planning Commission failed to proceed in a manner required by law when it found the project to be eligible for the categorical exemptions.

Nevertheless, in the interest of providing meaningful information to the Planning Commission and to foster the most informed decision making process practicable, an initial study and negative declaration were prepared pursuant to CEQA Guidelines Section 15300.2 (c).

The subject Initial Study describes the project and environmental setting in accordance with the requirements and intent of CEQA. Under "Description of Project" (pages 3 and 4), the Initial Study describes both the subject project and the parcel on which it is proposed, including the property's size, status as vacant, and its proximity to the Malibu Lagoon. Under "Surrounding Land Uses and Setting" (page 4), the Initial Study details the subject property's location relative to the Pacific Ocean, and provides a description of existing, adjacent parcels. Furthermore, there was extensive discussion during the course of the public hearings as well as the ERB meeting regarding the environmental setting and the biological resources located in the vicinity of the project site.

All referenced biological studies were prepared by qualified experts, as required by the LCP. The Initial Study does not mischaracterize relevant biological resources. Again, aside from a conclusory allegation, the appellant does not cite or provide any substantial evidence in support of his contention that there is a fair argument that the project will have a substantial

environmental impact. The City Council has reviewed the record and finds that there is no substantial evidence to support a fair argument of a potentially significant environmental impact. While there was speculation by some members of the public during the course of the public hearings on the project, there was no credible supporting evidence provided.

LCP Consistency. The City Council finds that the project is not inconsistent with the LCP. The project is proposed in the Malibu Colony, an established residential neighborhood, and for which specific development standards are set forth in the Malibu Colony Overlay District. Only *general* development standards are superseded by inconsistent ESHA development standards. As such, the specific development standards established for the Malibu Colony Overlay District take priority over all other inconsistent development standards found elsewhere in the LCP. [See LUP Policy 3.30, LIP § 3.4.1]

Accordingly, the specific provisions of the Malibu Colony Overlay District take priority over any inconsistent development standards found elsewhere in the LIP. Nevertheless, the project applicant has voluntarily chosen to meet the development requirements of Section 4.5 of the LCP and, specifically, has set back the proposed residence 100 feet from the delineated edge of offsite ESHA. The City Council finds that the subject project conforms to the development requirements of the LCP.

- B. The appellant alleges the applicant and his associates were given more time to speak at the hearing than the public and, as a result, the hearing was not conducted fairly.

Time limits for the applicant and any interested members of the public are listed on every Planning Commission agenda. Those time limits were enforced by the Commission during the course of its hearing. It is not unusual for individual Commissioners to recall speakers to the podium throughout the course of a public hearing in order to ask them specific questions. This is a normal part of the information gathering process and is not contrary to law. There was nothing unusual about the Planning Commission hearing on this project and, consistent with the law, every interested member of the public who wished to address the Commission was afforded a full and fair opportunity to be heard before the Commission took its action. The City Council finds that the Planning Commission hearing was conducted in a fair and impartial manner in accordance with all applicable laws.

- C. The appellant alleges that Finding 1 (of Section 3 (A) of Planning Commission Resolution 07-29) incorrectly states that the project conforms to the development standards of the LCP. The appellant contends that the project is inconsistent with the LCP on several grounds, including violations of ESHA protection provisions, lack of analysis of project alternatives that would minimize ESHA impacts, and several agency approvals which are necessary prior to project approval and are not in the record.

As detailed above, the project is governed by the specific development standards of the Malibu Colony Overlay District, unless stated otherwise in the Overlay District portion of the LIP itself. Nevertheless, the project applicant voluntarily chose to meet the standards of Section 4.5, specifically setting back the proposed residence 100 feet from the delineated edge of offsite ESHA. The subject property itself does not contain ESHA. There is no evidence in the record to

suggest that implementation of the subject project will result in any adverse impacts to the offsite ESHA.

The project applicant submitted two Feasible Alternative Reports in 2006, and both are contained in the record. The reports discuss the limitations imposed by the small size of the subject parcel, its proximity to ESHA, as well as other constraints that dictated the design ultimately submitted to and approved by the Planning Commission.

Moreover, site constraints and alternative sites for the proposed project were discussed under Finding C (2) of the Planning Commission Resolution as follows:

“The relatively small size of the subject property, coupled with the applicant’s voluntary increase in the rear yard setback, leaves few alternatives for the siting of development on the subject site. The requested MM of cumulative side yard setbacks would allow development on the subject property consistent with those setbacks enjoyed by other development in the Malibu Colony neighborhood, and would not interfere with public or private views. Story poles were placed on the subject site to demonstrate the project’s potential for change to the site relative to nearby properties. The requested MM of cumulative side yard setbacks will not adversely affect neighborhood character as the resulting development conforms to the standards of the Malibu Colony Overlay District, and is similar in scale to neighboring structures.”

It is unclear which “several agencies” the appellant is referring to. No other agency approvals are required for this project. The subject project was reviewed by the City Biologist, Geologist, Environmental Health Administrator, Public Works Department, Los Angeles Water District 29, and the Los Angeles County Fire Department. Each of those divisions or agencies granted conceptual approval to the project prior to its presentation to the Planning Commission on June 5, 2007. In addition, the project Initial Study was routed for review to the following agencies:

1. California Coastal Commission (CCC)
2. California Department of Fish and Game (CDFG)
3. California Department of Parks and Recreation (CDPR)
4. DWR
5. California Highway Patrol (CHP)
6. Caltrans, District No. 7
7. Water Quality Control Board, District No. 4
8. Native American Heritage Commission (NAHC)
9. California State Lands Commission (CSLC)

Of the referenced agencies above, comments were received only from CDFG. That agency forwarded five recommendations addressing the protection of onsite plant and wildlife. The project resolution includes conditions of approval that satisfy the recommendations of CDFG.

- D. The appellant alleges that Finding 3 (of Section 3 (A) of Planning Commission Resolution 07-29) incorrectly states that the project is the least environmentally damaging alternative. The appellant contends that the record contains no analysis of project alternatives, and thus fails to analyze or disclose project alternatives which would have less negative environmental impact.

The appellant further contends that this finding is premised on several inaccuracies, including a wetland delineation report that the appellant questions, and contends was possibly based on improper delineation technique, and an incorrect understanding of the LCP – the appellant contends that the Malibu Colony Overlay does not rule over the ESHA buffer provisions (of LIP Chapter 4).

As stated, the project applicant submitted two Feasible Alternative Reports in 2006, and both are contained in the record. The reports discuss the limitations imposed by the small size of the subject parcel, its proximity to ESHA, as well as other constraints that dictated the design ultimately submitted to and approved by the Planning Commission. Findings discussing why the subject project is the least environmentally alternative can be found on pages 3 and 7 of the project resolution. Furthermore, the wetland delineation report for the project was prepared by highly-qualified experts. The City Biologist agreed with the findings in the report. No substantial evidence was presented at the hearing to suggest that the conclusions in the report are unreliable.

The specific provisions of the Malibu Colony Overlay District take priority over any inconsistent development standards found elsewhere in the LIP. Nevertheless, the project applicant has voluntarily chosen to meet the development requirements of Section 4.5 of the LCP and, specifically, has set back the proposed residence 100 feet from the delineated edge of offsite ESHA. The City Council finds that the subject project conforms to the development requirements of the LCP.

- E. The appellant alleges that Finding 4 (of Section 3 (A) of Planning Commission Resolution 07-29) incorrectly states that the project conforms to the recommendations of the Environmental Review Board (ERB). The appellant contends that the ERB recommended the project design be altered to minimize impacts to the Cypress trees straddling the subject property line. The appellant contends that there is no evidence in the record that this has been done other than a blanket statement with no factual support, and that the ERB meeting and findings themselves are premised on an incorrect interpretation of the LCP (that the Malibu Colony Overlay rules over the ESHA buffer provisions), and thus the entire ERB review process was flawed and the project must be re-heard by the ERB.

The ERB at its December 20, 2006 regular meeting forwarded the following recommendation for consideration by the Planning Commission:

1. The ERB recommends that the foundation for the proposed residence be designed to minimize impacts to offsite Cypress Trees.

Project Condition of Approval No. 36 addresses this recommendation by requiring adherence to the mat foundation design approved by Chris Dean, City Geologist, on June 4, 2007 and presented to the Planning Commission at the June 5, 2007 Planning Commission Hearing. The mat foundation was specifically designed to minimize disturbance to the root systems of existing vicinity Cypress Trees.

As stated in above, the subject project is proposed in the Malibu Colony, an established

residential neighborhood, and for which specific development standards are set forth in the Malibu Colony Overlay District. Only general development standards are superseded by inconsistent ESHA development standards. As such, the specific development standards established for the Malibu Colony Overlay District take priority over all other inconsistent development standards found elsewhere in the LCP. [See LUP Policy 3.30, LIP § 3.4.1] Nevertheless, the project applicant has voluntarily designed the project to provide a 100-foot setback of the proposed residence from offsite ESHA.

- F. The appellant alleges that Finding 1 (of Section 3 (B) of Planning Commission Resolution 07-29) incorrectly states that the project is consistent with the policies of the Malibu LCP (see above).

As detailed above, the City Council finds that the subject project is consistent with polices and standards of the LCP.

- G. The appellant alleges that Finding 1 (of Section 3 (C) of Planning Commission Resolution 07-29) incorrectly states that the project is consistent with the policies of the Malibu LCP (see above).

As detailed above, the City Council finds that the subject project is consistent with polices and standards of the LCP.

- H. The appellant alleges that Finding 1 (of Section 3 (D) of Planning Commission Resolution 07-29) incorrectly states that the project is consistent with the policies of the Malibu LCP (see above).

As detailed above, the City Council finds that the subject project is consistent with polices and standards of the LCP.

- I. The appellant alleges that Finding 1 (of Section 3 (E) of Planning Commission Resolution 07-29) incorrectly states that the project is the least environmentally damaging alternative.

The project applicant submitted two Feasible Alternative Reports in 2006, and both are contained in the record. The reports discuss the limitations imposed by the small size of the subject parcel, its proximity to ESHA, as well as other constraints that dictated the design ultimately submitted to and approved by the Planning Commission. The appellant has not presented any substantial evidence to refute the finding of the Planning Commission. The City Council finds no evidence in the record to support the conclusion that any alternative design for the project would offer advantages in terms of any potentially negative effects on the environment. Accordingly, the City Council finds that the proposed project is the least environmentally damaging alternative.

#### Section 5. City Council Action.

Having reviewed the entire administrative record and considered all written and oral testimony offered in connection with this matter, the City Council hereby denies Appeal No. 07-005 and affirms the Planning Commission's adoption of Resolution No. 07-29 approving CDP No. 06-023, Minor

Modification Nos. 06-049 and 07-016, and adopting IS No. 07-001 and ND No. 07-001, subject to the conditions listed below:

Standard Conditions

1. Approval of this application permits the construction of a new, two-story, 5,200 square-foot single-family residence, a 1,368 square foot attached garage, pool/spa and a new alternative onsite wastewater treatment system as well as minor modifications for reductions in the required front and cumulative side yard setbacks. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
2. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
3. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until all permittees or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 working days of this decision.
4. This permit shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two (2) weeks prior to the expiration of the two-year period and shall set forth the reasons for the request.
5. This resolution shall be copied in its entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).
6. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any building or development permit.
7. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
8. Minor changes to the approved plans or the conditions may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Malibu Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.

9. All structures shall conform to the City of Malibu Environmental and Building Safety Division, City Geologist, City Geotechnical Engineer, City Environmental Health Specialist, City Biologist, City Public Works Department, and the Los Angeles County Fire Department requirements, conditions and comments. Notwithstanding this review, all required permits shall be secured.
10. The applicant shall request a final planning inspection prior to final inspection by the Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this Coastal Development Permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
11. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.
12. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Where, as a result of this evaluation, the Planning Manager determines that the project may have an adverse impact on cultural resources; a Phase II Evaluation of cultural resources shall be required pursuant to Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code.
13. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
14. When the framing is completed, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. The Planning Division shall sign off stating that said document has been received and verified.
15. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
16. The building pad and all other graded or disturbed areas on the subject site shall be planted within sixty (60) days of receipt of the Certificate of Occupancy for the residence.
17. Prior to issuance of a Certificate of Occupancy, the City Biologist shall inspect the project

site and determine that all planning conditions to protect natural resources are in compliance with the approved plans. Any alterations from the final approved plans must be submitted to the City Biologist prior to installation. Any unauthorized vegetation may require removal prior to issuance of a Certificate of Occupancy.

18. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
19. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
20. New structures shall incorporate colors and exterior materials that are compatible with the surrounding landscape. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no bright tones. The use of highly reflective materials shall be prohibited except for solar energy panels or cells which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible. All windows shall be comprised of non-glare glass.
21. Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that includes grading on slopes greater than 4:1. Approved grading operations shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1, unless the Planning Manager determines that completion of grading would be more protective of resources.
22. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
23. The non-exempt grading for the project shall not exceed 1,000 cubic yards of cut and fill.
24. A Wet Weather Erosion and Sediment Control Plan is required for this project (grading or construction activity is anticipated to occur during the raining season). The following elements shall be included:
  - a. Locations where concentrated runoff will occur.
  - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures.
  - c. Location and sizing criteria for silt basins, sandbag barriers, and silt fencing.
  - d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked off site.

25. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2.B.2.
26. This coastal development permit runs with the land and binds all future owners of the property.
27. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The coastal development permit is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the CDP approved by the City is void.
28. Construction hours shall be limited to Monday through Saturday from 7:00 a.m. to 7:00 p.m. No construction activities shall be permitted on Federal, State and Local holidays.
29. Construction related trucks, equipment and materials shall be located in such a manner as to ensure homeowner and emergency vehicle access at all time. An onsite construction monitor shall be required to observe that this condition is strictly adhered.
30. The construction monitor's phone number will be provided to the City and will be accessible during all construction hours.
31. A construction staging plan shall be reviewed and approved by Planning staff prior to plan check submittal.

### **Other Conditions**

#### **Biology/Landscaping**

32. Grading shall be scheduled only during the dry season from April 1-October 31st. If it becomes necessary to conduct grading activities from November 1 –March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
  - a. Night lighting from exterior and interior sources shall be minimized.
  - b. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.
  - c. No landscaping is proposed. As such none is permitted. Should the applicant intend to plant any new vegetation with a potential to exceed 6 feet in height (given consideration of future growth), a detailed landscape plan must be submitted to the City Biologist for review and approval prior to planting.
33. Construction and/or pruning of onsite or offsite Cypress Trees should be avoided during the active nesting season, which occurs between February 1 and July 30. Should such timing be infeasible, a qualified ornithologist shall conduct a focused nesting bird survey no more than

seven (7) days prior to such activities.

34. Should construction of the proposed residence or any accessory structures result in the death of any of the six offsite Monterey Cypress Trees identified as healthy (tree numbers 41, 42, 43, 47, 49 and 52 per a survey conducted by arborist Frederick Roth, Ph.D. and discussed in a letter submitted to the Planning Division dated October 17, 2006), the property owner shall replace the dead tree(s) with substitute Monterey Cypress Tree(s) acceptable to the City Biologist.

### **Site Conditions**

35. 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.
36. The final, approved foundation design of the proposed residence shall be consistent with conceptual drawings presented to the Planning Commission on June 5, 2007, which included design features to minimize disturbance to the root systems of existing vicinity Cypress Trees. The final foundation design shall be reviewed and approved by the City Biologist and City Geologist. This final design shall be reviewed and approved prior to issuance of grading and/or building permits.

### **Lighting**

37. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directed toward public viewing areas, including Pacific Coast Highway, public beaches, and/or the Pacific Ocean. 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 shall be prohibited.
  - h. Prior to issuance of the CDP, the applicant shall be required to execute and record a deed restriction reflecting the above restrictions.

### **Geology**

38. 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.

39. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require an amendment to this coastal development permit or a new coastal development permit.

#### **Public Works**

40. The project shall comply with all conditions of approval required by the City Public Works Department, including waste management conditions, as shown on the attached referral sheets

#### Section 6. Certification.

The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 23<sup>rd</sup> day of July, 2007.

\_\_\_\_\_  
JEFF JENNINGS, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

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

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