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

ADDENDUM

DATE: July 9, 2008

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item 11a, Thurs., July 10, 2008, Appeal No. A-4-MAL-07-095 (Margolis)

The purpose of this addendum is to:

1) Attach and respond to correspondence in opposition to the staff recommendation received from both of the appellants in this case, Steve Littlejohn and Malibu Coalition for Slow Growth (Patt Healy).

   Mr. Littlejohn's correspondence, dated June 30, July 3, and July 6, 2008, is attached as Exhibit 1. Mr. Littlejohn contends that the distance between the delineated off-site ESHA boundary and the applicant's rear property line was mismeasured by TeraCor, the applicant's consulting biologist. Mr. Littlejohn believes that TeraCor's measurement is off by 18 feet, thereby, he contends the proposed development extends 18 feet into the required 100-ft. ESHA buffer. Mr. Littlejohn has attached photographs of his measurement to demonstrate his finding. However, staff cannot confirm the accuracy of Mr. Littlejohn's measurement because he is speculating on where the actual rear property line and ESHA line are located. There is no evidence that the stake referenced by Mr. Littlejohn was placed by the applicant's biologist to delineate the ESHA boundary. Staff has analyzed the relative locations of the delineated ESHA boundary, the property boundary, and the location of the proposed development based on a surveyed, to-scale, site plan and the biologist's measured ESHA delineation map. Additionally, staff has reviewed TeraCor's ESHA delineation report and visited the site. As described in the staff report, Commission staff biologist Dr. Engel concurs with TeraCor's delineated ESHA and ESHA buffer.

   Mr. Littlejohn also contends that a caisson/above-grade beam foundation would be more protective of the Cypress tree roots than the proposed mat foundation design. According to the consulting geotechnical engineer, Grover Hollingsworth & Associates, in their May 10, 2007 "Revised Geotechnical Recommendations" for the subject development, the mat foundation may be inset from the building perimeter, as proposed, in order to avoid excavation within the root protection zones of off-site trees. As such, a portion of the residence nearest the trees will cantilever beyond the edge of the mat foundation. As described in the staff report, the proposed foundation will serve to adequately protect the adjacent Cypress tree stand.

   Patt Healy of Malibu Coalition for Slow Growth contends in her correspondence, received July 7, 2008 and attached as Exhibit 2, that the Cypress trees should be considered ESHA and receive additional protections. This issue is discussed on pages 28-30 of the staff

report. Like Mr. Littlejohn, Ms. Healy also contends that the 100-ft. ESHA buffer was mismeasured by TeraCor.

2) Attach correspondence received from the law office of Frank Angel, dated July 8, 2008 (Exhibit 3 of this addendum).

3) Provide clarification regarding Exhibit 4 (revised septic system plan) of the staff report. The black-and-white copy of the plan is of poor quality and the bounds of the septic dispersal field are not discernable from other site features. Attached as Exhibit 4 of this addendum is a revised version of the plan in which staff has highlighted the important elements. Staff would also note that the Cypress tree root protection zones indicated on the plan, which extend out three times the tree trunk diameter, was recommended by the consulting arborist for tree protection and the applicant has designed the project to avoid subsurface work within those zones.

4) Attach the written disclosures of ex-parte communications received by the date of this addendum (Commissioners Blank and Neely). Communications are attached as Exhibit 5 of this addendum.

5) The staff report erroneously indicates the lot size of the subject property. Make the following correction to the project description on page 11 of the staff report, as well as where referenced elsewhere on pages 11, 14, 18, 22, and 23. Deletions shown in ~~strikethrough~~, additions shown in underline:

> The applicant proposes to construct a two-story, 5,200 sq. ft. single-family residence, with attached six-car (1,368 sq. ft.) garage, pool, spa, and alternative onsite wastewater treatment system on a ~~0.41-acre~~ 0.19-acre parcel at 23405 Malibu Colony Drive, Malibu (**Exhibits 1-10**).

6) Make the following correction to the fourth paragraph on page 23 of the staff report, to clarify that the City of Malibu approved the proposed development with a proposed 100-foot ESHA buffer, but did not specifically require the 100-foot buffer (deletions shown in ~~strikethrough~~, additions shown in underline):

> 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~~ approved 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 2005 report 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)):

7) Make the following modifications to Special Condition No. Ten (Landscaping Plans) on pages 8-10 of the staff report (deletions shown in ~~strikethrough~~, additions shown in underline):

> **10. Landscaping Plans**
>
> ***Prior to issuance of the coastal development permit***, the applicant shall submit landscaping plans for all graded or disturbed areas on the project site, prepared by a licensed landscape architect or a

qualified resource specialist for the review and approval of the Executive Director. The landscaping plans shall include a scale map of the project site that shows the location, species, and size of each plant to be included in site landscaping. All development shall conform to the approved landscaping plans. The plans shall incorporate the criteria set forth below:

A. Plant Species

1. Plantings shall be native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site, except as noted in Section 3.10.1(A)(3) of the Malibu LIP. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. All native plant species shall be of local genetic stock.

2. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996 and identified in the *City of Malibu 's Invasive Exotic Plant Species of the Santa Monica Mountains*, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.

3. Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone (Zone A) required for fuel modification nearest approved residential structures. Irrigated lawn, turf and ground cover shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

B. Timing of Landscaping

1. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.

2. 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.

C. Landscaping Coverage Standards

Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for revegetation.

D. Cypress Tree Trimming

The landscape plans shall include tree trimming provisions for all existing Cypress trees situated on or immediately adjacent to the subject site for the express purpose of ensuring that potential nesting birds are not adversely impacted. Specifically, tree trimming shall only be done during the non-nesting season (October through December) to the maximum extent possible. All tree trimming shall be overseen by a qualified arborist. The arborist and a qualified biologist shall evaluate and provide recommendations to ensure that the proposed tree trimming would not compromise the tree's ability to support future nests.

If tree trimming activities cannot feasibly avoid the nesting season due to an immediate danger to health, safety, or property, a qualified biologist shall conduct a survey of nesting activities within the adjacent Cypress tree stand. If an active raptor, rare, threatened, endangered, or species of concern nest is found, then the applicant must obtain an amendment to this permit or obtain an emergency permit for such trimming, unless the Executive Director determines that no such permit or amendment is necessary.

~~D~~ E. Landscaping Monitoring

1. Any landscaping or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary.

2. Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies that the on-site landscaping is in conformance with the approved landscape plan. The monitoring report shall include photographic documentation of plant species and plant coverage.

3. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.

8) The following findings shall be added to the first paragraph on page 30 of the staff report (additions shown in underline):

To ensure that the proposed project does not impact potential nesting birds in on-site or adjacent trees, **Special Condition Twelve (12)** requires a qualified biologist with experience in conducting bird surveys to conduct bird surveys 30 days prior to construction, grading, or tree pruning/trimming to detect any active bird nests in all trees on and adjacent to the project site. The last survey should be conducted 3 days prior to the initiation of clearance/construction. If an active nest is located, clearing/construction shall be postponed until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. In addition, **Special Condition Ten (10)** requires that tree trimming provisions for all existing Cypress trees situated on or immediately adjacent to the subject site be included in submitted landscape plans for the express purpose of ensuring that potential nesting birds are not adversely impacted. Specifically, tree trimming shall only be done during the non-nesting season (October through December) to the maximum extent possible. All tree trimming shall be overseen by a qualified arborist. The arborist and a qualified biologist shall evaluate and provide recommendations to ensure that the proposed tree trimming would not compromise the tree's ability to support future nests. A conservative non-nesting season, at which point all late clutches would have fledged, extends from October through December. Therefore, all tree trimming should occur during this timeframe. If tree trimming activities cannot feasibly avoid the nesting season due to an immediate danger to health, safety, or property, a qualified biologist shall conduct a survey of nesting activities within the adjacent Cypress tree stand. If an active raptor, rare, threatened, endangered, or species of concern nest is found, then the applicant must obtain an amendment to this permit or obtain an emergency permit for such trimming, unless the Executive Director determines that no such permit or amendment is necessary.

Hi Dianna and Barbara:

In reviewing the YES recommendation for item 11a,

I was wondering if you could address the following issues:

1. If this is approved without the foundation that I am asking for (my engineer will be presenting the caisson/above grade beam foundation at the hearing and explaining why it is better for the applicant and the trees both) and what you approve causes the trees to die and fall on this development, who is liable?

2. The wrong foundation from #1 above, the placement of the leech field on the north end of the house, an in ground pool, and the MM that allows the structure to be built even closer in the side yard adjacent to the trees is in direct conflict with what is written on p13 of the Staff Report about section 4.2 of the LCP polices:
4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

I would like to point out that Monterey Cypress tree needles are full of highly combustible sap along with the other problems we are pointing out to you with this design.

3. On page 14 and 23, the report states that the project site is located on a .41 acre parcel. This is erroneous as it states on the plans that is is .19 acres (8412 square ft). As I will be presenting that about 5600 square ft of this lot (that is 2/3) will be covered in paving of some kind, this is a gross error of fact. That doesn't even cover the paving in the parking area in the front yard.

4. You are making a condition to this permit the replacement of any of the 6 major trees should they die, and since they are on Bill Littlejohn's property, then a replacement must be planted on someone else's property? Can you explain how you can actually make a condition like this? Isn't it trespassing? Did you get permission from Mr. Littlejohn to do this? Are you proposing a deed restriction as a condition for Margolis to develop on the neighbor's property?

5. On page 12 of the Staff Report you make mention:
In addition, the proposed project provides a 5 foot setback from the west property line where the Cypress tree windrow is located and the foundation of the residence has been designed to avoid impact to the root zones of the Cypress trees.
We have read all the consultant's reports and where is any evidence that supports this statement that the proposed mat foundation will avoid impact to the root zone? What I have determined (and will be presented in detail at the hearing) is that this proposed mat foundation will most likely kill off the roots from 3 directions: from cutting them off from oxygen, smothering them to death under the thick concrete mat placed on top of them and cutting them with the 4 foot deep trenches parallel to Windrow of Cypress. When an extensive root mass dies, the volume of the root mass disappears creating

variable shrinkage under this mat which could cause it to tilt (not to mention the trees will likely fall on his house about this time). Couple this with the differential settlement that will occur when the soils under this mat liquefy during a massive earthquake which alone would likely tilt this slab, why would the owner want to pinch pennies on his foundation on such an expensive development? We are going to show that a caisson/above grade beam foundation eliminates almost all of these troubling problems and should add only a very small percentage in the overall development of this site. Even the pool should be above grade and on caissons.

6. I have measured the plans and came up with 1870 square feet of living space on the first floor (vs the 1682 stated) and 3688 sq ft on the 2nd (vs the 3548 stated) for a total of 5558 sq ft (not the 5200 as stated). I don't know if this makes any difference to you, but this should be checked. The garage measures 1323 sq ft. But then I measured 702 sq ft of terrace (not including walks in the side yard clearance) on the 1st floor, 869 sq ft of terrace and a big void space on the 2nd floor which totals 1571 sq ft of terraces and void space. Then add in the approx 1220 sq ft of paving for the walk ways and about 500 sq ft for pool and deck, we tip the scales at 10,173 sq ft of development on a 8412 sq ft lot. I didn't even include the paving in the parking area out front. This development overpowers the lot. I also noticed that there is encroachment into the side yard clearance (1st floor by the east side of the garage and the office on the 1st floor on the east side and encroachments on the east side 2nd floor terrace and bedroom) Why are these encroachments into the side yard set back being allowed?

7. Please address my concerns about the ESHA boundary itself that I presented in a separate email earlier today. Essentially why is only the wetlands portion of the Malibu Lagoon Park the ESHA when considering the buffer for this project? Why isn't it the entire park?

8. Most OSTS (on site treatment systems) require future expansion area. Has it been officially determined that none is required? If so where is it?

9. On p23 of the Report, it is stated:
A June 3, 2005 Wetland Delineation Study prepared by the applicant's consulting biologist, 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 City Biologist concurred 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 wetland ESHA buffer is situated on the subject parcel.

Can anyone show me where Teracor is measuring to and from exactly? I have a photo (see attached) where I photographed the high tide water line at 55 ft from the chain link fence of the park (54.5 ft from the property line). How can this be 67 ft to where a wetland boundary exists if it is defined when under: **The California Code of Regulations Section 13577(b) of Title 14, Division 5.5, Article 18**:

ex. 1

(1) Measure 100 feet landward from the upland limit of the wetland. 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; or***
> ***(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.***

Again, tell me where Teracor's marker is? I have water at 54.5 ft from the rear property line. As I believe there has never been a rear property line survey marker at the site, does Teracor show what they were measuring to? How did they get 67 ft to the rear yard from the ESHA boundary as 67 feet would be 12 or 13 ft into the water when measured from the property line at the time I took this photo?

10. Why is it when I base my appeal for a de novo hearing that I mentioned this mis-measurement as one of the major reasons and yet nobody came to the site to measure and it just gets approved anyway?

11. On p28 of the report it is stated:
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.

Yet under 4.3.A.3 of the LIP defines ESHA as: ***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.***

Wouldn't it follow that the Cypress trees are indeed ESHA?

ex. 1

Under: 4.3.C.1 of the LIP: ***Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem have been eliminated.***

Lastly under 4.5.3A, C and D we have more guides to make all of the Malibu Lagoon Park ESHA:

4.5.3. Other types of environmentally sensitive habitat
A. Public accessways and trails, including directional signs
C. Restoration projects where the primary purpose is restoration of the habitat.
D. Invasive plant eradication projects if they are designed to protect and enhance habitat
values.

As this is one of the largest and greatest ESHAs in the Malibu area, please explain why isn't it ESHA to all of this park's boundaries? Considering the major trail to the beach for the public and the proposed restoration for the whole Lagoon Park, why isn't the entire park ESHA?

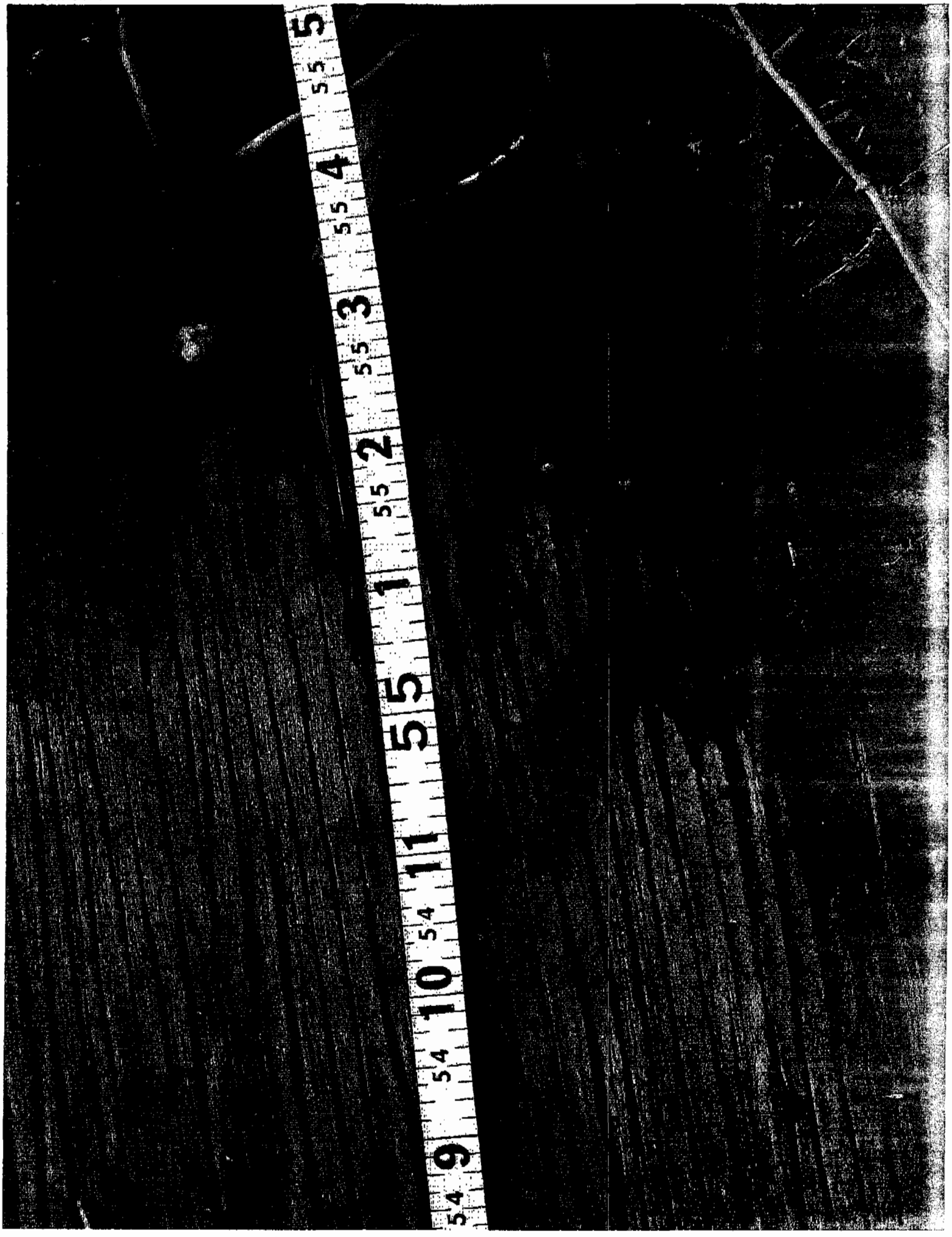
12. On p 35 of the Staff Report is states: ***Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.***

We have been presenting all this evidence to the contrary (alternative plot plans, moving the leech field to the front of the house, reducing the side yard MM, asking for a caisson foundation, etc.) to mitigate the impact on this site and the environment, yet you approve this development as though none of this was ever presented to you. Isn't this a violation of CEQA?

13. Good job with the Malibu Colony overlay district 20 ft rear yard set back not dominating the Malibu LIP's 100 ft ESHA buffer rules!

Regards,

Steve Littlejohn
7/5/08



Deanna Christensen

From: Steve Littlejohn [ljc@gte.net]
Sent: Monday, June 30, 2008 12:24 PM
To: Steve Littlejohn
Cc: Barbara Carey; Deanna Christensen; Frank Angel; Marcia Hanscom; richard Ibarra; Roy van de Hoek; Toni Littlejohn; Bill Littlejohn; Joanne Ventresca; Patt Healy; chester nite
Subject: Margolis residence buffer photo


48 ft -6.5 inches to ESHA boun...


62 ft to water.jpg (113 KB)


tape on boundary fence.jpg (22...


detail of ESHA boundary.jpg (6...

Hi Dianna:

Here are the photos that we spoke about (all taken on Sunday, 6/29/08).

(see the titles of the photos).

Tape of boundary fence = I hooked the tape measure to the park boundary fence which shows on the survey as being 0.7 feet outside (toward the lagoon) the rear property line. please note on the survey there is a 2nd chain link fence that is 18'-6" toward the proposed house at the west corner of this inner fence which is what I am contending is what Teracor measured to instead of the rear property line (it measures 67 feet to the stake described below to this west corner of the inner fence). By the way, I have never seen a rear property line survey stake at this site, so I don't know what Tercor was measuring to.

62 ft to water = self explanatory. This photo measures from the park boundary fence to the actual lagoon water's edge at this moment in time. This water level rises and falls with the tides and the state of the berm at the mouth of the lagoon. It is variable. The important thing here is how can it be 67 feet to a point where the earth is so dry that the hydrophytes cannot survive?

48' -6.5" to the ESHA boundary (also see the cropped photo that shows a magnified detail) = There has always been a wooden stake (it has a little red plastic tie on the top) marking a steel pin that was driven into the earth at this point that was spray painted day glow orange. When you read the consultant's report it describes what you see here perfectly. there is the water of the lagoon, then about 2 ft of mud flat or so, then about 10 feet up from the edge of the mud flat, you can see that the growth of the hydrophytes seems to stop right at this stake. You can see that the tape is measuring about 48' - 6.5" at this point (to this stake). If you do the math, this puts the rear property

ex. 1

line at 49 feet from the ESHA boundary. The project needs to be 51 feet back from this point, not 33 feet.

I hope that you will find this important enough to come an measure yourself. Perhaps have a representative from Teracor there as well?

If you verify that this fact, then it would seem logical that the applicant must design for a 51 ft rear yard set back and you cannot approve the incorrect design on July 10th. It would be logical to have this de novo hearing continued to allow the applicant the time to re-design.

Please call me after you review this.

Regards,

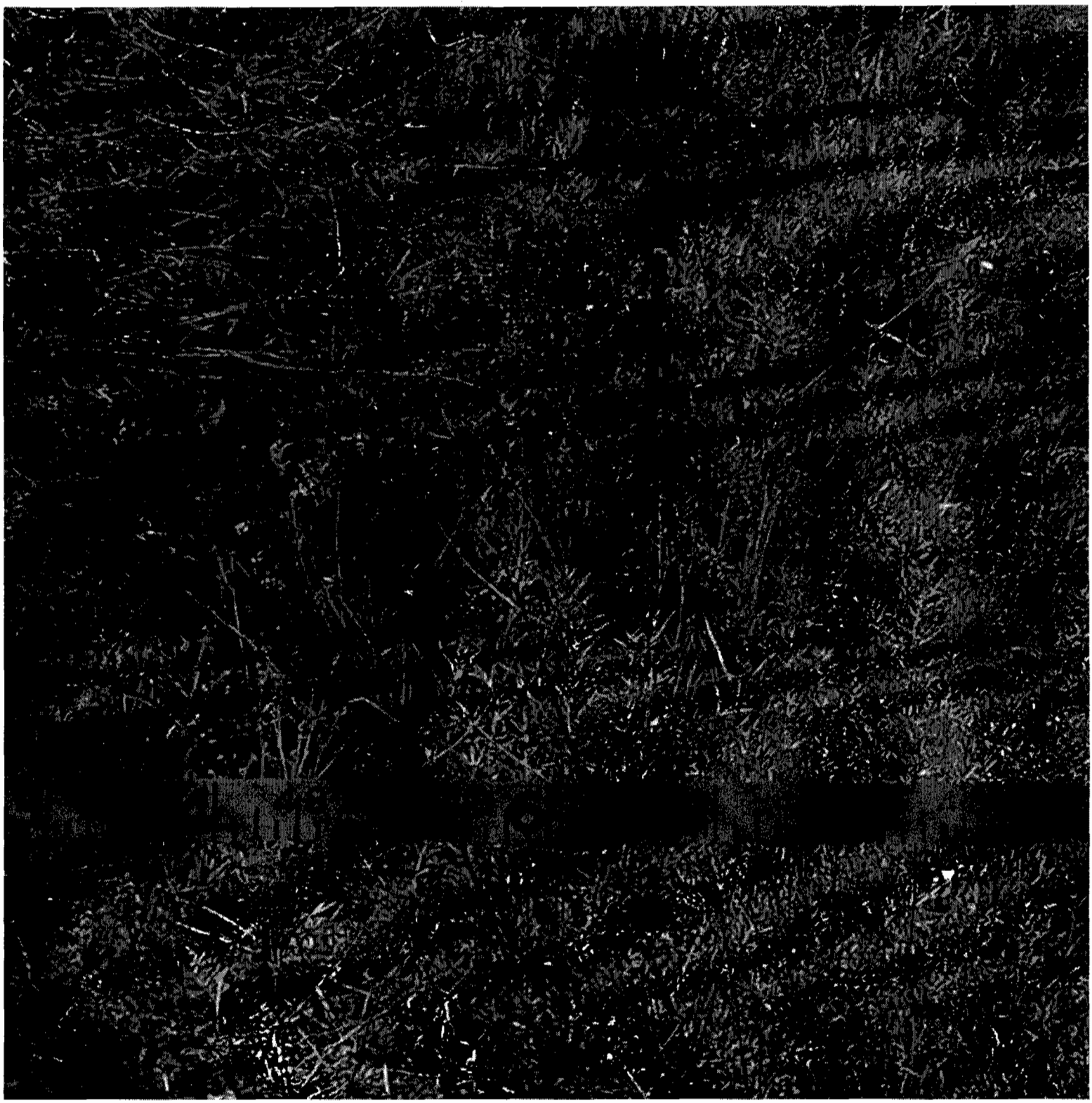
Steve Littlejohn
213-500-0442 = cell
310-457-9198 = office
310-457-5431 = morning office (cell doesn't work here)

ex. 1

ex. 1

ex. 1

ex. 1



ex.1

Deanna Christensen

From: Steve Littlejohn [ljc@gte.net]

Sent: Thursday, July 03, 2008 9:07 AM

To: Frank Angel; Marcia Hanscom; Patt Healy; Toni Littlejohn; chester nite; richard Ibarra; Roy van de Hoek; Marcia Hanscom; Barbara Carey; Deanna Christensen

Subject: engineer's letter

Hi Dianna:

Here is a letter (see the attachment) about why the caisson above grade beam foundation would not only be better for the ecosystem, but for the applicant himself. The applicant appears to be making a classic penny wise but pound foolish mistake here.

Please address these concerns. I am having my engineer come to the hearing unless it get continued over the mis-measurement to the ESHA boundary. Please let me know about that.

Regards,

Steve Littlejohn

ex. 1

THE ROLIN PARTNERSHIP
Architectural Engineering
P.O. Box 2408 Pismo Beach, CA 93448
805/481-5170 805/481-5270 fax

Mr. Steve Littlejohn
Re: 23405 Malibu Colony Drive
Malibu, CA

July 2, 2008

Dear Mr. Littlejohn,

I have reviewed the soils report by Grover Hollingsworth & Associates dated January 19, 2006 and the addendum of May 10, 2007. The addendum also had a plan of the proposed residence with schematic sections.

The soils have been analyzed and discussed in the referenced reports. My concerns would be the following:

a) If a ribbed mat footing is approved how can anyone guarantee that the ribs or mat will not cut any of the tree roots ?

b) If there is liquefaction and it occurs locally, what criteria can be used to guarantee minimum deflection or rotation ?

c) If 1" to 3" of settlement or 1 ¾" of differential settlement could occur, how do you insure the structural capacity of the building above the footings. If a mat slab rotates or tilts, and the walls stay perpendicular to the slab, then the walls are now tilted, or out of plumb, and the vertical loads imposed no longer are concentric with the walls and could cause out of plane bending. This could cause wall failure if not addressed. This is a structural engineering issue and not a geotechnical issue; but one that needs to be taken care of.

d) Also, I'm not an arborist but would the lack of oxygen or moisture to the tree roots affect their health ?

ex. 1

page 2

e) From a structural engineering standpoint, it would seem that a "poured in place" pile and grade beam foundation system would solve a lot of problems. Rotation would not be an issue. Vertical or lateral deflections could be reduced significantly and the magnitude of those moments reduced to very little. Furthermore the grade beams could be above grade, therefore not affecting the tree root structure.

f) Even with a well designed ribbed mat, you are guessing what would happen under earthquake conditions. Why would anyone want to take that chance ?

g) If the assumption is basically that the soil turns to "jello" during an earthquake, how do you develop friction at the bottom of the mat slab, or passive pressure to keep the building from moving laterally ?

Sincerely,

Kenneth W. Rolin

ex. 1

Design and Construction of Mat Foundations.

Accession Number : ADA216450

Title : Design and Construction of Mat Foundations.

Descriptive Note : Final rept.,

Corporate Author : ARMY ENGINEER WATERWAYS EXPERIMENT STATION VICKSBURG MS GEOTECHNICAL LAB

Personal Author(s) : Johnson, Lawrence D.

Report Date : NOV 1989

Pagination or Media Count : 356

Abstract : Mat foundations commonly support all types of structures. Flat mats from 2 to 8 ft in thickness often containing two-way steel reinforcement top and bottom usually support multistory or heavy structures. Mats less than 1 ft thick often constructed with steel reinforced ribs or stiffening crossbeams usually support light one or two story structures. Many of these mats have been designed and constructed for supporting permanent military facilities, particularly in heavy/shrinking and compressible soil. Some of these mats have experienced significant differential movement leading to cracking in the structure and have required costly remedial work. Attempts to reduce such maintenance expenses of some structures have lead to substantially increased design and construction costs for mat foundations. This report provides information on serviceability of structures, guidelines for evaluation of soil, and some structure input parameters for design analysis and guidelines for design and construction of ribbed mat foundations in expansive soils. Methods have been developed for evaluation of effective soil elastic moduli and stiffness of structures. New concepts are proposed for determining some soil input parameters for design in expansive soils such as the depth of the active zone for heave and edge moisture variation distance. Several case history studies of ribbed and flat mat foundations have been investigated to assist determination of suitable procedures for calculating deformation behavior of mat foundations. (jhd)

Descriptors : *FOUNDATIONS(STRUCTURES), *MATS, CASE STUDIES, COMPRESSIVE PROPERTIES, CONSTRUCTION, COSTS, CRACKS, DEFORMATION, DETERMINATION, MAINTENANCE, MILITARY FACILITIES, MODULUS OF ELASTICITY, REINFORCING MATERIALS, RIBS, SOILS, STEEL, STIFFNESS, STRUCTURES, THICKNESS, FIELD EQUIPMENT.

Subject Categories : CONSTRUCTION EQUIPMENT, MATERIALS & SUPPLIES
SOIL MECHANICS

Distribution Statement : APPROVED FOR PUBLIC RELEASE

ex. 1

To Members of the Coastal Commission
From: Patt Healy on behalf of the Malibu Coalition for Slow Growth (Appellant)
Re Th 11a A-4 MAL -07-095 23405 Malibu Colony Rd. 7-10-08
Date Written: July 2, 2008

Dear Commissioners:

We are appealing this project since its rear yard borders the Malibu Lagoon an ESHA. If not constructed properly this project will have serious negative impacts on the Malibu Lagoon ecosystem. This lagoon is of regional and statewide importance . As you are aware ninety five percent of our Coastal Wetlands have been destroyed and this particular wetland is one of the last remaining functioning wetlands and a major stopover for migrating birds as well as habitat for native species.

The Cypress trees that abut the western property line of this lot are an integral part of the lagoon ecosystem and we believe, that even though they are on private property in a residential area they should be considered ESHA. They are the roosting sites and possible nesting sites for Blue Herons, Egrets and other birds of prey including the Osprey, a species of special concern, that has been documented roosting in the Cypress. (photo 1 and 2, Ex1). Because of the trees special role in the ecosystem, they are in desperate need of preservation and will be destroyed if proper conditions are not imposed upon this property. Staff has imposed some conditions but not all that are needed to ensure the survival. of the Cypress.

ESHA

If you find the Cypress trees are ESHA , the appeal should be upheld , the project denied and the project redesigned to meet the ESHA requirements of the LCP.

Wetland Buffer

There is a legitimate conflict over the measurement of the required 100 foot setback buffer from the wetland boundary. .Appellants' biologist and Applicant's consultant have a legitimate depute as to the actual boundary. In fact the city biologist, at one time, until the applicants biologist decided otherwise, thought the wetland setback was further upland. (Ex 2)

Coastal Staff biologist Jonna Engels never measured the setback per Appellants request of Staff , rather relied solely on the Applicant's consultant's determination without the necessary site visit needed to make the proper buffer determination. This doesn't seem right and a site visit should take place by the Coastal biologist prior to your approving this project.

We ask that your decision be postponed until 100 foot setback from ESHA is measured by Coastal Staff to insure that the proposed development is set back 100 ft from the Malibu Lagoon wetland as required under the LCP.

If the Applicant is incorrect in its measurements, the mistake should be corrected otherwise it will set a precedent for the other lots that are yet to be built on and for the remodel/ tear down of the existing older residences that border the Malibu Lagoon

If our assessment is correct the project should be redesigned to meet the required 100 foot setback buffer from the Malibu Lagoon.

EXHIBIT 2
A-4-MAL-07-095 7.9.08 Addendum
Patt Healy Correspondence

Additional conditions

City staff and elected officials , City environmental Review Board, Coastal staff,. the Applicant , the Appellants all agree that the Cypress trees need to be preserved and not destroyed by the development of this project even if it is determined they are not ESHA.

There are 3 ways that the Cypress will die if the project is constructed without proper precautions. They are 1. Trimming the canopy, 2. Injury to the root system and 3. interruption of ground water flow and elevation of the water table. (Ex 3) Replacement trees will not make up for the destruction of 80 year old Cypress trees.

Trimming the canopy can't be avoided due to the height of the proposed structure and fire department requirements requiring clearing the canopy to 10 ft above the structure. This alone will weaken the trees but probably not kill them if pruning is done in the proper manner.

In order to not destroy these important trees and displace the birds that depend on them, the following added conditions need to be placed on this project and fulfilled prior to the issuance of a coastal permit.

1 In order to best protect the root systems of the Monterey Cypress trees and for safety reasons , we ask that the Applicant be required to utilize caissons with above the grade beams instead of its currently proposed foundation. Not only is it better for the trees but it is also a safer alternative for the residence since a matt foundation as proposed could end up tilting during a massive earth quake in-a liquefaction area.

2. In order to protect the Cypress tree root system , the pool be placed above ground. The excavation for the pool will destroy the Cypress root system in the vicinity of the pool and will likely lead to the trees demise and endanger the residence as the severed roots will likely destabilize these 80 ft. tall trees and could cause them to topple in the direction of the structure..

3. The leech field for the residence should be placed at the front of the house to protect the root system of the trees. If it is placed at its currently proposed location, the construction of the leech field will require roots to be cut , harming the trees and the effluent from the leech fields will cause a rise in the water table causing the roots to rot, further contributing to the trees demise.

4. Also it would help the continuing existence of the trees, if the Minor Modification for the side yard be denied and the 2.5 ft of requested reduction of the set back be given to the west side (7 ½ ft rather than 5 ft being asked for under this Minor Modification and let the east side be allowed to be 5 ft)

5. LIP section 4.4.1 requires applications for a coastal development permit require preliminary approval from the California Department of Fish and Game if new development is on a site that is adjacent to a stream or a wetland. There is no evidence in the city or Coastal Commission record that this approval has been obtained. A letter dated 3-28-07 from Fish and Game seems to indicate that this needed approval has never been obtained. Please condition this project to require that this approval be obtained. (Ex 4)

Not in Opposition to Project

We are not opposing the project. We are simply balancing the protection of the environment with the protection of private property rights.
These are all relatively simple fixes that will give the applicant his home and yet protect the Lagoon, the Cypress trees (and their continuing unique role in the ecosystem of the Malibu Lagoon).
This is fair to both the environment and to the Applicant.

We would like the opportunity to speak to you on this matter prior to the hearing and will try to reach you before then .

Thank you for considering our comments.

Exhibits
Photo 1 (Indicates Cypress trees proximity to Malibu Lagoon and birds roosting in them Contrary to Staff report even thought they are in a developed residential area and are allegedly regularly disturbed the have adapted well to any alleged disturbance see
(ex 1)
Photo 2 (Shows that birds roosting are Osprey a species of special concern that is rare)
Ex 1 (Contrary to staff report , Applicant's consultant in a 11-3-06 letter indicates that the Cypress could be nesting sites. "Due to the seasonal timing of their investigation nesting sites could not be confirmed" Also states that birds flushed from the trees returned quickly and that herons exhibited tolerance for construction noise and vehicular noise.)
Ex 2 (The city biologist believed the wetland boundary was further upland and only changed his mind when he read the Applicant's report)
Ex 3 (Frederick Roth consulting arborist in a 10-17-06 letter states how trees will be harmed and can die. which prompts our asking for the 5 special additional conditions.)
Ex 4 (3-27-7 letter from California Fish and Game . It indicates that Fish and Game may not be aware that under the LIP 4.4.1 before a coastal permit application can be processed their preliminary approval is required as part of the application process.)

ex. 2

Shows how Cypress are part of Lagoon ecosystems
Note Roosting Birds in Cypress

ex. 2

Photo
2.
42

ex. 2

TERACOR
RESOURCE MANAGEMENT

TEMECULA OFFICE
28999 Old Town Front Street Suite 202
Temecula, California 92590
T: 951 694 8000
F: 951 694 8035

03 November 2006

Date Received 11/7/06 Time 3:00 PM
Planning Commission meeting of 11/7/06
Agenda Item No. 6.E.
Total No. of Pages 2

RECEIVED
NOV 07 2006
PLANNING

Rick Margolis
Colony House I, LLC
2910 Valmere Drive
Malibu, California 90265

RE: GREAT BLUE HERON (*Ardea herodias*) AND BLACK-CROWNED NIGHT-HERON (*Nycticorax nycticorax*) PRESENCE ADJACENT TO A SINGLE FAMILY RESIDENTIAL LOT IN MALIBU, CA

Dear Mr. Margolis:

This letter has been prepared in response to your inquiry regarding the presence of great blue heron (*Ardea herodias*) and black-crowned night-heron (*Nycticorax nycticorax*) roosting in trees on and adjacent to your residential lot property in the Colony in Malibu. On 13 October 2006 S. Reed, Principal Biologist, **TERACOR Resource Management** (TERACOR), conducted a targeted biological evaluation of the subject property to confirm the species and disposition of wading birds/shorebirds on or near the subject vacant property. This analysis is based on our knowledge of 1) avian resources generally, 2) the Malibu lagoon area specifically, 3) field reconnaissance of your property, 4) designated "sensitivity levels" of the known species in question, and 5) City of Malibu and related project processing requirements.

Life History Parameters

The **great blue heron** is the largest heron in North America. The species is characterized by a short tail, long bill, occipital plumes and long rounded wings. They are known to nest as single pairs and small colonies. In the West, the range of the great blue heron stretches from the southeast Alaskan and northern British Columbian coasts to Baja California and southward into Central America. The great blue heron feeds in slow moving waters and seacoasts. Their diet consists of fish, amphibians, invertebrates, reptiles, small mammals, and even small birds. They nest in trees, shrubs, or on the ground near a water source.

The **black-crowned night heron** is a moderately-sized wading bird. They are characterized by a short neck, short legs, and a stocky frame. The range of the black-crowned night-heron stretches across North America from Washington to New Brunswick, and South through coastal Mexico, though they are known to breed on every continent with the exception of Australia and Antarctica. The black-crowned night-heron is a nocturnal and crepuscular feeder, and has a diet that consists mainly of fish, though they are also known to ingest invertebrates, mollusks, crustaceans, amphibians, reptiles, small mammals and plant materials. They prefer to nest near tree trunks, off distal forks of branches, in the open, or deep in foliage. They also exhibit a preference for islands and swamps for nesting due to the decrease of predatory threat, and nests are normally found near a water source.

Neither bird is protected under the federal or state Endangered Species Act.

CC: PC, CC, CA, PM, ECD Director, Planner, File, Counter, PC Corres., Rec. Secretary

Ex 1

see page 2

Findings and Recommendations

TERACOR's site evaluation confirmed great blue heron and black-crowned night-heron utilizing the Monterey cypress, Ficus and coral trees present on or near the Margolis property. We also observed a number of passerine birds in migration moving through the Colony generally. We observed that the resident herons exhibited a high tolerance for human presence (e.g., Colony construction and vehicular noise). Specifically we noted that birds flushed from the trees during our investigation returned quickly. Nesting could not be confirmed due to the seasonal timing of our investigation. The proximity of the Colony, however, to the Malibu Lagoon renders many trees throughout the Colony potential heron nesting sites.

Great blue heron rookeries (nest sites) have been designated as a California Species of Concern (CSC) locale by the California Department of Fish and Game (CDFG). Night herons have no designation by the State CDFG. Neither species or their nest sites are designated as sensitive by the U.S. Fish and Wildlife Service due to their overall abundance and adaptability to various wetland environments across the nation. In CEQA analyses, lead agencies generally take these designations into consideration even though CEQA specifically exempts single family homes on existing lots from this level of analysis.

The federal Migratory Bird Treaty Act (Act) specifically requires that no "take" of migratory species may occur directly to any bird or its active nest without federal authorization. "Take" occurs only if the bird is physically harmed or killed, or its active nest and eggs removed or destroyed. If the cluster of non-native trees on or near the Margolis property are to be trimmed or thinned, these activities should occur outside of the breeding season (breeding/nesting generally occurs in late Winter, Spring and early Summer). Tree removal/thinning activities should be monitored by a biologist or ecologist during any tree trimming work to avoid "take" of any bird protected under the Act.

It is our opinion that development of the property as planned can proceed as long precautionary measures described above are taken to minimuze effects to roosting sites in the area. If you have any questions please contact me at 951.694.8000. You may also reach me via email at sam@teracor.net.

Respectfully,

TERACOR Resource Management

Samuel Reed
Principal

H:\Active Projects\Margolis - Malibu Colony\Reports\Heron Letter Nov 2006.wpd

2 of 2

ex. 2

City of Malibu

23815 Stuart Ranch Road, Malibu, California 90265
(310) 456-2489 Fax (310) 456-7650

Planning Department

BIOLOGICAL REVIEW

Site Address: 23405 Malibu Colony
Applicant/Phone: Darren Domingue/ 310.452.9703
Project Type: Pre-application site meeting – ESHA Buffer determination
Project Number: PA 05-014

RESOURCES: Malibu Lagoon ESHA

SUMMARY OF DETERMINATION

On March 14, 2005 I met with the applicant and the prospective property owner to evaluate existing conditions on the subject parcel. The site is a narrow infill lot on the north (inland) side of Malibu Colony Road. North of the property boundary exists an access road for public utilities and the Malibu Lagoon. At that time, I made a determination that the ESHA boundary was likely adjacent to the north edge of the existing maintenance road. In my initial review for this pre-app, I mistakenly stated that the applicant had hired an independent biologist. However, since that time the applicant has hired the services of an independent biologist.

The applicant had the independent biologist make a determination regarding the limits of the Lagoon ESHA based on the results of focused surveys including an US Army Corps of Engineers protocol wetlands delineation. Based on the site visit and a meeting with the biologist, I concur with their biologist's determination that the nearest limits of ESHA to the subject property occur approximately 8 feet outside of the high tide line. Based on that determination, the required 100-foot ESHA buffer extends approximately 33 feet into the approximately 166.7-foot deep lot.

Pursuant to LIP Section 4.6.1 (B), new development shall provide a buffer of no less than 100 feet from the upland limit of the wetland. LIP Section 4.5 limits development within ESHA or ESHA buffer to aquaculture, wetlands-related scientific research, wetlands-related educational uses and incidental public service purposes.

Therefore, any other development shall occur outside of the 100-foot buffer. As defined in Chapter 2 of the LIP, development includes the placement or erection of any solid material or structure; and/or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste. As such, any proposed design for a residential structure must exclude any portion of the structure or septic system from the ESHA buffer zone.

Reviewed By: _____ Date: 6/9/05

Dave Crawford, City Biologist
310-456-2489 ext.227 (City of Malibu); e-mail dcrawford@ci.malibu.ca.us
Available at Planning Counter Mondays and Thursdays 8:30 a.m. to 12:30 p.m.

Ex 2
Experts disagree as to setback
Coastal Commission needs to measure
ex. 2

Frederick Roth, Ph.D.
Consulting Arborist

October 17, 2006

Bill Littlejohn
98A Malibu Colony Drive
Malibu, CA 90265

Dear Mr. Littlejohn:

The following letter is my assessment of the damage that development of the property to the east of your residence is likely to do to the Monterey cypress trees that line the east side of your property. It is based on my visit to the site on October 14, 2006.

Background: My survey identified 12 Monterey cypress trees of varying size, numbers of trunks and quality. Six of these trees are in good health and have good structure, and would be a significant loss to your property if damaged. These trees vary in trunk diameter from 29.3 to 42.2 inches at standard height. I estimated the value of these trees as landscape specimens, using standard methods prescribed by the Council for Tree and Landscape Appraisal to be in excess of three hundred thousand dollars.

The property line was clearly marked by survey stakes. Based on these stakes, the line varies from 10 feet from the tree's trunk on the north side of the property to approximately 12 inches inside the buttress roots on the south side.

Potential Damage: The impact of development would result from three distinct sources. These are:

- The need to prune the crowns of the trees in order to fit the proposed residence under the trees. The clearance needed was clearly indicated by the placement of "story poles" which literally tangled with tree crowns in some areas.
- Root injury caused by compaction of building pads, excavation for and construction of building footings and similar damage by footings of retaining walls if needed.
- Interruption in ground water flow and elevation of the water table due to construction of raised building pads if needed.

Assessment: Most of the tree crowns that appear to conflict with the story poles are of trees of poorer condition or structure, and clearance could be gained with relatively little damage to the more desirable trees. However, pruning at the property line to the tree's height would be highly destructive to the trees. Thus, if the proposed building is constructed as indicated, it would require that the trees overhang the structure.

6276 Mayberry Avenue
Alta Loma, California 91737
(909) 987-7165 (voice)
(909) 980-7995 (fax)

1 of 2

Ex 3

Damage / Death to Trees

ex. 2

It is generally recognized that roots of trees should not be pruned closer than 3 trunk diameters. This is possible at the north end of the line of trees, but there is far less clearance from the property line on the south end of the line of trees and it is questionable if building footings can be installed without seriously damaging at least some of the trees. It is clear that any root pruning on the east side of the trees would reduce their stability and increase the threat of their toppling to the east onto the newly constructed residence. I note that the trees already lean distinctly in that direction.

It is my understanding that the ground water in this location is frequently only a few feet from the surface and that installation of sanitation systems frequently requires that the building grade be raised to allow proper installation. Such raising of the grade could potentially damage the trees by severing roots for installation of retaining walls and by alteration of the water table, possibly resulting in saturated conditions in the current root zone. Under these conditions, the trees would be subject to root death due to anaerobic conditions and promotion of root rots.

The trees are approximately 80 years old, relatively old by the standards of the species, and thus are less able to tolerate significant changes in their environment than younger trees. The impact of the construction I have discussed above could easily cause the decline and death or structural failure of the trees.

Thank you for inviting my assistance with this situation, and please call me if you have any questions regarding this letter.

Best regards,

Frederick Roth, Ph.D.
Consulting Arborist

ex. 2

DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201

March 28, 2007

RECEIVED
APR 04 2007

Mr. Evan Langan
City of Malibu
23405 Malibu Colony Road
Malibu, CA 90017

Draft Mitigated Negative Declaration
23405 Malibu Colony Road Single Family Home
SCH # 2007031038, Los Angeles County

Dear Mr. Langan:

The Department of Fish and Game (Department) has reviewed the Initial Study (IS) and draft Mitigated Negative Declaration (SMND) for the above referenced project. The project consists of an application for a coastal development permit proposing construction of a new 5,200 square foot two-story single family home and a 1,368 square foot attached garage, pool/spa, grading and onsite wastewater treatment system. The project is located at 23405 Malibu Colony Drive within the coastal zone, City of Malibu. The site is vacant and located within a residential area. The site supports on site cypress trees providing roosting habitat for herons and raptors and is located near Malibu Lagoon.

The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Guidelines (CEQA), Section 15386).

Impacts to Biological Resources

Impacts to Native Birds - The Initial Study states that Malibu Lagoon is located to the north of the project site and that the site supports cypress trees that provide habitat for roosting herons and raptors, however no herons or raptors have been documented to have ever nested in the trees. The IS states that "several of these trees are proposed to be pruned under the proposed scope of the project".

a. The Project will result in the removal and/or disturbance to nesting bird habitat and therefore has the potential of impacting nesting native birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918(50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

Ex 4

173

ex. 2

b. Proposed project activities (including disturbances to native and non-native vegetation, structures and substrates) should take place outside of the breeding bird season which generally runs from March 1- August 31 and as early as February 1 for raptors to assist in the avoidance of take (including disturbances which would cause abandonment of active nests containing eggs and/or young). Take means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill (Fish and Game Code Section 86). Great Blue Herons have been documented to begin nesting as early as December within some coastal areas of Los Angeles County such as Marina Del Rey.

c. If project activities cannot feasibly avoid the breeding bird season, the Department recommends that beginning thirty days prior to the disturbance of suitable nesting habitat the project proponent should arrange for weekly bird surveys to detect any protected native birds in the habitat to be removed and any other such habitat within 300 feet of the construction work area (within 500 feet for raptors) as access to adjacent property allows. The surveys should be conducted by a qualified biologist with experience in conducting breeding bird surveys. The surveys should continue on a weekly basis with the last survey being conducted no more than three days prior to the initiation of clearance/construction work. If a protected native bird is found, the project proponent should delay all clearance/ construction disturbance activities in suitable nesting habitat or within 300 feet of nesting habitat (within 500 feet for raptor nesting habitat) until August 31 or continue the surveys in order to locate any nests. If an active nest is located, clearing and construction within 300 feet of the nest (within 500 feet for raptor nests) or as determined by a biological monitor shall be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting.

Limits of construction to avoid a nest should be established in the field with flagging and stakes or construction fencing. Construction personnel should be instructed on the sensitivity of the area. The project proponent should record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to the protection of native birds.

d. Tree pruning should be minimized to the extent necessary to protect public safety and property value while not precluding continued use by avian species for roosting and nesting sites as feasible.

e. Landscaping on the proposed project site should consist of native species which will facilitate use by avian species.

f. Artificial night lighting should use shields which direct light away from any wildlife habitat areas on or adjacent to the site including upward into roost trees.

The Department recommends that the above concerns are addressed prior to lead agency approval of the proposed project.

Thank you for this opportunity to provide comment. Questions regarding this letter and further coordination on these issues should be directed to Mr. Scott Harris, Associate Wildlife Biologist, at (626) 797-3170.

Sincerely,

Larry L. Eng, Ph.D.
Regional Manager

ex. 2

ANGEL LAW Law Offices of Frank P. Angel

2601 Ocean Park Blvd., Suite 205
Santa Monica, CA 90405
Tel: (310) 314-6433
Fax: (310) 314-6434

July 8, 2008

Deanna Christensen, Coastal Program Analyst
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001-2801

VIA E-mail: dchristensen@coastal.ca.gov, and Fax: (805) 641-1732

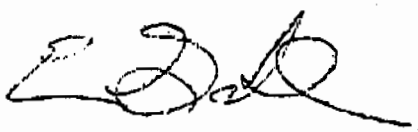
Re: Appeal number A-4-MAL-07-095 (Margolis, Malibu)

Dear Ms. Christensen:

Please see the attached letter, submitted by our office to the Malibu Planning Commission on June 4, 2007, for purposes of the above-referenced project. Although this letter is already part of the record of proceedings for the project, in an abundance of caution, we are resubmitting the letter to your office for purposes of exhaustion of our administrative remedies. After reviewing the staff report for the upcoming Coastal Commission hearing of July 10, 2008 regarding the project, we feel that all of the issues raised in the attached letter are still valid and, thus, warrant resubmission.

Sincerely,

ANGEL LAW



Erin Ganahl

Enclosures (1)

EXHIBIT 3
A-4-MAL-07-095 7.9.08 Addendum
Frank Angel Correspondence

ANGEL LAW Law Offices of Frank P. Angel

3250 Ocean Park Blvd., Suite 300
Santa Monica, CA 90405-3219
Tel: (310) 314-6433
Fax: (310) 314-6434

June 4, 2007

Planning Commission
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265

Re: Coastal Development Permit No. 06-023, Initial Study No. 07-001, Negative Declaration No. 07-001 and Minor Modifications Nos. 06-049 and 07-016 – Planning Commission June 5, 2007 Public Hearing

Dear Planning Commissioners:

We offer these comments on behalf of our client Bill Littlejohn, concerning the Initial Study and Negative Declaration (ISND) prepared for the project applications submitted by Darren Domingue for Richard Margolis (referenced above). To the extent planning staff still claims that the project is exempt from the California Environmental Quality Act (CEQA), as was already brought to your attention at the previous hearing and further explained below, this project is not exempt from CEQA. Thus, staff's decision to provide CEQA review, i.e., prepare an initial study was a correct, albeit late, decision.

Unfortunately, the ISND at issue fails to comply with CEQA's information disclosure requirements. Furthermore, the project, as sited and designed, fails to conform with the Malibu Local Coastal Program (MLCP), including strict environmentally sensitive habitat area (ESHA) protection provisions contained in both the MLCP land use plan element (MLUP) and the MLCP implementation plan ordinances (MLIP). For these reasons, we respectfully request that the Planning Commission (Commission) deny the project applications, and order preparation of a revised, adequate ISND.[1]

[1] Denial of the applications is mandated by CEQA, because under CEQA, a legally sufficient environmental document is a precondition to the legality of the public agency's approval decision. (See *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal.App.3d 185, 204.) Denial of the coastal development permit and the minor modifications is also mandated by the state coastal and planning laws -- including the California Coastal Act of 1976 (see Pub. Resources Code, § 30604, subd. (b)) -- and the MLCP. Under these laws, development must conform to the applicable local coastal program. The MLCP specifically states that development "shall be consistent with the [MLUP] map, and all applicable [M]LCP policies." (MLUP, ch. 5, subpart C.1; see also MLIP, § 13.3(C); see

ex. 3

The ISND's informational and analytical shortfalls, in summary, include the following:

- The ISND fails to describe the project and its unique environmental setting -- Malibu Lagoon and Surfrider Beach, a setting of statewide significance -- with sufficient detail for your Commission and the public to see and weigh all relevant direct and cumulative environmental impacts of the project;

- The ISND mischaracterizes and fails to disclose biological (land and marine) resources that are part of the project's environmental setting, and fails to adequately address all relevant direct and cumulative project impacts on these resources (e.g., septic system outflows in relation to ground water table; impacts to roosting bird colonies); and

- The ISND fails to point out any of the project's substantial inconsistencies with the Malibu Local Coastal Program (MLCP).

Furthermore, the Commission should note that substantial evidence is on record with the city, showing a fair argument that the project's adverse impacts on the environment are potentially significant. Therefore, and given the fact that the ISND proposes little mitigation to reduce these impacts to a level of insignificance, the Commission should order preparation of an environmental impact report (EIR). An EIR would truly disclose the project's adverse, potentially significant environmental impacts.[2] An EIR would also offer the Commission and the Environmental Review Board (ERB) project design alternatives to consider, as required by the ESHA policies of the MLCP.[3]

CEQA EXEMPTIONS DO NOT APPLY

In its ISND regarding this application, staff states that the project qualifies for class 3 and class 32 categorical exemptions from CEQA. Not so.

---

also Malibu Mun. Code, § 17.02.040(A)(1) ("[n]o building may be erected ... nor shall any land, building or premises be used, designed or intended to be used for any purpose or in any manner which is in conflict with the purposes and intent of the city's general plan; see *id.*, § 17.02.040(A)(2); see *Land Waste Management* v. *Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 957-959 ("[u]nder established law, local government agencies are powerless to issue land-use permits which are inconsistent with governing legislation").)

[2] Adverse environmental effects of a project that are *potentially* substantial must be treated as "significant" within the meaning of CEQA. (See *Vineyard Area Citizens for Responsible Growth, Inc.* v. *City of Rancho Cordova* (2007) 40 Cal.4th 412, 448 & fn. 17.)

[3] If the Commission orders preparation of an EIR, it will not need to order a revised ISND. (See CEQA Guidelines, § 15063, subd. (a).)

In order to qualify for the class 32 exemption, the project must have "no value as habitat for endangered, rare or threatened species." (CEQA Guidelines. § 15332, subd. (c).) As will be discussed below, there are 15 healthy, mature cypress trees whose branches and roots are partially on the subject property. As explained below, the trees provide essential roosting habitat for a number of rare and protected bird species, and will likely suffer substantial damage from the proposed project. Further, in order to qualify for a class 32 exemption, the project must be consistent with all applicable land use plans and zoning regulations. (CEQA Guidelines. § 15332, subd. (a).) As will be discussed below, this project is inconsistent with the MLCP on many fronts. Finally, in order to qualify, approval of the project must not result in any significant effects on water quality. (CEQA Guidelines. § 15332, subd. (d).) As will be discussed, there is a substantial likelihood that the project, as currently proposed, will harm water quality in the Malibu Lagoon by placing a pool, spa and a septic leach field adjacent to the lagoon in an area with a high water table. For all of these reasons, the class 32 categorical exemption is totally inapplicable here.

Further, the project does not qualify for the class 3 categorical CEQA exemption because exceptions to that (and exemption 32) apply. According to CEQA Guidelines section 15300.2, subdivisions (b) and (c), a categorical exemption may not be used where the cumulative impact of successive projects of the same type in the same place, over time is significant, or where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

Clearly there are "unusual circumstances" in this case that result in a substantial likelihood, if not certainty, that the project will have significant direct or cumulative effects on the environment. First, the project site's location is highly unusual: it borders on Malibu Lagoon (part of state parkland), *and* is immediately adjacent to a MLCP-designated ESHA (the lagoon and state parkland). Second, will impact the Cypress trees on the adjacent property, which have roots and branches extending far into the development site. As the Commission was apprized at the last hearing, these trees serve as a roosting habitat for a myriad of birds, at least two of which are California species of special concern -- the Osprey and the Sharp-shinned Hawk. The trees represent an important ecological feature due to their support of the birds; they qualify as an ESHA, as explained below.

For these reasons, the project is subject to CEQA. The exemptions cited by staff are simply inapplicable.

THE INITIAL STUDY/NEGATIVE DECLARATION IS INADEQUATE

The ISND for the project fails to meet the content requirements for initial studies. These are set forth in CEQA Guidelines section 15063. Its requirements must be met before the Commission may approve the project.

CEQA Guidelines section 15063, subdivision (a)(1) states that "[a]ll phases of project planning, implementation and operation must be considered in the Initial Study of the project." Here, the project description is inadequate. The ISND fails to describe and consider relevant aspects of the project. It offers little information regarding specific siting and design of project-related structures, including, importantly, the septic system/leach field. All we know is that it will likely be placed within the lagoon ESHA buffer. Further, the ISND should disclose impacts from all phases of development, including impacts from the construction phase, such as noise, where the staging area will be and increased vehicle traffic. There must be scientific evidence showing at what decibel level, noise impacts are considered insignificant in relation to parkland uses and the roosting habitat.

The ISND also fails to disclose likely impacts to local biological resources, such as severe damage to or death of the stand of mature cypress trees, as evidenced by two letters from professional arborists (see 12/19/06 letter from Richard Ibarra, pp60-61 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2; 10/17/06 Letter from Fred Roth, pp57-59 of June 5, 2007 Meeting Agenda Item 6F attachment Part 3). The damage to these trees will result in harm to local migratory bird populations that are found to roost there. The ISND fails to even mention over half of the bird species that have been frequently observed in cypress trees (as described in a November 5, 2006 letter from the Audubon Society, p62 of June 5, 2007 Meeting Agenda Item 6F attachment Part 3), and summarily dismisses the near certain significant disruption to these birds through harm to the cypress trees, their roosting habitat (discussed in detail below), stating that the "proposed improvement of the subject property 'would have no discernable effect to area habitat or wildlife.' " (ISND at 13.) Statements of "no discernable effect" without accompanying evidentiary support or analysis are unacceptable. (See *Citizens Assn. for Sensible Development of Bishop Area* v. *County of Inyo* (1985) 172 Cal.App.3d 151, ___.)

According to section 15063, subdivision (d) of the CEQA Guidelines, the IS must also include: (1) a description of the project including the location of the project, and (2) an identification of the environmental setting. Without an accurate, definite project description, and without an adequate description of the setting, impacts analysis will be skewed and the environmental document inadequate. (*City of Redlands* v. *County of San Bernardino* (2002) 96 Cal.App.4th 398, 406.) Here, the location and parameters of septic system in relation to Monterey cypress tree root system, groundwater and groundwater flows, are not described or dealt with. Further, the Lagoon and its ecological functions and recreational uses are not described in any detail whatsoever. Also, there is no discussion in the ISND of whether the cypress trees qualify as ESHA, despite a substantial evidence to support such a finding. [CCC biologist letter re Villa Venetia.] Thus, the environmental setting is inadequately described. As a result, impacts analysis necessarily could not be thorough.

CEQA Guidelines section 15063, subdivision (d)(4) requires a discussion of the ways to mitigate potentially significant effects. The ISND dismisses all impacts as being either

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nonexistent or less than significant, and thus states that no mitigation measures are required. This conclusion stands in direct contrast to comments provided by the California Coastal Commission, California Department of Fish and Game, two professional arborists, an ecologist, the Audubon Society, and other concerned citizens. What thresholds of significance did staff use for its conclusion that no aspect of this project would have a significant environmental impact, with or without mitigation? The likely damage to and potential death of many roosting trees (explained below) adjacent to an important avian feeding ground can hardly be considered insignificant by this standard. (See CEQA Guidelines, § 15065, subd. (a).) The placement of a sewage drainage field adjacent to an ESHA (likely inside of the buffer), which also happens to be a state park and an extremely important ecological feature for the southern California coast, can hardly be considered insignificant. As a result, the ISND again fails as an adequate disclosure and analysis under the requirements of CEQA.

CEQA Guidelines section 15063, subdivision (d)(5) requires an examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls, i.e., MLCP. The ISND fails to discuss many of the relevant sections of the MLCP. (See Exhibit 8 to April 26, 2007 comment letter from the Malibu Coalition for Slow Growth/Patt Healy, found at pp12-37 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2). As will be discussed below, the project is indeed inconsistent with important, mandatory policies and regulations of the MLCP, yet the ISND claims that the project is consistent with the MLCP.

For the foregoing reasons, the ISND fails to meet the requirements of CEQA. This Commission, therefore, should not approve the project unless and until the project application complies with CEQA and adequately discloses and truthfully describes the project's environmental impacts.

AN ENVIRONMENTAL IMPACT REPORT IS REQUIRED

CEQA requires an EIR whenever substantial evidence supports a fair argument that the proposed project may produce significant environmental effects. (CEQA, §§ 21080, subdivision (d) and 21082.2, subdivision (d); CEQA Guidelines, § 15064(f)(1).) Under well-settled CEQA case law, where a fair argument, based on substantial evidence, of a substantial impact on the environment or of local plan inconsistencies is presented, an EIR is required. (See *Pocket Protectors* v. *City of Sacramento* (2004) 124 Cal.App.4th 903, 930-931.) As explained next, this EIR standard is met in this case.

The Project is Inconsistent with the MLCP.

Section 30240, subdivision (a) of the Coastal Act requires that ESHAs "be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240, subdivision (b) states that "[d]evelopment in areas adjacent to environmentally sensitive habitat areas *and parks*

and recreation areas shall be sited to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas." (Emphasis added.) To this end, the MLCP has designated certain areas as ESHA (MLUP Policy 3.1), and has established that any other area that contributes to the viability of plant an animal species that is rare, threatened, endangered or of "Special Concern" *is also to be considered ESHA* (MLUP Policy 3.4).

The proposed project abuts a designated ESHA: the Malibu Lagoon State Park. According to MLUP Policy 3.14, any new development must be sited and designed to avoid ESHA impact. There is some discrepancy in the record regarding the delineation of the ESHA boundary. On one hand, the applicant's consultant (and the City Biologist) place the boundary at 33 feet past the Margolis property line. On the other hand, letters that have been submitted by the California Coastal Commission (11/6/06, attachment 2 to 5/31/07 Supplemental Commission Agenda Report, and 12/27/06, found at pp46-47 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2) and numerous citizens (Steve Littlejohn, 11/7/06, found at pp62-66 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2 and 4/23/07, found at pp8-11 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2; Patt Healy, 11/6/06, found at pp63-65 of June 5, 2007 Meeting Agenda Item 6F attachment Part 3) proffer substantial evidence that the ESHA extends substantially closer to the property line, and likely includes the stand of cypress trees. A December 27, 2006 letter from Barbara Carey, Supervisor of Planning and Regulation for the Coastal Commission, to the Malibu Planning Commission (found at pppp46-47 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2) states that "it is unclear from the staff report whether the upland portion of the wetland/lagoon was surveyed for habitat that meets the definition of ESHA, or whether the ESHA boundary was based solely upon the wetlands delineation." In fact, the ISND and the June 2005 report by the applicant's biologist (Terracor), relied on by the ISND, makes it quite clear that the ESHA boundary determination was based solely on the Terracor wetlands delineation, and does not take any other considerations into account that might establish science-based ESHA boundaries. The Coastal Commission's wetlands delineation guidelines provide helpful guidance in this regard. The Coastal Commission letter goes on to state that "[c]onsideration should be given to whether these [cypress] trees are ESHA, pursuant to LUP Policy 3.4." Still, the ISND fails to even mention, much less inquire into, this issue. Indeed, the ISND flatly ignores all evidence presented by all parties other than the applicant's biologist as to where the ESHA boundary lies, despite the highly credible evidence presented that the upland portion of the Lagoon area and the cypress trees themselves are likely ESHA. This runs directly counter to the policies of the MLUP and thus puts the proposed project out of conformity with the MLCP.[4]

Furthermore, MLUP Policy 3.23 dictates that "development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible"

[4]In City of Carmel-by-the-Sea v. Board of Supervisors (1986), 183 Cal. App. 3d 229, the court found that an EIR is especially useful when there is a dispute over the boundaries of a sensitive environmental area (wetlands).

(emphasis added); to that end, "buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect." (MLUP, Policy 3.23) These buffers, at a minimum, must be 100 feet in width. (Id.) Issues were raised at the ERB meeting of December 20, 2006 regarding the apparent conflict between the smaller ESHA buffer required by the Malibu Colony Overlay District and the minimum 100-foot buffer required by the Malibu LUP. Contrary to staff, Malibu Colony Overlay District standards do not trump these ESHA standards. The more restrictive ESHA standards control.[5] (See 12/27/06 letter from California Coastal Commission.)

As a result of the discrepancy in ESHA delineation, there is a discrepancy with respect to acceptable, science-based ESHA boundaries. The applicant has designed the proposed project to be built out as close to the ESHA boundary (applicant's version) as could possibly be allowed (and possibly within the ESHA buffer, as the septic system is likely within the ESHA buffer). Thus, if it is determined (as it should be) that the ESHA boundary is actually closer to the Margolis property, the proposed project will be found to be within the ESHA buffer.

Second, as the project is currently planned, though it is never mentioned or analyzed, it appears as though the septic leach field will be constructed within the ESHA buffer (given the ESHA boundary as delineated by the city/applicant). (See p.20 of June 5, 2007 Meeting Agenda Item 6F attachment Part 3.) This is completely unacceptable and in contrast with the clear dictate of the MLUP. The city biologist stated, in a June 9, 2005 letter to the applicant (p52 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2), that according to Chapter 2 of the MLIP "development includes the placement or erection of any solid material or structure; and/or disposal of any dredged material or of gaseous liquid, solid, or thermal waste."[6] Thus, "any proposed design for a residential structure must exclude any portion of the structure or septic system from the ESHA buffer zone." (Id.) The ISND completely fails to mention or analyze the septic system for the proposed project (in violation of CEQA disclosure requirements, as discussed

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[5] According to Malibu LUP Policy 3.30, "[p]rotection 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." Further, section 17.04.070 of the Malibu Municipal Code's zoning regulations states: "Where conflicts occur between the regulations of this title and the building code or other regulations effective within the city, the more restrictive of any such regulations shall apply."

[6] LIP 2.1 ("General Definitions") defines "development" as "on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in density or intensity of use of land."

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above); however, as discussed in the November 7, 2006 letter from Steve Littlejohn to the Commission, it appears extremely likely that the septic drainage field will, in fact, be sited in the ESHA buffer. Clearly, installation of a septic system/leach field on undeveloped land would constitute disposal of liquid/solid/thermal waste, and would certainly constitute a change in intensity of land use. It represents "development" under MLIP section 2.1, and thus violates the MLCP's ban on development within an ESHA buffer.

Finally, MLUP Policy 3.4 dictates that "[i]f there is no feasible alternative that can *eliminate all [ESHA] impacts*, then the alternative that would result in the fewest or least significant impacts shall be selected."[7] The project violates this policy, as its size, design and siting on the property are such that it *will* not result in the fewest or least significant impacts. The ISND summarily dismisses the mere possibility of alternative project designs with only the most cursory discussion, and no supporting evidence. Strangely, on pages 13-14 of the Commission Agenda report regarding this project, staff states that concerns brought up in comment letters were addressed 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." Did staff analyze alternatives? If so, where is the analysis and why was it not disclosed?

In a letter from staff to the applicant (7/8/06), staff required a feasible alternatives report, the purpose of which is to demonstrate that the project is the least environmentally harmful alternative. The applicant, in turn, did submit such a report (8/9/06). However, the report merely discusses the fact that alternative designs were considered and rejected based on stylistic preference; the report does not even mention environmental impacts of the proposal, let alone discuss or analyze alternatives that might have a reduced environmental impact.[8] Importantly, the applicant's stylistic or size preferences are not a

[7] MLUP Policy 3.14, in its entirety, states:

> "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."

[8] According to the National Association of Homebuilders, the average size of a home in the United States was 2,330 square feet in 2004. Applicant proposes a home nearly three times this size, with an additional six car garage (and two more outdoor parking spaces,

legally sustainable ground for rejecting alternatives. (See *Mein* v. *San Francisco Bay Conservation Etc. Com.* (1990) 218 Cal.App.3d 727, 735; see also *Citizens of Goleta Valley* v. *Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-1182, 1185, 1187.) Moreover, review of the applicable MLCP policies shows that the duties of staff and the Commission go far beyond rubber-stamping, or deference to, the applicant's desired size, design or site planning. Contrary to the views expressed by one planning commissioner at the last hearing on the project, the Commission has the authority and, indeed, the duty, under the MLCP, to critique project design and call for a smaller, environmentally superior re-design, as necessary to meet all applicable ESHA policies. This is not "social engineering." This is enforcing the MLCP and state CEQA policy, especially the policy "that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be *the guiding criterion in public decisions*." (Pub. Resources Code, § 21001, subd. (d).)[9] Again, the *Mein* case referenced above, and common sense, indicate that a "decent home" need not be a 6568-square foot mansion, including a six-car garage, pool and spa, as desired by the applicant. (See also fn. 8, *ante*.)

The apparent lack of consideration of alternatives presents an extremely compelling reason for the preparation of an EIR. An essential element of an EIR is the consideration of project alternatives. (See CEQA Guidelines, § 15126.6.) As such, an EIR would

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totaling eight), a pool and a spa. To maintain that any reduction whatsoever in the footprint or interior area of the home is not feasible is simply ludicrous. How can such a position possibly be justified, particularly when the environmental sensitivity of the area are taken into account?

[9] Another relevant CEQA policy is to "[r]equire governmental agencies at all levels to consider qualitative factors as well as economic and *technical factors* and *long-term* benefits and costs, in addition to short-term benefits and costs *and to consider alternatives to proposed actions* affecting the environment." The Commission cannot satisfy its duty under MLUP policy 3.14 to consider alternatives, unless alternative plans are actually presented to it and the public for comment. CEQA (and, for that matter, the MLCP, given its policy requirements) require the ERB, the Commission, the city council (in case of an appeal), and the public to have before them the *basis* for staff's opinions so as to enable them to make an *independent, reasoned* judgment. (See *Santiago County Water Dist.* v. *County of Orange* (1981) 118 Cal.App.3d 818, 831.) Mere say-so by staff/applicant is not enough. The IS must *disclose* the data and evidence relied on for the city's findings concerning the project. (*Citizens Assn. for Sensible Development of Bishop Area* v. *County of Inyo* (1985) 172 Cal.App.3d 151, 171-172.) In this case, the ISND does not disclose any data or evidence that would show why there is no feasible, environmentally superior alternative to the project as designed and sited -- nor is there an EIR to offer that information. To show compliance with MLCP policy 3.14, the ISND cannot simply ignore feasible alternatives. The ISND must inquire into whether the project would be consistent with the MLCP. (See CEQA Guidelines, § 15064, subd. (d)(5).)

assist the Commission and the applicant with bringing the project proposal into conformity with the MLCP by helping to achieve the requirement that the chosen project plan have the least impact on ESHA, and would assist the Commission in making a fully informed decision on the project.

The ISND is also inconsistent with the MLCP because standards for many of the findings required for approval of this project are not met.

In order to issue a coastal development permit (as requested in this case), four findings must be made (MLIP 13.9), including that the project is the least environmental damaging alternative, and, under circumstances that apply in this case, that the project conforms with the recommendations of the ERB or findings explain why it cannot. As will be explained below, the project is not the least environmentally damaging alternative. Furthermore, the ERB recommended that the foundation for the proposed recommendation be designed to minimize impacts to the Cypress stand. This has not been done, and no explanation is given as to why it cannot be done (see Agenda Report p7). Clearly, then, a coastal development permit may not be issued unless and until these defects are cured.

One finding that must be made in order to grant the two requested Minor Modifications is that the project is consistent with the policies of the MLCP. (MLIP 13.27.5) As discussed, the project is not consistent with the MLCP. Thus, the two requested minor modifications must not be granted unless and until these defects are cured.

A development permit for use in the ESHA overlay district (which applies within 200 feet of a designated ESHA) must be accompanied by three findings, one of which is that the use proposed is consistent with applicable zoning (MLIP 4.7.6). As has been explained, the proposed project is inconsistent with the MLCP, and is thus inconsistent with applicable zoning regulations.

Finally, at least two required agency approvals do not appear to have been secured for this project. MLIP Policy 4.4.1 requires that applications for development on sites containing or adjacent to a wetland include evidence of at least preliminary approval from the California Department of Fish and Game (CDFG). CDFG has commented on this proposed project, but the letter cites problems with the project (as yet unresolved) and in no way suggests approval of the project. This deficiency must be cured before the project may be approved.

MLUP policies 3.60 and 4.49 (MLUP, at 60, 90) require development applications to include a fuel modification plan approved by the County Fire Department's Forestry Division, including a site plan depicting possible brush clearance on adjacent properties. As we have not been able to locate any such approval in the record, there appears to be no evidence of Forestry Division approval of any fuel modification plan for any on-site development.

The project proposal is also inconsistent with the MLCP's zoning conformance standards for parking. According to the Commission Agenda Report of May 3, 2007, the MLCP allows two indoor and two outdoor parking places. The project proposal includes six indoor and two outdoor parking places, according to the plan drawings contained in Commission Resolution 07-29. Why is it, then, that the Agenda Report states that the project proposes six parking places (total), and states that this is consistent with the MLCP?

The Project Will Have a Significant Effect on the Environment.

According to the *Pocket Protectors* case, if "there is substantial evidence in the whole record supporting a fair argument that a project may have a significant nonmitigable effect on the environment, the lead agency shall prepare an EIR, even though it may also be presented with other substantial evidence that the proposed project will not have a significant effect." (*Pocket Protectors*, 124 Cal.App.4th at 927.) "Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a).) Notably, "personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument." (*Pocket Protectors*, 124 Cal.App.4th at 928.)

Here, it is clear that the Commission must prepare an EIR. Substantial evidence exists throughout the record of a fair argument that the project will have a substantial impact on the environment.

There is substantial evidence that the stand of mature cypress trees adjacent to the project will be damaged and even killed by construction of the project due to grading and compacting of the soil in the root area, substantial pruning of branches, and creation of anaerobic conditions due to construction of the septic system.

The December 2006 biological study by Terracor, the applicant's consultant, on pages 26 and 27, acknowledges that there will be grading and removal of "non-native plant species," and on page 3 mentions that there are "mature, non-native Coral and Cypress trees on the adjoining properties." However, this is as close as the biological study comes to acknowledging any impact to the Cypress stand. The biological study suggests, with no foundation or factual basis, that it might be ecologically more "appropriate" if the Cypress trees were *not* present. Not only is this a non sequitur, it runs directly contrary to the MLCP's ESHA requirements which mandate protection of habitat for protected and special concern species, at least two of which are found to roost in the Cypress stand (discussed below).

Similarly, the ISND mentions that the trees are proposed to be pruned (page 13), but never mentions that the pruning will necessarily be drastic due to placement of the building envelope and the 10-foot minimum fuel modification zone around it, and that

additional project impacts are likely to kill the trees. Instead, the ISND says that any such impact will "have no discernable effect to area habitat or wildlife." (ISND page 13.) To support this conclusion, the ISND asserts that 1) the trees will not be removed entirely, and 2) that the area has already been disturbed by decades of development. The assertion that there will be no impact because the trees will not be removed entirely lacks any scientific foundation. The assertion that there will be no impact from the proposed project because the trees have already been disturbed is factually wrong; the development has been in place (including the next door tennis court) since before the trees were planted (see Littlejohn letter, 4/23/07), and the tennis court is never used. Moreover, nearby development does not physically affect these trees.

Furthermore, to say that the area around the proposed project site is already degraded improperly downplays the migratory bird habitat values directly threatened by the project, the larger, tremendously significant ecosystem values of Malibu Lagoon, and, most significantly, the adverse cumulative or incremental effects of the project in relation to environmentally sensitive habitat, parkland and water quality baseline conditions.

The Coastal Act's ESHA protection policy (Public Resources Code, section 30240) "does not permit its restrictions to be ignored based on the threatened or deteriorating condition of a particular ESHA." (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507-508.) The adverse impacts of a new project, if viewed in isolation, might be individually minor. (See CEQA Guidelines, section 15355.) But the more stressed or degraded a natural resource is, the more serious the cumulative effect of the harm (resource degradation or disturbance, any form of take) will be, and the greater the need to protect the resource. (*Kirkorowicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980, 994-995; Bolsa Chica, 71 Cal.App.4th 493, 507-508; *Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 615, fn. 11; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) In brief, the initial study cannot sweep under the proverbial rug the project's potentially significant cumulative biotic or ecosystem impacts, which already are more serious than the cumulative biological impacts of other Malibu Colony single-family residences due to the project's specific location in the Malibu Colony. The IS must assess the level of significance of these impacts, rather than simply making unfounded claims that there will be no impact because there is already development nearby.

With the only two "facts" used to justify the conclusion that there will be no discernable effect on wildlife being shown as false, how can the conclusion be justified? Answer: it cannot. What threshold of significance is the Commission utilizing in making this determination? Once again, it most certainly must be a different threshold than that utilized by other agencies, the public, and CEQA.

Two letters and one email from two professional arborists make it abundantly clear that the Cypress trees will suffer severe damage, including high likelihood of mortality, if the project is approved as proposed. Frederick Roth's October 17, 2006 letter states that the pruning of the tree crowns, the excavation and compaction of the tree roots, and

interruption of groundwater flow and raising of the water table, which would result from this project "could easily result in the decline and death or structural failure of the trees." Steve Ibarra's December 19, 2006 letter states that pruning would "severely" impact the majority of the trees, that at least 50% of the trees' roots would have to be removed, and that the potential value loss with respect to the trees could be approximately $545,340. Furthermore, in a March 28, 2007 letter from California Department of Fish and Game (CDFG), CDFG regional manager Larry Eng recommends, prior to lead agency approval, that tree pruning should be minimized to protect continued use by avian species for roosting and nesting. Where is any of this evidence of substantial environmental impact mentioned in the ISND? Where is even the possibility of severe negative impact to the Cypress trees mentioned in the ISND or the biological study? Where is there any attempt in the ISND to prescribe "minimal" level of pruning, in consultation with CDFG. It appears that such consultation has not occurred. This, in and of itself, violates CEQA. (Pub. Resources Code, § 21080.3, subd. (a); see also, *id.*, § 21081.6; *Mejia* v. *City of Los Angeles* (2005) 130 Cal.App.4th 322, 340 ("[o]ur conclusion that a fair argument can be made that the project may have a significant impact on animal wildlife also compels the conclusion that the city was required to consult with the Department of Fish and Game, a trustee agency …, before conducting an initial study, and subsequently was required to notify the department of the city's intention to adopt a mitigated negative declaration").)

Substantial evidence clearly makes a fair argument that this project will have a significant environmental impact. Thus, an EIR is required for this proposed project.

Furthermore, as mentioned, the Cypress stand supports a large number of birds through providing roosting habitat close to the Malibu Lagoon, an extremely important feeding ground for the birds. Substantial evidence supports a fair argument that these birds will be significantly impacted by the proposed development.

Because the Cypress trees are likely to suffer significant damage and/or mortality as a result of the proposed project, as explained above, the birds will be driven away from this important roosting habitat. The ISND ignores impacts to the birds. As it's only two justifications for its finding that there will be no impact on local wildlife, as explained above, only two "facts" are given in the ISND: 1) the trees will not be removed entirely, and 2) that the area has already been disturbed by decades of development. As explained above, these statements are not only false, they run directly contrary to the law. With no true facts to support its assertion that there will be no impact to wildlife, how can staff conclude that there will be no impact to wildlife? Again, what threshold of "significance" is being utilized?

According to Barbara Carey of the Coastal Commission, the Cypress trees "contribute to the viability of these bird species in that they provide roosting habitat near the areas where they forage in Malibu Lagoon." (12/27/06 letter.) She explains:

> The height of these trees and the dense foliage provide some protection from disturbance and predators. Osprey, Great Egrets (and other herons)

> are especially valuable because of their special nature or role in the ecosystem. These bird species are top predators that maintain a balance in prey populations. Finally, they are easily disturbed by human activity. They appear to choose roosting locations as far from disturbance as possible, including in the highest trees.

(Ibid.) Clearly, then, severe pruning of the trees will be highly disturbing to the birds and may likely drive them away. Further, if these trees die or fail structurally, the birds will lose their habitat entirely. The March 28, 2007 letter from Larry Eng of CDFG states that "[t]he project will result in the removal and/or disturbance to nesting bird habitat and therefore has the potential of impacting nesting native birds." Biologist Roy van de Hoek, in his December 20, 1006 letter to the ERB (found at pp53-55 of June 5, 2007 Meeting Agenda Item 6F attachment Part 2), based on his extensive and long-standing knowledge of the Cypress stands and the roosting colonies it supports and his scientific understanding, explains in detail that the Cypress stand is vitally important to the roosting birds, and that the harm the proposed project will cause to the trees will have a severe negative impact on the roosting birds, which in turn has serious potential consequences to ardeid and raptor (the types of birds found in the Cypress stand) populations in Southern California. (*See* Id.)

How can the loss of important habitat to numerous large bird species and the resulting harm to the birds not be a significant environmental impact?

Barbara Carey also suggests conditions to be placed on the project to mitigate negative impacts on the birds, including providing an adequate buffer between the development and the trees, avoiding impacts or damage to the trees, and restricting construction to times that would be least disturbing to the birds. (12/27/06 letter.) Larry Eng (CDFG) also suggest that tree pruning should be minimized to protect roosting/nesting by avian species in the Cypress stand. (3/28/07 letter.) Have these mitigation members been required and incorporated into the final project plan? From the current record of the project proposal, it appears that they have not.

The biological study and ISND also fail to discuss the variety of bird species found to nest in the trees. The Audubon Society letter (11/5/06) lists the following species as being the most commonly spotted among the numerous large birds that roost in the cypress stand: great blue heron, great egret, snowy egret, black-crowned night heron, osprey, red-tailed hawk, red-shouldered hawk, cooper's hawk, sharp-shinned hawk and American kestrel. The biological study and the ISND reference less than half of these species, even though the Commission was in possession of the Audubon Society's letter for nearly five months prior to issuing the ISND. Why did staff downplay the quantity and variety of birds found to roost in the Cypress stand when more complete evidence regarding the variety of bird species found there was presented by the Audubon Society over six months ago?

Two of these species, Osprey and Sharp-shinned Hawk, are California Species of Special Concern (CSC). The ISND ignores this fact, stating that only rookeries are of "special concern." (ISND p13.) The ISND thus concludes that there will be "less than significant impact" on any special status species (including CSC), either directly or through habitat modification. How can this be, when the project will substantially modify and potentially destroy the birds' important roosting habitat?

According the MLIP Section 4.4.2, "[w]here trees suitable for nesting or roosting, or significant foraging habitat is present, a formal raptor survey will be required." There is no dispute as to whether raptor roosting habitat is present. The LIP states that in some cases the raptor survey may be more appropriately conducted immediately prior to permitted site grubbing/grading activities. (MLIP 4.2.2.) This situation, however, where it is known that the Cypress stand is a significant roosting area for many large bird/raptor species next to an ESHA is clearly not an appropriate case for postponing such a study. Where is this raptor study?

Furthermore, aside from presenting evidence that an EIR is necessary under CEQA, the potential harm to these birds might also violate other laws. For example, the California Code of Regulations, title 14, section 251.1 states that: "no person shall harass, herd or drive any game or nongame bird .... For the purposes of this section, harass is defined as an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding, or sheltering." There can be no doubt that removing and destroying a bird's roosting habitat next to a feeding area will interrupt its normal behavioral patterns, especially with respect to feeding and sheltering.

Additionally, the Migratory Bird Treaty Act (MBTA) (16 U.S.C.S. § 703 et seq.) is a criminal statute that prohibits the taking of listed migratory birds. Many birds listed by the MBTA have been found roosting in the Cypress stand at issue, including great blue heron, black-crowned night heron, snowy egret, osprey, red-tailed hawk, red-shouldered hawk, cooper's hawk, sharp-shinned hawk, and American kestrel. Though courts are split on the meaning of "take" under the MBTA, it has been held that the act prohibits take "by any means or in any manner." (*See United States v.Moon Lake Electrical Association* (D. Colo. 1999), 45 F. Supp. 2d 1070.)

The ISND also improperly downplays the significance of the project with respect to water quality. It fails to mention the significant ecosystem values of Malibu Lagoon, and, most significantly, the adverse cumulative or incremental effects of the project in relation to environmentally sensitive habitat, parkland and water quality baseline conditions.

The Malibu Lagoon is a unique and important ecological feature, supporting the tidewater goby, a federally listed endangered fish species, as well as numerous other fish species, migratory bird populations, and the general coastal ecosystem. Malibu Creek/Lagoon is also home to the southernmost population of steelhead trout. Steelhead are particularly sensitive to certain types of pollution, including ammonia, low dissolved

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oxygen, and hydrogen sulfide, all of which are often caused by sewage effluent. (Ambrose, Richard F. and Orme, Antony R., Lower Malibu Creek and Lagoon Resource Enhancement and Management, UCLA 2000, pp.3-4 – 3-13; cited portions attached hereto as Exhibit 1).

The Lagoon is currently listed under section 303(d) of the Federal Clean Water Act as water quality impaired, particularly for coliform/pathogens and nutrients/eutrophication. Eutrophication includes overenrichment of a waterbody by nutrients (particularly nitrogen and phosphorous), which can cause hypoxia, algal blooms and changes in species diversity and abundance. (Id. at p.5-1.) Development throughout the Malibu Creek watershed has caused increased eutrophication in Malibu Lagoon. (Id.) Wastewater treatment, including residential septic systems, is a major issue in terms of contribution to eutrophication in the Malibu Creek watershed, particularly due to the high groundwater levels of the area. (Id. at 5-5.) Furthermore, the "combination of a high, fluctuating water table and course soils and beach sands may limit filtration capabilities of on-site wastewater systems." (Id. at 5-13.)

The ISND's discussion of water quality impacts is completely lacking in analysis and acknowledgement of impacts to water quality. The ISND states that all water quality impacts will be less than significant. (ISND pp. 22-23). In its cursory discussion of water quality, the ISND states that a Best Management Practice would be implemented and, though "potential exists for runoff to occur," a drainage plan is required to be prepared by a qualified expert and submitted for approval by Malibu Public Works Department. Where are these plans? What will they consist of? What are their basic parameters? How will they ensure that there will be no runoff, despite the project's potential for runoff, and how will they guarantee that the project will have a less than significant impact on water quality in the ESHA?

Although the septic system is strangely, and completely, left out of the water quality discussion in the ISND (and indeed any discussion whatsoever), as mentioned above, an onsite wastewater treatment system (OWTS) is proposed for this project (ISND page 4), including a large drainage field which appears to be proposed directly adjacent to the wetland within the ESHA buffer (Commission Resolution 07-29 map A-3). The project has a high groundwater table, approximately 4-6 feed below the surface (ISND page 23). Considering this fact, and what is known about water quality issues facing the Lagoon, how can there be no significant impact to water quality in the Malibu Lagoon from placing a septic system drainage field only feet from the Lagoon?

Impacts to water quality are particularly important when considered cumulatively with other development in the Malibu Creek Watershed, which the ISND fails to do. As stated above, the adverse impacts of a new project, if viewed in isolation, might be individually minor. (See CEQA Guidelines, section 15355.) But the more stressed or degraded a natural resource is, the more serious the cumulative effect of the harm will be, and the greater the need to protect the resource. (*Kirkorowicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980, 994-995; Bolsa Chica, 71 Cal.App.4th 493, 507-508; *Sierra Club v.*

California Coastal Com. (1993) 12 Cal.App.4th 602, 615, fn. 11; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) The ISND may not ignore the project's potentially significant cumulative biotic or ecosystem impacts, which already are more serious than the cumulative biological impacts of other Malibu Colony single-family residences due to the project's specific location in the Malibu Colony. The IS must assess the level of significance of these impacts.

CONCLUSION

We urge the Commission to deny the project applications, and order preparation of a revised, adequate initial study. Furthermore, the Commission should order preparation of an environmental impact report (EIR). An EIR would truly disclose the project's adverse, potentially significant environmental impacts, and would also offer the Commission and the Environmental Review Board (ERB) project design alternatives to consider, as required by the ESHA policies of the MLCP. Finally, the matter should be referred back to the ERB so that the ERB might consider all of the evidence presented in light of the proper legal standards.

Thank you for this opportunity to comment on the ISND for the proposed project.

Sincerely,

ANGEL LAW

Erin Ganahl

cc: Evan Langan (via email attachment)

3.2.3. Species Accounts

In this section, we first discuss tidewater gobies and steelhead in detail, followed by summaries for the other indicator species. Information about the physical tolerances of the indicator species (along with appropriate literature citations) for salinity, temperature, ammonia, pH, dissolved oxygen, nitrate, nitrite, and sulfide are presented in the text and summarized in Table 3-2.

3.2.3.1. Tidewater Goby

3.2.3.1.1. Introduction

The tidewater goby, *Eucyclogobius newberryi*, is a small (≤ 50 mm), benthic fish endemic to California's coastal estuaries from the Agua Hedionda Lagoon, San Diego County, in the south to the Smith River, Del Norte County, in the north (Moyle et al. 1989). It is the only species in the genus *Eucyclogobius* (Moyle et al. 1989), but is closely related to several eastern Pacific species (bay goby, arrow goby *Clevlandia ios*, cheekspot goby *Ilypnus gilberti*, shadow goby *Quietula y-cauda*) (Swenson 1995). Most individuals complete their life cycle within one year (Capelli 1997), although laboratory specimens have survived up to three years (Swenson 1995). Habitat loss and degradation, and predation by exotic fishes have reduced the number of tidewater goby populations to fewer than 50, leading to its designation as a federally endangered species in 1994 (USFWS 1994). The tidewater goby is known to be a weak swimmer (Swenson 1995), and is therefore easily swept into the ocean during periods of heavy flow. For example, winter storms in 1972-73 caused the elimination of a tidewater goby population from Wadell Creek (Swenson 1995). Populations are considered to be genetically isolated (Crabtree 1985), as the goby lacks a marine phase in its life history and is therefore limited in its dispersal ability. However, tidewater gobies have been recorded at sites where they were reportedly eliminated by the 1987-92 drought (Capelli 1997). This suggests that recolonization and/or genetic exchange between neighboring populations may indeed occur. A short life span, narrow habitat requirements, and isolation of populations are all factors which, combined, increase the tidewater goby's susceptibility to natural and anthropogenic environmental change.

3.2.3.1.2. Life History

Although the tidewater goby may spawn at any time of year, spawning is most prevalent from spring to mid-summer (Capelli 1997). This period coincides with the time during which most California estuaries are naturally closed to the ocean and brackish water conditions prevail. Spawning activity may continue into fall and even winter if water temperatures remain warm and the berms found at the mouths of estuaries are not breached (Capelli 1997).

Of interest to behavioral ecologists, the breeding behavior of the tidewater goby is remarkable for the dominance and aggressiveness displayed by females. Unlike other gobies, females compete for access to burrows occupied by territorial males (Swenson 1995). Furthermore, females have highly developed black breeding coloration are

Exhibit 1 ex. 3

reported to initiate courtship more frequently than males (Swenson 1995, Swift et al. 1989)

Males excavate 10-20 cm burrows in coarse sand and protect a clutch of 300-500 eggs (Lafferty et al. 1996) until they hatch 9-11 days later (Swenson 1995). Newly hatched fry measure 4-5 mm TL (Swenson 1995), lack distinct coloration, and begin a pelagic existence. At 15-18 mm SL juveniles assume a benthic lifestyle (Moyle et al. 1989).

Tidewater gobies are known to live in a variety of habitats, although adults seem to prefer vegetated areas, which provide both cover from predators and substrate for crustacean prey (Swenson 1995). The tidewater goby feeds primarily on small crustaceans (mysid shrimp, ostracods, amphipods, etc.), aquatic insects (chironomid and diptera larvae), and molluscs (Irwin and Soltz 1984, Moyle et al. 1989), with diet depending on season and habitat (Swenson 1995).

Other gobies native to California estuaries are not thought to compete with the tidewater goby for food, as they spend portions of their lives in the ocean. However, introduced species, particularly the yellowfin goby, *Acanthogobius flavimanus*, and shimofuri goby, *Tridentiger bifasciatus*, are trophic competitors of the tidewater goby. Furthermore, these fish also prey on tidewater gobies (Wang 1984, Saiki 1993, Swenson 1995). The diet overlap between the three gobies may increase their encounter rate, and is thought to enhance the predation risk for the tidewater goby (Swenson 1995).

Resulting extinctions of tidewater goby populations could have significant impacts upon estuarine trophic dynamics. The tidewater goby is often one of the most abundant small fish population in estuaries where it is present (Lafferty et al. 1996). As secondary consumers and a prey item for larger fish and piscivorous birds, tidewater gobies are an important part of estuarine food webs (Swenson 1995).

3.2.3.1.3. Reasons For Using The Tidewater Goby as an Indicator Species

The tidewater goby *Eucyclogobius newberryi* appears to be an ideal indicator organism. A comprehensive review of the scientific literature pertaining to this species has produced a substantial amount of information regarding its habitat requirements and life history. Similar data on other Malibu Creek and Malibu Lagoon fish species, with the exception of the steelhead trout (*Oncorhynchus mykiss*), was scarce.

Eucyclogobius newberryi is also important in that it holds a unique position among California fish. The tidewater goby is one of only seven species of gobies native to California estuaries (Capelli 1997), and also belongs to a group of just three fish species living along the Pacific coast dependent upon a low salinity habitat (Swift et al. 1989).

Also of interest for using the tidewater goby as an ecological indicator is its status as a federally endangered species. Since 1900, habitat loss and degradation have resulted in its disappearance from 74% of the coastal lagoons south of Morro Bay (Moyle et al. 1989). Competition with and predation by non-native fish such as the yellowfin goby

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(*Acanthogobius flavimanus*), shimofuri goby (*Tridentiger bifasciatus*), stiped bass (*Morone saxatilis*), largemouth bass (*Micropterus salmoides*), white catfish (*Ameiurus catus*), tilapia (*Tilapia* spp.), and western mosquitofish (*Gambusia affinis*), may also be responsible for extinctions of tidewater goby populations (Saiki 1994, Lafferty and Page 1997, Wang 1984, Swenson 1995).

The native fish fauna of California is in serious decline, with 63% of its 155 taxa already extict or in danger of becoming extinct (Moyle 1995). Introduced fish species are at least partially responsible for this trend, the plight of the tidewater goby serving as a prime example. In the San Francisco Bay area, invasions by the predatory yellowfin goby *Acanthogobius flavimanus* (Brittan et al. 1970, McGinnis 1984) and the rainwater killifish *Lucania parva* (Lafferty and Page 1997) may have permanently eliminated local tidewater goby populations. In southern California, where the tidewater goby has disappeared from 74% of the coastal lagoons south of Morro Bay since 1900 (Moyle et al. 1989), over 100 non-native fish species have been reported, giving this region the distinction of exceeding all other areas of the state in numbers of successful invaders (Swift et al. 1993).

3.2.3.1.4. Habitat Requirements

Unlike virtually all other Malibu Creek and Malibu Lagoon fish, the tidewater goby has narrow habitat requirements. It is restricted to coastal brackish-water areas of coastal streams, marshes, lagoons, and estuaries in California (Swenson 1995, Swift et al. 1989, Lafferty and Page 1997).

3.2.3.1.5. Dissolved Oxygen

The EPA recommends dissolved oxygen levels ≥ 6.5 mg/L for early life stages of nonsalmonid fish. For all other life stages, the EPA recommends levels ≥ 6 mg/L (U.S. EPA 1986). The dissolved oxygen concentration range under which the tidewater goby is reported to live varies from 4-19 mg/L (Saiki 1994).

3.2.3.1.5.1. Recommendation

While early life stages of *Eucyclogobius newberryi* are present in Malibu Creek and Malibu Lagoon, dissolved oxygen levels should not fall below 6.5 mg/L. During all other times, the dissolved oxygen content should be ≥ 6 mg/L, and should never exceed 19 mg/L.

3.2.3.1.6. pH

For the maximum protection of freshwater aquatic life, the EPA recommends pH values in a range of 6.5-9.0. The recommendation for marine aquatic life is slightly narrower, at 6.5-8.5 (U.S. EPA 1986). *Eucyclogobius newberryi* is reportedly able to survive in waters with a pH range of 6.8-9.5 (Saiki 1994).

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3.2.3.1.6.1. Recommendation

To best protect the tidewater goby, pH levels in Malibu Creek and Malibu Lagoon should always range from 6.8-9.0.

3.2.3.1.7. Salinity

The tidewater goby can survive in salinities from 0 to 53 ppt (Capelli 1997) and has been reported to spawn over a range of 2-27 ppt (Swenson 1995). However, most estuaries providing suitable habitat have salinities of 5-20 ppt, with the goby preferring a much narrower range of 10-15 ppt (Capelli 1997). For this reason, the tidewater goby is usually associated with estuaries that develop seasonal sand and cobble berms at their mouths, thus eliminating tidal action. Estuaries with a permanent connection to the ocean typically have higher salinities (20-33 ppt) and rarely support tidewater goby populations (Capelli 1997).

3.2.3.1.7.1. Recommendation

In areas of Malibu Creek and Malibu Lagoon where the tidewater goby is known to occur, water salinity should never fall below 2 ppt nor exceed 27 ppt, with an optimum range of 5-15 ppt.

3.2.3.1.8. Temperature

Water temperature is an important physical parameter affecting the metabolism, respiration, behavior, distribution, feeding rate, growth, and reproduction of aquatic organisms (U.S. EPA 1986).

The tidewater goby is capable of surviving in water having a temperature range of 8°C (Swift et al. 1989) to 25°C (Swenson 1995), and spawning may occur in temperatures of 9-25°C (Swenson 1995). Peak spawning reportedly occurs in 18-22°C water (Moyle et al. 1989).

3.2.3.1.8.1. Recommendation

Water temperature should be maintained between 8°C and 25°C, except during late spring through mid summer, when peak spawning occurs. During this period, temperatures should be 18-22°C, and should never fall below 9°C or exceed 25°C..

3.2.3.2. Steelhead

3.2.3.2.1. Introduction

The species *Oncorhynchus mykiss* includes both steelhead and rainbow trout native to the eastern Pacific Ocean and the coastal drainages of North America extending from the Santo Domingo River in northern Baja California (USDA 1995) to Alaska (Emmett et al. 1991). Since 1874, rainbow trout have been introduced in streams and lakes worldwide, and are currently found on every continent with the exception of

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Antarctica (MacCrimmon 1971). Steelhead have a much narrower distribution, currently ranging from southern California to the Gulf of Alaska and interior British Columbia, from the coast to as far inland as Idaho (Di Silvestro 1997). Steelhead are also reportedly found in Kamchatka and Okhotsk Sea drainages in Siberia (McPhail and Lindsey 1970). Presently, Malibu Creek is the southern-most stream known to contain steelhead, with a population of up to 60 spawners (USDA 1995) and 145 juveniles (Keegan 1990). This population historically had about 1,000 adults (Nehlsen et al 1991).

Although this species was formerly known as *Salmo gairdneri*; the name was recently changed to *Oncorhynchus mykiss* due to its closer phylogenetic relationship to Pacific salmon (*Oncorhynchus*) than to Atlantic salmon (*Salmo*) (Thomas et al. 1986). *Salmo gairdneri* is the name typically encountered in the scientific literature.

Steelhead and rainbow trout frequently coexist and are distinguished not by their genetic composition, but by their life histories and behaviors. Steelhead are anadromous, meaning that they spend portions of their lives in both sea and freshwater. In contrast, rainbow trout spend their entire lives in freshwater. Interestingly, rainbow trout can give birth to anadromous fish and vice versa (Di Silvestro 1997). Why some fish go to sea and others do not is still unknown (Douglas 1995).

3.2.3.2.2. Life history

Steelhead begin life as eggs laid in the gravel of streams, where they incubate up to four months before hatching (Di Silvestro 1997). After hatching, juveniles spend one to three years in fresh water before migrating downstream, undergoing dramatic physiological changes, and entering the ocean (Carpanzano 1996). Steelhead from Oregon and Washington appear to head north to the Gulf of Alaska,while steelhead from southern Oregon and California tend to remain in offshore waters. Commercial fishing vessels have caught these steelhead as far as 3,000 miles out to sea (Di Silvestro 1997).

After spending one to five years in the ocean (Emmett et al. 1991), adult steelhead return to their natal streams to spawn. Unlike other Pacific salmonids which die immediately after spawning, approximately 20% of breeding steelhead return to the ocean and later spawn again, up to six times per individual (Carpanzano 1996). These repeat spawners are mostly female (Di Silvestro 1997).

Steelhead are known for their excellent homing abilities, a trait that has led to the development of unique stocks or races of steelhead in specific streams (Moyle 1976). At least two races are known to exist and are distinguished by when adult fish enter fresh water to spawn (Smith 1960). The summer run migrates during spring, summer, and early fall, while the winter run migrates during fall, winter, and early spring. In some large rivers with many tributaries, steelhead are presumed to migrate year-round. In California, some river mouths are closed during spring and summer, and steelhead may return only in fall after heavy rains (Fry 1973).

In freshwater and estuarine habitats, steelhead feed primarily on gammarid amphipods, small crustaceans, insects, and small fishes (Moyle 1976, Wydoski and

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Whitney 1979). In the ocean, juveniles and adults feed on crustaceans, insects, squid, and fishes (LeBrasseur 1966, Wydoski and Whitney 1979).

In freshwater, steelhead are fed upon by coho salmon, char, mergansers, gulls, belted kingfisher, bears, marten, otter, and other steelhead. Its main predators in the ocean are the Pacific lamprey, seals, sea lions, and killer whales (Scott and Crossman 1973).

Mature steelhead are typically 45-70 cm in length and weigh 2-5 kg, but can reach up to 122 cm and 19.5 kg. Fish in the southern part of the range are typically smaller and spend less time in the ocean than those in the north. In a recent study, adult steelhead averaged 58.1 cm in length in California, 66.7 cm in Oregon, and 71.0 cm in British Columbia (Withler 1966).

Virtually all natural mortality (97%) occurs in the egg and larval stages, which are strongly affected by dissolved oxygen, water temperature, velocity, turbidity, depth, competition with other fishes, and pollution (Emmett et al. 1991, Shapovalov and Taft 1954).

The adult winter run of steelhead in Malibu Creek is from December to March, with the peak run in February and March (Fukushina and Lesh 1998).

3.2.3.2.3. Reasons For Using Steelhead Trout as an Indicator Species

An important reason for using the steelhead trout as an indicator species is the vast amount of information available in the scientific literature regarding its environmental requirements, a sharp contrast to virtually all other species inhabiting Lower Malibu Creek and Malibu Lagoon. For example, relevant information pertaining to both the mosquitofish, *Gambusia affinis*, and topsmelt *Atherinops affinis*, was limited to only salinity and temperature requirements. A review of the literature concerning the killifish, *Fundulus parvipinnis*, only yielded information on salinity, temperature, pH, and sulfide requirements. In comparison, relevant information concerning *Oncorhynchus mykiss* included over 100 references and information on the following water quality parameters: temperature, dissolved oxygen, ammonia, pH, salinity, nitrate, nitrite, and hydrogen sulfide. For each of these parameters, numerous studies exist.

Its narrow habitat requirements are yet another reason for choosing the steelhead trout. In Malibu Creek and Malibu Lagoon, almost all fish taxa are highly tolerant to environmental variability. For example, the killifish, *Fundulus parvipinnis*, can live in water ranging from completely fresh to that having salinities as high as 128 ppt (Moyle 1976), while the topsmelt, *Atherinops affinis*, tolerates water temperatures up to 33°C (91.4°F) (Carpelan 1955). Thus, it is difficult, if not impossible, to use these and other species as indicators of water quality in Malibu Creek and Malibu Lagoon.

Another reason for using the steelhead as an indicator species is the important role it presumably plays in southern California estuarine food chains. Research has demonstrated that salmon significantly enrich carbon and nutrient cycles near their spawning sites (Kline et al. 1990, Bilby et al. 1996). In fact, salmonids are regarded as

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keystone species in maintaining biodiversity, especially in areas where they are abundant (Allendorf et al. 1997).

The tremendous decline of natural populations of steelhead trout, particularly in southern California, is another important reason for choosing it as an indicator species. Despite lacking a predictable water supply, southern California's streams once sustained large runs of steelhead and resident rainbow trout. Recent estimates suggest that annual runs of 30-35,000 steelhead were found in the Santa Inez, Ventura, and Santa Clara rivers during the late 19th century (Douglas 1995). The combined effects of dam construction, stream chanelization, urbanization, and water development reduced these numbers to as few as 500 individuals by 1995 (Douglas 1995). Today, steelhead are rarely found south of the Ventura River (Emmett et al. 1991), with Malibu Creek representing the southern-most stream known to contain steelhead USDA 1995).

Since 1900, more than 23 endemic steelhead stocks have disappeared, and 43 other stocks face a moderate to high risk of extinction (Di Silvestro 1997). The Endangered Species Committee of the American Fisheries Society recently listed 214 native stocks of Pacific salmon (*Oncorhynchus* spp.), steelhead (*O. mykiss*), and coastal cutthroat trout (*O. clarki clarki*) as being at risk of extinction in California, Oregon, Idaho, and Washington (Nehlsen et al. 1991).

Due to declining natural populations, stocks have been augmented by hatchery production. In 1987, up to 17 million steelhead smolts were planted in the Columbia River Basin (Emmett et al 1991). However, the mass release of hatchery fish may have negative effects on wild populations. Studies have shown that hatchery fish have lower survival and reproduction rates than wild fish (Chilcote et al. 1986). Interbreeding with hatchery fish has led to reduced genetic diversity among wild populations and given rise to offspring with lower disease resistance (Reisenbichler and Phelps 1989).

Furthermore, anadromous salmonid species are composed of stocks that originate from specific watersheds and usually return to their natal streams to spawn, resulting in a large degree of reproductive isolation between populations. Because anadromous salmonid stocks are adapted to local environmental conditions, the loss of individual populations is likely to cause changes in genetic composition and loss of genetic diversity (Nehlsen et al. 1991).

Southern California steelhead populations frequently experience environmental conditions not encountered by northern populations. Rainfall and streamflow in southern California are highly variable and unpredictable, and long drought periods are not uncommon. Many streams dry up completely each year, and water temperatures periodically reach or exceed the upper lethal limit. These factors may in part explain recent data demonstrating significant genetic differences between populations of steelhead and rainbow trout in southern California and those north of San Simeon (Douglas 1995, Marx 1996).

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3.2.3.2.4. Ammonia

The toxicity of ammonia to steelhead and rainbow trout has been studied extensively, as it is one of the two most significant water quality parameters limiting the production this species in aquaculture (Colt et al. 1980). The effects of ammonia on *Oncorhynchus mykiss* include decreased growth (Burkhalter and Kaya 1977, Rice and Stokes 1975), reduced nitrogen excretion (Fromm and Gillette 1968, Olson and Fromm 1971), increased incidence of disease (Burkhalter and Kaya 1977, Larmoyeux and Piper 1973), gill damage (Rice and Stokes 1974), and other sublethal physiological effects (Larmoyeax and Piper 1973, Mayer and Kramer 1973).

Ammonia is a naturally occurring product of biological metabolism, but high concentrations are often associated with human sources such as sewage treatment plants, agricultural and feedlot runoff, coal coking and gasification plants, and fertilizer manufacturing plants (Burkhalter and Kaya 1977).

Ammonia exists in both ionized (NH_4^+) and unionized (NH_3) forms, with its toxicity dependent on the concentration of the unionized ammonia (UIA) fraction (U.S. EPA 1986, Hofer et al. 1995). The proportion of ammonia present in the unionized form is largely determined by two other water quality parameters, pH and temperature (Alabaster and Lloyd 1982a, Trussel 1972).

Results indicate that the toxicity of ammonia, in terms of NH_3, increases at lower pH values (U.S. EPA 1984). Similarly, it has been shown that elevated water temperature increase the proportion of UIA present in an ammonia solution (Alabaster and Lloyd 1982a).

Other water quality parameters also affecting the lethal toxicity of ammonia to aquatic life include dissolved oxygen (Downing and Merkens 1955, Merkens and Downing 1957), salinity (Herbert and Shurben 1965), and carbon dioxide (Lloyd and Herbert 1960).

The toxicity of ammonia to rainbow trout has been widely studied, with 96-hr LC50 values ranging from 0.16 to 1.1 mg/L NH_3 (U.S. EPA 1984). Among numerous salmonid species tested by the EPA for ammonia toxicity, rainbow trout were the most sensitive, with lethal concentrations of ammonia as low as 0.32 mg/L (U.S. EPA 1984). The tolerance of rainbow trout to ammonia appears to increase as the fish develop through the larval stages, is greatest at the juvenile and yearling stages, and decreases thereafter (Thurston and Russo 1983).

Ammonia seems to have especially significant effects on developmental stages of *Oncorhynchus mykiss*. Growth and development of rainbow trout fry have been shown to be inhibited by long-term exposures to concentrations of ammonia as low as 0.05 mg/L (Burkhalter and Kaya 1977).

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3.2.3.2.4.1. Recommendation

Following a comprehensive review of studies on *Oncorhynchus mykiss* and other salmonids, the EPA issued detailed guidelines in 1984 for ammonia in surface waters containing salmonids (U.S. EPA 1984). These criteria are based on both water temperature and pH, the two water quality parameters most strongly influencing ammonia concentration. Guidelines are listed for both 1-hour and 4-day exposure to ammonia. Criteria include both total ammonia concentration and the concentration of unionized ammonia, the portion responsible for adverse effects on aquatic life. Based upon our thorough literature review, we believe that adherence to these guidelines will be protective of steelhead trout in Malibu Creek and Malibu Lagoon.

3.2.3.2.5. Dissolved Oxygen

Dissolved oxygen (DO) is often a limiting factor in maintaining freshwater aquatic life. Low oxygen levels have a significant effect on many physiological, biochemical, and behavioral processes in fish. Depletion of oxygen levels is a common result of many forms of water pollution, and the effects on *Oncorhynchus mykiss* have been extensively studied (Alabaster and Lloyd 1982b, Barton and Taylor 1966, Davis 1975, Downing and Merkens 1955, Garside 1966, Jones 1971, Lloyd 1961, Matthews and Berg 1997, Nebeker and Brett 1976, Rombough 1988, Silver et al. 1963, Thurston et al. 1981).

Reduced dissolved oxygen concentrations are known to increase the toxicity of various poisons (e.g., ammonia, hydrogen sulfide, cadmium, cyanide, zinc, lead, copper, phenols) to freshwater aquatic life (Thurston et al 1981, Davis 1975). Studies have demonstrated low dissolved oxygen levels to increase the toxicity of ammonia (Downing and Merkens 1955, Merkens and Downing 1957), cyanide (Downing 1954), and zinc, lead, copper, and phenols (Lloyd 1961) to rainbow trout. Sublethal effects of low DO levels in steelhead trout include retarded development, reduced growth, and premature hatching and emergence of embryos (Rombough 1988).

Rainbow trout and steelhead reportedly require well-oxygenated (5-11 ppm) water (Douglas 1995). Another recent study found the optimal DO levels for rainbow trout to be $\geq$ 7 mg/L at temperatures $\leq$ 15°C, and $\geq$ 9 mg/L at temperatures >15°C (Barton and Taylor 1996). Spawning steelhead require at least 80% saturation, with temporary levels not lower than 5.0 mg/L (Moyle et al. 1989). The incipient lethal level for adult and juvenile rainbow trout is approximately 3 mg/L, depending on environmental conditions, especially temperature (Matthews and Berg 1997).

The extreme sensitivity of salmonids to low dissolved oxygen levels during early life is well-documented (Davis 1975, Alabaster and Lloyd 1982b, Rombough 1988). The lower threshold for the incubation of salmonid embryos is reported to be 5.0 mg/L (Reiser & Bjornn 1979), with 100% mortality of embryos occurring at 1.6 mg/L (Garside 1966, MacCrimmon 1971, Shumway et al. 1964).

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A comprehensive review of the minimum oxygen requirements of Canadian aquatic life (Davis 1975) recommends DO levels ≥ 9.74 mg/L to provide the maximum level of protection for salmonid larvae and mature eggs. Symptoms of oxygen distress in larvae and eggs were reportedly noticeable at levels below 8.09 mg/L (Davis 1975). In a more recent review, the EPA recommends DO levels ≥ 11 mg/L to protect salmonid embryo and larval stages (U.S. EPA 1986).

With regards to juvenile and adult life stages, the EPA has designated levels ≥ 8 mg/L as sufficiently protective (U.S. EPA 1986), while Davis proposes DO levels ≥ 7.84 mg/L (Davis 1975).

Streams with oxygen-supersaturated water may also adversely affect steelhead trout, but such conditions are rarely encountered in nature. Elevated oxygen levels can lead to gas-bubble disease in fish, especially when accompanied by high pH values (Alabaster and Lloyd 1982b). One study found the 96-hr LC50 value for steelhead to be 116% saturation, while the 30-day LC50 was 114% (Nebeker and Brett 1976).

3.2.3.2.5.1. Recommendation

Dissolved oxygen criteria in Malibu Creek and Malibu Lagoon for *Oncorhynchus mykiss* should depend upon the life stages present, since young fish are especially sensitive to low oxygen levels. Therefore, we recommend DO concentrations ≥ 9 mg/L while embryo and larval stages are present, with levels never lower than 7 mg/L. For all other life stages, we recommend DO levels ≥ 6 mg/L, with temporary levels never to fall below 4 mg/L.

3.2.3.2.6. Hydrogen Sulfide

Hydrogen sulfide is an anaerobic degradation product of both organic sulfur compounds and inorganic sulfates, including those in sewage, algae, and other naturally deposited organic material (U.S. EPA 1986). It is a soluble, highly poisonous gas having a characteristic rotten egg odor, and can be detected in the air by humans at a concentration as low as 0.002 ppm (U.S. EPA 1986).

Data concerning the effects of hydrogen sulfide on *Oncorhynchus mykiss* was scarce. One study reported the 96-hr LC50 for rainbow trout to be 0.4μM (Bagarinao 1991). Another researcher reports rainbow trout survival in hydrogen sulfide concentrations as high as 0.45 mg/L (Ortiz et al. 1993), but this study was based on short-term (8-hour) exposure. Recent long-term field and laboratory studies demonstrate hydrogen sulfide toxicity at much lower concentrations (U.S. EPA 1986). Accordingly, the EPA recommends levels no higher than 2 μg/L of hydrogen sulfide for the protection of fish and other aquatic life (U.S. EPA 1986).

3.2.3.2.6.1. Recommendation

The scarcity of data concerning the toxicity of hydrogen sulfide to *Oncorhynchus mykiss* precludes us from drawing any definite conclusions. We recommend following

ex. 3

5.1 Introduction

Malibu Lagoon is a small estuary located within the City of Malibu, approximately 35 miles (56 km) west of Los Angeles, California. The lagoon is a seasonal brackish marsh that is generally closed from the ocean by a sand barrier in the dry season, and open to the ocean in the wet season. It is the receiving water of the 109 square mile (282 km^2) Malibu Creek Watershed. The main channel is Malibu Creek, which receives waters from several lakes and tributaries, and drains into Malibu Lagoon, then empties into Santa Monica Bay (Figure 1) (Warshall 1992).

Water resource management of Malibu Lagoon is concerned with the potential problems associated with eutrophication (Warshall 1992). Eutrophication includes overenrichment of a waterbody by nutrients, primarily nitrogen and phosphorus. Nutrients limit the growth of phytoplankton (algae) and macrophytes (larger aquatic plants). Excessive levels of nutrients can cause overstimulation of aquatic plant growth, resulting in algal blooms and other detrimental consequences (Kiorboe 1996). Effects include hypoxia, algal blooms, and changes in species diversity and abundance. These changes are considered undesirable because they can affect beneficial uses and reduce biological diversity (Richardson and Jorgensen 1996). The recommended level of nutrients in estuaries and coastal ecosystems to avoid algal blooms is 0.01 to 0.1 mg P/L and 0.1 to 1.0 mg N/L (10:1 of N:P). The higher concentrations support less diversity (NOAA/EPA, 1988).

Eutrophication can be caused by either natural or anthropogenic processes. Anthropogenic, or cultural, eutrophication can proceed at an accelerated rate compared to the natural phenomenon and is a major form of water pollution (NOAA/EPA 1988). Urbanization causes an increase in cultural eutrophication by increasing the sources and delivery of nutrients to a receiving water. Evidence of eutrophication at Malibu Lagoon includes the observance of persistent algal blooms. These blooms are more likely to occur when the sand barrier restricts tidal flushing; however, a study by Ambrose et al. (1995) noted dense, floating algal mats in the Lagoon during mid-to-late summer 1994 even with the Lagoon mouth open.

Urbanization throughout the Malibu Creek watershed has caused an increase in flow of water in Malibu Creek from runoff and wastewater discharges(USDA 1995). The additional freshwater changes the character of the lagoon, and brings with it elevated concentrations of nutrients (Ambrose et al. 1992). Historically, there was little creek flow in the summer months, but water imported to support the urbanization of the watershed has altered the natural hydrology and changed the lagoon habitat (USDA 1995).

ex. 3

use types throughout the watershed was beyond the scope of work but may be helpful in future research efforts.

5.2.1 Sources of Nutrients

Potential sources of nutrients in the Malibu Creek watershed include: (1) fertilizer, (2) onsite wastewater systems (i.e., septic effluent or seepage), (3) Tapia tertiary-treated wastewater, (4) confined animal facilities (i.e., corrals) (5) road surfaces from automobile deposits, and (6) soils. Nutrients from these sources can enter surface or groundwater and then flow into Malibu Lagoon (USDA 1995). The amount of nutrients carried is determined by the landuse and management practices of the area from which it originates.

Wastewater treatment is a major issue in the Malibu Creek Watershed. The Tapia Wastewater Treatment Facility discharges into the creek. This tertiary-treated water contains nutrients. There are also approximately 2,300 on-site wastewater systems (i.e., septic systems) of varying capacities within the watershed. Concentrations of residential septic systems occur throughout the watershed and near the lagoon, including within Cold Creek Canyon, Serra Retreat, and Malibu Colony (USDA 1995). A concentration of large commercial septic systems also occur near the lagoon.

Septic seepage can enter the creek through subsurface transmission. Effluent can enter groundwater and effluent mixed with groundwater can reach surface waters through subsurface flow (Valiela et al, 1997). These septic systems can be influenced by large fluctuations of groundwater in the Malibu area (USDA 1995).

In the City of Malibu, groundwater fluctuates dramatically with drought, storms, effluent, and spray (i.e., landscaping) irrigation, and is considered to flow in the general direction of the topography. Soils in the area range from pure sands to pure clays. Malibu Colony septic systems are placed on an old delta with a mixture of silts, sands and clays or on imported or rearranged soils. There may also be highly transmissive layers of cobbles or gravel instead of bedrock. These soils, along with high groundwater, can contribute to high infiltration of septic seepage and/or golf course irrigation water into the Malibu Lagoon (USDA 1995).

Phosphorus in soils reach the lagoon when sediment is carried in surface waters. Most soils naturally contain phosphorus; it can also be artificially present in soils through fertilizer application, septic system failure, or as a component of the fire retardant, *Phoscheck*. Much of the Malibu Canyon is steep, and sediment can be loosened and carried with storm water runoff.

ex 3

5.3.3 Groundwater Inputs

Groundwater and soil characteristics are important in Malibu because of onsite wastewater disposal systems and the golf course in proximity to the creek and lagoon. Nutrients from (G1-1) commercial and (G1-2) private septic system effluents and from (G2) Malibu Colony Golf Course fertilizer can leach into the groundwater in the lagoon vicinity and then flow into the lagoon.

In order to accurately estimate the magnitude of sources, it is necessary to know the amount, direction and quality of the water flows, and the distance to the water table. However, for the Malibu area, no comprehensive studies or map of the hydrogeology of the Malibu area are available that provide detailed site specific information (Warshall 1992). Therefore, flow of groundwater and influence of groundwater inputs can only be estimated from reported values.

Groundwater flow into the Lagoon can be estimated by the Darcy equation:

$$Q = K \times A \times \text{slope},$$

where:

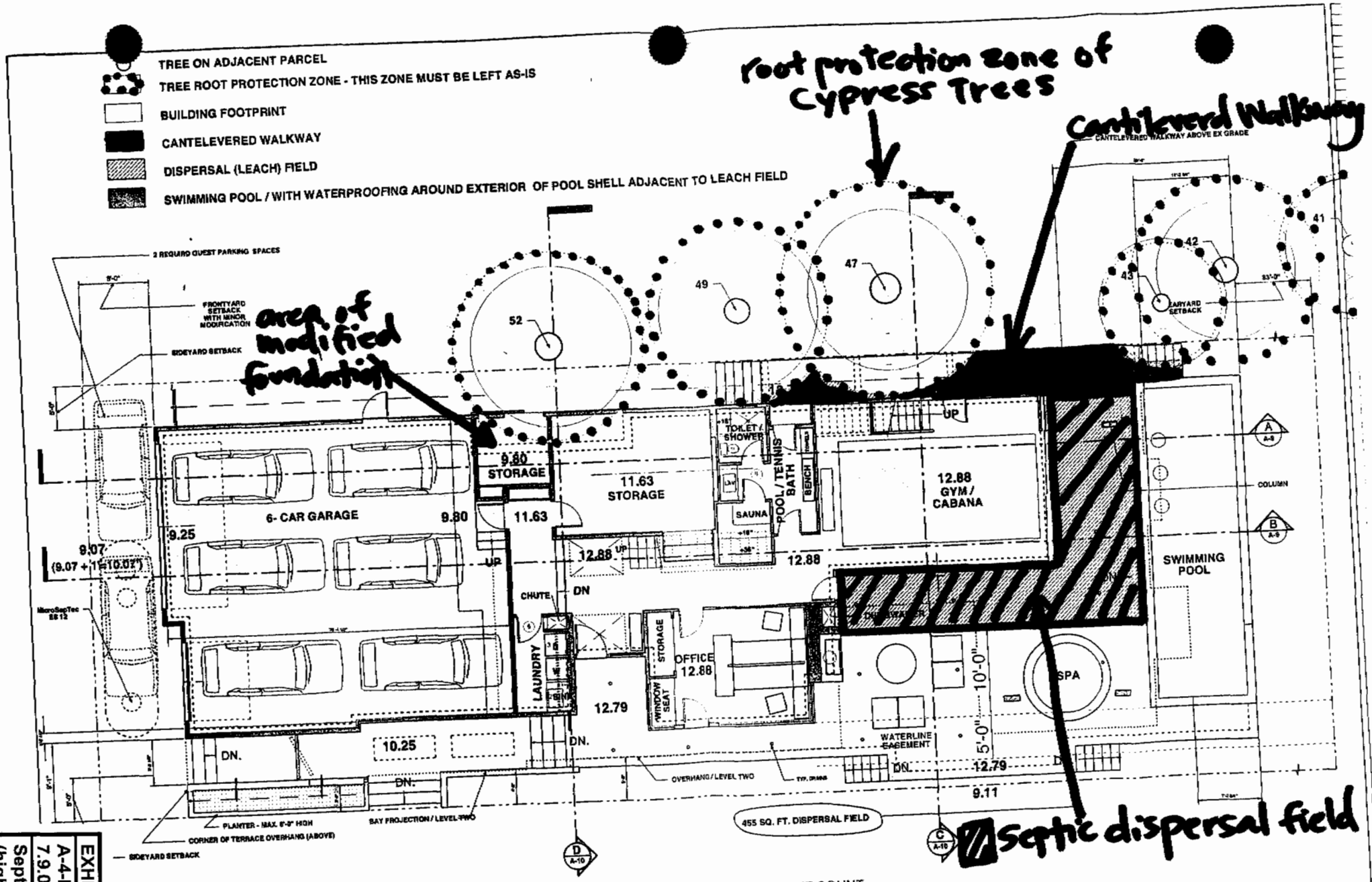
Q: water flow
K: hydraulic conductivity
A: cross-sectional area that water passes through
slope: slope of water gradient

The values for slope and hydraulic conductivity (K) reported in Warshall (1995) are slope= 0.0016 and K= 1.0 - 10.0 meters d^{-1}. The calculated flow from these values is 156 $m^3\ d^{-1}$. However, because the slope can be artificially increased more than an order of magnitude due to saturated soils from septic or other influences occurring near the lagoon, the daily flows from the septic systems and golf course can be used to approximate the total daily flow of groundwater into the lagoon.

5.3.3.1 Septic Seepage-(G1)

The combination of a high, fluctuating water table and coarse soils and beach sands in the Malibu area may limit filtration capabilities of on-site wastewater systems; however, studies have not been done to document these impacts. Currently available information does not provide useful information to allow evaluation of the effectiveness and conditions of each system (USDA 1992). Therefore, the complexity of groundwater characteristics in the Lagoon vicinity allows only generalizations regarding the fate of effluent following ground disposal or movement from existing sources.

ex. 3



FLOOR PLAN - LEVEL ONE (14) · (41) · (55) = 1[illegible] UNIT COUNT

(VERSION B)

(WITH PARTIAL SITE PLAN)

1/4"=1'-0"

HOUSE - 1624 SQ.FT.
GARAGE - 1368 SQ.FT.

(SEE SHEET A-1 FOR DIAGRAM OF STRUCTURE SETBACKS)

EXHIBIT 4
A-4-MAL-07-095
7.9.08 Addendum
Septic System Plan (highlighted for clarity)

EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc. **A-4-MAL-07-095, *Margolis Thurs 11a***

Date and time of receipt of communication: ***July 3, 2008 @ 3:00pm.***

Location and type of communication: ***Café Borrone, Menlo Park – in person***

Person(s) initiating communication: **Toni Littlejohn**

Detailed substantive description of content of communication:

Appellant raised the following issues:

The Monterey Cypress trees growing on their father's property just to the west of Mr. Margolis' property need to protected.

1. The measurement of the ESHA boundary to Mr. Margolis' property line is inaccurate.
2. There are alternative foundations using caissons with above grade beams instead of the proposed matt foundation that would be less destructive to the Cypress roots.
3. Placing the pool above ground would be less destructive to the Cypress roots..
4. Moving the leach field to the front of the house away from the western property line would be less destructive to the Cypress roots..
5. Denying Mr. Margolis' request to reduce the side yard set back from 6.25' to 5' on the western edge of the property line.
6. In case any of the Monterey Cypress trees die - the staff report states that Mr. Margolis is required to replace the tree(s) even though they are not located on his property.

7/6/2008
Date

Signature of Commissioner

EXHIBIT 5
A-4-MAL-07-095 7.9.08 Addendum
Ex Parte Communications

EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc. **A-4-MAL-07-095, *Margolis Thurs 11a***

Date and time of receipt of communication: ***July 6, 2008 @ 11:30am***

Location and type of communication: ***Telephone conversation***

Person(s) initiating communication: **Sean B. Doherty, The Donegal Group**

Detailed substantive description of content of communication:

Sean called and expressed his overall satisfaction with the staff report and appreciation for the staffs diligent work and conclusions. He accepts the special conditions and looks forward to an uneventful hearing on the 10th.

7/6/2008
Date

Signature of Commissioner

ex. 5

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	Wednesday, July 2nd, 2008, 3:00 pm Phone Call Meeting
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Commissioner Neely's Office Eureka, CA
Person(s) initiating communication:	Don Schmidtz
Person(s) receiving communication:	Commissioner Neely
Name or description of project:	July Agenda Item Th11a, Margolis Single Family Home, Malibu

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

Spoke with applicant's representative regarding the Margolis home. Mr. Schmidtz discussed the project from an historical perspective. The Commission found substantial issue during last Septembers hearing. Since then the applicant has been working with staff to address all issues, including the Monterey Cypress Trees and the setback from the lagoon. The applicant is agreeing with the staff recommendations.

7/2/08

Date

Signature of Commissioner Neely

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

ex. 5

Th 11a

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

Appeal Filed:	8/6/07
49th Day:	9/24/07
Substantial Issue Found:	9/5/07
Staff:	D. Christensen
Staff Report:	6/25/08
Hearing Date:	7/10/08

STAFF REPORT: APPEAL
DE NOVO REVIEW

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions

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

APPLICANT: Colony House 1, LLC (Richard Margolis)

AGENTS: 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 six-car (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: Certified Malibu LCP; CCC Appeal No. A-4-MAL-07-095 Substantial Issue Determination Hearing Staff Report, dated August 23, 2007, prepared by D. Christensen; June 5, 2007 City of Malibu Staff Report for 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; "Biological Study", prepared by TeraCor, dated December 5, 2006; "Delineation and Determination of Recommended Setback of a Single Family Residence to an ESHA", prepared by TeraCor, dated June 3, 2005; "Addendum Analysis" prepared by TeraCor, dated February 6, 2008; TeraCor Response Letter to the CCC Regarding Substantial Issue Staff Report, dated September 2, 2007; "City of Malibu Environmental Health Department approval of revised on-site wastewater treatment system plan, dated November 13, 2007.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **Approval** of the proposed project with **Twelve (12) Special Conditions** regarding geologic and engineering recommendations, assumption of risk, erosion control, drainage and polluted runoff control plans, on-site wastewater treatment system, lighting restriction, structural appearance, future improvements restriction, deed restriction, pool and spa drainage and maintenance, landscaping plan, cypress tree protection and monitoring, and nesting bird protection measures. As conditioned, the proposed development will be consistent with all applicable policies and standards of the certified City of Malibu Local Coastal Program (LCP) and with the public access and public recreation policies in Chapter 3 of the Coastal Act.

The Commission previously found that this appeal raised a substantial issue with respect to the project's consistency with the applicable environmentally sensitive habitat policies and standards of the LCP. The standard of review for the de novo review of the project is whether the proposed development is in conformity with the certified City of Malibu Local Coastal Program and the public access and public recreation policies in Chapter 3 of the Coastal Act. During the De Novo hearing, testimony may be taken from all interested persons.

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. A-4-MAL-07-095 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. STANDARD CONDITIONS

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

2. Expiration. If development has not commenced, the permits will expire two years from the date on which the Commission voted on the de novo appeal of the permits. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application(s) for extension of the permit(s) must be made prior to the expiration date.

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

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

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

III. SPECIAL CONDITIONS

1. Plans Conforming to Geotechnical Engineer's Recommendations

By acceptance of this permit, the applicants agree to comply with the recommendations contained in the submitted geotechnical and soils engineering reports ("Soils Engineering Exploration", dated January 30, 2002, and "Response to City Geotechnical Review Sheets", dated January 19, 2006 and May 22, 2006, prepared by Grover-Hollingsworth and Associates Inc.; "Revised Geotechnical Recommendations", dated May 10, 2007, prepared by Grover-Hollingsworth and Associates Inc.; and "Proposed Dispersal Field," dated August 31, 2007, prepared by Grover-Hollingsworth and Associates Inc.). These recommendations, including recommendations concerning foundations, grading, footings, drainage, and septic system, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultants prior to commencement of development.

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

2. Assumption of Risk

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

3. Erosion Control, Drainage and Polluted Runoff Control Plans

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

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

- Property limits, prior-to-grading contours, and details of terrain and area drainage
- Locations of any buildings or structures on the property where the work is to be performed and the location of any building or structures of adjacent owners that are within 15 ft of the property or that may be affected by the proposed grading operations
- Locations and cross sections of all proposed temporary and permanent cut-and-fill slopes, retaining structures, buttresses, etc., that will result in an alteration to existing site topography (identify benches, surface/subsurface drainage, etc.)
- Area (square feet) and volume (cubic yards) of all grading (identify cut, fill, import, export volumes separately), and the locations where sediment will be stockpiled or disposed
- Elevation of finished contours to be achieved by the grading, proposed drainage channels, and related construction.
- Details for the protection of existing vegetation from damage from construction equipment, for example: (a) grading areas should be

minimized to protect vegetation; (b) areas with sensitive or endangered species should be demarcated and fenced off; and (c) native trees that are located close to the construction site should be protected by wrapping trunks with protective materials, avoiding placing fill of any type against the base of trunks, and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.

- Information on potential flow paths where erosion may occur during construction
- Proposed erosion and sediment prevention and control BMPs, both structural and non-structural, for implementation during construction, such as:
  - Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method.
  - Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method.
  - Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site.
  - Prevent blowing dust from exposed soils.
- Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:
  - Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials.
  - Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies.
  - Provide sanitary facilities for construction workers.
  - Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.

b) ***Storm Water Management Plan (SWMP)***, for the management of post construction storm water and polluted runoff shall at a minimum include the following:

- Site design and source control BMPs that will be implemented to minimize or prevent post-construction polluted runoff (see 17.5.1 of the Malibu LIP)
- Drainage improvements (e.g., locations of diversions/conveyances for upstream runoff)
- Potential flow paths where erosion may occur after construction
- Methods to accommodate onsite percolation, revegetation of disturbed portions of the site, address onsite and/or offsite impacts and construction of any necessary improvements
- Storm drainage improvement measures to mitigate any offsite/downstream negative impacts due the proposed development, including, but not limited to:

- Mitigating increased runoff rate due to new impervious surfaces through on-site detention such that peak runoff rate after development does not exceed the peak runoff of the site before development for the 100 year clear flow storm event (note; Q/100 is calculated using the Caltrans Nomograph for converting to any frequency, from the Caltrans "Hydraulic Design and Procedures Manual"). The detention basin/facility is to be designed to provide attenuation and released in stages through orifices for 2-year, 10-year and 100-year flow rates, and the required storage volume of the basin/facility is to be based upon 1-inch of rainfall over the proposed impervious surfaces plus 1/2-inch of rainfall over the permeable surfaces. All on-site drainage devices, including pipe, channel, and/or street & gutter, shall be sized to cumulatively convey a 100 year clear flow storm event to the detention facility, or;
- Demonstrating by submission of hydrology/hydraulic report by a California Registered Civil Engineer that determines entire downstream storm drain conveyance devices (from project site to the ocean outlet) are adequate for 25-year storm event, or;
- Constructing necessary off-site storm drain improvements to satisfy the above, or;
- Other measures accomplishing the goal of mitigating all offsite/downstream impacts.

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

4. <u>On-site Wastewater Treatment System</u>

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

5. <u>Exterior Lighting Restriction</u>

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

1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas, on the site. This lighting shall be limited to fixtures that are directed downward, and use bulbs that do not exceed 60 watts, or the equivalent, unless a higher wattage is authorized by the Executive Director.

2) Security lighting attached to the residence that is controlled by motion detectors and is limited to 60 watts, or the equivalent.

3) The minimum lighting necessary for safe vehicular use of the driveway. The lighting shall be limited to 60 watts, or the equivalent.

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

6. Structural Appearance

Prior to issuance of the coastal development permit, the applicants shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. A-4-MAL-07-095. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. 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. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. A-4-MAL-07-095 if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. A-4-MAL-07-095. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to any future development on any portion of the parcel. Accordingly, any future improvements to any of the property, including but not limited to the single family residence, garage (including conversion of the structure to habitable space), septic system, driveway, new or replacement landscaping, hardscape, and removal of vegetation or grading other than as provided for in the approved fuel

modification/landscape plan, shall require an amendment to Coastal Development Permit No. A-4-MAL-07-095 from the Commission or shall require an additional coastal development permit from the City of Malibu.

8. Deed Restriction

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

9. Pool and Spa Drainage and Maintenance

By acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

10. Landscaping Plans

Prior to issuance of the coastal development permit, the applicant shall submit landscaping plans for all graded or disturbed areas on the project site, prepared by a licensed landscape architect or a qualified resource specialist for the review and approval of the Executive Director. The landscaping plans shall include a scale map of the project site that shows the location, species, and size of each plant to be included in site landscaping. All development shall conform to the approved landscaping plans. The plans shall incorporate the criteria set forth below:

A. Plant Species

1. Plantings shall be native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site, except as noted in Section 3.10.1(A)(3) of the Malibu LIP. The native plant species shall be chosen

from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.

2. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996 and identified in the *City of Malibu 's Invasive Exotic Plant Species of the Santa Monica Mountains*, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.

3. Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone (Zone A) required for fuel modification nearest approved residential structures. Irrigated lawn, turf and ground cover shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

B. Timing of Landscaping

1. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.

2. 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.

C. Landscaping Coverage Standards

Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for revegetation.

D. Landscaping Monitoring

1. Any landscaping or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary.

2. Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies that the on-site landscaping is in conformance with the approved landscape plan. The monitoring report shall include photographic documentation of plant species and plant coverage.

3. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.

11. Monterey Cypress Tree Protection and Monitoring

By acceptance of this permit, the applicant agrees to have a certified arborist survey the project site prior to any construction activities, to flag the construction work area and to flag the on-site and adjacent Cypress trees and their minimum root protection zones to be avoided during all work.

The applicant shall retain the services of a certified arborist to be present on-site during grading and tree trimming/pruning operations to monitor the work and ensure the six healthy Cypress trees (Tree Nos. 41, 42, 43, 47, 49, and 52) are protected. The applicant shall direct the monitoring arborist to notify the Executive Director immediately if any of the six healthy Cypress trees are adversely impacted, damaged, or removed. The monitoring arborist shall have the authority to require the applicants to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise, and shall be directed to exercise that authority if either of those conditions occurs. Should any of the six healthy Cypress trees identified above be lost or suffer worsened health or vigor as a result of the project, at least one replacement tree (that is at least 48-inch box in size) for every one lost shall be planted on the project site as mitigation. In that case, the applicant shall submit, for the review and approval of the Executive Director, a Cypress tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a ten-year monitoring program to ensure that the replacement planting program is successful. An annual monitoring report on the replacement Cypress tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years. Upon submittal of the replacement planting program, the Executive Director shall determine if an amendment to the subject permit, or an additional coastal development permit, is required.

12. Nesting Bird Protection Measures

A qualified biologist, with experience in conducting bird surveys, shall conduct bird surveys 30 days prior to construction to detect any active bird nests in the trees on and adjacent to the project site. The last survey should be conducted 3 days prior to the

initiation of clearance/construction. If an active nest is located, clearing/construction on the project site shall be postponed until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. Construction personnel shall be instructed on the sensitivity of the area. The project biologist shall record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to protection of nesting birds.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION

The applicant proposes to construct a two-story, 5,200 sq. ft. single-family residence, with attached six-car (1,368 sq. ft.) garage, pool, spa, and alternative onsite wastewater treatment system on a 0.41-acre parcel at 23405 Malibu Colony Drive, Malibu (**Exhibits 1-10**).

B. BACKGROUND

1. Project Site

The subject 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 State Park, 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**).

The subject property is visible from Malibu Lagoon State Park, public parkland that is situated adjacent to the applicant's north (rear) property line. However, no trails or access ways are located on the property. As such, the proposed project has no impact on public access, and is thus consistent with the public access and recreation policies of the Malibu LCP and the Coastal Act.

2. 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 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. 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. 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. The appeal was scheduled for a substantial issue determination at the Commission's September 2007 meeting. On September 5, 2007, the Commission found that Appeal No. A-4-MAL-07-095 presented a substantial issue with respect to the grounds on which the appeal was filed under §30603 of the Coastal Act regarding consistency with the ESHA protection policies of the certified Local Coastal Plan. The appeal hearing was continued for the Commission's de novo review of the project.

Correspondence received since the Commission's September 5, 2007 appeal hearing on substantial issue is attached as **Exhibit 13**. One of the letters is from Steve Littlejohn, one of the appellants in this case. Mr. Littlejohn suggests an alternative siting and design plan for the project in which no development is within 100 feet of the applicant's rear property line or within 5 feet of the west property line where the Cypress tree windrow is located. Mr. Littlejohn believes that the applicant's rear property line is where ESHA shall be delineated. As described later in this report, the proposed project provides the required 100 foot buffer from off-site Malibu Lagoon ESHA, as determined by a site-specific biological assessment. In addition, the proposed project provides a 5 foot setback from the west property line where the Cypress tree windrow is located and the foundation of the residence has been designed to avoid impact to the root zones of the Cypress trees.

C. CONSISTENCY WITH LCP POLICIES – STANDARD OF REVIEW

After certification of a Local Coastal Program (LCP), Section 30603 of the Coastal Act provides for appeals to the Coastal Commission of a local government's actions on certain types of developments (including new development located between the first public road and the sea or within 100 feet of a wetland, such as the proposed project). In this case, the proposed development has been previously appealed to the Commission, which found, during a public hearing on September 5, 2007, that a substantial issue was raised.

At this stage of the appeal hearing, the Commission conducts a "de novo" review of the permit application, and the standard of review for the proposed development is the policies and provisions of the City of Malibu Local Coastal Program (LCP), which was certified by the Commission on September 13, 2002, and the public access and public recreation policies in Chapter 3 of the Coastal Act. The LCP consistency issues raised by the proposed development are discussed in the following sections.

D. HAZARDS

The proposed development is located on a bluff top lot in Malibu, an area generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards that are applicable to the proposed development.

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states in pertinent part that new development shall:

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

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

> ***4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.***
>
> ***4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a***

statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.

4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.

6.29 Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:

- ***Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.***
- ***Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.***
- ***Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.***
- ***Lawn shall not be located on any geologically sensitive area such as coastal blufftop.***
- ***Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.***

The proposed project site is located on a 0.41-acre parcel within the City's Malibu Colony Overlay District. 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. Malibu Lagoon, a wetland/estuary environment lies to the north of the property. A portion of the subject parcel (33 feet of property's rear yard) is situated within 100 feet of the upland limit of the adjacent wetland. The site is currently vacant and is comprised of ornamental landscaping.

The Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazard. In addition, the LCP requires a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. According to submitted geotechnical and soils engineering reports ("Soils Engineering Exploration", dated January 30, 2002, and "Response to City Geotechnical Review Sheets", dated January 19, 2006 and May 22, 2006, prepared by Grover-Hollingsworth and Associates Inc.; "Revised Geotechnical Recommendations", dated May 10, 2007, prepared by Grover-Hollingsworth and Associates Inc.; and "Proposed Dispersal Field," dated August 31, 2007, prepared by Grover-Hollingsworth and Associates Inc.), the subject site is underlain by a minor amount of fill over beach deposits and alluvium at depth. Groundwater is present at a

depth of five feet. A liquefaction analysis performed for the site indicates that the beach deposits below the groundwater table is liquefiable. However, the geologic consultants conclude that the subject property is a suitable site for the proposed development and will be safe against hazards from excessive settlement or slippage. The Commission is aware of no evidence contesting the findings in these studies, and thus, accepts their conclusions. As such, the Commission finds that the proposed project will serve to ensure general geologic and structural integrity on site. However, the Commission also finds that the submitted geotechnical and soils engineering reports include a number of recommendations to ensure the geologic stability and geotechnical safety of the site. To ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into all new development, the Commission finds it necessary to impose **Special Condition One (1),** which requires the applicant to incorporate all geologic and geotechnical recommendations of the consulting geologist and geotechnical engineer into the final project plans to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, drainage, and septic. Any substantial changes to the proposed development approved by the Commission that may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

As discussed above, the applicant's engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, the proposed development is located on a parcel adjacent to Malibu Lagoon that possesses a high water table and liquefiable substrate. The Commission finds that because there remains some inherent risk in building on the subject site, and due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from flooding, liquefaction, and wildfire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Two (2)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards that exist on the site and that may adversely affect the stability or safety of the proposed development. In addition, the Commission finds it necessary to impose **Special Condition Eight (8)**, as required by Malibu LUP Policy 4.42. **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission also finds that the minimization of site erosion will add to the stability of the site. In addition, the Malibu LCP requires that graded and disturbed areas be revegetated to minimize erosion. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants compatible with the surrounding environment. Invasive and non-native plant species are typically characterized as having a shallow root structure in comparison with their high surface/foliage weight and/or require a greater amount of irrigation and maintenance than native vegetation. The Commission finds that non-native and invasive plant

species with high surface/foliage weight and shallow root structures do not serve to stabilize bluff slopes and bluff top areas and that instead such vegetation adversely affects the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foliage weight, which helps to stabilize the soils, but also by their low irrigation and maintenance requirements. Malibu LCP policy 3.119 requires that landscaping for erosion control purposes consist entirely of native or drought-tolerant non-invasive plants. Within Zone A, as designated on the fuel modification plan, non-invasive ornamental plants are acceptable. Typically, Zone A is a 20 foot irrigated zone immediately surrounding the structure. Therefore, in order to ensure the stability and geotechnical safety of the site, **Special Condition Ten (10)** requires that all proposed disturbed and graded areas on the subject site are stabilized with native and limited non-invasive ornamental vegetation.

The project will increase the amount of impervious coverage on-site, which may increase both the quantity and velocity of stormwater runoff. If not controlled and conveyed off-site in a non-erosive manner, this runoff will result in increased erosion, adversely affect site stability, and degrade water quality. The applicant's geologic / geotechnical consultant has recommended that site drainage be collected and distributed in a non-erosive manner. In addition, the Malibu LCP Policy 4.10 requires that "new development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams". Therefore, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by **Special Condition Three (3)**, to prepare and implement drainage and polluted runoff management plans for the construction and post-construction phases of development that are prepared by the consulting engineer.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of Chapter 4 (Hazards and Shoreline/Bluff Development) of the Malibu LUP, including Section 30253 of the Coastal Act, which is incorporated as part of the LUP, and applicable standards of Chapter 9 (Hazards) of the Malibu LIP.

E. VISUAL RESOURCES

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Roads, which are those roads within the City that traverse or provide views of areas with outstanding scenic quality that contain striking views of natural vegetation, geology, and other unique natural features, including the beach and ocean. The Malibu LCP requires that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures.

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

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

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

6.1 The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.

6.2 Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.

6.4 Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.

6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.

6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

6.13 New development in areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.

6.15 Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.

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

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

The applicant proposes to construct a two-story, 5,200 sq. ft. single-family residence, with attached 1,368 sq. ft. garage, pool, spa, and alternative onsite wastewater treatment system on a 0.41-acre parcel within a residential neighborhood. The subject property is bounded by existing residential development to the west and east, Malibu Lagoon State Park to the north, and Malibu Colony Drive to the south. The property is not located along the beachfront and would not obstruct ocean views from any public viewing areas. The subject property is, however, partially visible from Malibu Lagoon State Park, public parkland that is situated adjacent to the applicant's north (rear) property line. The proposed project is sited in line with existing residential development and would not be significantly visible from public parkland. The proposed project has also been designed to conform to the scale and character of the other residences in the neighborhood. The proposed 5,200 sq. ft. residence is two-story and 30 feet in height. Although the structure will be visible from parkland, reducing the proposed structure further to one-story, or 18 feet in height, or reducing the structure footprint, would not significantly reduce adverse visual impacts.

Since the project site will be visible from a public viewing area, mitigation to address potential visual impacts is needed for the proposed residence. The visual impact of the proposed structure can be minimized by requiring the structure be finished in a color consistent with the surrounding natural landscape and, further, by requiring that non-reflective materials are used. To ensure visual impacts associated with the structure's appearance are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-reflective materials, as detailed in **Special Condition Six (6)**.

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

areas. In order to mitigate any potential future visual and environmental impacts of the proposed project, the Commission finds it necessary to require that exterior lighting to be minimized and restricted to low intensity fixtures, shielded, and concealed to the maximum extent feasible so that no light source is directly visible from public viewing areas or the beach and ocean area, as specified in **Special Condition Five (5)**.

Special Condition Eight (8) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

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

F. ENVIRONMENTALLY SENSITIVE HABITAT AND WATER QUALITY

The following policies of Chapter Three of the Coastal Act are incorporated as part of the City of Malibu LUP:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

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

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

> ***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.***

In addition, the City of Malibu certified LUP contains policies that protect the environmentally sensitive habitat areas of the City. LUP Policy 3.8 states that Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. The LUP policies also establish the protection of areas adjacent to ESHA through the provision of buffers. Natural vegetation buffer areas must be provided around ESHA that are of sufficient size to prevent impacts that would significantly degrade these areas. Development, including fuel modification, shall not be permitted within required buffer areas.

LUP Policy 3.23 states the following:

> ***Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs 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 ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.***

Policy 3.31 of the LUP states that permitted development located within or adjacent to ESHA and/or parklands that adversely impact those areas may include open space or conservation restrictions or easements over ESHA, ESHA buffer, or parkland buffer in order to protect resources.

The certified Local Implementation Plan (LIP) contains standards and policies to implement the Land Use Plan. Chapter 4 of the LIP specifically addresses environmentally sensitive habitat areas (ESHA). The ESHA overlay provisions apply to those areas designated ESHA on the Malibu LIP ESHA overlay map and those areas within 200 feet of designated ESHA. Additionally, those areas not mapped as ESHA, but found to be ESHA under the provisions of Section 4.3 of the Malibu LIP are also subject to these provisions. The purpose of the ESHA overlay zone is to protect and preserve areas 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 easily be disturbed or degraded by human activities and development. The environmentally sensitive habitat overlay zone not only extends over an ESHA area itself but also includes buffers necessary to ensure continued protection of habitat areas. Only uses dependent on the environmentally sensitive habitat areas and which do not result in significant disruption of habitat values are permitted in the ESHA overlay zone.

Section 4.6.1 of the Malibu LIP states, in part, the following with regard to 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 Commission recognizes that new development in Malibu and the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

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

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

Further, the following LUP water quality policies are applicable:

> ***3.100 New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.***
>
> ***3.102 Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.***
>
> ***3.110 New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate***

sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.

3.111 New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.

3.125 Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.

3.126 Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.

3.127 OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.

3.131 The construction of private sewage treatment systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage treatment system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.

3.138 New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems.

3.141 Applications for a coastal development permit for OSTS installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTS on groundwater level, quality of nearby surface drainages, and slope stability. Where it is shown that the OSTS will negatively impact groundwater, nearby surface waters, or slope stability, the OSTS shall not be allowed.

Analysis

The applicant proposes to construct a two-story, 5,200 sq. ft. single-family residence, with attached 1,368 sq. ft. garage, pool, spa, and alternative onsite wastewater treatment system on a 0.41-acre parcel at 23405 Malibu Colony Drive, Malibu (**Exhibits 1-10**). The subject 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. 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**). 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 June 3, 2005 Wetland Delineation Study prepared by the applicant's consulting biologist, 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 City Biologist concurred 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 wetland ESHA buffer is situated on the subject parcel.

ESHA Delineation

In its September 2007 substantial issue determination on the subject appeal, the Commission found a lack of adequate analysis regarding the boundaries of the off-site ESHA and a misapplication of the LCP policies raised a substantial issue in terms of the project's conformance with the ESHA protection provisions of the Malibu LCP.

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 2005 report 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 predominently mesophytic or xerophytic cover;
B. the boundary between soil that is predominently hydric and soil that is predominently 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 2005 wetland delineation report and concluded that there were flaws in the biological consultant's analysis of the upslope area that indicated the delineated upland limit of the wetland might not be accurate.

Three separate vegetative communities were 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 dominent species within the plot, is an upland indicator species and since less than 50% of the dominent 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. TeraCor biologist, Timothy Searl, clarified this issue for Commission staff in his September 2, 2007 letter which states that the data form for sampling plot #6 indicated only the genus for saltbush and not the species. There were actually two saltbush species present in that polygon: Big Saltbush (native) and Waxy Saltbush (non-native). Waxy saltbush is not listed as a wetland indicator species in the 1988 *National List of Plant Species That Occur in Wetlands*. Therefore, the lack of dominant listed wetland indicator species and lack of hydrology and hydric soils in this polygon resulted in TeraCor's determination that the area is not a wetland. Commission staff biologist Dr. Engel has reviewed TeraCor's September 2, 2007 letter and found it provided the necessary additional information to support the non-wetland determination.

The other information that had previously raised an issue regarding the accuracy of the ESHA delineation had to do with the fact that no sampling was conducted within the polygon labeled saltbush scrub on the 2005 wetland delineation map. 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. To clarify this issue, TeraCor performed a field assessment within the saltbush scrub polygon on January 31, 2008. An addendum report on the results of the assessment was received by Commission staff on February 11, 2008. The report states that the saltbush scrub polygon does not qualify as a wetland because upland vegetation was dominant, hydrology was absent, and soils were non-hydric. Commission staff biologist Dr. Engel has reviewed TeraCor's sampling report and concurrs with the conclusions of the wetland delineation.

Lastly, issue was raised in the subject appeal regarding whether the identified upland habitat adjacent to the property and Malibu Lagoon wetland met the definition of ESHA. When the proposed project was considered by the City of Malibu, the "upland" area was not analyzed by the City or the biological consultant for inclusion as ESHA itself. The scope of the 2005 biological consultant's assessment was limited to discerning wetland ESHA. The biologist's 2005 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 their September 2, 2007 response letter to Commission staff regarding the appeal, the applicant's consulting biologist, TeraCor, states that the upland areas adjacent to the property and lagoon are disturbed, consist largely of non-native vegetation, and do not support sensitive bird, reptile, or mammal species. TeraCor concludes that the upland areas do not meet the definition of ESHA. The area between the subject property and the lagoon is bisected by a State Parks public access/maintenance road. The relatively small strips of upland vegetation on either side of the road is disturbed and contains predominantly non-native vegetation according to TeraCor's surveys. Commission staff is currently processing a coastal development permit application for a large-scale restoration project at Malibu Lagoon State Park. To enhance lagoon habitat value and function, the proposed restoration project involves changing the lagoon's configuration, planting native species and removing non-native species. While the upland areas adjacent to the applicant's property and Malibu Lagoon possesses important transitional habitat value and wetland buffer function, the upland areas currently do not contain plant or animal life, or habitat for plant or animal life, that is either rare or especially valuable because of its special nature or role in the ecosystem. Based on the available information, the Commission concludes that the upland-vegetated areas adjacent to the site do not meet the definition of ESHA and the delineated off-site ESHA boundary (65-67 feet from the applicant's rear property line) is indeed accurate. The project approved by the City was designed such that the proposed

pool, spa, residence, garage, and septic system are all situated at least 33 feet from the rear property line that fronts the lagoon in order to provide a 100-foot buffer from adjacent ESHA on State parkland. However, a 493 sq. ft. subsurface dispersal field associated with the proposed alternative onsite wastewater treatment system was located within the ESHA buffer area on-site, adjacent to the rear property line. The applicant has since re-designed the project to relocate the septic system outside the ESHA buffer area. As such, all proposed development will provide the required 100-foot buffer from ESHA.

Although the applicant is providing the 100-foot buffer from ESHA as required by the LCP, it should be noted that the Commission disagrees with an LCP interpretation the City of Malibu made during their consideration of the project. The City made the argument 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.

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 referred 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 as, and substitute for, the general development standards that apply City-wide. They are specific to this overlay district, but their subject-matter is still such that they are “general” development standards for that unique location. 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.

ESHA Buffer

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 subject property. Section 4.3 of the Malibu LIP states that the actual physical extent of habitat meeting the definition of "environmentally sensitive area" shall be based on a site-specific biological study and available independent evidence. As mentioned previously, a site-specific biological assessment for the project found that a portion of the subject parcel is situated within 100 feet of off-site ESHA. The applicant designed the project such that the proposed pool, spa, residence, and garage are all situated at least 33 feet from the rear property line that fronts the adjacent lagoon ESHA in order to provide the required 100-foot buffer. However, as approved by the City of Malibu, the project previously included a 493 sq. ft. subsurface dispersal field associated with the proposed alternative onsite wastewater treatment system (OWTS) that was located within the ESHA buffer area on-site, adjacent to the rear property line. 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 did not analyze siting and design alternatives to avoid placement of the OWTS and dispersal field within the ESHA buffer during their review of the project. The Commission concluded at the substantial issue determination hearing on the subject appeal in September 2007 that, at a minimum, the location of the OWTS aspect of the approved project presented a substantial issue with respect to whether it provides an adequate buffer from the adjacent wetland ESHA. The applicant has since provided Commission staff with a revised OWTS plan in which the subsurface septic dispersal field on the property has been relocated outside of the 33 foot ESHA buffer area on the property (**Exhibit 4**). The City of Malibu Environmental Health Department has reviewed and approved the revision. As such, the proposed project is consistent with Section 4.6.1 of the Malibu LIP, in that the development will provide a sufficient buffer from the off-site ESHA.

In order to ensure that no additions or improvements are made to the property without due consideration of the ESHA impacts, the Commission finds it necessary to require a future development restriction, which requires the applicant to obtain an amended or new coastal permit if additions or improvements to the site are proposed in the future, as detailed in **Special Condition Seven (7)**. In addition, **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission has determined that in conjunction with siting new development to avoid impacts to ESHA, additional actions can be taken to minimize adverse impacts to ESHA. The Commission finds that the use of non-native and/or invasive plant species

for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Ten (10)** requires that landscaping consist primarily of native plant species and that invasive plant species shall not be used.

Monterey Cypress Trees

There is a windrow of approximately 14 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 Cypress tree trunks reside on the neighboring property, the tree roots and canopies extend over the west edge of the subject property (**Exhibit 10**). According to the consulting arborist of the applicant, in a March 16, 2007 letter, only 6 of the 14 Cypress trees are in a healthy condition (**Exhibit 12**). 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.

At the substantial issue determination hearing on the subject appeal, the Commission found that the appellants contention that the approved project does not conform to the ESHA protection policies and provisions of the certified LCP with regard to the Cypress trees raised a substantial issue. The City did not analyze whether the trees met or failed to meet the definition of an environmentally sensitive habitat area (ESHA). 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 a site-specific biological study, as well as available independent evidence.

Monterey Cypress trees are not native to this region of California, and are not afforded protection under the City's Native Tree Protection Ordinance (LIP Chaper 5). However, evidence in the record suggests the trees provide a valuable role in the estuary ecosystem. The trees provide benefits to 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 the Malibu Lagoon estuary. The height of the trees and the dense foliage provide protection from disturbance and predators. However, the trees have <u>not</u> been used as a nesting site. A California Department of Fish & Game

comment letter to the City of Malibu, 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 trees are located in a built-out residential neighborhood subject to regular disturbance and neither the trees or bird species that use them are rare, easily disturbed, or especially valuable because of their special nature or role in the ecosystem. Therefore, the Commission finds that the subject Cypress trees do not meet the definition of ESHA under the Malibu LCP. However, the trees do provide habitat value for roosting native birds (herons and raptors), and potentially nesting native birds, that warrants protection to the maximum extent feasible.

The California Department of Fish & Game March 28, 2007 letter recognized that there was a potential for the project to impact nesting native birds and provided 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. Also recognizing the biological importance of the Cypress trees, the City of Malibu imposed special conditions on the proposed project to address foundation design to protect tree roots, avoidance of construction during nesting season, replacement of Cypress trees at a 1:1 ratio as mitigation should any trees die as a result of project construction, and limitation on night lighting.

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 applicant requested a “minor modification” to reduce the required cumulative side yard setback (25% of total lot width provided by the two side yard setbacks combined) from 12 feet, 5 inches to 10 feet. The applicant proposes a side yard setback of 5 feet on each side, instead of the required 6.25 feet on each side. The applicant’s request for a 17% reduction in the cumulative side yard setback requirement is within the parameters of a minor modification. In addition, the proposed project will meet the minimum single side yard setback requirement of 5 feet. The proposed project site is relatively constrained given the width and size of the parcel and proximity to Malibu Lagoon ESHA. However, the side yard setback reduction places the proposed residence 5 feet from the western property line where the windrow of Cypress trees is located. The applicant has modified the design of the structure’s foundation in order to avoid destruction to the root zone of one of the adjacent Cypress trees that the building will encroach upon. Although none of the trees will require removal as a result of the proposed project, the applicant will need to prune several of the Cypress trees to accommodate the proposed structure. Since the trees possess biological value and should be protected to the maximum extent feasible, the Commission finds it necessary to require the applicant to have a certified arborist survey the project site prior to any construction activities and flag the construction work area and the Cypress trees and their minimum root protection zones to be avoided during all work, as detailed in **Special Condition Eleven (11)**. The arborist is to be present on-site during grading and tree trimming/pruning operations to monitor the work and ensure the six healthy Cypress trees are protected. Should any of the six healthy Cypress trees identified above be lost or suffer worsened health or vigor as a result of the project, at least one

replacement tree (with at least a 48-inch box size) for every one lost shall be planted on the project site as mitigation.

To ensure that the proposed project does not impact potential nesting birds in on-site or adjacent trees, **Special Condition Twelve (12)** requires a qualified biologist with experience in conducting bird surveys to conduct bird surveys 30 days prior to construction, grading, or tree pruning/trimming to detect any active bird nests in all trees on and adjacent to the project site. The last survey should be conducted 3 days prior to the initiation of clearance/construction. If an active nest is located, clearing/construction shall be postponed until the nest(s) is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting.

The Commission finds that the proposed project, as conditioned, will not result in adverse impacts to ESHA and is consistent with the applicable policies of the Malibu LCP.

Water Quality

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

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

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

Further, the following LUP water quality policies are applicable:

> ***3.100 New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.***
>
> ***3.102 Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent***

with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.

3.110 New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.

3.111 New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.

3.125 Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.

3.126 Wastewater discharges shall minimize adverse impacts to the biological productivity and quality of coastal streams, wetlands, estuaries, and the ocean. On-site treatment systems (OSTSs) shall be sited, designed, installed, operated, and maintained to avoid contributing nutrients and pathogens to groundwater and/or surface waters.

3.127 OSTSs shall be sited away from areas that have poorly or excessively drained soils, shallow water tables or high seasonal water tables that are within floodplains or where effluent cannot be adequately treated before it reaches streams or the ocean.

3.128 New development shall be sited and designed to provide an area for a backup soil absorption field in the event of failure of the first field.

3.130 Subsurface sewage effluent dispersal fields shall be designed, sited, installed, operated, and maintained in soils having acceptable absorption characteristics determined either by percolation testing, or by soils analysis, or by both. No subsurface sewage effluent disposal fields shall be allowed beneath nonporous paving or surface covering.

3.131 New development shall include the installation of low-flow plumbing fixtures, including but not limited to flow-restricted showers and ultra-low flush toilets, and should avoid the use of garbage disposals to minimize hydraulic and/or organic overloading of the OSTS.

3.132 New development may include a separate greywater dispersal system where approved by the Building Safety Department.

3.133 The construction of private sewage treatment systems shall be permitted only in full compliance with the building and plumbing codes and the requirements of the LA RWQCB. A coastal development permit shall not be approved unless the private sewage treatment system for the project is sized and designed to serve the proposed development and will not result in adverse individual or cumulative impacts to water quality for the life of the project.

3.140 New septic systems shall be sited and designed to ensure that impacts to ESHA, including those impacts from grading and site disturbance and the introduction of increased amounts of groundwater, are minimized. Adequate setbacks and/or buffers shall be required to protect ESHA and other surface waters from lateral seepage from the sewage effluent dispersal systems.

3.141 Applications for a coastal development permit for OSTS installation and expansion, where groundwater, nearby surface drainages and slope stability are likely to be adversely impacted as a result of the projected effluent input to the subsurface, shall include a study prepared by a California Certified Engineering Geologist or Registered Geotechnical Engineer that analyzes the cumulative impact of the proposed OSTS on groundwater level, quality of nearby surface drainages, and slope stability. Where it is shown that the OSTS will negatively impact groundwater, nearby surface waters, or slope stability, the OSTS shall not be allowed.

The project site is a vacant infill parcel located in the Malibu Colony residential neighborhood adjacent to Malibu Lagoon State Park. The proposed development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on the project site. The reduction in permeable surface area therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak water discharge is increased and the peak occurs much sooner after precipitation events. Additionally, grading, excavation and disturbance of the site from construction activities and runoff from impervious surfaces can result in increased erosion.

In addition, pollutants commonly found in runoff associated with new residential development include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter and organic matter; fertilizers, herbicides, and pesticides from household gardening; nutrients from wastewater discharge, and animal waste; and bacteria and pathogens from wastewater discharge and animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation which provides food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The LCP water quality policies cited above are designed to protect water quality and prevent pollution of surface, ground, and ocean waters. The Malibu LCP requires the

preparation of a Storm Water Management Plan (SWMP) for all projects that require a coastal development permit. A SWMP illustrates how the project will use appropriate site design and source control best management practices (BMPs) to minimize or prevent adverse effects of the project on water quality. Therefore, pursuant to the requirements of the Malibu LCP, and to ensure the proposed project will not adversely impact water quality or coastal resources, the Commission finds it necessary to require the preparation of a SWMP for the subject site, that utilizes site design, source control and treatment control BMPs, as specified in **Special Condition Three (3)**.

Furthermore, erosion control and storm water pollution prevention measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from runoff during construction. The Malibu LCP requires that a Local Storm Water Pollution Prevention Plan (SWPPP) be prepared for all development that requires a Coastal Development Permit and a grading or building permit, and it be applied to the construction phase of the project. The SWPPP includes measures and BMPs to prevent erosion, sedimentation and pollution of surface and ocean waters from construction and grading activities. In this case, the proposed project does involve grading and construction that requires grading and building permits. Therefore, pursuant to the Malibu LCP and to ensure the proposed development does not adversely impact water quality or coastal resources during the construction phase of the project, the Commission finds it necessary to require the applicant to submit a Local SWPPP for the subject site, consistent with the requirements specified in **Special Condition Three (3)**.

As stated previously, the proposed project includes a swimming pool and spa. Malibu LUP policies 3.95 and 3.96 require that new development be sited and designed to protect water quality and not result in the degradation of surface waters, including the ocean, coastal streams or wetlands. There is the potential for pools and spas to have deleterious effects on aquatic habitat if not properly maintained and drained. In addition, chlorine and other chemicals are commonly added to pools and spas to maintain water clarity, quality, and pH levels. Further, both leakage and periodic maintenance of the proposed spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing instability of the site and adjacent properties and may result in the transport of chemicals, such as chlorine, into coastal waters, adversely impacting sensitive wetland and marine habitats. Therefore, in order to minimize potential adverse impacts from the proposed pool and spa, the Commission finds it is necessary to require the applicant to submit a pool and spa drainage and maintenance plan, as detailed in **Special Condition Nine (9)**.

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

the provisions of the plumbing code is protective of resources. In order to ensure the OSTS is maintained and monitored in the future to prevent system failures or inadequate system performance, the Malibu LCP includes policies and standards requiring the regular maintenance and monitoring of the OSTS. Therefore, the Commission finds that it is necessary to require the applicant to submit verification that they have obtained a monitoring, operation and maintenance permit from the City, as outlined in **Special Condition Four (4)**.

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

G. MINOR MODIFICATION (LIP SECTION 13.27.5)

Section 13.27 of the Malibu LIP states that the Planning Manager may consider and approve minor deviations from standards or requirements of the LCP as applied to a coastal development permit for specific situations, such as reduced setbacks. The applicant requests a "minor modification" to reduce the required front yard setback from 15 feet to 8 feet, and the required cumulative side yard setback (25% of total lot width provided by two side yard setbacks combined) from 12 feet, 5 inches to 10 feet. The applicant proposes a side yard setback of 5 feet on each side, instead of the required 6.25 feet on each side. The Malibu LCP specifies that a minor modification may not reduce setbacks by more than 20%, except for front yard setbacks, which may not be reduced by more than 50%. In the case of the proposed project, the applicant's request for a 17% reduction in the cumulative side yard setback requirement and a 47% reduction in the front yard setback requirement is within the parameters of a minor modification. In addition, the proposed project will meet the minimum single side yard setback requirement of 5 feet.

Section 13.27.5(B) of the LIP states that a minor modification may only be approved if the project is also consistent with the policies of the LCP, does not adversely affect neighborhood character, and complies with all applicable requirements of state and local law.

The proposed project site is relatively constrained given the width and size of the parcel and proximity to Malibu Lagoon ESHA. The proposed reduction in yard setbacks is consistent with other properties in the neighborhood and will not adversely affect neighborhood character. As discussed in the preceding sections of this staff report, the proposed project, as conditioned, is consistent with all relevant policies of the LCP. In addition, the project is consistent with the applicable requirements of state and local law.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding

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

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

Local Coastal Program - City of Malibu

ESHA and Marine Resources Map 3: Dan Blocker to Malibu Pier

Match Line to Map 2

Match Line to Map 4

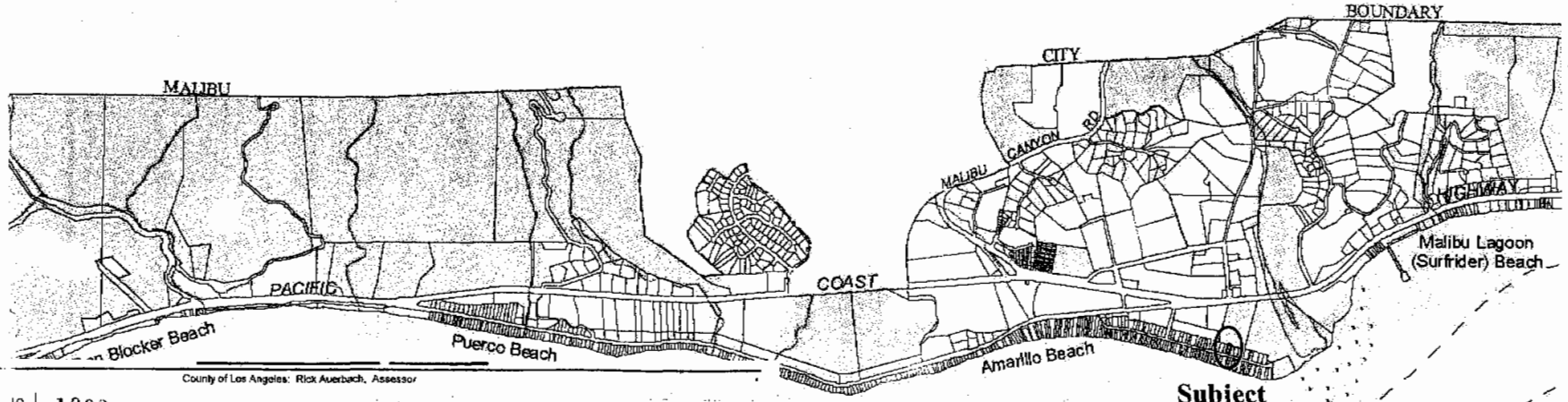
Environmentally Sensitive Habitat Areas
Includes areas identified as coastal sage scrub and/or chaparral, riparian areas and wetlands.*

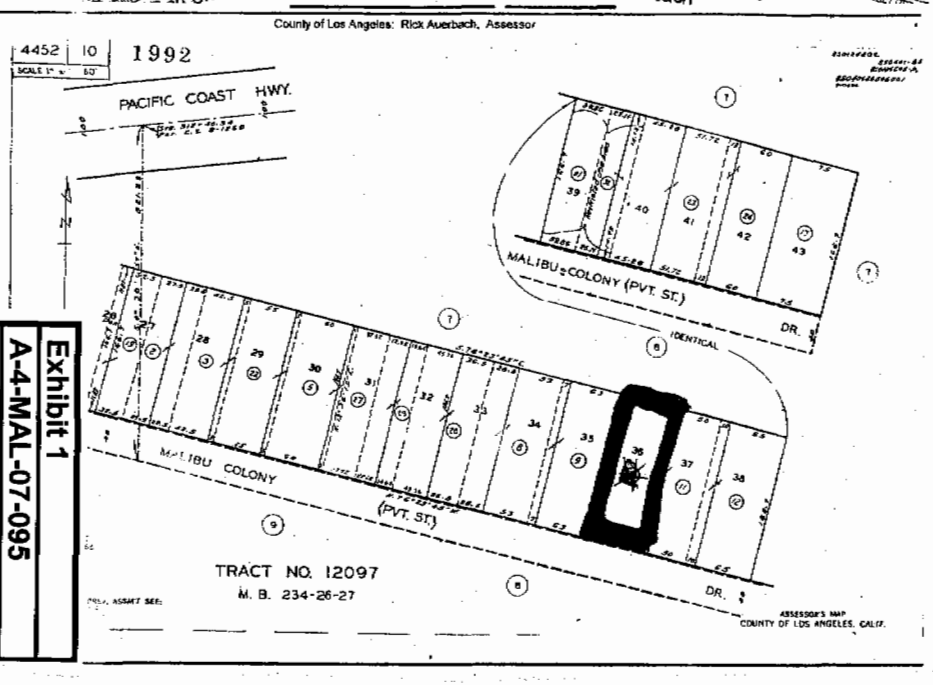
Kelp Beds

Near Shore Shallow-water Fish Habitat

Streams

Clam Habitat





N

1/2 1

file

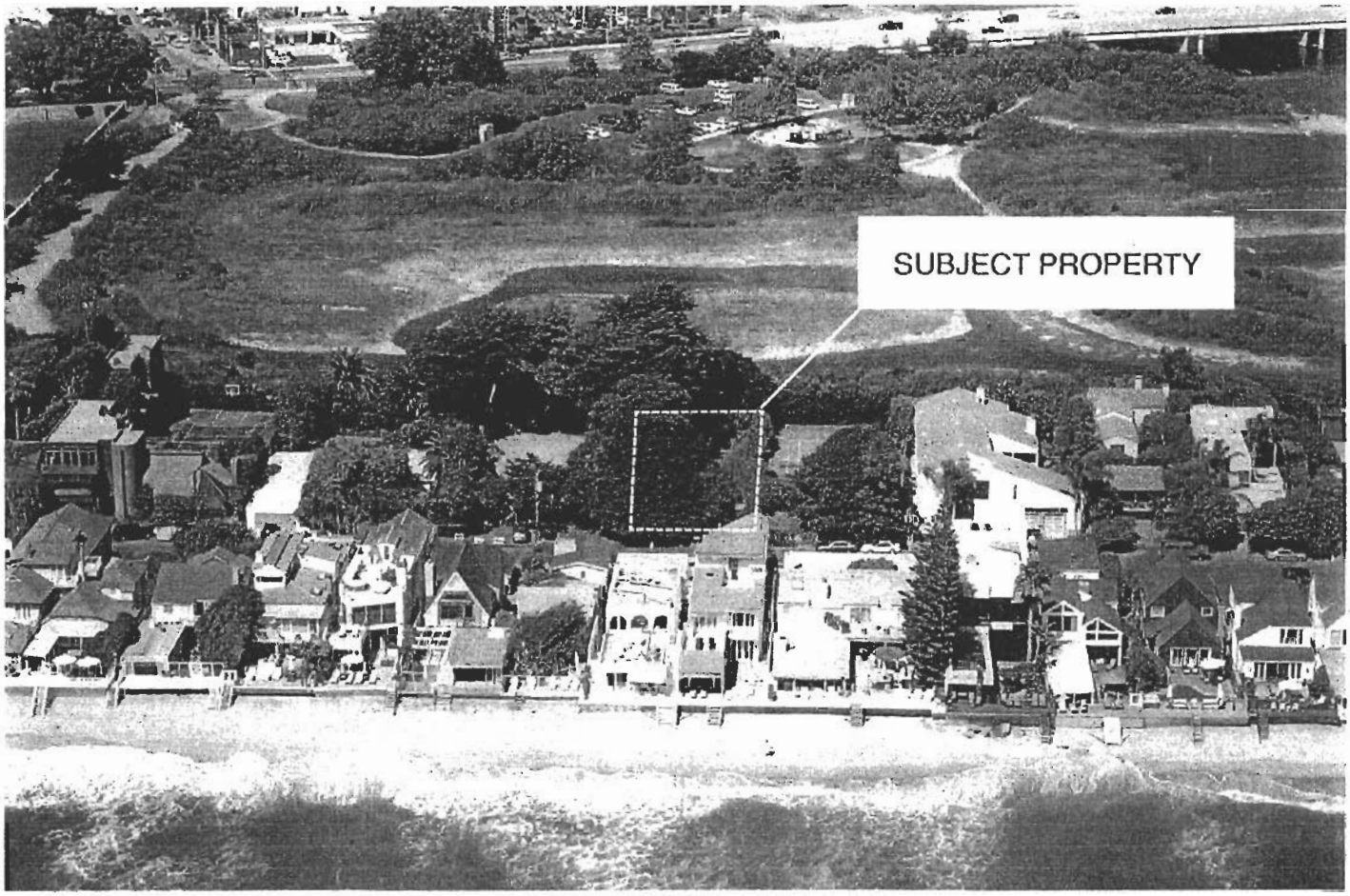
*Boundaries of ESHAs may change location over time due to varying circumstances. This map is not intended to depict fixed boundaries of ESHAs or marine resources and may not include all areas that are ESHA. This map does not establish any final boundary lines or constraints on the Commission's ability 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, JVC Revised 9/02

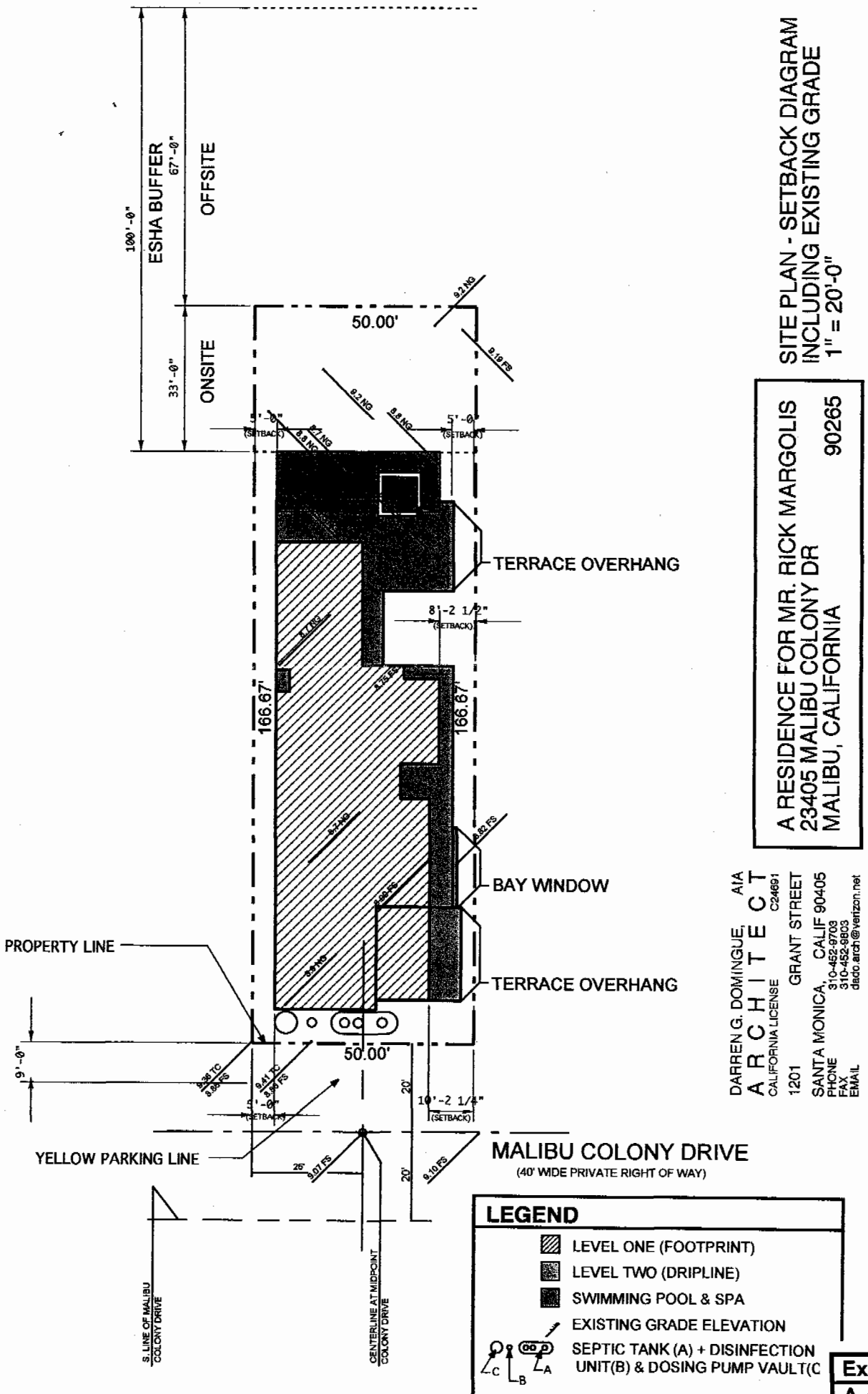
Exhibit 1
A-4-MAL-07-095
Vicinity / Parcel Maps

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 90265
MALIBU, CALIFORNIA

DARREN G. DOMINGUE, AIA
ARCHITECT
CALIFORNIA LICENSE C24691
1201 GRANT STREET
SANTA MONICA, CALIF 90405
PHONE 310-452-9703
FAX 310-452-9803
EMAIL dado.arch@verizon.net

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

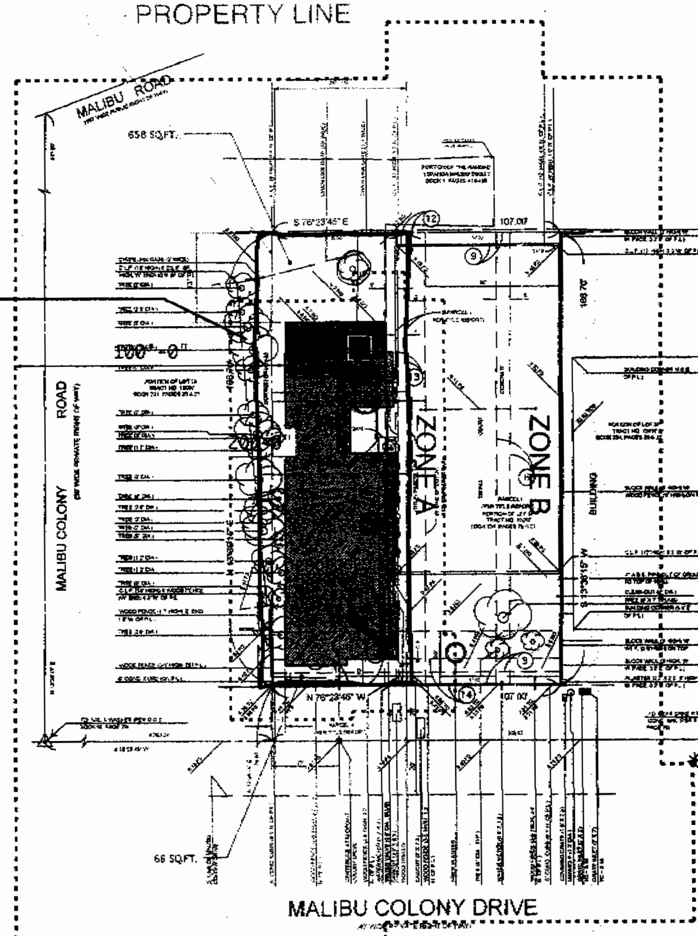
FUEL MODIFICATION PLAN

NOTES CORRESPONDING TO SCHEDULE "B":

LAND AREA:

PARKING STALLS:

LEGEND:



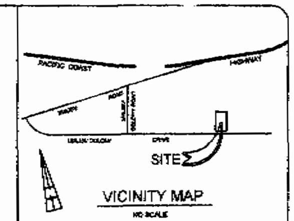
SITE RESTRICTIONS:

GRAPHIC SCALE: 1"=20'

FLOOD NOTE:

BENCH MARK:

BASIS OF BEARINGS:



ASSESSMENT FOR FUEL MODIFICATION PLAN

Zone A – Setback Zone

Zone B – Irrigated Zone

Zone C – Native Brush Thinning Zone

Fire Access Road Zone

Maintenance

COUNTY OF LOS ANGELES FIRE DEPARTMENT FIRE PREVENTION BUREAU PRELIMINARY FUEL MODIFICATION PLAN APPROVED

FUEL MODIFICATION UNIT

MARGOLIS RESIDENCE
23405 MALIBU COLONY DRIVE
MALIBU, CALIFORNIA 90265

DARREN DOMINGUE, ARCHITECT
1201 GRANT STREET
SANTA MONICA, CALIFORNIA 90265

ACCEPTED AND APPROVED FOR CONSTRUCTION		
OWNER	BY	DATE
TENANT	BY	DATE
CONTRACTOR	BY	DATE

THIS DRAWING MAY NOT BE USED FOR CONSTRUCTION WITHOUT THE ABOVE APPROVALS NOR WITHOUT THE REQUIRED PERMITS BEING OBTAINED.

REVISIONS: NO. | DESCRIPTION | DATE | APP'D

DATE	3-4-05
SCALE	1"=20'
DRAWN	F.M.
CHECKED	SEO

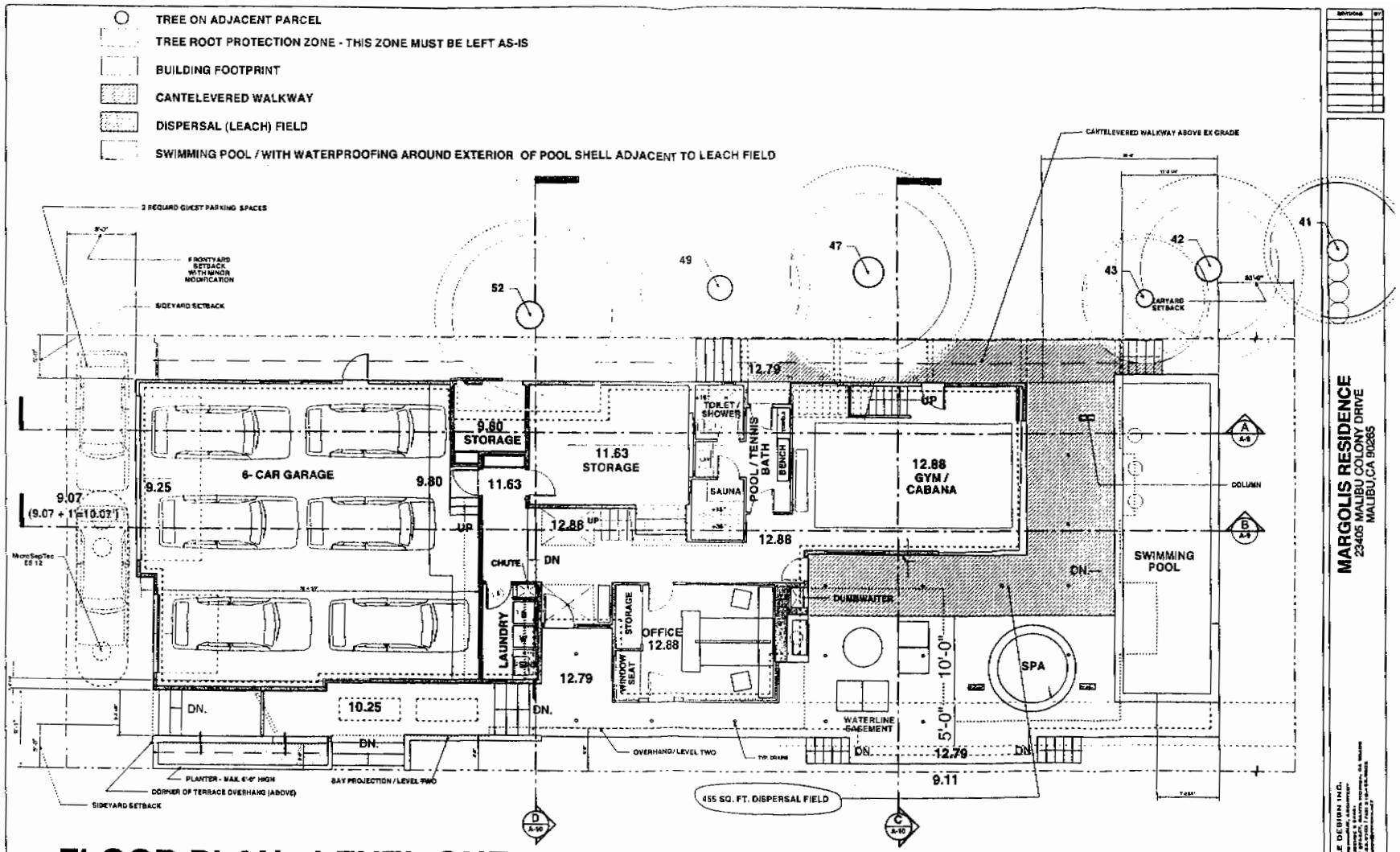
SCOTT E. OHANA, P.L.S.
400 PRINCELAND COURT, UNIT 5
CORONA, CALIFORNIA 92879
951/739-7975
FAX 951/739-7542

SHEET TITLE: ALTA/ACSM LAND TITLE SURVEY

SITE: 23405 MALIBU COLONY DRIVE MALIBU, CALIFORNIA

SHEET NO. 1 of 1

ex. 3



FLOOR PLAN - LEVEL ONE

(VERSION B)

(WITH PARTIAL SITE PLAN)

1/4"=1'-0"

(SEE SHEET A-1 FOR DIAGRAM OF STRUCTURE SETBACKS)

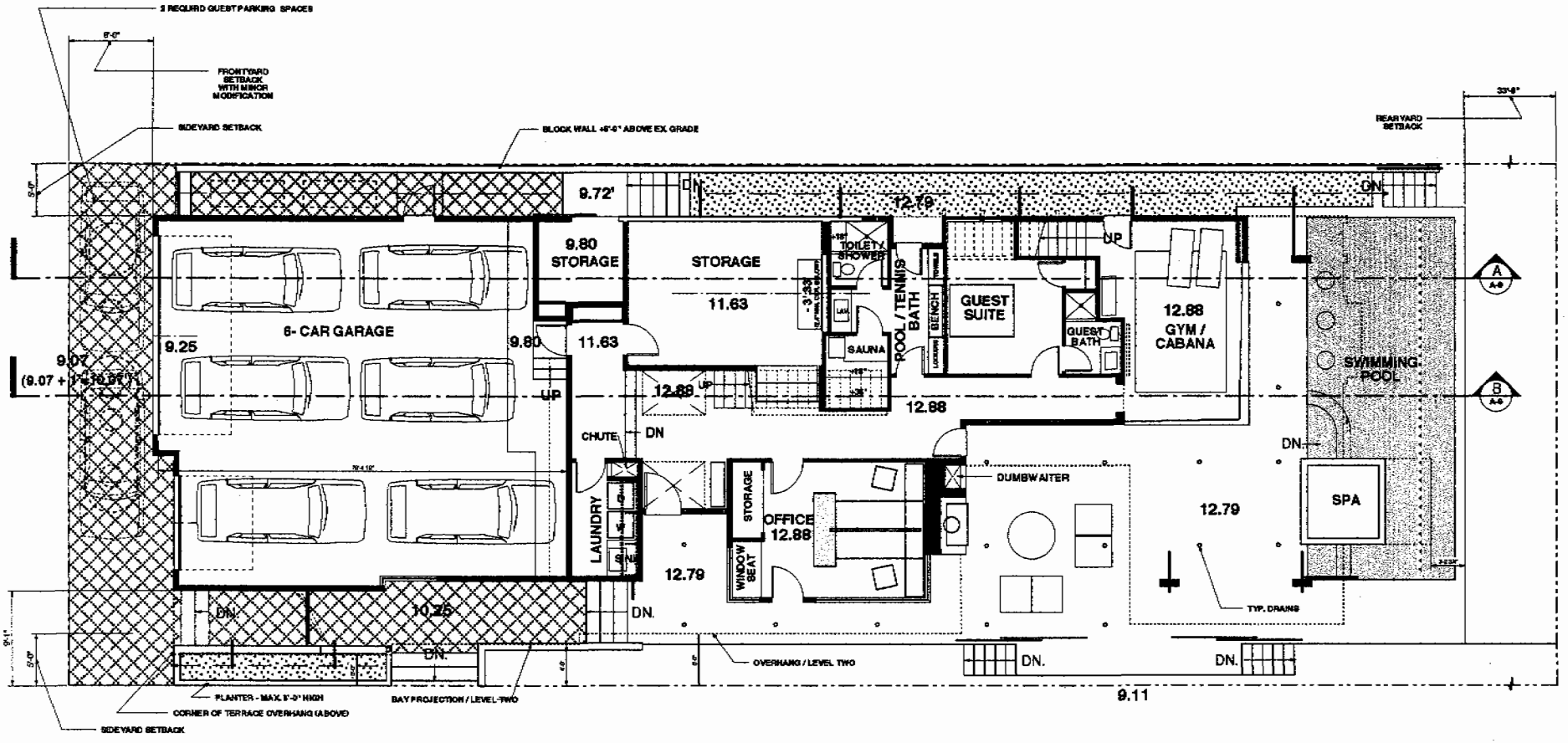
HOUSE - 1624 SQ.FT.
GARAGE - 1368 SQ.FT.

MARGOLIS RESIDENCE
23405 MALIBU COLONY DRIVE
MALIBU,CA 90265

DOMICILE DESIGN INC.

A-4

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



LOOR PLAN - LEVEL ONE

(WITH PARTIAL SITE PLAN)

1/4"=1'-0"

HOUSE - 1652 SQ.FT.
GARAGE - 1368 SQ.FT.

(SEE SHEET A-1 FOR DIAGRAM OF STRUCTURE SETBACKS)

MARGOLIS RESIDENCE
23405 MALIBU COLONY DRIVE
MALIBU, CA 90265

DARRYL DOMINIQUE, AIA
ARCHITECT
1321 GRANT STREET
SANTA MONICA, CALIF 90405

DATE:
SCALE: 1/4" = 1'-0"
DRAWN: DD / TC
JOB
SHEET
A-4

Exhibit 5
A-4-MAL-07-095
1st Floor Plan

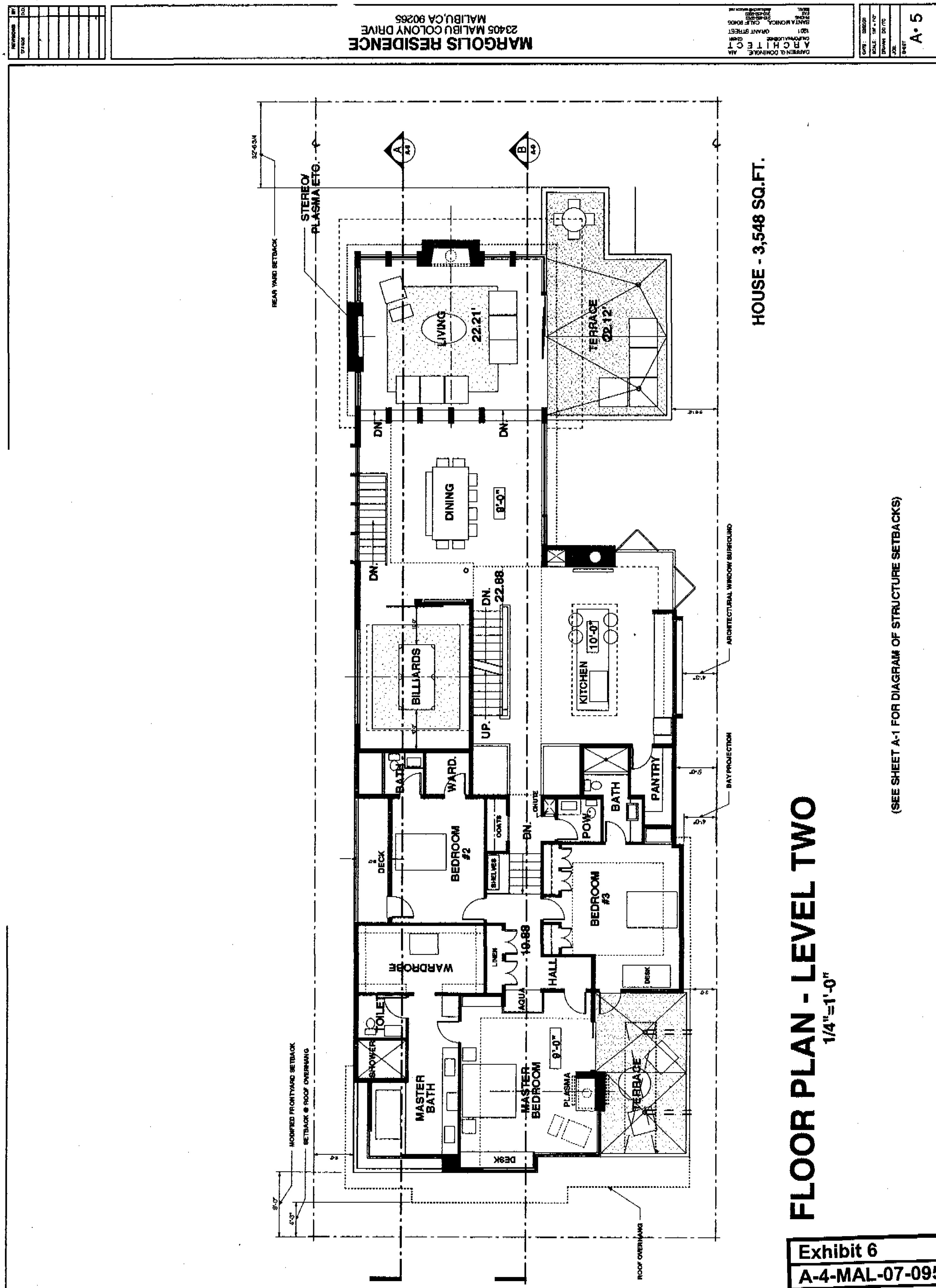
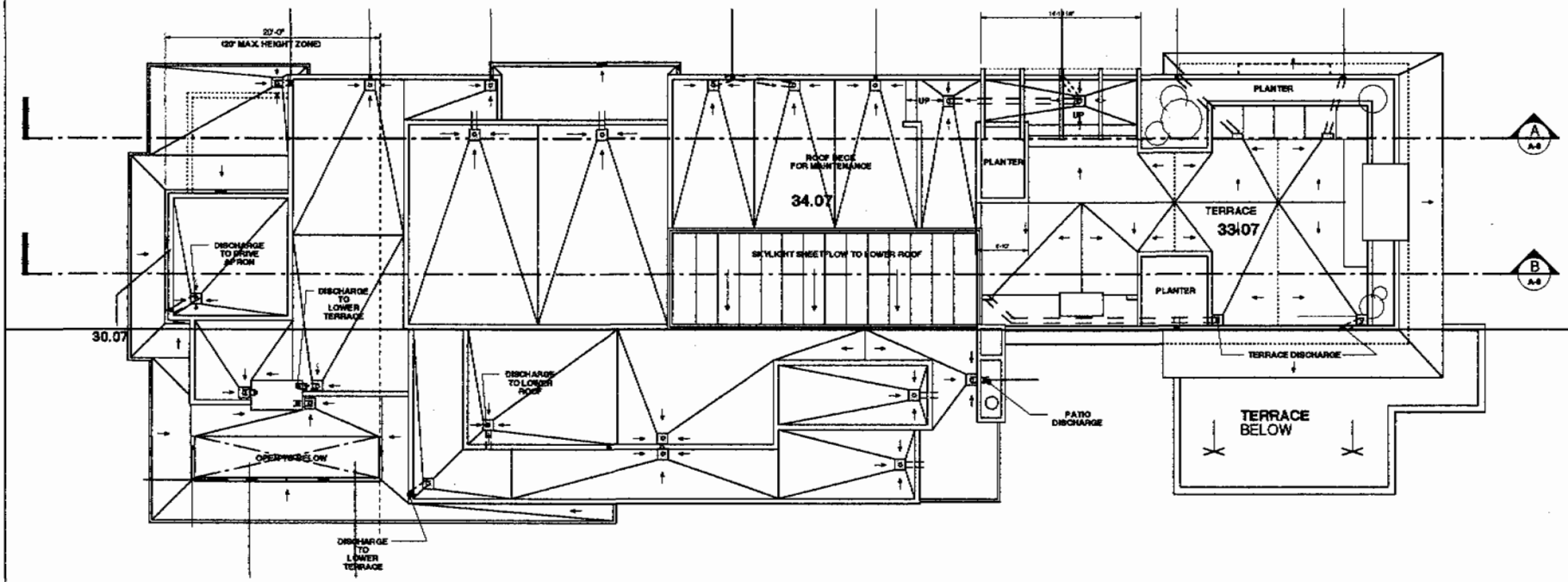


Exhibit 6
A-4-MAL-07-095
2nd Floor Plan



ROOF PLAN

1/4"=1'-0"

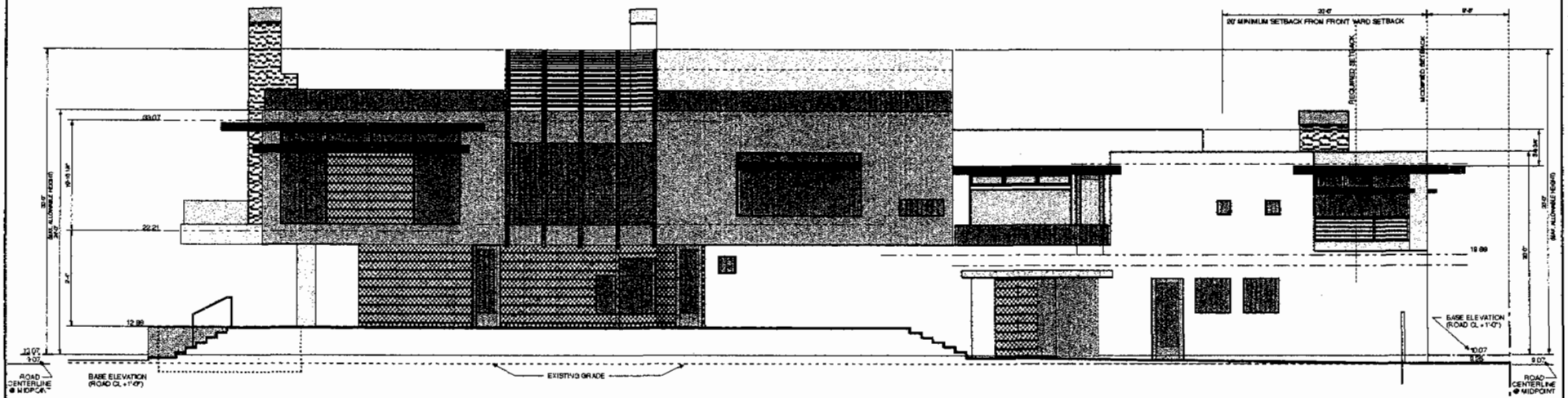
Exhibit 7
A-4-MAL-07-095
Roof Plan

REVISIONS	BY
07/2005	DD

MARGOLIS RESIDENCE
23405 MALIBU COLONY DRIVE
MALIBU, CA 90265

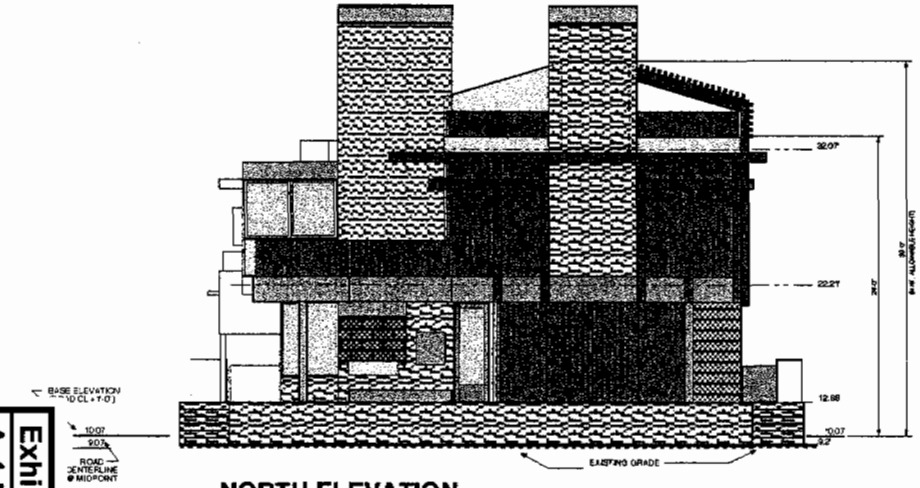
DARREN G. DOMROSE, AIA
ARCHITECT
1031 GRANT STREET
SANTA MONICA, CALIF 90405
PHONE
FAX

DATE: 02/2005
SCALE: 1/4" = 1'-0"
DRAWN: DD ITC
JOB:
SHEET: A-6



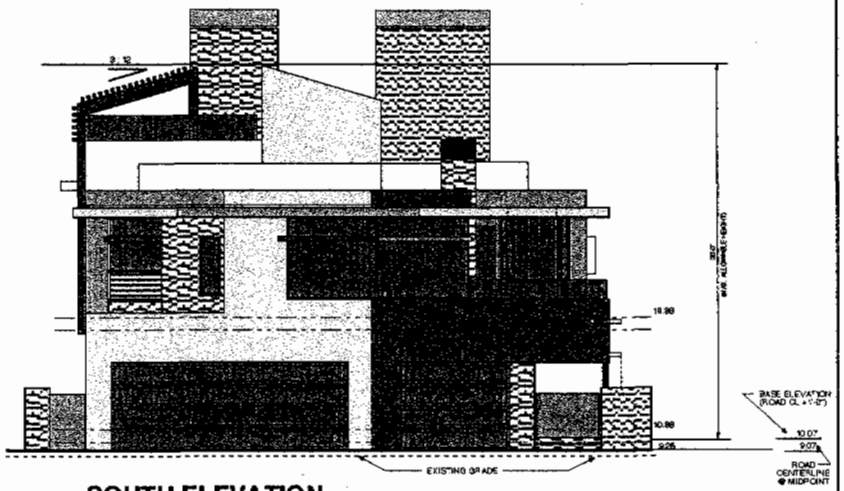
WEST ELEVATION

SCALE 1/4"=1'-0"



NORTH ELEVATION

SCALE 1/4"=1'-0"



SOUTH ELEVATION

SCALE 1/4"=1'-0"

MARGOLIS RESIDENCE
23405 MALIBU COLONY DRIVE
MALIBU, CA 90265

EXTERIOR ELEVATIONS
(SOUTH / NORTH / WEST)

DARRELL DOMINGUEZ, AIA
ARCHITECT
1331 GRANT STREET
SANTA MONICA, CALIFORNIA

DATE:
SCALE: 1/4" = 1'-0"
DRAWN: DD / TC
JOB:
SHEET: A-7

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

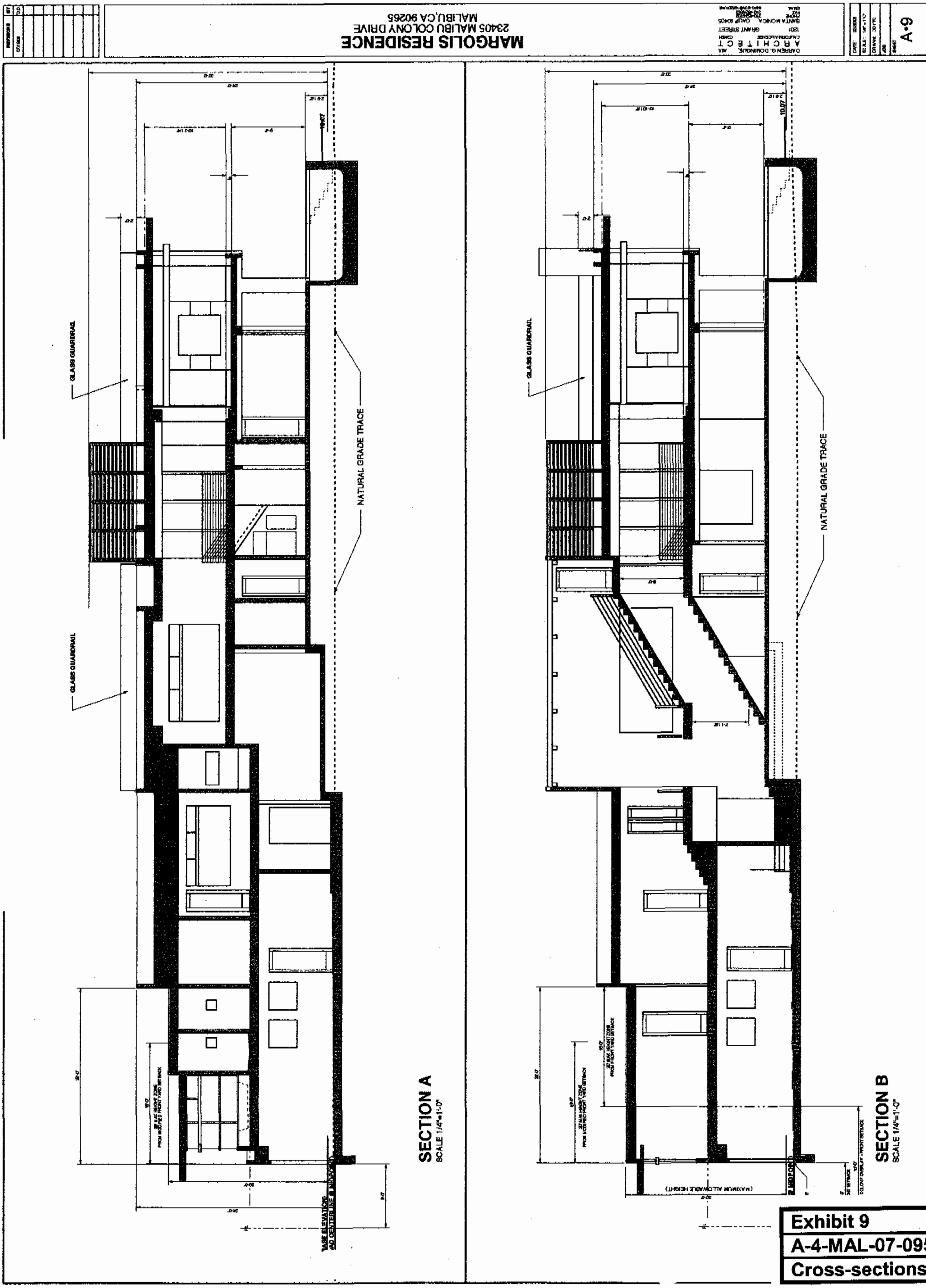
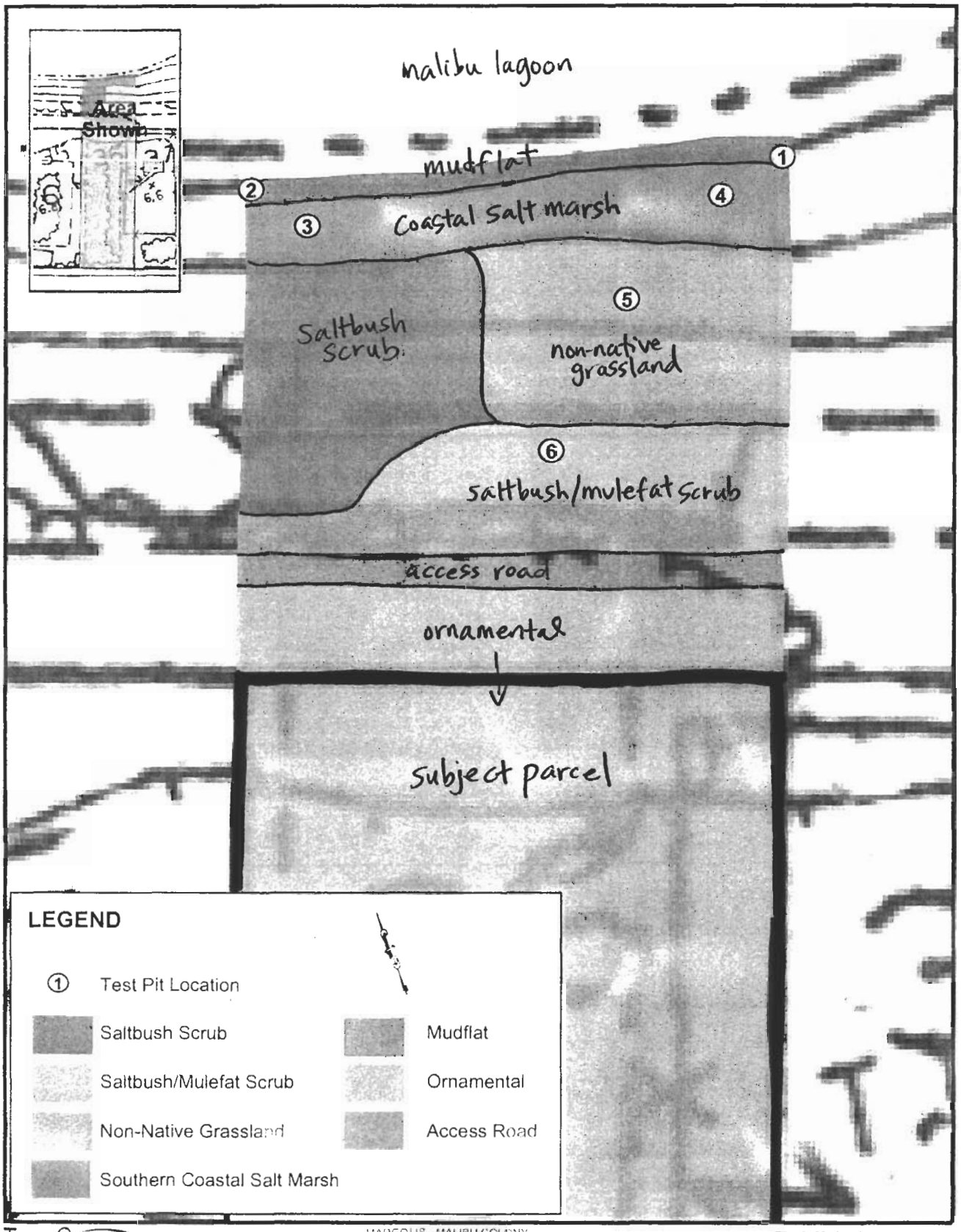


Exhibit 9

A-4-MAL-07-095

Cross-sections

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

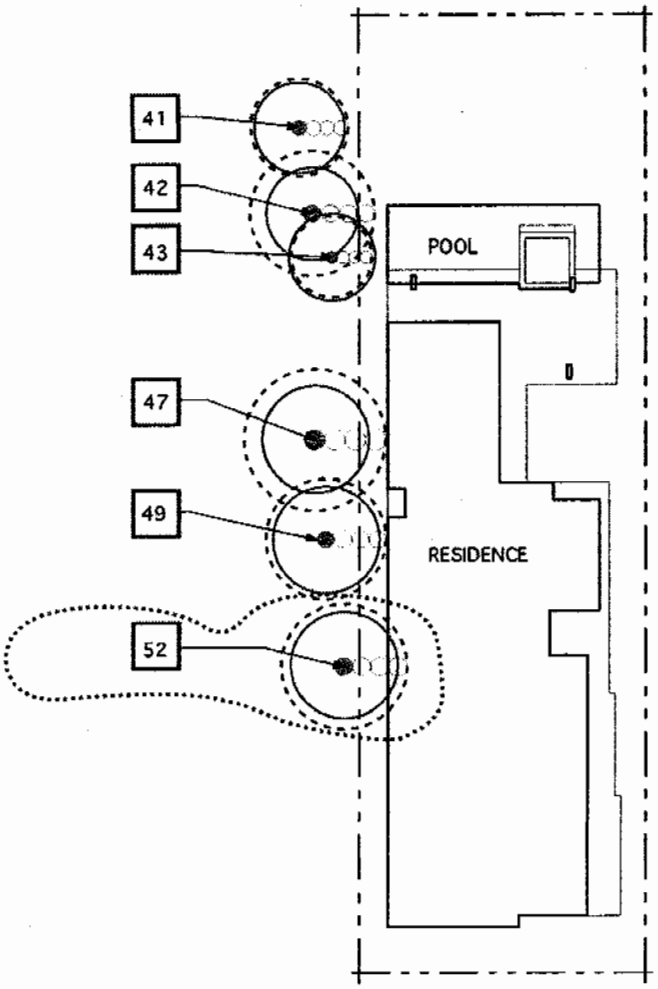


TERACOR RESOURCE MANAGEMENT

MARGOLIS - MALIBU COLONY
MAY 2005

Exhibit 3
Test Pit Locations

Exhibit 11
A-4-MAL-07-095
Vegetation Map



5 of the 6 healthy trees have the preferred 3 tree trunk diameter spacing from proposed structure.

TREE LEGEND

(6 HEALTHY OFF-SITE TREES AS IDENTIFIED BY DR. FREDERICK ROTH / NEIGHBOR'S CONSULTING ARBORIST)

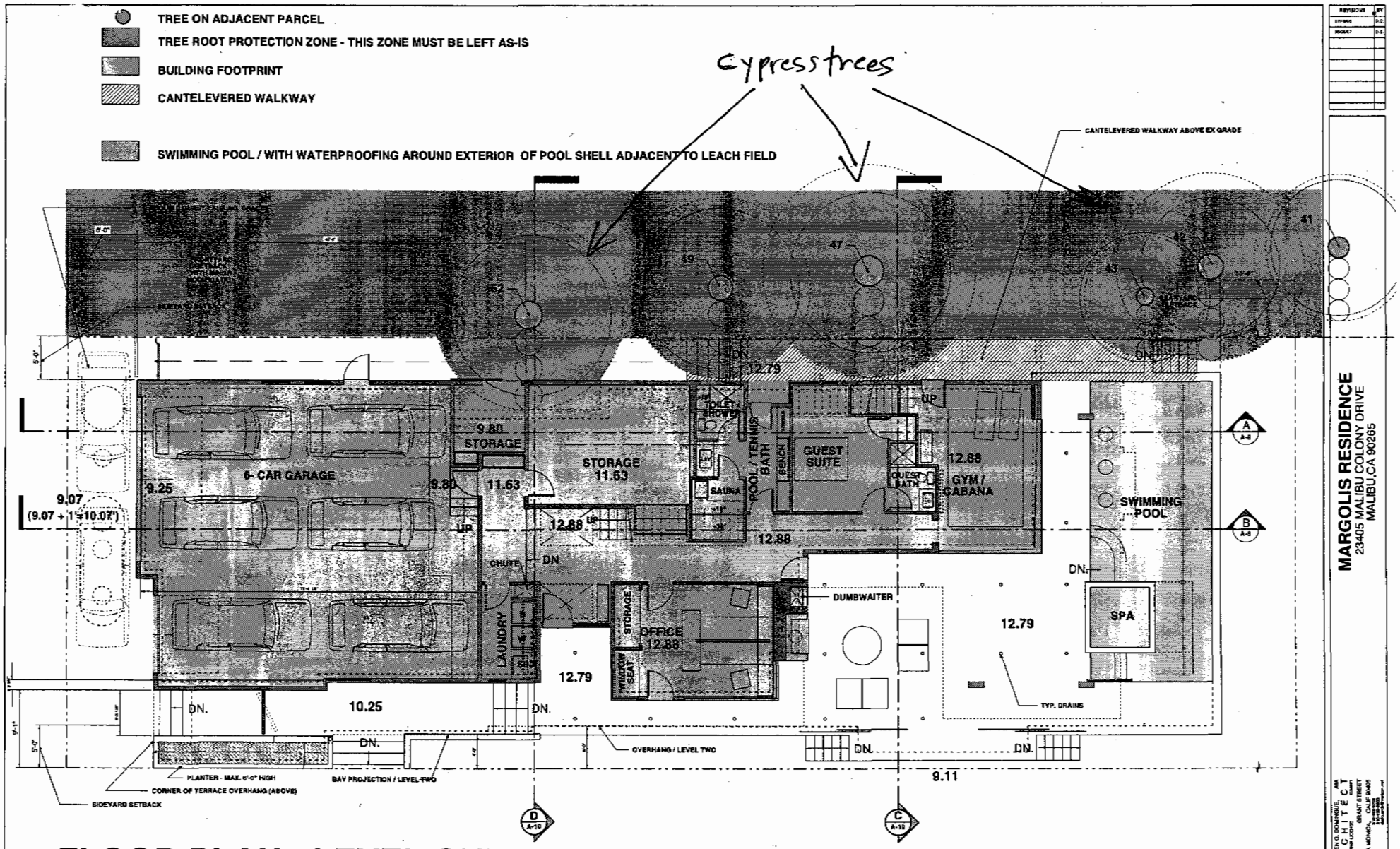
CYPRESS TREES / TREE TRUNK DIAMETERS TO SCALE / FIELD VERIFIED

OFF-SITE TREES / NO ENCROACHMENT

OFF-SITE TREES / ENCROACHMENT

TREE ROOT MINIMUM PROTECTION ZONE
(3 TREE TRUNK DIAMETERS)

Exhibit 12
A-4-MAL-07-095
site plan with cypress trees



FLOOR PLAN - LEVEL ONE

(23) + (41) (64) = TOTAL FIXTURE UNIT COUNT

(VERSION A)

(WITH PARTIAL SITE PLAN)

1/4"=1'-0"

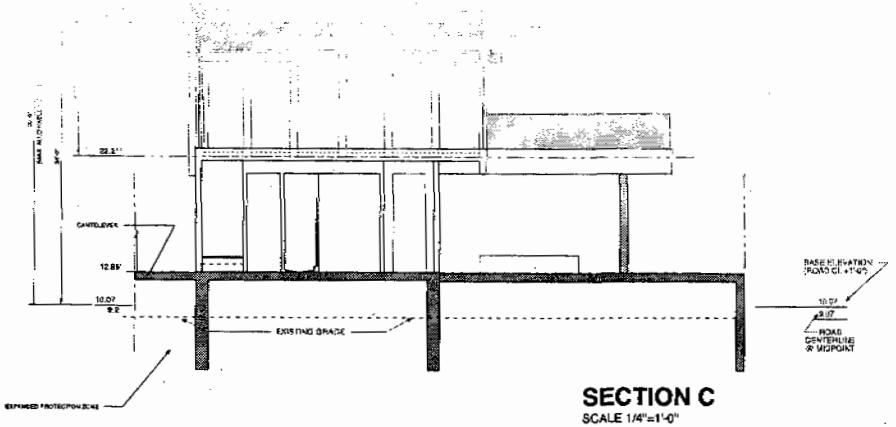
HOUSE - 1652 SQ.FT.
GARAGE - 1368 SQ.FT.

(SEE SHEET A-1 FOR DIAGRAM OF STRUCTURE SETBACKS)

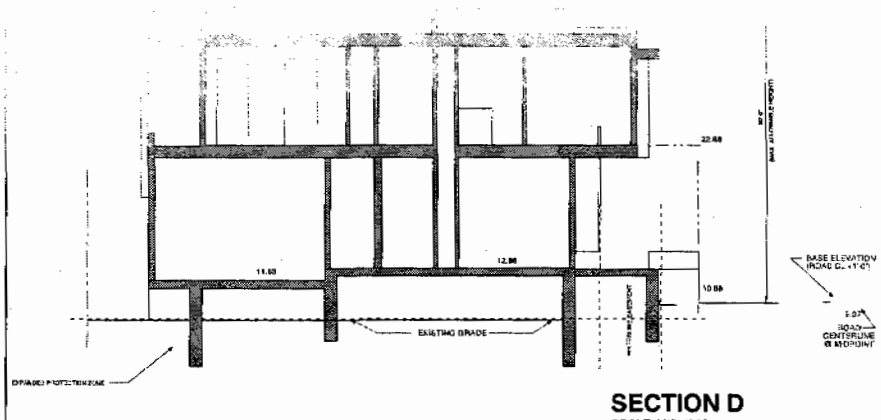
MARGOLIS RESIDENCE
23405 MALIBU COLONY DRIVE
MALIBU,CA 90265

A- 4

ex. 12



SECTION C
SCALE 1/4"=1'-0"



SECTION D
SCALE 1/4"=1'-0"

MARGOLIS RESIDENCE
23405 MALIBU COLONY DRIVE
MALIBU,CA 90265

DARREN G. DOMINQUE, AIA
ARCHITECT
CALIFORNIA LICENSE
1201 LA MONICA, CALIF 90403
PHONE
FAX

DATE: 12/9/06
SCALE: 1/4" = 1'-0"
DRAWN: DD / TC
JOB:
SHEET
A-10

ex. 12

4093 Oakmont Lane
Shingle Springs, CA 95682

Office: (916) 719-5343
Fax: (530) 676-1747

ACTA

Air Conditioning Trade Association

June 18, 2008

Commissioner Patrick Kruer, Chairman
California Coastal Commission
c/o The Monarch Group
7727 Herschel Ave.
La Jolla, California 92037

Re: Local Coastal Permitting Authority

Dear Chairman Kruer:

I represent the Air Conditioning Trade Association, a statewide association of sheet metal and air conditioning contractors. Our member contractors are concerned about the California Coastal Commission (CCC) permitting process and implications, especially regarding recent actions taken relating to the purpose and goals of the Local Coastal Programs (LCP). The August 2007 appeal and pending De Novo hearing on appeal No. A-4-MAL-07-095 for a proposed single-family home is an example of CCC taking action beyond what the Coastal Act allows pursuant to PRC Section 30004 (a) Local Action.

In the case of A-4-MAL-07-095 records reveal the project met the standards of the Malibu LCP (which the CCC approved) and the CDP application was approved by the local authority. As required in PRC Section 30004 (a) of the Coastal Act, deference should be given to the local approval process. The courts reaffirmed this bedrock principle of the Coastal Act this year in the Security National Guaranty, Inc. case, which is published. The court's ruling specifies that the CCC cannot revise or reinterpret the adopted LCP in the course of a de novo hearing. Accordingly, the CCC is banned from redefining the ESHA boundaries as established by the LCP, and cannot reinterpret the language in the overlay districts, which establish specific setbacks and development standards.

When the Coastal Act of 1976 was enacted by the Legislature, it was the intent of the Legislature that LCP provisions for counties and cities required them to implement Coastal Act policies with an understanding of local issues and that "each LCP reflects unique characteristics of individual coastal communities" as stated by CCC. It is to everyone's understanding that the purpose of LCPs is to allow for local control on discretionary approvals whether for a single-family home, commercial or a public project. This process has been extremely effective since its adoption

Exhibit 13
A-4-MAL-07-095
Correspondence

because it allows local decision makers who have the greatest knowledge and stake of an area and/or particular project involved in the development and to be the final arbiter in the approval process pursuant to LCP standards.

If the Coastal Commission has the final vote to potentially deny a project that the City ultimately approved, this will send a clear statement that no county or city can ever be secure in their knowledge of their own planning process or the vote of the local planning authority. Despite having a LCP that must be approved by the Coastal Commission to begin with, no agency or project manager could be certain that the guidelines they followed in the LCP would be honored. Needless to say it would bring projects to a halt and throw the planning process up and down the state into chaos.

We would urge you to continue to protect local control by supporting the City of Malibu and, without delay, approve this project. This would send a resounding message that local control is to be respected as established by the legislature in the Coastal Act, and that it is not to be unjustly usurped by the Coastal Commission.

Sincerely,

Frank R. Stephens

Frank R. Stephens
Government Affairs Director

ex. 13

Deanna Christensen

From: Steve Littlejohn [ljc@verizon.net]
Sent: Tuesday, June 24, 2008 4:28 PM
To: Barbara Carey; Deanna Christensen; Frank Angel; Marcia Hanscom; richard Ibarra; Roy van de Hoek; littlejohn
Subject: please give this to Dianna


Margolis 2nd fl alternative pl...


Margolis 1st floor alternative...

Hi Barbara:

Would you be sure to forward this to Dianna Christensen for me? I am just guessing at her email address.

I had presented this alternative plan for the Margolis Residence in the Malibu Colony in Eureka, but I just want to make sure it gets into the file. This plan represents the proper set back from the Malibu Lagoon Esha and helps mitigate the issues of the applicant's proposed design (which will result in the death of most of the large cypress trees next door). The main points include:

1. It still is a good sized home that sets back properly from this great Esha.
2. It puts the leech field out by the street where there are no tree roots and creates off street parking without having so much of the foot print taken up by a 5 car garage as proposed.
3. I would suggest that a caisson with an above grade beam foundation be required (that way very minimal tree roots are cut)
4. I would also suggest that the pool be built above grade (again to not cut tree roots) or be built on the roof.

Please have Dianna call me when she has a moment. I will be out of town, but my cell should work 213-500-0442. Next wk, in the mornings I am reachable until about 11AM or so: 310-457-5431 and on my cell or at the office 310-457-9198 after that.

Regards,

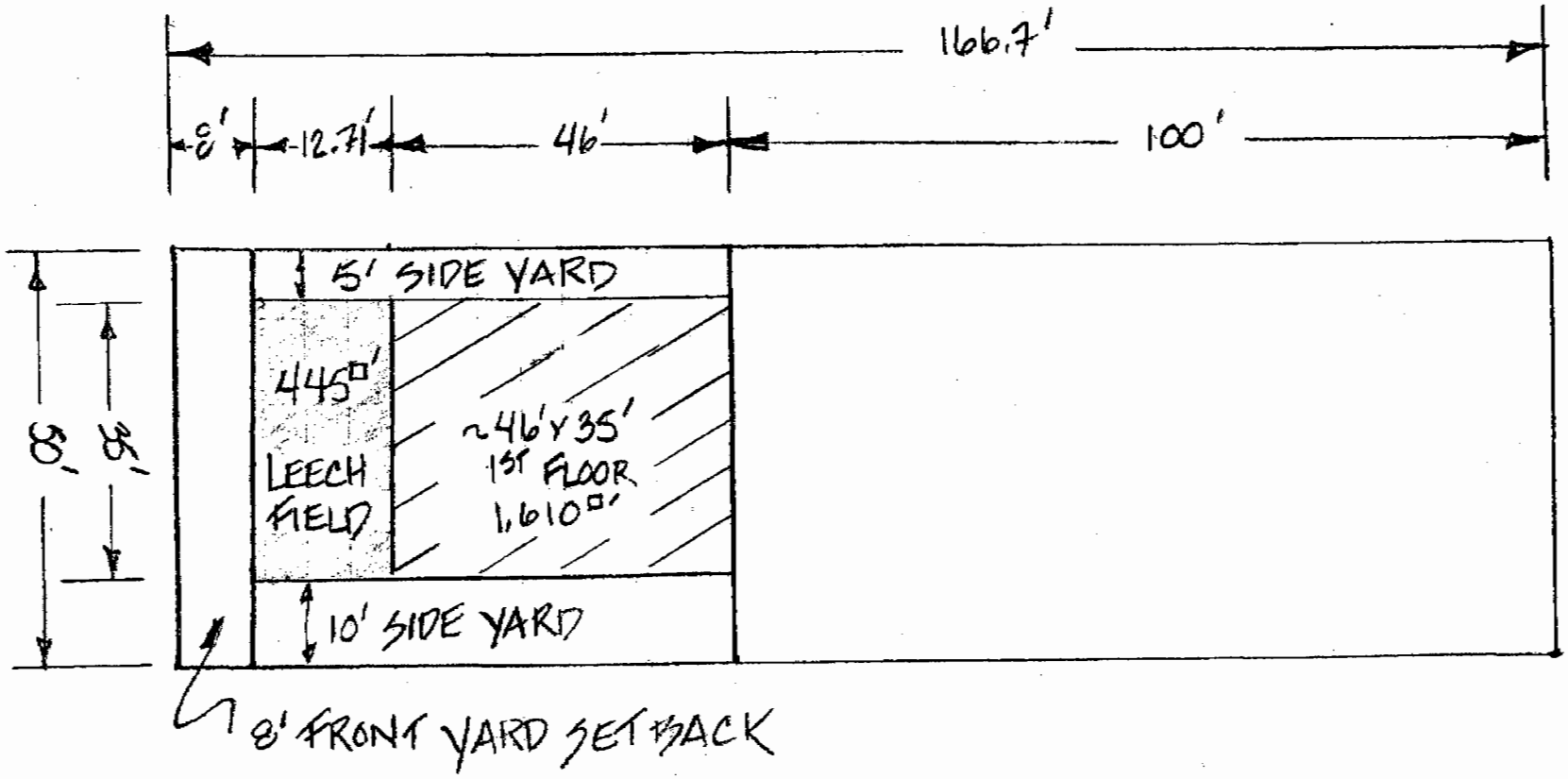
Steve Littlejohn

ex. 13

50' x 166.7' LOT

TOTAL BUILDING ENVELOPE 3930□'

1ST FLOOR 1610□'
2ND FLOOR 2320□'
LESS 400□' GARAGE = 3530□'



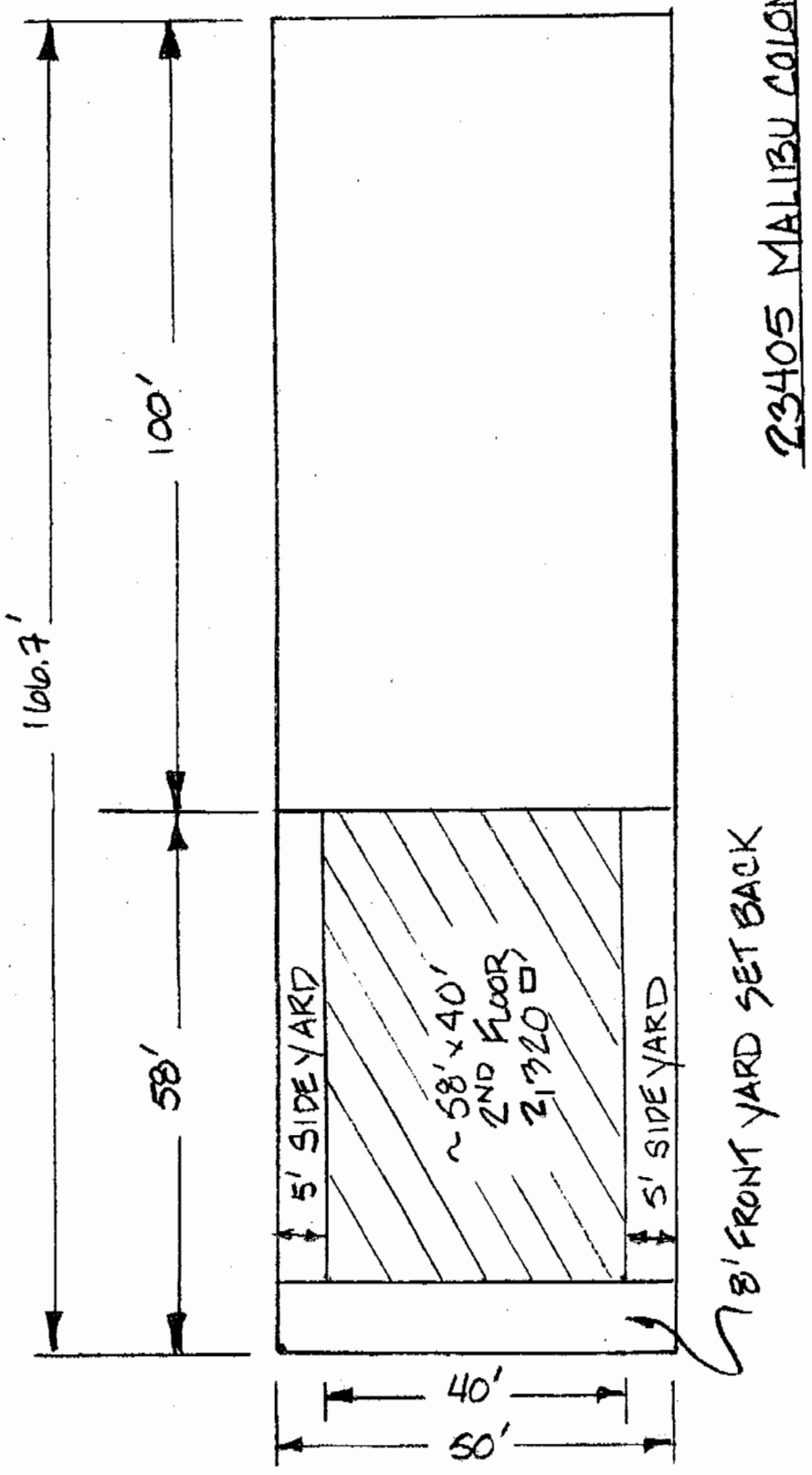
23405 MALIBU COLONY DR
1ST FLOOR

— MALIBU COLONY DR —

MALIBU LAGOON / ESHA

ex. 13

MALIBU LAGOON / ESHA



ex. 13