

CALIFORNIA COASTAL COMMISSION

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



Item Th 12a

DATE: November 4, 2009

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item 12a, Thursday, November 5, 2009 hearing regarding Appeal No. A-4-MAL-09-070 (Drane)

Staff has received the attached correspondence from the applicant's representative regarding the staff recommendation.

TELEPHONE
(310) 456-5373

RICHARD N. SCOTT, INC.
A PROFESSIONAL LAW CORPORATION
24055 PACIFIC COAST HIGHWAY
MALIBU, CALIFORNIA 90265

FACSIMILE
(310) 456-9729

November 3, 2009

RECEIVED
NOV 3 2009

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

VIA FACSIMILE (805)
641-1732 AND FEDERAL
EXPRESS

Re: Permit No. A-4-MAL-09-070, 7271 & 7273 Birdview Avenue

Dear Honorable Chairman and Members of the Coastal Commission:

This office represents Mr. Clark Drane (the "Owner"), the owner of property commonly known as 7273, 7275 and 7277 Birdview Avenue, Malibu, California (the "Triplex Property"). The Owner also has an easement for pedestrian ingress and egress over 7271 Birdview Avenue (the "Easement Property"). This correspondence is to correct a position the undersigned took at a meeting of the City Council of Malibu regarding the date of acquisition of the easement and address certain points made in the Staff Report to the Commission dated October 22, 2009.

At the Malibu City Council meeting which approved the construction of a new 110 foot long, three foot wide private stair case on the bluff face of the Easement Property I misspoke and indicated that the easement was acquired by the Owner in 1999. In fact, the easement was acquired by the Owner in 1974. A copy of that Deed is enclosed herewith. My reference to the 1999 deed involved a correction of the legal description of the easement area.

The Commission staff argues in part that the easement parcel described in the 1974 deed acquired by the Owner does not constitute a parcel as defined in Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 122 S. Ct. 1465 (2002) (the "Tahoe Case"). That case is inapposite. In the Tahoe Case, the plaintiff's argued that substantially all of the property owned by the plaintiff's were temporarily taken as a result of the Tahoe Regional Planning Agency's moratorium. The Supreme Court indicated that the entirety of the parcel had to be deemed useless in order for a taking to apply.

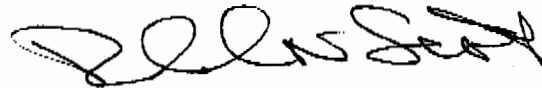
In this case, the Owner owns two parcels. A fee parcel consisting of the Triplex Property and an easement parcel over the Easement Property, which is not owned by the Owner. Accordingly, the Owner has two parcels, and the failure to grant a permit to construct the stairs over the easement parcel would make the entire easement parcel useless as it is only five feet wide.

The staff also argues that there was no citation or authority for the statement made by the undersigned that "the law is clear that easements may be the subject of a regulatory taking by the government". To address that issue, the Commission Staff is directed to City of Los Angeles v. Wright (1951) 107 Cal App. 2d 235, 236 p. 2d 892, California Constitution Article I § 14 and Bacich v. Board of Control, 23 Cal. 2d, 343 144 p. 2d 818.

Without prejudice to further rights of the Owner, the foregoing is respectfully submitted and we request that the appeal be withdrawn and the approval granted by the City of Malibu left to stand.

Yours very truly,

RICHARD N. SCOTT, INC.



By:

RICHARD N. SCOTT
President

RNS:sd

Encl.

C: Mr. Clark Drane

Order No. LA 748391
 Escrow No. 582-3216
 Loan No.

2506

06388/320

WHEN RECORDED MAIL TO:

Mr. William A. Schultz, et al
 c/o Bank of America NT&SA
 Malibu Office #582
 23676 W. Malibu Road
 Malibu, Calif. 90265
 (Escrow No. 3216)

RECORDED IN OFFICIAL RECORDS
 OF LOS ANGELES COUNTY, CA
 27 MIN. 11 A.M. AUG 21 1974
 Recorder's Office

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

DOCUMENTARY TRANSFER TAX \$ 108.25
 X. Computed on the consideration or value of property conveyed; 6%
 Y. Computed on the consideration or value less liens or encumbrances;
 Z. Computed on the value of the property.

Arthur B. Cleland
 BANK OF AMERICA
 23676 W. Malibu Road
 Malibu, California 90265

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged.

Arthur B. Cleland and Eileen P. Cleland, husband and wife

hereby GRANT(S) to

William A. Schultz and Carol E. Schultz, husband and wife, as to an undivided one-half
 interest, and Clark Drane and Mildred Drane, husband and wife, as to an undivided one-
 half interest, as tenants in common.

the real property in the ~~unincorporated~~ unincorporated area of the
 County of Los Angeles

per legal description more particularly described in Exhibit "A" attached hereto and made
 a part hereof consisting of one page:

Dated August 15, 1974

STATE OF CALIFORNIA
 COUNTY OF
 Los Angeles

On August 16, 1974

before me, the undersigned, a Notary Public in and for said
 State, personally appeared Arthur B. Cleland and
Eileen P. Cleland

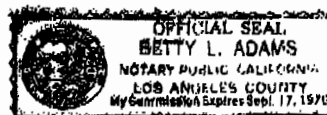
known to me to be the person(s) whose name(s) is/are
 subscribed to the within instrument and acknowledged that
 they executed the same.

WITNESS my hand and official seal.

Signature *Betty L. Adams*

Arthur B. Cleland
 Arthur B. Cleland

Eileen P. Cleland
 Eileen P. Cleland



(This area for official notarial seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

1002 (10/86)

7483945

06380921

PARCEL 1:

A parcel of land, as confirmed to Matthew Keller by the Patent recorded in Book 1, Pages 407 et seq., of Patents, in the office of the County Recorder of said County, more particularly described as follows:

Beginning at the intersection of the center line of Road Easement No. 1 (Birdview Avenue) with the center line of Road Easement No. 3 (Sealion Place) as said road easements are described in the Declaration of Easement filed for record August 21, 1946 in Book 23683 Page 17, Official Records of said County; thence along said center line of Road Easement No. 1 South $33^{\circ} 49' 01''$ East 69 feet thence South $56^{\circ} 10' 59''$ West 130.00 feet thence North $33^{\circ} 49' 01''$ West 110.00 feet thence North $56^{\circ} 10' 59''$ East 130 feet to said center line of Road Easement No. 1 thence along said last mentioned center line, South $33^{\circ} 49' 01''$ East 41.00 feet to the point of beginning.

The above described land being a portion of Parcel 25, in said County and State, as shown on map filed in Book 57 Page 41 of Record of Surveys, in the office of the County Recorder of said County.

Reserving onto the grantors, their successors and assigns an easement for ingress and egress, public utilities and incidental purposes over the Northeasterly 15 feet of said land.

EXCEPT therefor all minerals, oil, petroleum, asphaltum, gas, coal and other hydrocarbon substances in, on, within and under said lands and every part thereof, but without right of entry, as reserved by Marblehead Land Company, in deed recorded October 31, 1946 in Book 23928 Page 5, Official Records.

PARCEL 2:

An exclusive easement for pedestrian walking purposes only over a strip of land five (5) feet wide described as follows:

The Northeasterly five (5) feet of a parcel of land situated in the County of Los Angeles, State of California, being a portion of the Rancho Topanga Malibu Seguit as confirmed to Matthew Keller by Patent recorded in Book 1, Pages 407 et seq. of Patents Records of said County, said parcel of land described as follows:

Beginning at a point in the center line of Road Easement No. 1 (Birdview Avenue) described in the Declaration of Easement filed for record August 21, 1946 as Instrument No. 3439, said point of beginning being South $33^{\circ} 49' 01''$ East 908.91 feet from the Northwestern extremity of that certain centerline course described in said Easement No. 1 as South $33^{\circ} 49' 01''$ East 949.91 feet; thence from said point of beginning South $33^{\circ} 49' 01''$ East 41.00 feet along centerline to the point of intersection of the centerline of Easement No. 1 (Birdview Avenue) and Easement No. 3 (Sealion Place); thence continuing along said centerline of Easement No. 1 South $33^{\circ} 49' 01''$ East 69.00 feet; thence South $56^{\circ} 10' 59''$ West 130.00 feet; thence North $33^{\circ} 49' 01''$ West 110.00 feet; thence North $56^{\circ} 10' 59''$ East 130.00 feet to the point of beginning.

EXCEPT therefrom that portion described as follows:

Beginning at the intersection of the center line of Road Easement No. 1 (Birdview Avenue) with the center line of Road Easement No. 3 (Sealion Place) as said road easements are described in the Declaration of Easement filed for record August 21, 1946 in Book 23683 Page 17, Official Records of said County; thence along said center line of Road Easement No. 1 South $33^{\circ} 49' 01''$ East 69 feet thence South $56^{\circ} 10' 59''$ West 130.00 feet thence North $33^{\circ} 49' 01''$ West 110.00 feet thence North $56^{\circ} 10' 59''$ East 130 feet to said center line of Road Easement No. 1 thence along said last mentioned center line, South $33^{\circ} 49' 01''$ East 41.00 feet to the point of beginning.

EXHIBIT "A"

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

89 SOUTH CALIFORNIA ST., SUITE 200

VENTURA, CA 93001

(805) 585-1800

ITEM TH 12a

Filed: 9/28/09
49th Day: 11/16/09
Staff: Barbara Carey
Staff Report: 10/22/09
Hearing Date: 11/5/09



STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT: City of Malibu
LOCAL DECISION: Approval with Conditions
APPEAL NO.: A-4-MAL-09-070
APPLICANT: Clark Drane
AGENT: Richard Scott (of Richard N. Scott, Inc., A Professional Law Corporation)
APPELLANTS: Commissioners Mary Shallenberger and Sara Wan
PROJECT LOCATION: 7271 & 7273 Birdview Avenue, City of Malibu, Los Angeles County (APN: 4468-020-021 & 4468-020-022)

PROJECT DESCRIPTION: Construction of a new 110-foot long, three-foot wide private staircase on the bluff face. The staircase would be located within a pedestrian easement held by the applicant that extends across the property (developed with a single family residence) adjacent to the residential triplex parcel owned by the applicant.

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed relative to the approved project's conformity to the policies and provisions of the certified City of Malibu Local Coastal Program. The **motion** and **resolution** for a "substantial issue" finding are found on **page 5**. The appellants contend that the development approved in CDP 07-106 is not consistent with the policies and provisions of the LCP with regard to environmentally sensitive habitat areas, visual resources, and blufftop development. The appeal also asserts that three variances from the standards of the LIP are not justified. The standard of review at this stage of an appeal requires the Commission to determine whether the appeal, raises a substantial issue with respect to the grounds stated in the appeal relative to the conformity of the approved development to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act.

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

writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

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EXHIBITS

- Exhibit 1. Vicinity Map
- Exhibit 2. Parcel Map
- Exhibit 3. 2008 Photograph
- Exhibit 4. Project Plans
- Exhibit 5. Pedestrian Easement Document 1999
- Exhibit 6. Appeal
- Exhibit 7. City Council Findings—September 14, 2009
- Exhibit 8. City Staff Report for September 14, 2009 hearing (with Attachments
A-H only due to length)

I. APPEAL PROCEDURES

A. APPEAL JURISDICTION

Under Section 30603 of the Coastal Act, local government approvals of coastal development permits may be appealed to the Commission if the development authorized would be located within the appealable areas, such as the area between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of any wetland, estuary, or stream and lands within 300 feet of the top of the seaward face of a coastal bluff.. Further, any development approved by a coastal county that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission, irrespective of its geographic location within the coastal zone. Finally, any local government action on a proposal for development that constitutes major public works or major energy facilities may also be appealed to the Commission.

In this case, the City of Malibu's final local action is appealable to the Commission pursuant to Section 30603(a)(1). The project is located on a coastal bluff and the site is between the sea and the first public road (Birdview Avenue) paralleling the sea, as shown on the City of Malibu Post Certification Map.

B. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs, a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal permit actions. During a period of 10 working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Grounds for Appeal

Pursuant to Section 30603(b)(1) of the Coastal Act, the grounds for appeal of development approved by the local government and subject to appeal to the Commission are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (Sections 30210-30214 of the Public Resources Code).

2. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends a finding that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on the substantial issue question. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only

persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

3. De Novo Review Stage of the Hearing

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

In this case, if the Commission finds a substantial issue raised, staff anticipates continuing the de novo permit consideration portion of the appeal hearing by the Commission at a future Commission meeting.

C. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

Coastal Development Permit (CDP) application No. 07-106 and associated variance requests Nos. 07-052 and 08-057 were considered by the City of Malibu Planning Commission on October 21, 2008. City staff recommended denial of the CDP and the variances. The Planning Commission continued CDP No. 07-106 and directed staff to bring back a resolution and findings for approval of the CDP and associated variances.

On May 19, 2009, the Planning Commission considered the CDP again, as well as the resolution and findings in support of approval of the application. However, the Planning Commission voted to deny the CDP and the variance requests. On May 27, 2009, the applicant filed an appeal of the Planning Commission decision. On September 14, 2009, the Malibu City Council considered the appeal of the Planning Commission action on CDP No. 07-106. The City Council upheld the applicant's appeal, overturning the Planning Commission's action and approving with conditions CDP No. 07-106 and VAR Nos. 07-052 and 8-057.

The Notice of Final Local Action for CDP No. 07-106 and associated variances was received in the South Central Coast District Office on September 21, 2009. The ten-day Commission appeal period extended from September 22, 2009 to October 5, 2009. One appeal of the City of Malibu's action was filed by Commissioners Sara Wan and Mary Shallenberger during the appeal period, on September 28, 2009. Commission staff notified the City of Malibu and the applicant of the pending appeal.

II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

A. MOTION AND RESOLUTION FOR SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-MAL-09-070 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-MAL-09-070 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP.

III. FINDINGS AND DECLARATIONS FOR FINDING SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The project approved by the City of Malibu includes the construction of a new 110 foot long, three-foot wide private staircase on the bluff face. The applicant owns a residential triplex directly adjacent to the street at 7271 Birdview Avenue (APN 4468-020-022). He also holds a five-foot wide easement for pedestrian purposes across the adjacent property (which is developed with a single family residence) at 7273 Birdview Avenue (APN 4468-020-021). **Exhibit 2** shows the subject parcels. The staircase would be located within the pedestrian easement located on the adjacent property. **Exhibit 3** is a photo of the area showing the bluffs above Westward Beach Road. The land seaward of the bluff is a public beach owned by Los Angeles County. There is a road and public parking in the most landward portion of the beach park, with sandy beach beyond.

The applicant did not provide a site plan, foundation plan, or details regarding how the proposed staircase would be constructed, the overall area of construction disturbance, or if a staging area would be needed. Information was provided that indicates no grading would be required for the construction, but no information was given on how

footings would be installed or if excavation would be necessary for the footings. The only plan provided is the sketch shown in **Exhibit 4**.

B. LOCAL PERMIT HISTORY

Following is the City of Malibu permitting history for the subject sites, as provided in the City staff reports for the subject CDP. The staff reports state that:

The existing triplex was constructed in 1964. On May 18, 2006, the former property owner submitted Over-the-Counter (OC) No. 06-060 for the repair and maintenance of existing stairs leading to Westward Beach. The application was approved on May 23, 2006. Then on November 15, 2006, the approval was rescinded by the Planning Division as staff determined that photographs of the damaged staircase were actually on the adjacent parcel and no staircase existed linking 7273 Birdview Avenue to Westward Beach.

The applicant submitted the subject CDP application No. 07-106 to the City of Malibu for the construction of a 110-foot long, 3-foot wide private staircase on the bluff face on August 23, 2007. The application included two associated variances (VAR Nos. 07-052 and 8-057) to allow for reduction of the required bluff setback and for construction on slopes in excess of 2 ½ to 1, respectively. The application was deemed complete on December 13, 2007. On March 5, 2008, the applicant submitted an application for an amendment to the City's certified LCP (LCPA No. 08-001) to allow staircases to be constructed within existing access easements along bluff faces.

The subject CDP application and LCPA No. 08-001 were both scheduled for hearing before the City of Malibu Planning Commission on October 21, 2008. City staff recommended denial of both the CDP and the LCPA. The Planning Commission continued CDP No. 07-106 and directed staff to bring back a resolution and findings for approval of the CDP and associated variances. The Planning Commission acted to recommend that the City Council deny the LCPA.

On March 20, 2009, a third variance request (VAR No. 09-012) was added to the project to allow for a reduction of the required 100-foot ESHA buffer. On May 19, 2009, the Planning Commission considered the CDP and variances again, as well as the resolution and findings in support of approval of the application. However, the Planning Commission voted to deny the CDP and the variance requests. On May 27, 2009, the applicant filed an appeal of the Planning Commission decision.

On September 14, 2009, the Malibu City Council considered the appeal of the Planning Commission action on CDP No. 07-106. The City Council upheld the applicant's appeal, overturning the Planning Commission's action and approving with conditions CDP No. 07-106 and VAR Nos. 07-052 and 8-057.

On September 14, 2009, the Malibu City Council considered the appeal of the Planning Commission action on CDP No. 07-106. The City Council upheld the applicant's appeal, overturning the Planning Commission's action and approving with conditions CDP No. 07-106 and VAR Nos. 07-052 and 8-057.

C. APPELLANTS' CONTENTIONS

The appeal filed on September 28, 2009 by Commissioner Sara Wan and Commissioner Mary Shallenberger is attached as **Exhibit 6**. The appellants contend that the development approved in CDP 07-106 is not consistent with the policies and provisions of the LCP with regard to environmentally sensitive habitat areas, visual resources, and blufftop development. The appeal also asserts that three variances from the standards of the LIP are not justified.

The appeal cites a lack of consistency with LUP policy 3.58 and LIP Section 4.6.1 and states that:

The Malibu LUP mandates that environmentally sensitive habitat areas (ESHA) shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources. Bluff face areas are designated ESHA in the LCP and new development must provide a buffer of no less than 100 feet from a bluff edge. The LCP also specifically prohibits new development on bluff faces, except for engineered stairways or accessways to provide *public* beach access where no feasible alternative means of public access exists. Private accessways are certainly not a permitted use in coastal bluff ESHA. Even if the approved staircase were to be dedicated for public use, the finding could not be made that no feasible alternative means of public access exists because Point Dume State Beach and Westward Beach Road exist nearby and provide for public shoreline access.

With regard to blufftop development, the appeal cites LUP policies 4.27 and 4.29 and LIP Sections 10.4(D) and (F), 12.9(F) and states the following:

...the shoreline and bluff development provisions of the LCP require that new development be setback from a bluff edge a sufficient distance to ensure it will not be threatened by erosion for a projected 100 year economic life of the structure, which is in no case less than 100 feet. This setback can be reduced to 50 feet only if certain geologic and engineering factors can be met with a 50 foot setback. The City's findings do not address whether conditions to reduce the setback to 50 feet were even met. There is no provision for reducing the bluff setback to zero feet.

With regard to visual resources, the appeal states the following:

...the visual resource provisions of the LCP (LUP Policy 6.16 and LIP Section 6.5 (D)(2) require that bluff development provide a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The LCP states that the setback necessary to protect visual resources may be excess of, but not less than the setback necessary to minimize geologic hazards. No setback from the bluff edge was required and no variance from the standards of LIP Section 6.5 (D)(2) was granted by the City.

Finally, the appeal states the following regarding the City's granting of three variances from the required standards of the LCP:

Variances were approved to eliminate the required setbacks from the bluff edge and coastal bluff ESHA, and for construction on slopes in excess of 2.5:1. In approving the subject CDP and three associated variances, the City found that denial of the variances would deprive the property owner of developing his property (easement) for its intended use as a private pedestrian accessway. Issue is raised with this finding because the subject properties (7271 and 7273 Birdview) each contain a residential development and have already been provided an economically viable use. The proposed staircase, an accessory structure, does not trigger application of the LCP's "taking" provisions.

The appeal also includes the actual text of all the above cited applicable LCP policies and provisions. Rather than include them here, they are quoted in the applicable subsection of Section D below.

D. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for this stage of the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP.

Based on the findings presented below, the Commission finds that a substantial issue exists with respect to the grounds on which the appeal has been filed. The approved project is not consistent with the policies of the City of Malibu certified LCP for the specific reasons discussed below.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., title 14, section 13115(b)).

In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers the following factors:

- (1) The degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP;
- (2) The extent and scope of the development as approved by the local government;
- (3) The significance of coastal resources affected by the decision;
- (4) The precedential value of the local government's decision for future interpretation of its LCP; and
- (5) Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County raises a substantial issue with regard to the appellants' contentions.

Each issue and LCP Policy raised by the appellants is outlined below. Each issue is then discussed in relation to the degree of factual and legal support provided by the City to support its conclusion that the approved development is consistent with the certified City of Malibu LCP. Finally, after the discussion of the factual and legal support for the City's conclusions regarding the issues raised by the appellant, the other four factors used to determine whether a substantial issue exists will be discussed relating to the project as a whole, including the scope of the development, the resources on the site, the precedential value for interpretation of the City's LCP policies, and the applicability of the issues beyond the local area.

1. Variances granted are not justified

The appeal addresses the inconsistencies of the approved project with regard to the ESHA, bluff development, and visual resource policies and provisions of the LCP. In addition, the appeal raises issue with regard to an overarching issue that relates to each of the other three issue areas. This issue is whether the three variances granted from the LCP provisions regarding bluff setback, ESHA setback, and development on slopes greater than 2:1 are consistent with the variance provisions of the certified LCP. LIP Section 13.26.5 details the following findings that must be made in order to approve a variance:

13.26.5 Findings

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

- A. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.
- B. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.
- C. The granting of the variance will not constitute a special privilege to the applicant or property owner.
- D. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.
- E. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.
- F. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

- G. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property
- H. The subject site is physically suitable for the proposed variance.
- I. The variance complies with all requirements of state and local law.
- J. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

In the course of considering the subject CDP, the City considered the issue of whether denial of the variances (and by extension, denial of the project), as required by the policies and provisions of the LCP, would result in a “taking” of the applicant’s property. As part of the initial application, the applicant’s agent submitted a written statement in support of the variance requests, which asserts that:

The City’s Local Coastal Program (“LCP”) prohibits stairways on bluff locations such as that applied for. However, the subject parcel of property is a 5 foot wide easement area extending from a triplex owned by the owner of the 5 foot parcel to the north. The triplex is on a separate parcel of real property. The sole purpose of the easement is for ingress and egress to the beach. Accordingly, we have **unique** circumstances involved in the application. A denial of the requested variance would prohibit the sole purpose of the use of the land i.e. ingress and egress to the beach. There are no other uses for this parcel of property.

In response to the City Staff’s initial recommendation of denial of the CDP and variance requests (Planning Commission hearing of October 21, 2008), the applicant’s agent asserted that the easement is a separate parcel that was obtained by the applicant solely for the development of an access stairway, that no other use of the “property” is feasible, and that denial of the request would deprive the applicant of all economic viability of the easement “parcel”. The applicant’s agent submitted a letter dated October 14, 2008 to the Malibu Planning Commission in support of the application for CDP 07-106 and associated variances. This letter states the following regarding the City staff recommendation:

Staff indicates that the subject property has economic viability because it is developed as a triplex. This is a misstatement of fact. The subject property is an easement parcel separately acquired by the property owner who owns the triplex... The easement parcel is a separate property interest which was obtained solely for the purpose of accessing the beach. Accordingly, it is the applicant’s position that denial of the application (or in the alternative amending the LCP to permit stairs under certain circumstances) would deprive the property owner of all economic viability of the easement parcel.

However, the applicant did not provide any substantiation of these claims or even provide any rationale for reaching the conclusions that the easement constitutes a separate parcel and that denial of the staircase would result in depriving the applicant of all economic viability. Perhaps most significantly, the applicant did not explain why he concludes that the easement should be considered a legal parcel. An easement is an

interest in land, but it is not a “parcel,” which is the unit of analysis used for purposes of “takings” determinations. Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 122 S.Ct. 1465 (2002). The applicant’s agent stated during the City Council hearing that: “the law is clear that easements may be the subject of a regulatory taking by the government,” but he provided no citation or other reference to any case law to support this claim. If this unsubstantiated assertion were correct, one could evade all land use regulation simply by purchasing easements designated for precise purposes that are prohibited by existing land use regulations and then claim that the regulations are inapplicable because they would effect an unconstitutional taking of the easement interest.

The applicant did not provide any information about his investment backed expectations regarding the easement either. No information was provided regarding the purchase price of the easement or the basis for the applicant’s expectation that the construction of a stairway would be allowable at the time the easement was recorded. The applicant’s agent verbally stated during the October 21, 2008 Planning Commission hearing both that the easement was acquired approximately 30 years ago and that the easement had been granted prior to the certification of the LCP and prior to the effective date of the Coastal Act. However, there is no evidence in the record that bears out this assertion. The only evidence in the City record concerning the easement is the quitclaim deed recorded in 1999 granting to the applicant an easement over an area of the adjacent parcel for pedestrian purposes. At the City Council hearing on September 14, 2009, the applicant’s agent stated that the applicant had bought the easement at a different time (1999) than he purchased the residential property.

As described above, the subject project was considered at several hearings before the Malibu Planning Commission and City Council. City staff recommended that the Planning Commission deny the CDP and associated variance requests on the basis that the required findings for approval could not be made. According to the minutes of the Planning Commission hearing (October 21, 2008), the Assistant City Attorney verbally informed the commissioners that he disagreed with the applicant’s agent that the applicant would be deprived of all economic use. He also stated that the easement held by the applicant is not a parcel. After discussion by the commissioners, the October 2008 hearing was continued with direction for staff to return to the Planning Commission with findings to approve the CDP with variances.

The CDP application was again considered by the Planning Commission on May 19, 2009. At that hearing, the commissioners voted to deny the CDP application. According to the minutes of the hearing, there was no discussion at the hearing regarding the issue of whether denying the variances would result in depriving the applicant of all reasonable economic use of the easement. Rather, one planning commissioner stated his preference for the Coastal Commission to be the defendant in litigation over the matter instead of the City. Other planning commissioners stated that they preferred the matter to be finally decided by the City Council. The findings adopted in support of the denial state that there are no special circumstances or exceptional characteristics applicable to the property that would deprive the owner of privileges enjoyed by other properties. The findings state that, to the contrary, the granting of the variance would confer a privilege to the applicant in that other similar properties would not be allowed a bluff staircase under the provisions of the LCP. Finally, the findings state that the parcel

is currently developed with a multi-family residence, which constitutes reasonable economically viable use of the property.

On September 14, 2009, the Malibu City Council considered the applicant's appeal of the Planning Commission's denial action on the CDP and upheld the appeal, overturning the Planning Commission's action and approving the CDP and associated variances with conditions. Although the minutes of the City Council hearing have not yet been adopted, the hearing video is available on the City's website. The council members did not discuss whether they agreed with the applicant's assertion that the easement constituted a separate parcel. Several council members did make statements regarding the applicant's arguments that denial of the CDP and variances would constitute a taking. One of the council members stated that: "The Coastal Commission was very clear that we should interpret the LCP as we see fit to interpret it and they would probably appeal if they didn't like our decision" and that: "I have an increasing allergy when someone makes a credible argument of a taking". Another council member asserted: "Let's put it back to the Coastal Commission because it will be appealed". A different council member added: "Then let them get sued". After discussion, the City Council voted 3-2 to uphold the applicant's appeal and to adopt approval findings that were previously prepared by staff for consideration by the Planning Commission.

The City Council findings (**Exhibit 7**) approving the CDP (and associated variances) do not include any analysis of the applicant's takings assertion, nor do they make any conclusion that the project would be approved in order to avoid depriving the applicant of all economic use of the easement. Rather, the findings for the three approved variances more generally state that: "Denial of the variance would deprive the property owner of developing his property for its intended use as a pedestrian accessway".

The findings are similarly vague on the question of whether the easement area is a "parcel" or "property" for the purposes of determining if there are special circumstances or exceptional characteristics that would justify the variances. As such, the City did not adequately establish any basis for finding that there are special circumstances or exceptional characteristics applicable to the property that would deprive the owner of privileges enjoyed by other properties in the area that are within the same zoning category. Absent an affirmative finding with substantiation that the applicant's easement constitutes a "parcel", it must be assumed that the parcel or property in question is the parcel underlying the easement (APN 4468-020-022). That parcel is a rectangular lot that is comprised of a flat, blufftop portion and a steep, bluff face portion. The parcel is developed with an existing single-family residence. There is nothing different about the configuration or topography of this parcel such that strict application of the zoning ordinance deprives such property of privileges enjoyed by the other parcels in the area.

Further, the City found that the variances would not constitute a special privilege to the applicant as there are other private bluff staircases both to the west and the east of project site. This is not entirely accurate however. There is a stairway on the adjacent parcel to the west (upcoast), but this stairway is a legally non-conforming structure that has existed on the site since before the effective date of the California Coastal Zone Conservation Act of 1972 (as evidenced by aerial photographs). There are no bluff stairways in the immediate vicinity to the east (downcoast).

The City also found that the granting of the three variances will not be contrary to or in conflict with the goals, objectives, and policies of the LCP. As described in more detail below, the variances are in fact in direct conflict with the ESHA, blufftop development, and visual resource goals, objectives, and policies of the LCP. Finally, the City found that the variance requests are consistent with the purpose and intent of the zone in which the site is located. The findings state that: "The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the RR-1 zoning district. The proposed project is for the construction of a new staircase accessory to an existing triplex, which is permitted in the zone". However, this finding ignores the fact that the policies and provisions of the LCP unambiguously prohibit new private bluff staircases as a use in any zone.

In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers the degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP. Here, the City has not provided a high degree of factual or legal support for its decision that the required findings of fact for each of the three variances granted are justified.

2. Project is Inconsistent with the ESHA policies and provisions of the LCP

The policies and provisions of the LCP provide for the protection of ESHA, including bluff habitat. Bluff ESHA is not mapped on the LCP ESHA maps for the simple reason that the bluffs are a linear feature that cannot be easily shown at the scale of the maps. However, it is clear from the LCP that bluff habitat is designated as ESHA. Given the pattern of development on bluff-top properties, bluff habitat is increasingly rare. The following policies and provisions apply to bluff ESHA and were cited by the appellants:

LUP Policy 3.58

To protect seabird-nesting areas, no pedestrian access shall be provided on bluff faces except along existing, formal trails or stairways. New structures shall be prohibited on bluff faces, except for stairs or accessways to provide public beach access.

LIP Section 4.6.1 *(in part)*

Buffers

...

D. Coastal Bluff ESHA

New development shall provide a buffer of no less than 100 feet from the bluff edge.

These bluff ESHA policies are included in the Malibu LCP in order to ensure that impacts to sensitive coastal bluff habitats are avoided. This is not only to avoid direct removal of bluff vegetation for the construction of structures, but also to avoid other potential impacts resulting from increased erosion and increased human activity. Further, the cumulative effect of additional structures on the bluff will be to separate and isolate the areas of the bluff habitat between such structures, reducing the habitat values of the whole area. The appeal asserts that the approved CDP is not consistent

with these ESHA policies of the LCP and that a private bluff staircase is not a use allowed in bluff ESHA.

As discussed above, the City approved a variance to reduce the ESHA buffer standard required by LIP Section 4.6.1 from 100 feet to zero feet. Not only does the approved project not provide for any buffer from coastal bluff ESHA, it is located within the habitat itself. The City's findings state the following:

The 2007 Biological Assessment completed for the project identifies that the five foot wide easement area contains a pre-existing drainage pipe and that since the staircase would be constructed directly above this pipe, it would require a minimal amount of vegetation to be removed. The biological assessment has recommended that any removal of vegetation will require a nesting bird survey should construction take place during breeding season.

The biological assessment found that notwithstanding the presence of the drainage pipe, there is native vegetation typically found in coastal bluff scrub located on the bluff face, with more non-native species closer to the top of the bluff. The findings do not discuss whether there is evidence that the existing drainage pipe was permitted (or existed prior to the effective date of the California Coastal Zone Conservation Act) on the bluff face, or if it is an unpermitted structure. Without this information, it is not possible to assess if the claim that a minimal amount of vegetation removal would be required to construct the bluff staircase.

Additionally, the applicant did not provide a site plan, foundation plan, or details regarding how the proposed staircase would be constructed, the overall area of construction disturbance, or if a staging area would be needed. Information was provided that indicates no grading would be required for the construction, but no information was given on how footings would be installed or if excavation would be necessary for the footings. Furthermore, the project does not include any re-vegetation of disturbed slopes. The removal of vegetation, particularly on steep slopes, will allow for increased erosion on the bluff face, which is itself an erosional feature. Additionally, focused runoff from the staircase structure itself has the potential to undercut and erode the bluff beneath it. Given that issues were not addressed, it is not known if the City has accurately assessed the actual impact to bluff ESHA that would result from the project.

The City's findings also discuss the provisions of LIP Section 4.7 Economically Viable Use. This section provides standards for the approval of a use not otherwise allowed by the standards of the ESHA overlay district in order to provide an economically viable use on an undeveloped legal parcel. The City found that the proposed development is consistent with the provisions of Section 4.7. However, the provisions of this LIP section are not applicable in this case. The approved private stairway is located within an easement area that is located within a parcel that is already developed with a single family residence, providing the owner with an economically viable use. As such, the provisions of LIP Section 4.7 do not allow for the approval of the staircase within bluff ESHA.

The project, as approved, is not consistent with the cited ESHA policies and provisions of the LCP. As discussed above, the variance to the ESHA buffer standard is not

justified. In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers the degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP. Here, the City has not provided a high degree of support for its decision that the private bluff staircase will avoid impacts to ESHA, consistent with the policies and provisions of the LCP.

3. The project is inconsistent with the bluff development policies and provisions of the LCP

The Malibu LCP requires that new development on blufftop parcels maintain a setback from the bluff edge that is sufficient to ensure structural stability for the development itself for the economic life of the structure. The bluff edge setback is also required in order to avoid the need for shoreline protective devices or bluff reconstruction in the future. The following LCP policies and provisions were cited by the appellants:

LUP Policy 4.27

All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.

LUP Policy 4.29

No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

LIP Section 10.4(D) *(in part)*

All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet if the City geotechnical staff determines that either of the conditions below can be met with a lesser setback. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge. Ancillary structures shall be removed or

relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer, or a Registered Civil Engineer with experience in soil engineering.

LIP Section 10.4 (F)

No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access where no feasible alternative means of public access exists. Drainage devices constructed to conform to applicable Best Management Practices shall be installed in such cases. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

Section 10.4 D of the Malibu LIP provides the setback requirements that new development on bluffs must meet. The required standard for bluff development is a minimum of 100 feet. This setback may be reduced to no less than 50 feet if one of two conditions can be met with a bluff setback that is less than 100 feet. The two cases are as follows:

1. Factor of Safety less than 1.5

Section 10.4 D1 provides for the condition where the bluff exhibits a factor of safety less than 1.5 for either gross or surficial landsliding. In that case, the location on the bluff top at which a 1.5 factor of safety exists must be determined. The required bluff setback would be the 1.5 factor of safety line plus the distance that the bluff might be expected to erode over 100 years (based on the bluff retreat rate).

2. Factor of Safety Greater than 1.5

Section 10.4 D2 provides for a different condition where the bluff exhibits a gross and surficial factor of safety greater than 1.5. In this case, the bluff setback would be the distance that the bluff might be expected to erode over 100 years (based on the bluff retreat rate) plus ten feet.

One of the grounds stated in the appeal is that the approved CDP is not consistent with the blufftop development policies and provisions of the LCP. There is **no** provision for reducing the bluff setback to anything less than 50 feet, let alone zero feet or allowing development on the bluff face, in any case. With regard to the subject project, there is no evidence in the City's administrative record regarding whether the project site could even meet the standards to allow a reduction in the bluff setback to 50 feet and the City findings provide no analysis of this provision. The record contains one geologic report regarding the subject project site. The Limited Geologic Opinion Report, prepared by GeoConcepts, Inc., dated June 18, 2007 relates information based on the geologist's visual observations on the site, and review of other geology reports for nearby properties. The report concludes that: "the orientation of the bedrock structure for the bluff slope is geologically favorable" but that: "A detailed geology and soils engineering investigation with subsurface exploration should be anticipated prior to development of the stairway". The report goes on to state that:

A detailed engineering geology and soils engineering investigation including surface mapping, subsurface exploration and laboratory testing of earth materials could result in different conclusions and recommendations described herein. No detailed surface mapping,

subsurface exploration, or laboratory testing were performed for this limited opinion report. To determine the subsurface conditions, subsurface explorations would be required.

There was no information provided on the factor of safety or bluff retreat rate for the subject site. The City did not evaluate whether the site meets the requirements for reducing the bluff edge setback from 100 feet to 50 feet. Nonetheless, the City's variance states that it is for a reduction in the bluff edge setback from 50 feet to zero feet. The City found in approving a variance that:

The site of the proposed staircase has been determined to be stable by a site specific geology report (GeoConcepts, 2007) and the City Geologist has approved the proposed project. Furthermore, the bluff, due to its location landward of the Westward Beach parking lot and approximately 350 feet from the shore, is not subject to wave action or continual erosion that could affect site stability. Prior to the issuance of a building permit, the project will be reviewed for structural integrity and stability.

However, as stated in the GeoConcepts report, the conclusions are not based on any actual geologic exploration of the site aside from surface observation and review of geology reports prepared for properties in the area (the report does not discuss whether the other geology reports are themselves based on subsurface exploration). This review alone does not provide much evidence upon which to base the conclusion that structural stability is ensured. The City's findings do not reveal the substance of the City Geologist's additional review of the project.

Further, while it is true that the foot of the bluff is not, in this case, subject to wave action, that is not the only mechanism resulting in bluff erosion. The approved project does not include any re-vegetation of disturbed slopes. The removal of vegetation, particularly on the steep bluff face, will allow for increased erosion. Additionally, focused runoff from the staircase structure itself has the potential to undercut and erode the bluff beneath it. The required bluff setbacks are designed not only to assure structural stability for new development, but to also prevent development on bluffs that will result in increased or accelerated erosion of these features.

The project, as approved, is not consistent with the cited bluff development policies of the LCP. As discussed above, the variance to the bluff setback standard is not justified. In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers the degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP. Here, the City has not provided a high degree of support for its decision that the bluff staircase is consistent with the policies and provisions of the LCP.

4. The project is inconsistent with the visual resource protection policies and provisions of the LCP

In addition to the bluff setbacks required to protect ESHA and to ensure structural stability, the LCP requires bluff development setbacks in order to protect visual resources. The following LCP policies and provisions are cited in the appeal:

LUP Policy 6.16

Blufftop development shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure, as detailed in Policy 4.27.

LIP Section 6.5 D

Bluff Development

1. In addition to the blufftop development setback requirements necessary to ensure geologic stability contained in Chapter 10 of the certified Malibu LCP, new development proposed on bluffs shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of, but no less than, the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure.
2. No permanent structures shall be permitted on a bluff face, except for engineered stairways to accessways to provide public beach access. Such structures shall be designed and constructed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

These provisions are necessary in order to avoid the alteration of the natural bluff landform as well as the individual and cumulative impacts to the unique scenic and visual quality of the Point Dume area. One of the grounds of the appeal is that no setback from the bluff edge was required and that no variance from the standards of LIP Section 6.5 (D) (2) was granted by the City. As discussed above, there is substantial issue raised by the lack of sufficient justification for the three variances (from ESHA buffer, blufftop development setback, and slope development standards) that were granted. However, in the case of the visual resource policies and provisions requiring development setbacks from the bluff edge, the City did not approve any variance. The standard was simply not met. The City's findings regarding visual resources do not address LUP Policy 6.16 or LIP Section 6.5 D. The findings state that:

Due to fixed location of the pedestrian access easement, no feasible alternative building site location exists where the staircase would not be visible from Westward Beach. The proposed staircase has been designed to emulate the existing nearby staircases and will have no significant adverse scenic or visual impacts due to project design, location on the site, or other reasons.

The findings also state that the staircase has been conditioned to utilize colors that will be compatible with the surrounding natural environment and that the staircase will be compatible with other existing staircases in the neighborhood.

However, what is not discussed in the City's findings is the fact that most, if not all, of such existing bluff stairways are non-conforming structures (Some, like the staircase on the adjacent lot, are legally non-conforming in that they have existed continually since

prior to the effective date of California Coastal Zone Conservation Act of 1972. Some are likely unpermitted structures.) The fact that the private staircase would be similar in design to other stairways in the area does not minimize its impact to visual resources. The impact to views from public areas (in this case, Westward Beach) of staircases and other development on the bluff face or near the bluff edge is cumulative. The more that such development is constructed, the less the bluff appears to be a natural geologic feature and habitat area.

The project, as approved, is not consistent with the cited visual resource policies or provisions of the Malibu LCP. In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers the degree of factual and legal support for the local government's decision that the development is consistent with the certified LCP. Here, the City has not provided any legal support for its decision that the private bluff staircase is consistent with the cited visual resource policies and provisions of the LCP.

5. Additional Factors to Determine Whether the Appeal Raises a Substantial Issue

In evaluating the issue of whether the appeal raises a substantial issue with respect to the project's consistency with the provisions and requirements of the certified Land Use Plan and Local Implementation Program requirements regarding environmentally sensitive habitat areas, blufftop development, and visual resources, the Commission regularly considers other factors in addition to the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP. For the reasons discussed above, the Commission finds that the City did not have strong factual or legal support for its decision that the development is consistent with the certified LCP. The Commission also considers the extent and scope of the development approved by the City, the significance of coastal resources affected by the decision, the precedential value of the local government's decision for future interpretation of its LCP, and whether the appeal raises only local issues, or those of regional or statewide significance.

First, the extent and scope of the development approved by the City is not particularly significant because the project consists of a three-foot wide stairway. This project will not cover a very large area. However, as discussed above, the potential impact of this project is not just individual, but a cumulative one that must be considered in context of other existing non-conforming stairways and other bluff face structures. Taken cumulatively, the impact of structures on the bluff face, including the isolation of ESHA and the alteration of the natural bluff landform is extensive. Next, the Commission considers the significance of any coastal resources that are affected by the decision. Here, the sensitive habitat resources that will be impacted is coastal bluff scrub, which owing to its increasing rarity and its sensitivity to disturbance, is designated ESHA.

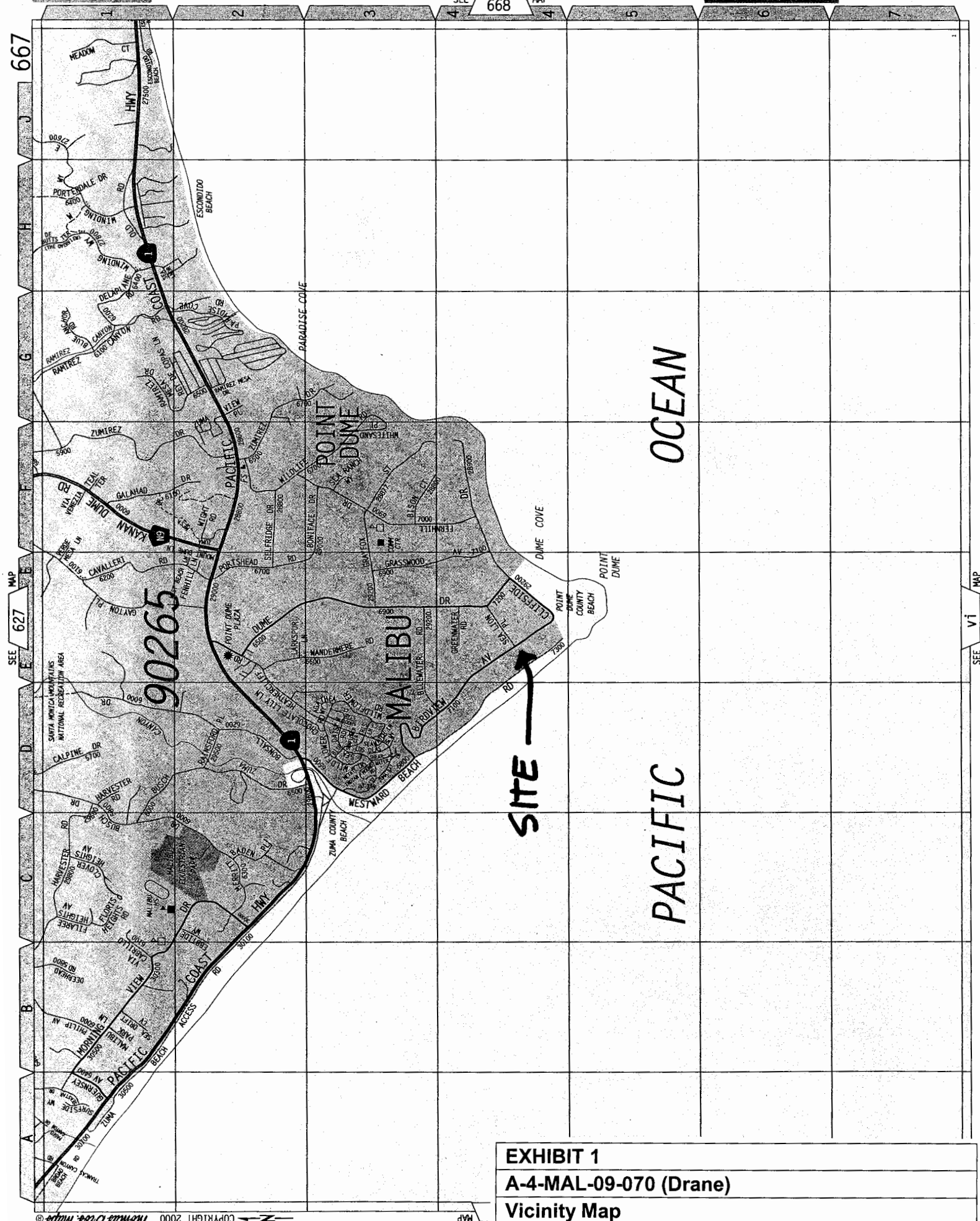
Additionally, the Commission looks at the precedential value of the local government's decision for future interpretation of its LCP. The subject CDP is the first project that includes development on a bluff face that has been considered by the City pursuant to the certified LCP. This decision approving a development that is not consistent with several unambiguous ESHA, blufftop development, and visual resource policies and

standards and includes several variances not just to reduce required setbacks and buffers but to eliminate them completely will set an adverse precedent for the way the City will interpret its LCP in the future.

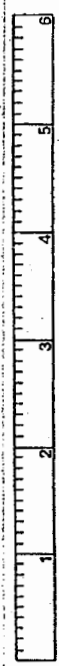
Finally, the last factor the Commission considers to determine whether the appeal raises a substantial issue, is whether the appeal raises only local issues, or those of regional or statewide significance. Here, the project involves development on a bluff face. The Commission considers a variety of development proposals and LCP planning issues involving coastal bluffs in many coastal cities and counties across the state. The Commission commonly considers issues similar to those involved in this case, including the protection of coastal bluff ESHA, the assurance of structural stability for blufftop development, and the protection of visual resources. So, it is clear that the issues involved in the subject appeal are of statewide significance. In sum, the Commission finds that each of the factors listed above, used to evaluate whether a substantial issue exists, are satisfied in this case.

E. CONCLUSIONS REGARDING SUBSTANTIAL ISSUE ANALYSIS

For the reasons discussed in detail above, the appeal raises substantial issue with respect to the consistency of the approved development with the policies and provisions of the City of Malibu's certified LCP regarding environmentally sensitive habitat areas, bluff development, and visual resources. In evaluating the whether the subject appeal raises substantial issue, the Commission has explicitly addressed several factors that play a part in identifying if the issues raised in an appeal are "significant". The Commission finds that there is not adequate factual and legal support for the City's position that the proposed project complies with LCP policies. The project will have both an individual and cumulative adverse effect on significant coastal resources, namely coastal bluff ESHA and visual resources. Further, because the County has not ensured that the project conforms to the existing policies and provisions of the LCP and has not provided sufficient evidence to support its decision, the project will have adverse precedential value regarding interpretation of the City's LCP for future projects. Finally, the issues involved affect similar bluff development statewide. Therefore, the Commission finds that a substantial issue exists with respect to the grounds raised by Commissioners Sara Wan and Mary Shallenberger in Appeal No. A-4-MAL-09-070, relative to the approved project's conformity to the policies and provisions of the certified City of Malibu Local Coastal Program.



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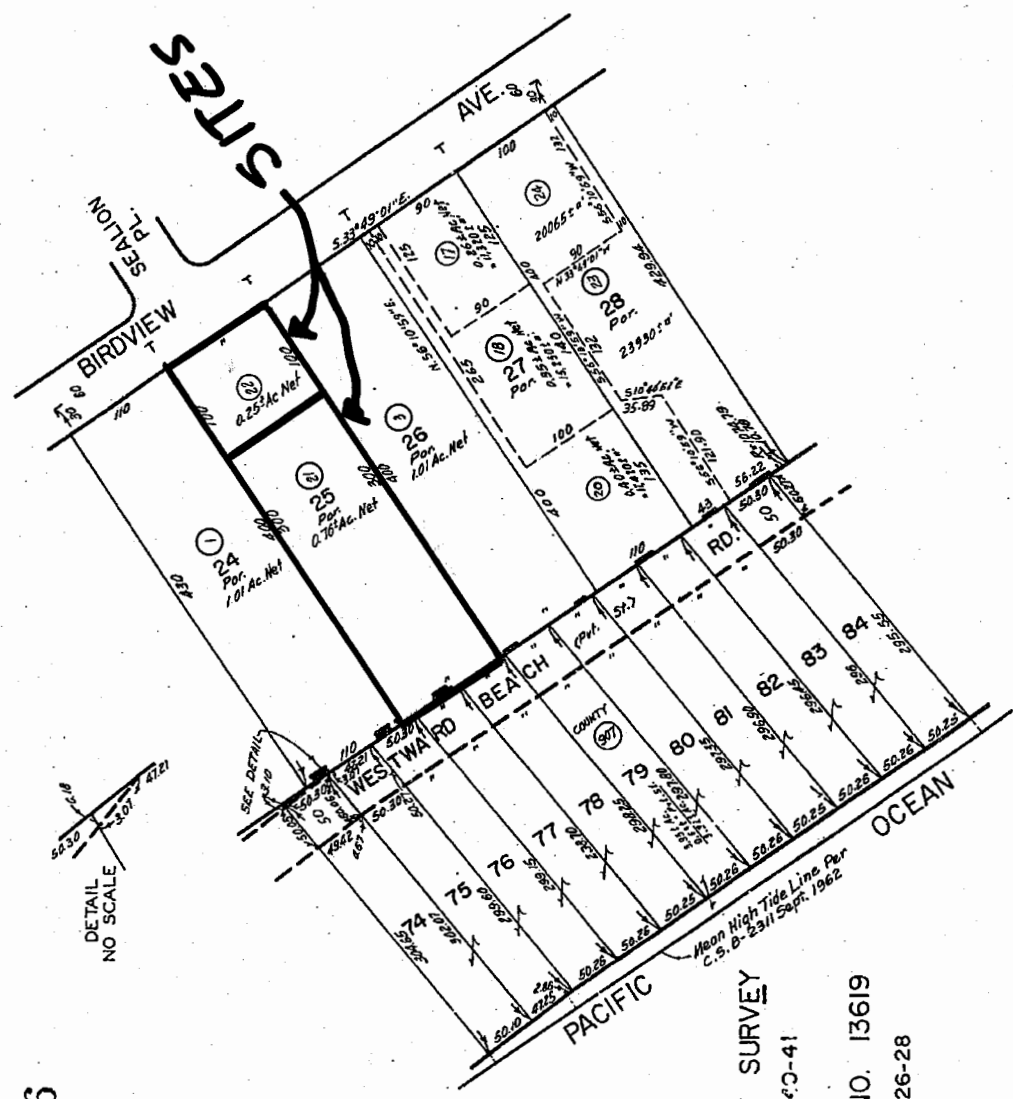


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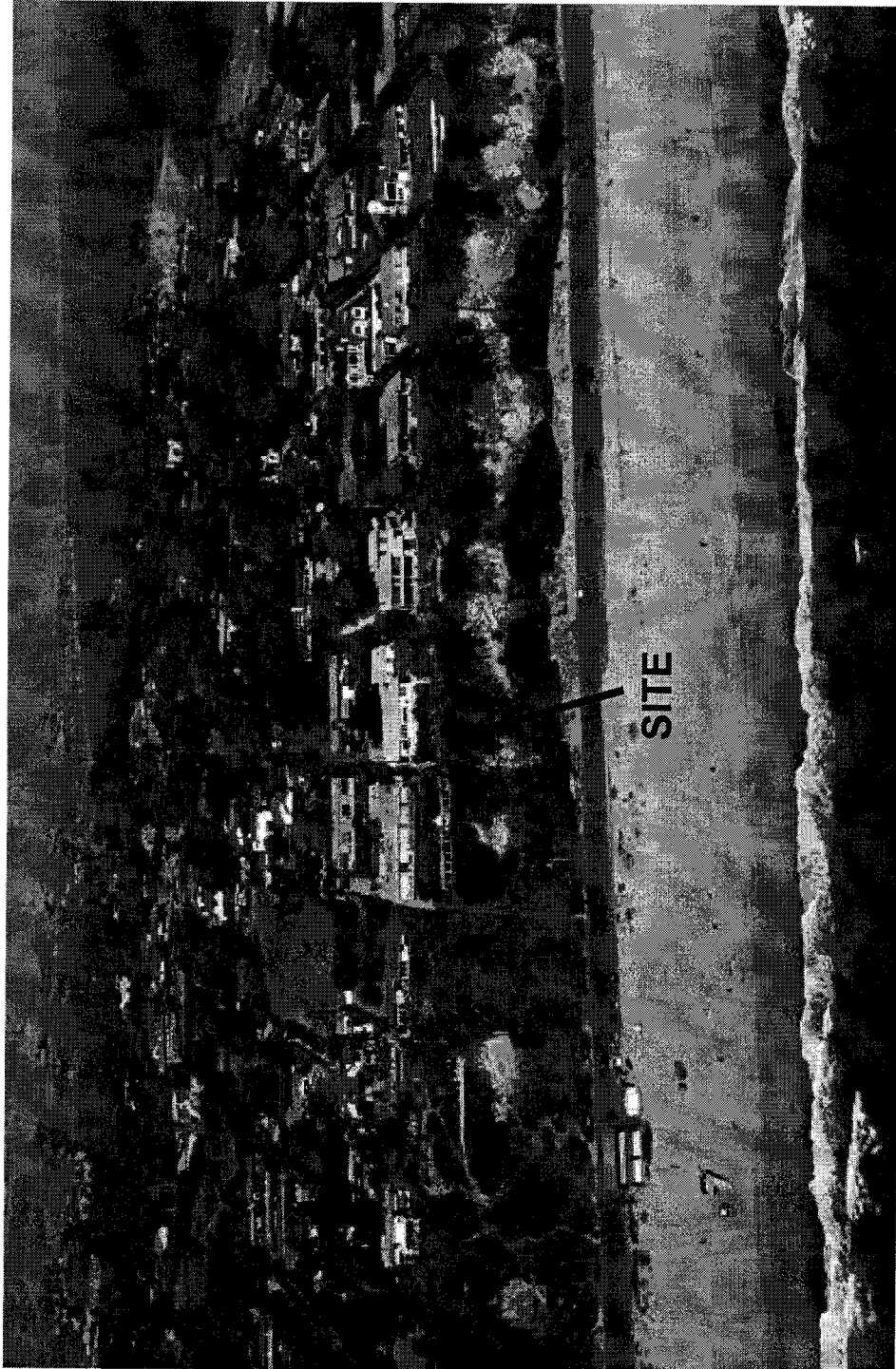
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OR PREY. ASSMT. SEE: 482-3108333

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

EXHIBIT 2
A-4-MAL-09-070 (Drane)
Parcel Map



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EXHIBIT 3

A-4-MAL-09-070 (Drane)

2008 Photograph

BIRDVIEW AVENUE

RECEIVED

AUG 23 2007

PLANNING DEPT.

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BIRDVIEW AVE

PARCEL 1 PER
DOC. NO. 94-186682
AND R.S. 198-36.

FD NAIL TIN & TAG
IN SEAWARD SIDE OF
POW. POLE PER
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FD NAIL & TAG



MARKED BLACK CROSS
IN TOP OF BRICK
PLANTER.

MARKED BLACK CROSS
IN CONC WALK AT GATE

PURPOSES

FOR PEDESTRIAN
No. 99-1339203.

LEGEND

- INDICATES A SET 1' X 2' WOOD STAKE
WITH TAG L.S. 5009, FLUSH W/ GROUND.

MARKED BLACK CROSS
IN CONC LANDING ABOVE STAIRS

MAP SHOWING SURVEY OF A
PORTION OF THE NW'LY LINE OF
PARCEL 25, PER R.S. 57, 40-41,
BEING ALSO THE NW'LY LINE OF A
5' WIDE PED. E'SMNT PER D.R. DOC.
No. 99-1339203,
IN THE CITY OF MALIBU
COUNTY OF LOS ANGELES, CA

SURVEYED IN JUNE, 2006
AT REQUEST OF MR. CLARK DRANE

BY: QUIROS SURVEYING
22249 PCH MALIBU CA 90265
310 456-8022

PT ON PARCEL LINE PRODUCED:
SET NAIL, TIN & TAG L.S. 5009
IN TOP OF ASPHALT CURB,
0.8' SEAWARD OF TRUE CORNER.

PT ON PARCEL LINE PRODUCED:

WESTWARD BEACH

PARKING LOT

FILE 662-2-A

EXHIBIT 4

A-4-MAL-09-070 (Drane)

Project Plans (2 Pages)

REPAIR & REPLACE

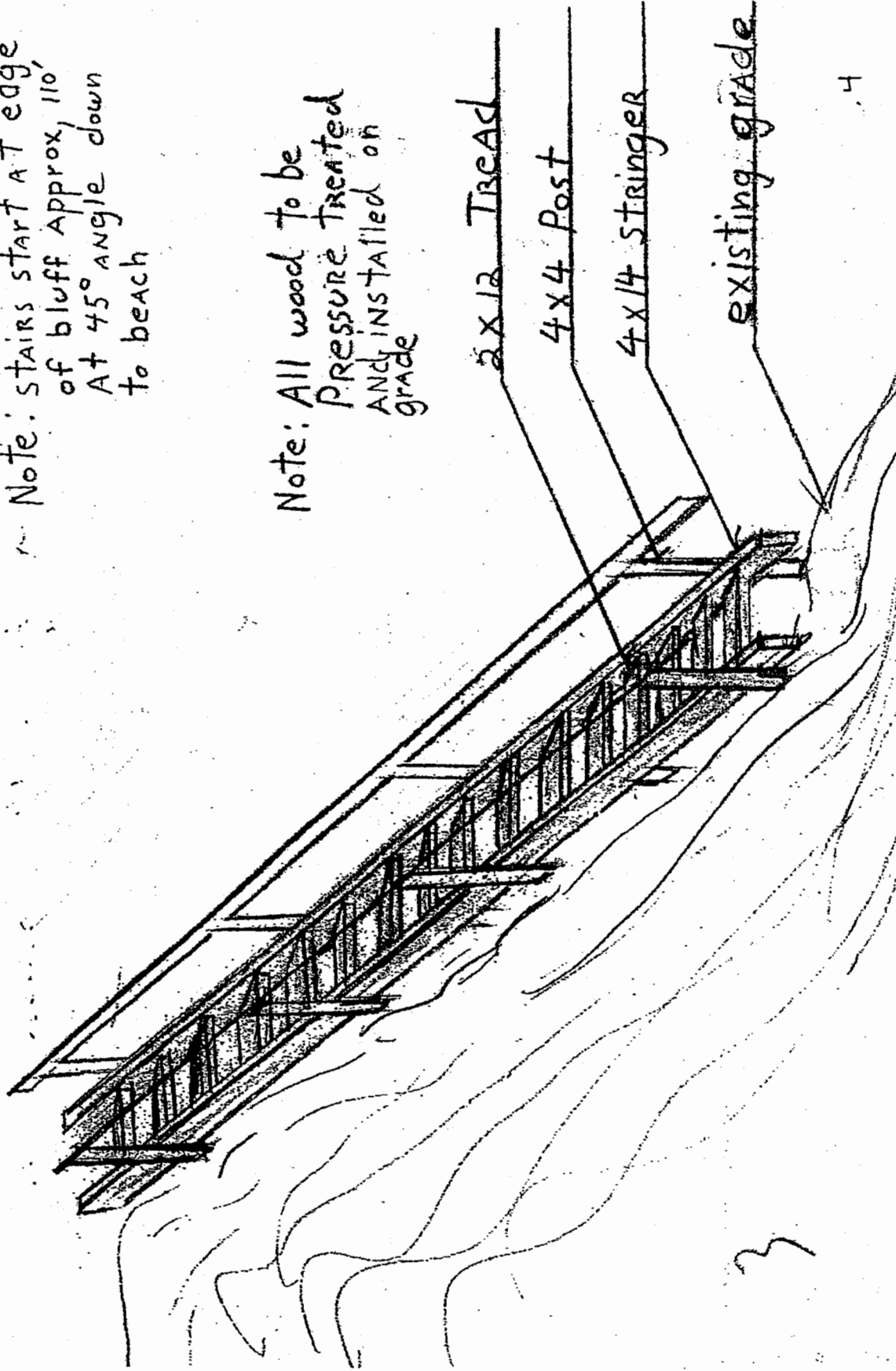
457-3106

CLARK DRANE
7273 BIRDAVIEW AVE
MALIBU CA 90265
MARY MATZA 457-3106

CONTRACTOR
BICK/CUNNINGHAM
310-633-1254

Note: stairs start at edge
of bluff approx, 110',
At 45° angle down
to beach

Note: All wood to be
Pressure treated
AND installed on
grade



Date:

99 1339203

RECORDED/FILED IN OFFICIAL RECORDS RECORDER'S OFFICE LOS ANGELES COUNTY CALIFORNIA JUL 20 1999 AT 8 A M

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

FEE CODE	N/A	N/A	0	20	9	19	04	19
REC FEE	NO PAGES	NO TITLES	PCOR	D A FEE	SURVEY MON	NOTIF	INVOL LIEN	NON CONF

6

EXAMINER'S INT

Assessor's Identification Number (AIN)
To Be Completed By Examiner Or Title Company In Black Ink

Number of Parcels Shown

Revision Number

EXHIBIT 5

A-4-MAL-09-070 (Drane)

Pedestrian Easement Document 1999 (6 Pages)

RECORDING REQUESTED BY
North American Title
AND WHEN RECORDED MAIL TO

99 1339203

2

- CLARK DRANE
- 6914 GRENoble ST.
- Tujunga CA 91042

FEE \$19	M
DAF \$2	
C-20	5

THIS SPACE FOR RECORDERS USE ONLY

EASEMENT QUITCLAIM DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(s)

DOCUMENTARY TRANSFER TAX is \$NONE

- ☐ computed on full value of property conveyed or
☐ computed on full value less value of liens or encumbrances remaining at time of sale
☐ Unincorporated area ☒ City of Malibu AND

FOR A VALUABLE CONSIDERATION receipt of which is hereby acknowledged,

Eileen P. Clenard Trustee of the Clenard Family Trust dated 9/19/89

do(es) hereby REMISE RELEASE AND FOREVER QUITCLAIM to

Clark Drane and Mildred Drane as Trustees of the Clark Drane Family Revocable 1976 Trust Established 12/22/75

An Easement for pedestrian purposes over

the real property in the City of Malibu County of Los Angeles State of California described as

Complete legal description attached hereto marked Exhibit A and by this reference incorporated herein

A P #

"This is a conveyance of an easement and
the consideration and value is less than \$100,
R & T 11911"

"This is a conveyance of an easement (Exhibit "A") and the consideration and
value is less than \$199, R & T 11911 This Deed is recorded to confirm the
easement described therein to correct a previous incorrectly recorded legal
description "

DATED June 25 1999

STATE OF CALIFORNIA

COUNTY OF Los Angeles

On July 13th, 1999

before me JENINA ATKINSON

a Notary Public in and for said State personally appeared

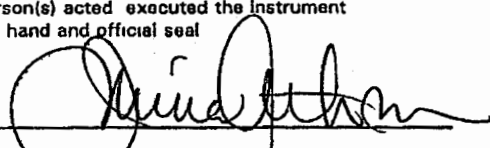

Eileen P. Clenard, Trustee of the Clenard Family
Trust dated 9/19/89

* Eileen P. Clenard *

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s) or the entity upon behalf of
which the person(s) acted executed the instrument
WITNESS my hand and official seal



Signature



(This area for official notarial seal)

Mail tax statements to

Exhibit "A"

"LEGAL DESCRIPTION"

3

AN EASEMENT FOR PEDESTRIAN PURPOSES OVER THE NORTHWESTERLY FIVE FEET (5'), MEASURED AT RIGHT ANGLES, OF THE FOLLOWING DESCRIBED PROPERTY

A PARCEL OF LAND IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1, PAGES 407, ET SEQ, OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF ROAD EASEMENT NO 1 (BIRDVIEW AVENUE) WITH THE CENTER LINE OF ROAD EASEMENT NO 3 (SEALION PLACE), AS SAID ROAD EASEMENTS ARE DESCRIBED IN THE DECLARATION OF EASEMENT FILED FOR RECORD AUGUST 21, 1946 AS INSTRUMENT NO 3439 IN BOOK 23683, PAGE 17 OF OFFICIAL RECORDS OF SAID COUNTY, THENCE, ALONG SAID CENTER LINE OF ROAD EASEMENT NO 1, SOUTH 33° 49' 01" EAST 69 00 FEET, THENCE SOUTH 56° 10' 59" WEST 130 00 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE CONTINUING SOUTH 56° 10' 59" WEST 300 00 FEET, THENCE NORTH 33° 49' 01" WEST 110 00 FEET, THENCE NORTH 56° 10' 59" EAST 300 00 FEET TO A LINE THAT BEARS NORTH 33° 49' 01" WEST FROM SAID TRUE POINT OF BEGINNING, THENCE SOUTH 33° 49' 01" EAST 110 00 FEET TO THE TRUE POINT OF BEGINNING, AND AS SHOWN ON EXHIBIT MAP ATTACHED

THE ABOVE DESCRIBED LAND BEING A PORTION OF PARCEL 25, IN SAID CITY, COUNTY AND STATE, AS SHOWN ON MAP FILED IN BOOK 57, PAGES 40-41, OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER

99 1339203

Exhibit "A"

"LEGAL DESCRIPTION"

4

AN EASEMENT FOR PEDESTRIAN PURPOSES OVER THE NORTHWESTERLY FIVE FEET (5'), MEASURED AT RIGHT ANGLES, OF THE FOLLOWING DESCRIBED PROPERTY

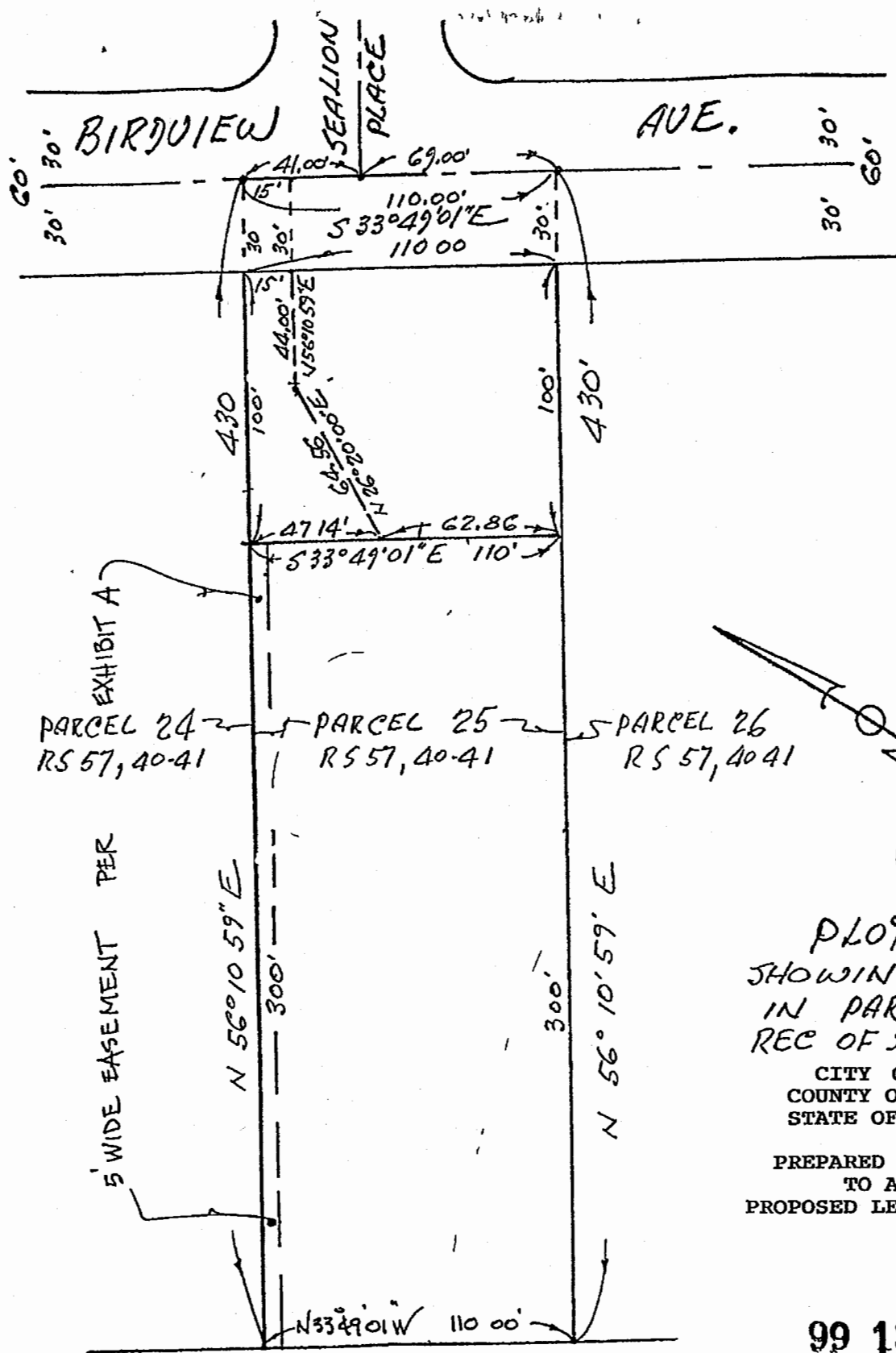
A PARCEL OF LAND IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1, PAGES 407, ET SEQ, OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS

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THE ABOVE DESCRIBED LAND BEING A PORTION OF PARCEL 25, IN SAID CITY, COUNTY AND STATE, AS SHOWN ON MAP FILED IN BOOK 57, PAGES 40-41, OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER

99 1339203

6



PLOT PLAN
SHOWING PARCELS
IN PARCEL 25
REC OF SURVEY 57, 40-4
CITY OF MALIBU
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

PREPARED IN JUNE, 1999
TO ACCOMPANY
PROPOSED LEGAL DESCRIPTIONS

99 1339203

NOTE: This is not a map of a survey

662-3-A

CALIFORNIA COASTAL COMMISSION

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

RECEIVED
SEP 28 2009

ARNOLD SCHWARZENEGGER, Governor



CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Commissioner Mary Shallenberger; Commissioner Sara Wan

Mailing Address: C/O South Central Coast District, 89 South California Street

City: Ventura

Zip Code: 93001

Phone: 805 585-1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Construction of a new 110 foot long, three foot wide staircase within a five foot wide pedestrian easement along a bluff face at 7271 Birdview Avenue, as accessory to an existing, residential triplex on the adjacent lot, 7273 Birdview Avenue.

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

7271 & 7273 Birdview Avenue, City of Malibu (APNs 4468-020-021 and 4468-020-022)

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-4-MAL-09-070

DATE FILED: 9/28/09

DISTRICT: So. Central Coast

EXHIBIT 6**A-4-MAL-09-070 (Drane)****Appeal**

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

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

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

6. Date of local government's decision: September 14, 2009

7. Local government's file number (if any): CDP 07-106

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Clark Drane
c/o Richard Scott
24955 Pacific Coast Highway
Malibu, CA 90265

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

(1)

(2)

(3)

(4)

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

See Exhibit A attached

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

SECTION V. Certification

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

Signed: Mary K Schallenberger
Appellant or Agent

Date: 9/28/09

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

Signed: _____

Date: _____

(Document 2)

RECEIVED
SEP 28 2009

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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

See Exhibit A attached

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

SECTION V. Certification

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

Signed: Lara J. Wan
Appellant or Agent

Date: 9/28/09

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

Signed: _____

Date: _____

(Document2)

RECEIVED
SEP 28 2009

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT A
Reasons Supporting the Appeal

RECEIVED
SEP 28 2009

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ESHA Protection, Bluff Development, and Visual Resources

The approved project involves the construction of a new 110-ft. long, 3-ft. wide staircase down a steep bluff face (1:1 slope) to provide private access from an existing triplex at 7273 Birdview Avenue down to Westward Beach. From the triplex, the staircase would descend down an adjacent property (7271 Birdview Ave) that the applicant has a 5-ft. wide pedestrian access easement across (easement deed recorded in 1999). Variances were approved to eliminate the required setbacks from the bluff edge and coastal bluff ESHA, and for construction on slopes in excess of 2.5:1. In approving the subject CDP and associated variances, the City found that denial of the variances would deprive the property owner of developing his property (easement) for its intended use as a private pedestrian accessway. Issue is raised with this finding because the subject properties (7271 and 7273 Birdview) each contain a residential development and have already been provided an economically viable use. The proposed staircase, an accessory structure, does not trigger application of the LCP's "taking" provisions.

Issue is raised with regard to the approved project's consistency with the ESHA protection, visual, and bluff development policies of the Malibu LCP (LUP Policies 3.58, 4.27, 4.29, 6.16, and LIP Sections 4.6.1(D), 6.5(D)(2), 10.4(D) and (F), 12.9(F) listed below). The Malibu LUP mandates that environmentally sensitive habitat areas (ESHA) shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources. Bluff face areas are designated ESHA in the LCP and new development must provide a buffer of no less than 100 feet from a bluff edge. The LCP also specifically prohibits new development on bluff faces, except for engineered stairways or accessways to provide *public* beach access where no feasible alternative means of public access exists. Private accessways are certainly not a permitted use in coastal bluff ESHA. Even if the approved staircase were to be dedicated for public use, the finding could not be made that no feasible alternative means of public access exists because Point Dume State Beach and Westward Beach Road exist nearby and provide for public shoreline access.

Further, the shoreline and bluff development provisions of the LCP require that new development be setback from a bluff edge a sufficient distance to ensure it will not be threatened by erosion for a projected 100 year economic life of the structure, which is in no case less than 100 feet. This setback can be reduced to 50 feet only if certain geologic and engineering factors can be met with a 50 foot setback. The City's findings do not address whether conditions to reduce the setback to 50 feet were even met. There is no provision for reducing the bluff setback to zero feet. Finally, the visual resource provisions of the LCP (LUP Policy 6.16 and LIP Section 6.5 (D)(2) require that bluff development provide a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The LCP states that the setback necessary to protect visual resources may be excess of, but not less than the setback necessary to minimize geologic hazards. No setback from the bluff edge was

required and no variance from the standards of LIP Section 6.5 (D)(2) was granted by the City.

Relevant LCP Policies

ESHA

LUP Policy 3.58

To protect seabird-nesting areas, no pedestrian access shall be provided on bluff faces except along existing, formal trails or stairways. New structures shall be prohibited on bluff faces, except for stairs or accessways to provide public beach access.

LIP Section 4.6.1 (in part)

Buffers

...

D. Coastal Bluff ESHA

New development shall provide a buffer of no less than 100 feet from the bluff edge.

BLUFF DEVELOPMENT

LUP Policy 4.27

All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.

LUP Policy 4.29

No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

LIP Section 10.4(D) (in part)

All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for

a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet if the City geotechnical staff determines that either of the conditions below can be met with a lesser setback. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist and/or Geotechnical Engineer, or a Registered Civil Engineer with experience in soil engineering.

LIP Section 10.4 (F)

No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access where no feasible alternative means of public access exists. Drainage devices constructed to conform to applicable Best Management Practices shall be installed in such cases. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

VISUAL RESOURCES

LUP Policy 6.16

Blufftop development shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure, as detailed in Policy 4.27.

LIP Section 6.5 D

Bluff Development

1. In addition to the blufftop development setback requirements necessary to ensure geologic stability contained in Chapter 10 of the certified Malibu LCP, new development proposed on blufftops shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of, but no less than, the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure.
2. No permanent structures shall be permitted on a bluff face, except for engineered stairways to accessways to provide public beach access. Such structures shall be designed and constructed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.

RESOLUTION NO. 09-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU UPHOLDING APPEAL NO. 09-003 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-106 AND VARIANCE NOS. 07-052, 08-057 AND 09-012 FOR THE CONSTRUCTION OF A NEW 110 FOOT LONG, THREE FOOT WIDE STAIRCASE WITHIN A FIVE FOOT WIDE PEDESTRIAN EASEMENT ALONG A BLUFF FACE AT 7271 BIRDVIEW AVENUE, AS ACCESSORY TO AN EXISTING, RESIDENTIAL TRIPLEX ON THE ADJACENT LOT, 7273 BIRDVIEW AVENUE (DRANE)

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

Section 1. Recitals.

A. On August 23, 2007, an application for Coastal Development Permit (CDP) No. 07-106 was submitted by Richard Scott, on behalf of property owner Clark Drane, to the Planning Division for processing. The subject application was routed to the City Biologist and City Geologist for conformance review.

B. On November 9, 2007, a Notice of Application for a new coastal development permit was posted on the subject property.

C. On December 13, 2007, the application was deemed complete for processing.

D. On March 5, 2008, the applicant submitted an application for Local Coastal Program Amendment (LCPA) No. 08-001. The LCPA proposed allowing staircases to be constructed in existing access easements along bluff-faces. The applicant requested that staff place the CDP application on hold and bring both the CDP and LCPA projects together at the same Planning Commission meeting.

E. On October 9, 2008, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

F. On October 21, 2008, the Planning Commission held a duly noticed public hearing, reviewed and considered the staff report (which included a recommendation of denial), reviewed and considered written reports, public testimony and related information. At the conclusion of the hearing the Planning Commission directed staff to prepare the appropriate findings required to approve CDP No. 07-106 and Variance (VAR) Nos. 07-052, 08-057 and 09-012.

G. On March 20, 2009, VAR No. 09-012 was added to the project scope for the reduction of the required setback from coastal scrub Environmentally Sensitive Habitat Area (ESHA).

EXHIBIT 7

A-4-MAL-09-070 (Drane)

City Council Findings—September 14, 2009

H. On April 9, 2009, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

I. At the April 21, 2009 Planning Commission meeting, the Commission continued the hearing to the May 19, 2009 meeting due to a procedural error.

J. On May 7, 2009, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

K. On May 19, 2009, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the Agenda Report, public testimony and all related information. At the conclusion of the hearing the Planning Commission adopted findings to deny CDP No. 07-106.

L. On May 27, 2009, Appeal No. 09-003 was filed by Richard Scott on behalf of the property owner, Clark Drane.

M. On June 1, 2009, the appeal was deemed complete by staff.

N. On September 3, 2009, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

O. On September 14, 2009, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, public testimony and all related information.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposal as described above, and has found that this project is listed among the classes of projects, which have been determined not to have a significant effect on the environment, and therefore, is categorically exempt from the provisions of CEQA, pursuant to California Code of Regulations Section 15303(e) – New Construction or Conversion of Small Structures. This section allows an exemption for “construction and location of limited numbers of new, small facilities or structures...accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences.” The construction proposed is for a staircase and therefore falls under the provisions of this section. The City Council has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

Section 3. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the City Council adopts the findings in the staff report, the findings of fact below, and approves CDP No. 07-106 and VAR Nos. 07-052, 08-057 and 09-012 for the construction of a new 110 foot long, three foot wide staircase along a bluff face, accessory to an existing, residential triplex and providing access from the triplex to the public parking lot landward of Westward Beach.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all coastal development permits.

Finding A1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

The proposed private staircase is located within an area on the property addressed as 7271 Birdview Avenue (APN 4468-020-021). The legal description calls the area "an easement for pedestrian purposes over the northwesterly five feet, measured at right angles" of the aforementioned property. The location of the easement is along a bluff-face which is dominated by approximately 45 degree (or 1 to 1) slopes. The easement descends from the subject property, 7273 Birdview Avenue, across 7271 Birdview Avenue, and down to the Westward Beach public parking lot at the toe of the bluff.

The project has been reviewed for conformance with the LCP. As discussed herein, the project, as proposed and/or conditioned, conforms to the certified City of Malibu LCP. The required findings for the variance requests can be made.

Finding A2. The project is located between the first public road and the sea. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is located between the first public road and the sea but will not impact public access or recreation as the development is located on a bluff-top parcel. The Westward Beach parking lot is located between the parcel and the ocean, and the project site does not currently provide public access to the beach. The project site is accessible by way of a private driveway and is not accessible to the public; therefore, vertical access at the project site is not feasible. Additionally, access to nearby public coastal tidelands may be obtained via nearby Point Dume Headlands Park and Westward Beach Road. The project will not result in significant impacts on public access or recreation. The project conforms to the public access and recreation policies of the Coastal Act of 1976.

Finding A3. The project is the least environmentally damaging alternative.

Pursuant to CEQA, this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is therefore categorically exempt. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA,

and that there are no further feasible alternatives that would reduce impacts on the environment. The project complies with the development requirements of the LCP. The proposed staircase accessory to the triplex is consistent with the rural residential-one acre (RR-1) zoning classification of the subject property.

The project will not result in any potentially significant impacts because there are no further feasible conditions or alternatives that would substantially lessen any adverse effects of the development on the environment. The following alternatives were considered.

1. No Project – The no project alternative would avoid any change to the project site, and hence, any change to natural resources. The project site contains an easement of which its sole use is for pedestrian access. The “no project” alternative would not allow the construction of a staircase within the easement, which is proposed to provide safe access between Westward Beach and the property at 7273 Birdview Avenue. The slope within the easement is at such an angle that the easement could not safely be used without improving it, which in this case requires a staircase. Without the project, there would be no way to safely use the pedestrian easement.
2. Smaller Project – The proposed staircase measures three feet in width and is approximately 110 feet long. The staircase fits entirely within the existing pedestrian access easement. A smaller staircase length-wise is not feasible because it would stop mid-bluff and not span the distance between the triplex and the Westward Beach parking lot. A smaller staircase width-wise is not feasible because the project, as designed, meets the minimum standard for staircase width set forth in the Uniform Building Code.
3. Alternative Location – An alternative location is not possible due to fact that the location of the pedestrian access easement is fixed onsite. This is not a feasible alternative.
4. Proposed Location - The selected location for the staircase is on geologically stable land and is sited entirely within the pedestrian access easement. There is no other feasible way in which to utilize the easement safely, without first installing an access staircase, due to the slope present along the bluff-face.

Based on the site reconnaissance, photographs, review of the plans, and the nature of the surrounding area, the City Council determined that the proposed project will have no significant adverse scenic or visual impacts on public views due to project design, location on the site or other reasons. The project consists of construction of a new private exterior staircase within an existing easement. The project is the least environmentally damaging alternative.

Finding A4. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

It has been determined that the property contains ESHA via a site specific Biological Assessment completed by Forde Biological Consultants dated July 31, 2007. Additionally, LCP Land Use Plan (LUP) Policy 3.77 designates that all beach or ocean bluff areas adjacent to marine and beach habitats are to be considered ESHA. However, pursuant to LIP Section 4.4.4(C), the proposed project is exempt from

review by the Environmental Review Board (ERB) because the project includes the development of new structure in the same location as an existing structure, where no additional fuel modification is required.

B. Variance for the Reduction of the Required Bluff Setback (LIP Section 13.26.5)

A variance is requested for the construction of a staircase which descends a bluff-face. This variance is necessary because the area of the pedestrian access easement is along a bluff. Due to the fixed location of the easement, there is no other alternative location for the access staircase. Pursuant to LIP Section 13.26.5, the City Council may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes 10 findings of fact. Based on the foregoing evidence contained within the record, the City Council approves VAR No. 07-052.

Finding B1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The project site is a five foot wide easement to be used solely for ingress and egress over a property contiguous to a fee parcel owned by the applicant. The sole purpose of the easement is for ingress and egress and the easement leads from the triplex property to the parking lot adjacent to Westward Beach. The entirety of the proposed staircase is located on the face of a bluff. Strict application of the zoning ordinance would deprive the owner of the use of the property and privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Neighboring properties both to the east and to the west include private staircases to the beach.

Development regulations requiring at least a 50 foot setback from the edge of a bluff are written on a citywide basis and cannot take into account the individual and unique characteristics a property may exhibit. In this instance, the strict application of the ordinance would preclude the development of a safe way in which to utilize the pedestrian access easement which descends down the bluff from the triplex on Birdview Avenue. Without granting this variance for construction of the staircase within the easement, the easement holder would not be able to access the easement safely. Denial of the variance would deprive the property owner of developing his property for its intended use as a pedestrian accessway.

Finding B2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The granting of the variance will allow the construction of a private staircase, which will not be detrimental to the public's interest, safety, health or welfare. Furthermore, the staircase will not be detrimental or injurious to the property or improvements in the same vicinity and zone as the subject property.

Finding B3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

The granting of the variance will not constitute a special privilege to the applicant or property owner in that the sole purpose of the subject easement is for ingress and egress to the beach and no other use of the property may be made. The proposed project is located in the vicinity of other private bluff staircases to both the east and the west and is consistent with the surrounding neighborhood.

Finding B4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

The granting of the variance for the reduction of the required bluff setback will not be contrary to or in conflict with the general purposes and intent of the zoning provisions nor contrary to or in conflict with the goals, objectives and policies of the LCP. As stated previously, granting the requested variance will allow the subject property to be developed in a similar manner to abutting properties and no alternatives exist that would eliminate the need for the requested variance. The proposed project has been reviewed for conformance with the LCP and applicable City goals and policies by the City Biologist and City Geologist.

Finding B5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The subject parcel contains ESHA and ESHA buffer. The granting of this variance will allow for a three foot wide, 110 foot long staircase to be constructed entirely within a five foot wide access easement. There is no other feasible alternative location possible due to the fixed location on the parcel.

Finding B6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The requested variance is not associated with stringline standards; therefore, this finding is not applicable.

Finding B7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity, which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the RR-1 zoning district. The proposed project is for the construction of a new staircase accessory to an existing triplex, which is permitted in the zone.

Finding B8. The subject site is physically suitable for the proposed variance.

The site of the proposed staircase has been determined to be stable by a site specific geology report (GeoConcepts, Inc., 2007) and the City Geologist has approved the proposed project. Furthermore, the bluff, due to its location landward of the Westward Beach parking lot and approximately 350 feet from the shore, is not subject to wave action or continual erosion that could affect site stability. Prior to the issuance of a building permit, the project will be reviewed and approved for structural integrity and

stability. All final recommendations of the applicant's consulting geologist and structural engineer, as well as those recommendations of the Environmental and Building Safety Division and the City Geotechnical staff, will be incorporated into the final project design. As such, the subject was determined to be physically suitable for the proposed variance.

Finding B9. The variance complies with all requirements of State and local law.

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

Finding B10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The requested variance is for relief from a specific development standard and does not involve the reduction or elimination of public parking. Therefore, this finding is not applicable.

C. Variance for Construction on Slopes in Excess of 2½ to 1 (LIP Section 13.26.5)

A variance is requested for the construction of a staircase on slopes in excess of 2½ to 1. This variance is necessary because steep slopes dominate the entire area of the pedestrian access easement. There is no other alternative location for the access staircase. Pursuant to LIP Section 13.26.5, the City Council may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes 10 findings of fact. Based on the foregoing evidence contained within the record, the City Council approves VAR No. 08-057.

Finding C1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The subject property is a five foot wide easement to be used solely for ingress and egress over a property contiguous to a fee parcel owned by the applicant. The sole purpose of the easement is for ingress and egress and the easement leads from the triplex property to the parking lot adjacent to Westward Beach. Strict application of the zoning ordinance would deprive the owner of the use of the property and privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Neighboring properties both to the east and to the west include private staircases to the beach.

Development regulations limiting construction on slopes are written on a citywide basis and cannot take into account the individual and unique characteristics a property may exhibit. In this instance, the strict application of the ordinance would preclude the development of a safe way in which to utilize the pedestrian access easement which descends down the bluff from the triplex on Birdview Avenue. Without granting this variance for construction of the staircase within the easement, the easement holder would not be able to access the easement safely. Denial of the variance would deprive the property owner of developing his property for its intended use.

Finding C2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The granting of the variance will allow the construction of a private staircase, which will not be detrimental to the public's interest, safety, health or welfare. Furthermore, the staircase will not be detrimental or injurious to the property or improvements in the same vicinity and zone as the subject property.

Finding C3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

The granting of the variance will not constitute a special privilege to the applicant or property owner in that the sole purpose of the subject easement is for ingress and egress to the beach and no other use of the property may be made. The proposed project is located in the vicinity of other private bluff staircases to both the east and the west and is consistent with the surrounding neighborhood.

Finding C4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

The granting of the variance for construction on slopes in excess of 2½ to 1 will not be contrary to or in conflict with the general purposes and intent of the zoning provisions nor contrary to or in conflict with the goals, objectives and policies of the LCP. As stated previously, granting the requested variance will allow the subject property to be developed in a similar manner to abutting properties and no alternatives exist that would eliminate the need for the requested variance. The proposed project has been reviewed for conformance with the LCP and applicable City goals and policies by the City Biologist and City Geologist.

Finding C5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The subject parcel contains ESHA and ESHA buffer. The granting of this variance will allow for a three foot wide, 110 foot long staircase to be constructed entirely within a five foot wide access easement. There is no other feasible alternative location possible due to the fixed location on the parcel.

Finding C6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The requested variance is not associated with stringline standards; therefore, this finding is not applicable.

Finding C7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity, which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the RR-1 zoning district. The proposed project is for the construction of a new staircase accessory to an existing triplex, which is permitted in the zone.

Finding C8. The subject site is physically suitable for the proposed variance.

The site of the proposed staircase has been determined to be stable by a site specific geology report (GeoConcepts, Inc., 2007) and the City Geologist has approved the proposed project. Furthermore, the bluff is not subject to wave action or continual erosion that could affect site stability. Prior to the issuance of a building permit, the project will be reviewed and approved for structural integrity and stability. All final recommendations of the applicant's consulting geologist and structural engineer, as well as those recommendations of the Environmental and Building Safety Division and the City Geotechnical staff, will be incorporated into the final project design. As such, the subject was determined to be physically suitable for the proposed variance.

Finding C9. The variance complies with all requirements of State and local law.

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

Finding C10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The requested variance is for relief from a specific development standard and does not involve the reduction or elimination of public parking. Therefore, this finding is not applicable.

D. Variance for Reduction of ESHA Setback (LIP Section 13.26.5)

A variance from the ESHA setback requirement is requested for the construction of a private access staircase. This variance is necessary because the project is proposed on a coastal bluff and LUP Policy No. 3.77 designates all coastal bluffs within the City to be ESHA, regardless of site conditions or past use. The site specific biological assessment (Forde, 2007) has determined that the upper portion of the easement contains non-native vegetation, while the lower portion of the easement contains coastal bluff scrub ESHA.

Pursuant to LIP Section 13.26.5, the City Council may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes 10 findings of fact. Based on the foregoing evidence contained within the record, the City Council approves VAR No. 09-012.

Finding D1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The site conditions on subject property are such that the strict application of the zoning ordinance deprives the subject property owner of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. The subject variance will allow the subject easement to be developed in a similar manner to abutting properties and because the entire easement is within coastal bluff ESHA (as denoted by the LUP). Without granting this variance for the reduction in the required 100 foot coastal bluff ESHA setback, there would be no way to construct the staircase which is necessary to safely utilize the existing pedestrian easement. Neighboring properties along Birdview Avenue and Cliffside Drive have private bluff staircases within on-site ESHA and denial of the variance would deprive the property owner of developing his property in a similar manner with respect to required coastal bluff ESHA setbacks.

Finding D2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The project will meet all applicable building and engineering safety codes and will not be detrimental to other adjacent properties or improvements. The proposed variance will allow the construction of an access staircase within a five foot wide pedestrian access easement and will not be detrimental to the public's interest, safety, health or welfare. As stated previously, the proposed project has been reviewed and approved by the City Geologist. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies.

Finding D3. The granting of the variance will not constitute a special privilege to the applicant or property owner.

Granting of the variance will not constitute a special privilege to the applicant or property owner because there is no other feasible and safe use for the pedestrian access easement and, additionally, other properties in the immediate vicinity also have private access staircases which descend down the bluff to the beach below. Since the applicant is constructing a staircase within an existing access easement, granting the variance does not constitute a special privilege to the property owner.

Finding D4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.

The granting of the variance for the reduction in the required coastal bluff ESHA setback will not be contrary to or in conflict with the general purposes and intent of the zoning provisions nor contrary to or in conflict with the goals, objectives and policies of the LCP. As stated earlier, granting the requested variance will allow the subject easement to be developed in a similar manner to abutting properties and because the entire easement is within coastal bluff ESHA (as denoted by the LUP), no alternatives exist that would eliminate the need for the requested variance. The proposed project has been reviewed and approved for conformance with the LCP by the City Geologist.

Finding D5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for

siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

The easement area is comprised of coastal bluff ESHA. The granting of this variance will allow for a private staircase to be constructed entirely within a five foot wide pedestrian access easement. Due to the fixed nature of the access easement, there is no other feasible alternative location on which to place the staircase. Because there is already an existing drainage pipe within the easement which has precluded a large amount of vegetation, the installation of a staircase immediately on top of the pipe will have little impact on sensitive habitat. Additionally, the proposed development is within the 10,000 square foot development envelope required by LIP Section 4.7.1, which includes the existing triplex on the parcel and the proposed staircase.

Finding D6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by Chapter 2 of the Malibu LIP.

The requested variance is not associated with stringline standards; therefore, this finding is not applicable.

Finding D7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity, which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the RR-1 zoning district. The proposed project is for the construction of a new staircase accessory to an existing triplex, which is permitted in the zone.

Finding D8. The subject site is physically suitable for the proposed variance.

The granting of the variance will allow construction of a residence that is compatible with the surrounding built environment. With the implementation of specific geotechnical standards, the subject site is physically suitable for the proposed variance. The topography and presence of ESHA on the site physically constrains proposed development, but it does not prevent development given certain locally-common engineering measures. The subject site is physically suitable for the proposed variance in that there is no alternate building site or configuration, which would eliminate the need for the variance request because the entire easement area is comprised of ESHA and ESHA buffer.

Finding D9. The variance complies with all requirements of State and local law.

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

Finding D10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The requested variance is for relief from a specific development standard and does not involve the reduction or elimination of public parking. Therefore, this finding is not applicable.

E. Environmentally Sensitive Habitat Area (LIP Chapter 4)

The project site is not designated as ESHA on the LCP ESHA Overlay Map. However, LUP Policy No. 3.77 designates all coastal bluffs within the City to be ESHA, regardless of site conditions or past use.

The 2007 Biological Assessment completed for the project identifies that the five foot wide easement area contains a pre-existing drainage pipe and that since the staircase would be constructed directly above this pipe, it would require a minimal amount of vegetation to be removed. The biological assessment has recommended that any removal of vegetation will require a nesting bird survey should construction take place during breeding season.

Pursuant to LIP Section 4.7.6, residential development within an ESHA may be approved or conditionally approved only if the City Council makes the following supplemental findings:

Finding E1. Application of the ESHA overlay chapter would not allow construction of a residence on an undeveloped parcel.

Without granting the variance, the applicant would be denied from making beneficial use of the parcel in question, the easement area.

Finding E2. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay chapter and it complies with the provisions of Section 4.7 of the Malibu LIP.

LIP Section 4.7 discusses the economically viable use of a property. This section provides development standards for new construction that encroaches into ESHA or ESHA buffer area where no less environmentally damaging alternatives are available. The proposed project is consistent with all provisions of the certified LCP, with the inclusion of the three variances.

F. Native Tree Protection (LIP Chapter 5)

The provisions of the Native Tree Protection Chapter only apply to those areas containing one or more native Oak, California Walnut, Western Sycamore, Alder or Toyon trees that have at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, four and one half feet from the ground. The areas to be disturbed by the project do not accommodate any trees. Accordingly, the findings in the Native Tree Protection Chapter are not applicable.

G. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The proposed project is visible from Westward Beach, a designated scenic area. Therefore, LIP Chapter 6 applies and the five findings set forth in LIP Section 6.4 are made as follows.

Finding G1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Due to fixed location of the pedestrian access easement, no feasible alternative building site location exists where the staircase would not be visible from Westward Beach. The proposed staircase has been designed to emulate the existing nearby staircases and will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Finding G2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

The project has been designed to avoid any adverse or scenic impacts. The proposed staircase has been conditioned to utilize colors and materials that will be compatible with the surrounding natural environment and the staircase will be compatible with the other existing staircases in the surrounding neighborhood.

Finding G3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the project as proposed or conditioned is the least environmentally damaging alternative.

Finding G4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

The pedestrian access easement is within a fixed location on the subject property. There are no alternative locations for the proposed project that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

Finding G5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

The proposed staircase will be visible from Westward Beach, an identified scenic area. However, due to the fixed nature of the access easement, there is no other feasible location for the construction of the staircase.

H. Transfer Development Credit (LIP Chapter 7)

Pursuant to LIP Section 7.2 the regulations requiring a transfer of development credit apply to any action to authorize a coastal development permit for a land division or multi-family development. This CDP does not involve a land division or multi-family development and is located within an easement which is vacant; therefore, LIP Chapter 7 does not apply.

I. Grading (LIP Chapter 8)

There is no grading associated with the proposed project. Therefore, the project conforms to the grading requirements as set forth under LIP Section 8.3, which ensures that new development minimizes the visual and resource impacts of grading and landform alteration by restricting the amount of non-exempt grading to a maximum of 1,000 cubic yards for a residential parcel.

J. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazard must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7).

Finding J1. The project, as proposed, will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

Analysis of the project for hazards included review of the following documents/data, which are available on file with the City: 1) existing City geologic data maintained by the City; and 2) Preliminary Geologic Opinion Report prepared by GeoConcepts, Inc. dated June 18, 2007.

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

1. The project site could be subject to hazards from seismically-induced landslide.
2. The project site is in the vicinity of extreme fire hazard areas.

The City Geologist has reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided his recommendations and those contained in the associated geotechnical reports are incorporated into the project design.

Landslide Hazard

The June 2007 GeoConcepts report states that "the bluff portion of the site is located within landslide zone on the State of California Seismic Hazard Map (Plate 3). Ancient or recent bedrock landslides were not observed on the property. Geologic maps...do not depict landslides in the local area that could adversely affect the subject property from a geologic viewpoint."

Based on the findings of the June 2007 report, "the orientation the bedrock structure for the bluff slope is geologically favorable. Therefore, the proposed stairway from the mesa to the beach should be supported by the bedrock." Nonetheless, the property owner will be required to record an "Assumption of Risk and Release" for landslide hazard prior to permit issuance. This requirement is included as a condition of approval in Section 4 of this resolution.

Fire Hazard

The entire city limits of Malibu are located within the fire hazard zone, so no other alternatives were considered. As such, the proposed project as conditioned will not be subject to nor increase the instability of the site or structural integrity involving wildfire hazards. However, a condition of approval has been included in Section 4 of this resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

The project will incorporate all recommendations contained in the cited geotechnical report; as such, the proposed project will not increase instability of the site or structural integrity from geologic, flood or any other hazards.

Finding J2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As discussed previously, the project, as conditioned, will not be adversely affected relative to potential geotechnical impacts. The project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards, location on the site, or other reasons.

Finding J3. The project, as proposed, is the least environmentally damaging alternative relative to hazards.

As discussed previously, the project will not result in potentially significant impacts on the physical environment. The proposed project is the least environmentally damaging alternative relative to hazards.

Finding J4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As discussed previously, there are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

Finding J5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

The City's review did not identify any unavoidable hazards or subsequent mitigation related to the development, provided that standard engineering techniques are followed. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the LCP.

K. Shoreline and Bluff Development (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The proposed staircase is designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is not subject to wave uprush and will not impact shoreline sand supply processes; therefore, the project was not referred to the City Coastal Engineer. The required findings in LIP Section 10.3 are made as follows.

Finding K1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

The project is located on the seaward side of Birdview Avenue, but it does not touch the sand. The project site does not currently offer public access and will not impede public access once constructed. The Westward Beach parking lot is sited between the bluff and the sand. Therefore, the project will not adversely affect shoreline sand supply or other resources due to project design, location on the site or for other reasons.

Finding K2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed previously, the project, as designed, conditioned and approved by the City Geologist, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding K3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in Finding A3, the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding K4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding K2, the project, as designed or conditioned, will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding K5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The project does not include a shoreline protective device; therefore, this finding does not apply.

L. Archaeology (LIP Chapter 11)

LIP Chapter 11 requires certain procedures be followed to determine potential impacts on archaeological resources. According to the City of Malibu Cultural Resources Map, the subject site has an intermediate potential to contain sensitive resources. However, since no grading is associated with the subject project, no further study is required at this time. Nonetheless, standard conditions of approval have been included in Section 4 of this resolution which pertain to the protection of cultural resources. Should any potentially important cultural resources be found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information.

M. Public Access (LIP Chapter 12)

No issue of public prescriptive rights has been raised.

Lateral Access- Although the project site is located on the ocean side of Birdview Avenue, the Westward Beach Parking Lot separates the easement from the beach. The project site does not have potential to dedicate lateral access.

Bluff-Top Access- The project site is a bluff-top parcel; however, no potential project-related or cumulative impact on bluff-top access is anticipated because the site does not have potential to offer bluff-top access. The project site is accessible by way of a private driveway and is not accessible to the public. Due to the topography of the project site, public safety concerns may arise if bluff-top access was provided.

Trail Access- No mapped trails are located on or adjacent to the subject property; however California State Parks identifies two trails which are located at the nearby Point Dume Headlands Park and provide public access to the beach. The proposed project will not impede the existing trails; therefore, no conditions or findings for trail access are required.

Recreational Access- The project site does not include nor have any public accessways to existing or planned public recreational areas. The proposed project will not impact any existing recreational access; therefore, no conditions or findings for recreational access are required.

Vertical Access- The project site is accessible by way of a private driveway and is not accessible to the public; therefore, vertical access at the project site is not feasible. Additionally, access to nearby public coastal tidelands is available at the Point Dume Headlands Park (approximately 760 feet to the southeast) and Westward Beach Road located approximately 2,900 feet to the west. The project, as proposed, does not block or impede access to the ocean. The project site is located on the top of a bluff and does not affect the public's ability to access the beach. Consistent with LIP Section 12.6, due to the ability of the public, through other reasonable means, to reach nearby coastal resources, an exception for public vertical access has been determined to be appropriate for the project and no condition for vertical access has been required. The following findings and analysis were conducted in accordance with LIP Section 12.7.3 regarding vertical access. Due to these findings, LIP Section 12.7.1 is not applicable.

Finding M1. The type of access potentially applicable to the site involved (vertical, lateral, blufftop, etc.) and its location in relation to the fragile coastal resource to be protected, the public safety concern, or the military facility which is the basis for the exception, as applicable.

As discussed previously, the project site is accessible by way of a private driveway and vertical public access at the project site is not feasible. Vertical access would not impact fragile coastal resources or have any impact on a military facility. The basis for the exception to the requirement for vertical access is associated with the availability of access adjacent to the project site and a mile west of the project site.

Finding M2. Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that fragile coastal resources, public safety, or military security, as applicable, are protected.

Vertical access would not impact fragile coastal resources or have any impact on a military facility. The basis for the exception to the requirement for vertical access is associated with the availability of access nearby as described previously.

Finding M3. Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an access way on the subject land.

The project as proposed does not block or impede access to the ocean. No legitimate governmental or public interest would be furthered by requiring access at the project site because: a) existing access to coastal resources is adequate; and b) the proposed project will not impact the public's ability to access the shoreline or other coastal resources.

N. Land Division (LIP Chapter 15)

This project does not involve a division of land as defined in LIP Section 15.1. Therefore, LIP Chapter 15 does not apply.

O. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. The proposed project does not include an OWTS; therefore, this chapter does not apply.

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the City Council hereby approves Coastal Development Permit No. 07-106 and Variance Nos. 07-052, 08-057 and 09-012, subject to the following conditions.

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs

relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application allows the construction of a 110 foot long, three foot wide private staircase entirely within the five foot wide pedestrian access easement that runs over the property addressed as 7271 Birdview Avenue. The staircase will connect the existing triplex at 7273 Birdview Avenue to the Westward Beach parking lot.
3. This permit shall be valid for two years from the effective date of this approval, September 14, 2009, and shall automatically expire unless extended in accordance with the LCP. An extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until all permittees or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 working days of this decision.
5. This resolution (including signed and notarized Acceptance of Conditions Affidavit and Department Review Sheets) shall be copied in its entirety and placed directly onto a separate plan sheet(s) behind the cover sheet of the construction plans submitted to the City of Malibu Environmental and Building Safety Division for plan check.
6. The applicant shall submit three full sets of plans, including the pages described in Condition No. 5, to the Planning Division prior to entering building plan check.
7. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
8. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the LCP. An application with all required materials and fees may be required.
9. All structures shall conform to the City of Malibu Environmental and Building Safety Division and City Geologist requirements. Notwithstanding this review, all required permits shall be secured.
10. The applicant shall request a final planning inspection prior to final inspection by the Building Division.

11. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information. Where, as a result of this evaluation, the Planning Manager determines that the project may have an adverse impact on cultural resources; a Phase II Evaluation of cultural resources shall be required pursuant to LIP Chapter 11.3(F).
12. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
13. Pursuant to LIP Section 13.20, development pursuant to an approved coastal development permit shall not commence until the coastal development permit is effective. The coastal development permit is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
14. This coastal development permit runs with the land and binds all future owners of the property.
15. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

Construction Phase

16. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays and City-designated holidays.
17. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, will be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.

Colors and Materials

18. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.

19. The use of highly reflective materials shall be prohibited.
20. The colors and materials proposed shall be clearly indicated on all building plans and shall be reviewed and approved by the Planning Division prior to building plan check.

Geology

21. All recommendations of the consulting Certified Engineering Geologist or Geotechnical Engineer and/or the City Geologist shall be incorporated into all final design and construction, including foundations. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a building permit.

Biology

22. To avoid impacts to nesting birds, any vegetation removal scheduled between February 15 and August 30 will require nesting bird surveys by a qualified biologist prior to initiation of such activities. Should active nests be identified, a buffer area no less than 150 feet (300 feet for raptors) shall be fenced off until it is determined by a qualified biologist that the nest is no longer active. A report discussing the results of nesting bird surveys shall be submitted to the City Biologist prior to ANY vegetation removal on site.
23. No new landscaping is proposed with this project; therefore, none is approved. Should the applicant intend to plant any new vegetation, a detailed landscape plan shall be submitted for review and approval prior to any planting.

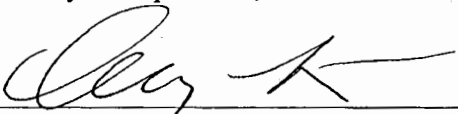
Deed Restriction

24. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to hazards associated with development on a bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.
25. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.

Section 5. Certification.

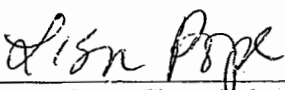
The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 14th day of September, 2009.



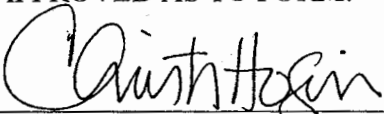
ANDY STERN, Mayor

ATTEST:



LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

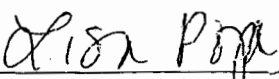


CHRISTI HOGIN, City Attorney

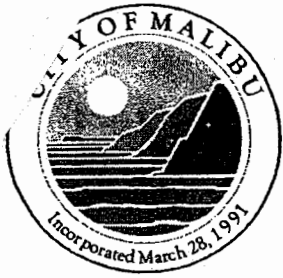
Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Malibu Municipal Code and Code of Civil Procedure.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 09-52 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 14th day of September, 2009, by the following vote:

AYES:	3	Councilmembers:	Sibert, Barovsky, Stern
NOES:	2	Councilmembers:	Conley Ulich, Wagner
ABSTAIN:	0		
ABSENT:	0		



LISA POPE, City Clerk
(seal)



City Council Meeting
09-14-09

**Item
4.B.**

Council Agenda Report

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

Prepared by: Stephanie Danner, Senior Planner *SD*

Reviewed by: Stefanie Edmondson, AICP, Acting Planning Manager *SE*
Victor Peterson, Community Development Director *VP*

Approved by: Jim Thorsen, City Manager *JT*

Date prepared: August 27, 2009 Meeting date: September 14, 2009

Subject: Appeal No. 09-003 – Appeal of Planning Commission Resolution No. 09-25, Denying Coastal Development Permit No. 07-106 and Variance Nos. 07-052 and 08-057 for the Construction of a New 110 Foot Long, Three Foot Wide Staircase Within a Five Foot Wide Easement Along a Bluff Face, as Accessory to an Existing Residential Triplex

Applicant/Appellant: Richard Scott on behalf of Clark Drane, property owner

Appeal Filed: May 27, 2009

Application Filing Date: August 23, 2007
(Coastal Development Permit No. 07-106)

Easement Holder: Clark Drane

Easement Holder Address: 7273 Birdview Avenue (APN 4468-020-022) within the appealable coastal zone

Underlying Fee Holder: Jack V. Hoffmann

Underlying Property Address: 7271 Birdview Avenue (APN 4468-020-021) within the appealable coastal zone

RECOMMENDED ACTION: Adopt Resolution No. 09-52 (Attachment A) denying Appeal No. 09-003 and denying Coastal Development Permit (CDP) No. 07-106, Variance (VAR) Nos. 07-052 and 08-057 for the construction of a new 110 foot long, three foot wide staircase within a five foot wide pedestrian easement along a bluff face at 7271 Birdview Avenue, as accessory to an existing, residential triplex on the adjacent lot, 7273 Birdview Avenue.

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

DISCUSSION: The matter is an appeal (Attachment B) of a coastal development permit denied by the Planning Commission on May 19, 2009. Planning Commission Resolution No. 09-25 and the related Planning Commission Agenda Report are included in this report as Attachments H and I.

The Appellant contends that the Planning Commission's findings were not supported by substantial evidence in the record and that the decision was contrary to law.

Staff has carefully re-examined all the evidence in the record and determined that the record supports the Planning Commission's decision denying the CDP and Variance applications. The Appellant has not submitted any new information or evidence since the Planning Commission issued its decision.

PROJECT BACKGROUND:

Surrounding Land Use and Setting

Table 1 – Surrounding Uses	
Direction	Description
North	Two-story, four-unit, multi-family residence (1.01 acres)
South	Westward Beach (County beach) (300 feet to the west)
East	Birdview Avenue
West	One-story, single-family residence (0.76 acre), Westward Beach Road

Properties situated in the vicinity along Birdview Avenue are zoned Rural Residential – One Acre (RR-1) and are developed with either single-family residences or multi-family residences. Westward Beach, located further south, is zoned public open space and is operated by Los Angeles County Beaches and Harbors.

Table 2 details property data pertaining to both the easement holder parcel, 7273 Birdview Avenue, and the underlying fee parcel, 7271 Birdview Avenue.

Table 2 – Property Data		
	7273 Birdview Avenue	7271 Birdview Avenue
Lot Shape	Square	Rectangle
Lot Depth	100 feet	300 feet
Lot Width	110 feet	110 feet
Gross Lot Area	10,890 square feet (0.25 acre)	33,253 square feet (0.76 acre)

The subject properties are located between Birdview Avenue and Westward Beach Road. 7273 Birdview Avenue is immediately adjacent to the Birdview right-of-way and

shares an access driveway with the downslope lot adjacent to the rear property line. Existing development on 7273 Birdview Avenue includes a two-story, multi-family residence that contains three separate units, perimeter fencing, an entrance driveway off of Birdview Avenue and mature landscaping. Existing development on 7271 Birdview Avenue includes a two-story, single-family residence.

A five-foot wide easement, which begins at the southwest corner of 7273 Birdview Avenue, runs across the adjacent property at 7271 Birdview Avenue, down the bluff face, and terminates at the Westward Beach parking lot. The proposed private staircase would be located within this easement. The easement is for pedestrian purposes only (Attachment D). A drainage pipe is the only development within the easement. Historic photographs of the site, as provided by the California Coastal Records Project, do not reveal a staircase within the easement. The drainage pipe can be seen as early as 1972.

The project area lies within the appealable jurisdiction as depicted on the Post-Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction Map. While the LCP Environmentally Sensitive Habitat Area (ESHA) Overlay Map does not depict the project area as containing ESHA, LCP Land Use Plan (LUP) Section 3(A)(2) designates all coastal dunes and bluff face areas as ESHA (Attachment C).

Easement Holder Permission

Pursuant to LIP Section 13.6.2(C) (Proof of Ownership or Owner's Consent), where the applicant for a CDP is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the City shall not require the holder or owner of any superior interest in the property to join as a co-applicant. All holders or owners of any other interest of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant.

The underlying fee owner has been notified of the application and, while he has not joined as a co-applicant, he has submitted a letter of support for the project (refer to the Correspondence section of this report for further details).

Project Description

The proposed project includes the following:

Construction of a new 110-foot-long, three-foot-wide staircase which will lie entirely within a five-foot-wide easement and will extend from the subject property down to Westward Beach Road.

- VAR No. 07-052

A variance is requested to allow for the construction of a staircase less than 50 feet from the face of a bluff. The required findings cannot be made as discussed in this report.

- VAR No. 08-057

A variance is requested to allow for the construction of a staircase on slopes in excess of 2½ to 1. The required findings cannot be made as discussed in this report.

Existing City Approvals

The existing triplex located at 7273 Birdview Avenue was constructed in 1964.

On May 18, 2006, the former property owner submitted Over-the-Counter (OC) Permit No. 06-060 for the repair and maintenance of existing stairs leading to Westward Beach. The application was approved on May 23, 2006. Subsequently, on November 15, 2006, the approval was rescinded by the Planning Manager as staff determined that photographs of the damaged staircase submitted in connection with the application were actually photographs of a staircase on the adjacent parcel to the northwest (7257 Birdview Avenue), and that no staircase existed linking 7273 Birdview Avenue to Westward Beach.

No other prior City approvals exist for the subject project.

Chronology of Project

On August 23, 2007, an application for CDP No. 07-106 was submitted by Richard Scott, on behalf of property owner Clark Drane, to the Planning Division for processing. The subject application was routed to the City Biologist and City Geologist for conformance review.

On November 9, 2007, a Notice of Application for a new coastal development permit was posted on the subject property.

On December 13, 2007, the application was deemed complete for processing.

On March 5, 2008, the applicant submitted an application for Local Coastal Program Amendment (LCPA) No. 08-001.¹ The LCPA proposed allowing staircases to be constructed in existing access easements along bluff-faces. The applicant requested that staff place the CDP application on hold and bring both the CDP and LCPA projects together at the same Planning Commission meeting.

On October 9, 2008, a Notice of Planning Commission Public Hearing for the CDP was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

On October 21, 2008, the Planning Commission held a duly noticed public hearing, reviewed and considered the Agenda Report (which included a recommendation of denial), reviewed and considered written reports, public testimony and related information. At the conclusion of the hearing, the Planning Commission continued the item to a date uncertain and directed staff to prepare the appropriate findings necessary to approve CDP No. 07-106 and VAR Nos. 07-052 and 08-057.

On April 9, 2009, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

At the April 21, 2009 Planning Commission meeting, the Commission continued the hearing to the May 19, 2009 meeting due to a procedural error.

On May 7, 2009, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

On May 19, 2009, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the Agenda Report, public testimony and all related information. At the conclusion of the hearing, the Planning Commission adopted Resolution No. 09-25 denying CDP No. 07-106 and VAR Nos. 07-052 and 08-057.

On May 27, 2009, Appeal No. 09-003 was filed by Richard Scott on behalf of the property owner, Clark Drane.

¹ On December 8, 2008, the City Council held a duly noticed public hearing at which time the City Council reviewed and considered the Agenda Report, reviewed and considered written reports, public testimony and other information in the record and adopted Resolution No. 08-69, denying LCPA No. 08-001.

On June 1, 2009, the appeal was deemed complete by staff.

On September 3, 2009, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

ITEM ON APPEAL TO THE CITY COUNCIL

The appeal submitted on May 27, 2009 alleges that: 1) the findings set forth in Planning Commission Resolution No. 09-25 are not supported by the evidence in the record; and 2) the decision was contrary to law. The Appellant provided the following statements in support of the appeal.

Appeal Item 1. The findings presented by staff in the draft Planning Commission Resolution, prepared on March 16, 2009, show approval findings could be made.

Appeal Item 2. The Coastal Act provides it shall not be interpreted in a manner which would constitute a taking. Planning Commission Resolution No. 09-25, as adopted by the Planning Commission on May 19, 2009, will constitute a taking.

Listed below are the Appellant's statements contained in the filed appeal documents and staff's response to each statement respectively. The full text of the appeal is attached hereto as Attachment B.

Appeal Item 1. "The findings are not supported by the evidence."

The Appellant states that "the findings presented by staff in the draft Planning Commission Resolution, prepared on March 16, 2009, show approval findings could be made."

Staff Response:

Staff was instructed by the Planning Commission, at its October 21, 2008 meeting, to bring forth findings in support of the Applicant's project proposal. Staff prepared a draft resolution with findings to approve the private staircase and presented them to the Planning Commission at the May 19, 2009 public hearing. However, at the conclusion of the hearing, the Planning Commission determined that the affirmative findings were not adequately supported by the evidence in the record. Rather than adopting the affirmative findings, the Planning Commission determined that the evidence in the record instead supported findings for denial of the application.

The denial in Planning Commission Resolution No. 09-25 was supported by the LCP consistency analysis that was completed for the proposed private staircase. The analysis evaluated the project in relation to the policies and development standards set forth in the LCP. The following section details the findings of the consistency analysis, which determined the proposed project does not conform to LUP Policies 2.23, 3.58, 4.29, 3.77 and 4.27, and the relevant standards set forth in LCP Local Implementation Plan (LIP) Chapters 4, 6, 10 and 12.

A. The following LUP policies place specific restrictions on the construction of structures on the face of a bluff:

LUP Policy No. 2.23 "No new structures or reconstruction shall be permitted on a bluff face, except for stairways or accessways to provide public access to the shoreline or beach or routine repair and maintenance or to replace a structure destroyed by natural disaster."

LUP Policy No. 3.58 "To protect seabird-nesting areas, no pedestrian access shall be provided on bluff faces except along existing, formal trails or stairways. New structures shall be prohibited on bluff faces, except for stairs or accessways to provide public beach access."

LUP Policy No. 4.29 "No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible."

The three policies listed above prohibit staircases on bluff faces, except those which provide public beach access. The proposed project is for a private staircase to link an existing triplex with Westward Beach Road to the southwest. As such, the project, as proposed, violates LUP Policy Nos. 2.23, 3.58 and 4.29.

LUP Policy No. 3.77 "Development on beach or ocean bluff areas adjacent to marine and beach habitats shall be sited and designed to prevent impacts that could significantly degrade the Environmentally Sensitive Habitats Areas. All uses shall be compatible with the maintenance of the biological productivity of such areas."

The City Biologist has reviewed the subject application for conformance with the LCP. In the review, dated October 28, 2007, the City Biologist determined that the project cannot be approved for LCP conformance as submitted. The City Biologist's review sheet is included as Attachment E to this report. The proposed staircase will not be compatible with the maintenance of the biological productivity of the bluff area.

LUP Policy No. 4.27 "All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems, etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge."

The proposed staircase does not maintain any setback from the bluff edge, as it will extend down the entire face of the bluff. As such, the proposed new development does not satisfy the setback requirements, and therefore, violates LUP Policy No. 4.27.

B. The LIP contains the specific development standards which must be applied to the proposed project.

LIP Chapter 4 contains requirements for development proposed in ESHA or ESHA buffer areas. As stated previously in this report, the City Biologist has determined that ESHA standards apply to this project as it is sited on the face of a bluff (Attachment E). LIP Chapter 4 allows certain types of development within ESHA or ESHA buffer areas. LIP Section 4.5 lists permitted uses as: 1) public accessways and trails, including directional signs; 2) interpretive signage designed to provide information about the value and protection of the resources; 3) restoration projects where the primary purpose is restoration of the habitat; and 4) invasive plant eradication projects if they are designed to protect and enhance habitat values.

The City Biologist has determined that the private staircase is not consistent with the permitted uses allowed on a bluff face and that the project cannot be approved for LCP conformance.

LIP Section 4.6.4(C) states "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 take precedence."

Additionally, **LIP Section 6.8(C)** provides an exemption from the scenic, visual and hillside resource protection policies for public accessways and trails. These types of development are permitted even though they may impact scenic resources.

These two sections of the LIP demonstrate that priority is given for projects providing public access to coastal resources over the protection of scenic resources. No similar exemptions are available for projects that propose private access.

LIP Chapter 10 contains specifications for construction along the shoreline and on bluffs. LIP Section 10.4(D) contains the same language as LUP Policy 4.27, cited earlier in this report. Furthermore, LIP Section 10.4(F) states "no permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access where no feasible alternative means of public access exists."

The proposed staircase does not maintain a 100-foot or even a 50-foot setback from the bluff-top, as required by LIP Section 10.4(D). Furthermore, the staircase is for private use, and therefore, is prohibited by LIP Section 10.4(F).

Because the project does not conform to the development standards set forth in LIP Section 10.4, the applicant has requested a variance to the required 100-foot bluff setback. The Planning Commission analyzed the proposal based on the assumption that a variance may be granted if the evidence supports each of the required findings. The Planning Commission determined that the facts do not support the findings necessary for a variance from the minimum bluff setback.

Finally, **LIP Section 12.9(F)** states "no new structures or reconstruction, except for routine repair and maintenance or to replace a structure destroyed by natural disaster in accordance with PRC Section 30610(d) and (g), shall be permitted on a bluff face, except for engineered staircases or accessways to provide for public shoreline access where no feasible alternative means of public access exists."

This development standard prohibits staircases on bluff faces, except those which provide public beach access. As such, the private staircase, as proposed, does not comply with LIP Chapter 12.

Appeal Item 2. "The decision was contrary to law."

The Appellant states that "the Coastal Act provides it shall not be interpreted in a manner which would constitute a taking. Resolution 09-25, as adopted by the Planning Commission on May 19, 2009, will constitute a taking."

Staff Response:

The subject property at 7273 Birdview Avenue is zoned RR-1 and is presently developed with a two-story, multi-family residence that contains three separate units. The adjacent property, 7271 Birdview Avenue, is also zoned RR-1 and is developed

with a single-family residence. Both the Applicant's parcel and the parcel on which the easement lies are developed with residential uses and denial of the requested variances does not in any way interfere with the continuation of those primary uses.

A taking does not occur simply because government action deprives an owner of previously available property rights. Penn Central Transp. Co. v. New York (1978) 438 U.S. 104, 130. "Government could hardly go on if to some extent values incident to property could not be diminished without paying for every change in the general law." Pennsylvania Coal Co. v. Mahon (1922) 260 U.S. 393, 413. A property owner has no reasonable expectation that zoning laws will remain unchanged. The fact that the applicable zoning scheme once allowed for the construction of stairways on bluffs does not mean that the government, in the exercise of its police power, is forever foreclosed from placing stricter regulations on such uses at some point in the future. The City of Malibu Certified Local Coastal Program was prepared, adopted and certified by the California Coastal Commission in 2002 pursuant to Public Resources Code section 30166.5. The LCP unambiguously prohibits the type of use contemplated by the subject application.

Denial of the application to construct a private staircase on a bluff face does not in any way interfere with the existing uses on the subject properties.

PUBLIC CORRESPONDENCE: Since the preparation of the May 19, 2009 Planning Commission agenda report, up to the date of this report, staff has received one item of correspondence, other than the appeal, regarding this project (Attachment F).

- On May 19, 2009, a letter was submitted by the underlying fee owner of the parcel containing the pedestrian access easement, Jack V. Hoffmann. This letter voices his support of the proposed staircase.

SUMMARY: The Appellant has not provided substantial evidence to support the findings required for approval of the proposed project. Furthermore, substantial evidence in the record supports the findings for denial.

Based on the record as a whole, including, but not limited to, all written and oral testimony offered in connection with this matter, staff recommends that the City Council adopt Resolution No. 09-52, denying Appeal No. 09-003 and denying CDP No. 07-106 and VAR Nos. 07-052 and 08-057 for the construction of a new 110 foot long, three foot wide staircase within a five foot easement along a bluff face at 7271 Birdview Avenue, as accessory to an existing, residential triplex on the adjacent lot, 7273 Birdview Avenue.

PUBLIC NOTICE: On September 3, 2009, pursuant to LIP Chapter 13, a Notice of City Council Public Hearing was published in a newspaper of general circulation within

the City and a public notice was mailed to the owners and occupants of all properties within a radius of 500 feet of the property involved in this application.

ATTACHMENTS:

- A. City Council Resolution No. 09-52
- B. Appeal No. 09-003
- C. Vicinity Map and Aerial Photo
- D. Project Plans
- E. Departmental Review Sheets
- F. Correspondence
- G. Public Hearing Notice

Distributed to the City Council and available for review on the City's website.

- H. Planning Commission Resolution No. 09-25 (adopted)
- I. May 19, 2009 Planning Commission Agenda Report
 - 1. Planning Commission Resolution No. 09-25 (proposed)
 - 2. Planning Commission Agenda Report and Attachments dated April 21, 2009 (including the October 21, 2008 Agenda Report)
 - 3. Correspondence
 - 4. Public Hearing Notice / Mailer

RESOLUTION NO. 09-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 09-003 AND DENYING COASTAL DEVELOPMENT PERMIT NO. 07-106 AND VARIANCE NOS. 07-052 AND 08-057 FOR THE CONSTRUCTION OF A NEW 110 FOOT LONG, THREE FOOT WIDE STAIRCASE WITHIN A FIVE FOOT WIDE PEDESTRIAN EASEMENT ALONG A BLUFF FACE AT 7271 BIRDVIEW AVENUE, AS ACCESSORY TO AN EXISTING, RESIDENTIAL TRIPLEX ON THE ADJACENT LOT, 7273 BIRDVIEW AVENUE (DRANE)

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

Section 1. Recitals.

A. On May 18, 2006, the former property owner submitted Over-the-Counter (OC) Permit No. 06-060 for the repair and maintenance of existing stairs leading to Westward Beach. The application was approved on May 23, 2006. Subsequently, on November 15, 2006, the approval was rescinded by the Planning Manager as staff determined that photographs of the damaged staircase were actually on the adjacent parcel to the northwest (7257 Birdview Avenue) and no staircase existed linking 7273 Birdview Avenue to Westward Beach.

B. On August 23, 2007, an application for Coastal Development Permit (CDP) No. 07-106 was submitted by Richard Scott, on behalf of property owner Clark Drane, to the Planning Division for processing. The subject application was routed to the City Biologist and City Geologist for conformance review. Variance (VAR) No. 07-052 was assigned for the reduction of the required bluff setback and VAR No. 08-057 was assigned for proposed construction on slopes in excess of 2½ to 1.

C. On November 9, 2007, a Notice of Application for a new coastal development permit was posted on the subject property.

D. On December 13, 2007, the application was deemed complete for processing.

E. On March 5, 2008, the applicant submitted an application for Local Coastal Program Amendment (LCPA) No. 08-001. The LCPA proposed allowing staircases to be constructed in existing access easements along bluff-faces. The applicant requested that staff place the CDP application on hold and bring both the CDP and LCPA projects together at the same Planning Commission meeting.

F. On October 9, 2008, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

G. On October 21, 2008, the Planning Commission held a duly noticed public hearing, reviewed and considered the agenda report (which included a recommendation of

denial), reviewed and considered written reports, public testimony and related information. At the conclusion of the hearing, the Planning Commission continued the item to a date uncertain and directed staff to prepare the appropriate findings necessary to approve CDP No. 07-106 and VAR Nos. 07-052 and 08-057.

H. On April 9, 2009, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

I. At the April 21, 2009 Planning Commission meeting, the Commission continued the hearing to the May 19, 2009 meeting due to a procedural error.

J. On May 7, 2009, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

K. On May 19, 2009, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, public testimony and all related information. At the conclusion of the hearing the Planning Commission adopted Resolution No. 09-25, which included findings for denial of CDP No. 07-106 and VAR Nos. 07-052 and 08-057.

L. On May 27, 2009, Appeal No. 09-003 was filed by Richard Scott on behalf of the property owner, Clark Drane.

M. On June 1, 2009, the appeal was deemed complete by staff.

N. On September 3, 2009, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

O. On September 14, 2009, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, public testimony and all related information.

Section 2. Environmental Review.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves.

Section 3. Appeal of Action.

The appeal submitted on May 27, 2009, alleges that: 1) the findings set forth in Planning Commission Resolution No. 09-25 are not supported by the evidence in the record; and 2) the decision was contrary to law. Specifically, the Appellant contends: 1) that the draft findings presented by staff in the draft Planning Commission Resolution, prepared on March 16, 2009,

show approval findings could be made; and 2) that denial of the variance requests results in a taking.

Section 4. Findings for Denial of Appeal No. 09-003.

Based on the evidence in the record and in the Council Agenda Report for the subject project presented at the September 14, 2009 City Council meeting, the City Council hereby makes the following findings denying the appeal. The variances for the reduction in the required bluff setback and for construction on slopes in excess of 2½ to 1 are hereby denied. Therefore, the proposed coastal development permit associated with this application is also denied on the grounds that the proposed staircase does not conform to LCP Local Implementation Plan (LIP) Chapter 4 (Environmentally Sensitive Habitat Area (ESHA)), LIP Chapter 6 (Scenic, Visual and Hillside Resource Protection), LIP Chapter 10 (Shoreline and Bluff Development) and LIP Chapter 12 (Public Access).

A. General Coastal Development Permit

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

The proposed project does not comply specifically with LCP Land Use Plan (LUP) Policies 2.23, 3.58, 3.77, 4.27 and 4.29 and LIP Chapters 4, 6, 10 and 12. The LCP contains provisions to permit accessways to be constructed within ESHA as long as they provide public access. As the proposed staircase will only provide access for one residential parcel, it is considered private access and cannot be approved. Therefore, the project does not conform to the City of Malibu LCP and this finding cannot be made.

B. Environmentally Sensitive Habitat Area

A coastal development permit for a use other than those conditionally permitted in the ESHA overlay chapter may be approved or conditionally approved only if the City Council makes the following supplemental findings in addition to the findings required in LIP Section 13.9. The City Council hereby determines that the evidence in the record does not support the findings required by this chapter.

Required Finding A. Application of the ESHA overlay chapter would not allow construction of a residence on an undeveloped parcel.

The subject parcel is already developed with a two-story, multi-family residence. Application of this chapter does not in any way interfere with the existing residential uses on the property.

Required Finding B. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay chapter and it complies with the provisions of Section 4.7 of the Malibu LIP.

LIP Section 4.7 discusses the economically viable use of a property. This section provides development standards for new construction that encroaches into ESHA or ESHA buffer area where no less environmentally damaging alternatives are available. The subject parcel is already developed with residential uses and the proposed stairway project is not consistent with all provisions of the certified LCP; therefore, this finding cannot be made.

C. Variance Findings for the Reduction of the Required Bluff Setback

Based upon substantial evidence in the record, including all written and oral testimony, the City Council hereby denies VAR No. 07-052 based on the following findings of fact:

1. There are no special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance would deprive the owner of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Indeed, the granting of a variance to allow construction of a private staircase down the face of a bluff would confer a special privilege not enjoyed by other properties. Strict application of the development restrictions set forth in LIP Chapters 4 and 10 would also not deprive the owner of privileges enjoyed by other properties in the vicinity under identical zoning classification. The proposed staircase would be situated on an easement. Both the dominant and servient parcels are currently developed with residential structures (a single-family residence at 7271 Birdview Avenue and a three-unit, multifamily residence at 7273 Birdview Avenue), which constitute reasonable, economically viable uses of each property. Construction of a private staircase on the bluff face would confer a special privilege to the easement holder.
2. The granting of this variance would be detrimental to the public interest in that it would visually impact the natural beauty of the bluff face and could threaten a sensitive environmental area. It would also confer a special privilege to the owner of the easement that is not enjoyed by owners of similar size properties with similar zoning and topography and could threaten a sensitive environmental area. While other properties in the immediate vicinity already have staircases that extend down the bluff face and terminate at Westward Beach, these staircases were constructed prior to the California Coastal Commission's adoption and certification of the City's Local Coastal Program and are, presumably, legal non-conforming structures. All new development must comply with all regulations set forth in the LCP.
3. The variance would constitute a special privilege to the property owner as other properties must comply with LCP development requirements and there is nothing unique about this parcel that justifies deviation from the applicable development standards. The property is currently developed with a multi-family residence and the property owner has been provided reasonable use of the property. A grant of easement cannot convey greater rights than those enjoyed by the underlying fee owner. A private accessway across a bluff face is not a permissible use under the LCP.
4. The variance for the reduction of the required bluff setback for construction of an access staircase will only provide private access to a single property owner. LIP Chapter 10 only allows the construction of permanent accessways on a bluff face if those accessways provide *public*

beach access and, even then, only where no feasible alternative means of public access exists. The variance is contrary to the LCP in that it would confer a special privilege to the holder of the easement that is not available to other owners of similar sized properties with similar zoning and topography.

5. The variance does not comply with all requirements of state and local law. In particular, the request is inconsistent with the LCP and inconsistent with the California Coastal Act. There are no special circumstances that warrant relief from the minimum required setback from the top of a bluff.

D. Variance Findings for Construction on Slopes in Excess of 2½ to 1

Based upon substantial evidence in the record, including all written and oral testimony, the City Council hereby denies VAR No. 08-057 based on the following findings of fact:

1. There are no special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance would deprive the owner of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Indeed, the granting of a variance to allow construction of a private staircase down the face of a bluff would confer a special privilege not enjoyed by other properties. Strict application of the development restrictions set forth in LIP Chapters 4 and 10 would also not deprive the owner of privileges enjoyed by other properties in the vicinity under identical zoning classification. The proposed staircase would be situated on an easement. Both the dominant and servient parcels are currently developed with residential structures (a single-family residence at 7271 Birdview Avenue and a three-unit, multi-family residence at 7273 Birdview Avenue), which constitute reasonable, economically viable uses of each property. Construction of a private staircase on the bluff face would confer a special privilege to the easement holder.

2. The granting of this variance would be detrimental to the public interest in that it would visually impact the natural beauty of the bluff face and could threaten a sensitive environmental area. It would also confer a special privilege to the owner of the easement that is not enjoyed by owners of similar size properties with similar zoning and topography and could threaten a sensitive environmental area. While other properties in the immediate vicinity already have staircases that extend down the bluff face and terminate at Westward Beach, these staircases were constructed prior to the California Coastal Commission's adoption and certification of the City's Local Coastal Program and are, presumably, legal non-conforming structures. All new development must comply with all regulations set forth in the LCP.

3. The variance would constitute a special privilege to the property owner as other properties must comply with LCP development requirements and there is nothing unique about this parcel that justifies deviation from the applicable development standards. The property is currently developed with a multi-family residence and the property owner has been provided reasonable use of the property. A grant of easement cannot convey greater rights than those enjoyed by the underlying fee owner. A private accessway across a bluff face is not a permissible use under the LCP.

4. The variance for construction of an access staircase on slopes in excess of 2½ to 1 will only provide private access to a single property owner. LIP Chapter 10 only allows the construction of permanent accessways on a bluff face if those accessways provide *public* beach access and, even then, only where no feasible alternative means of public access exists. The variance is contrary to the LCP in that it would confer a special privilege to the holder of the easement that is not available to other owners of similar size properties with similar zoning and topography.

5. The variance does not comply with all requirements of state and local law. In particular, the request is inconsistent with the LCP and inconsistent with the California Coastal Act. There are no special circumstances that warrant relief from the minimum required setback from the top of a bluff.

Section 5. Additional Basis for Denial.

The applicant cannot demonstrate a legal right, interest, or other entitlement to use the property for the proposed development. An easement for "pedestrian purposes" does not necessarily include the right to improve the easement area with a stairway.

Section 6. Certification.

The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 14th day of September, 2009.

ANDY STERN, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney

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

MAY 27 2009

PLANNING DIV.



City of Malibu

23815 Stuart Ranch Road, Malibu, CA 90265
(310) 456-2489 ext. 245

**PLANNING DIVISION
COASTAL DEVELOPMENT PERMIT
NOTICE OF APPEAL CHECKLIST**

Actions Subject to Local Appeal: Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision or any portion of the decision of the Planning Manager may be appealed to the Planning Commission by an aggrieved person, and any decision of the Planning Commission may be appealed to the City Council by an aggrieved person.

Deadline and Fees: Pursuant to LIP Section 13.20.1, an appeal shall be filed with the City Clerk within 10 days following the date of action for which the appeal is made, as indicated in the decision. If the tenth day falls on a weekend or a City-recognized holiday, the deadline shall extend to the close of business at City Hall on the first business day (whether whole or partial) following the weekend or a City-recognized holiday. Appeals shall be accompanied by the filing fee of \$701.90 as specified by the City Council.

To perfect an appeal, this form must be completed, together with all the necessary attachments, and must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23815 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Department Specialist, at (310) 456-2489 ext. 245.

Part I. Project Information

1. What is the file number of the coastal development permit you are appealing?
07-106
2. On what date was the decision made which you are appealing? 5/19/09
3. Who made the decision you are appealing?
☐ Planning Manager ☒ Planning Commission
4. What is the address of the project site at issue? 7271, 3, 5 & 7
Birdview

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MAY 27 2009

PLANNING DIV.

Part II. Appeal Summary

1. Indicate your interest in the decision by checking the appropriate box.

- ☒ I am the Applicant for the project
☐ I am a neighbor
☐ Other (describe)

2. If you are not the applicant, please indicate the applicant's name:

3. Indicate the nature of your appeal.

a) Are you appealing the ☐ approval or ☒ the denial of the application or ☐ a condition of approval?

b) Each approval is accompanied by a list of specific conditions. If you are appealing one or more of the conditions of approval, list the condition number and state the grounds for your appeal. (Attach extra sheets if necessary.)

4. Check the appropriate box(es) to indicate which of the following reasons forms the basis of your appeal:

- ☒ The findings or conditions are not supported by the evidence, or the decision is not supported by the findings; or
- ☐ There was a lack of fair or impartial hearing; or
- ☒ The decision was contrary to law.

You must next provide a specific statement in support of each of the bases for appeal that you have checked above. Appeals that are stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

Staff findings show approval
findings could be made.

The Coastal Act provides it shall not be interpreted
in a manner which would constitute a taking. Resolu-
tion 09-25 as adopted will constitute a taking.

Page 2 of 4

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MAY 27 2009

PLANNING DIV.

Each coastal development permitting decision made by the Planning Manager or the Planning Commission is accompanied by written findings. The written findings set forth the basis for the decision. If you have checked the first box in this section as a ground for your appeal, you must indicate the specific finding(s) you disagree with and give specific reasons why you believe the finding(s) is/are not supported by the evidence or why the decision is not supported by the findings. Appeals stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

Staff made findings and drafted a resolution
approving the CDP and granting the variances.
See attached. The Planning Commission r
adopted a resolution contrary to those attached.

Part III. Appeal Checklist

ALL of the following must be timely filed to perfect an appeal.

1. ☒ Completed Appeal Checklist (This form with appellant's signature)
2. ☒ Appeal Fee \$701.90

The appeal fee must be submitted in the form of a check or money order made payable to the City of Malibu. Cash will not be accepted.

3. ☒ Mailing Labels and Radius Maps for Public Notice to Property Owners and Occupants

Public notice of an appeal must conform to the manner in which the original notice was given. The notice radius for appealable CDPs and non-appealable CDPs that do not require a public hearing is 100 feet for property owners and residents. The notice radius for non-appealable CDPs that require a public hearing is 300 feet for property owners and 100 feet for residents.

The mailing labels and radius map must be certified by the preparer (a form is available at the public counter); certifications may not be more than six months prior to the date of submittal; the radius map must be provided on an 8 1/2" x 11" paper; the mailing labels must be printed on 8 1/2" x 11" paper, 3 columns, 10 rows (e.g. Avery 5160).

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MAY 27 2009

PLANNING DIV.

Part III. Signature and Appellant Information

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or otherwise deficient, the appeal is ineffective and the filing fee may be returned. IN ORDER TO PERFECT AN APPEAL, ALL APPEAL SUBMITTALS MUST BE COMPLETE BY THE DEADLINE. NO EXTENSIONS WILL BE ALLOWED FOR APPELLANTS WHO ONLY PARTIALLY COMPLY WITH THESE REQUIREMENTS AS OF THE DEADLINE. IF AN APPEAL IS NOT PERFECTED BY THE DEADLINE, THE DECISION BECOMES FINAL.

Richard Scott
PRINT APPELLANT'S NAME

(310) 456-5373
TELEPHONE NUMBER


APPELLANT'S SIGNATURE

5/26/09
DATE

Appellant's mailing address: 24955 Pacific Coast Hwy., #C-202, Malibu,

Appellant's telephone: (310) 456-5373 CA 90265

OFFICE USE ONLY

Action Appealed: _____

Appeal Period: _____

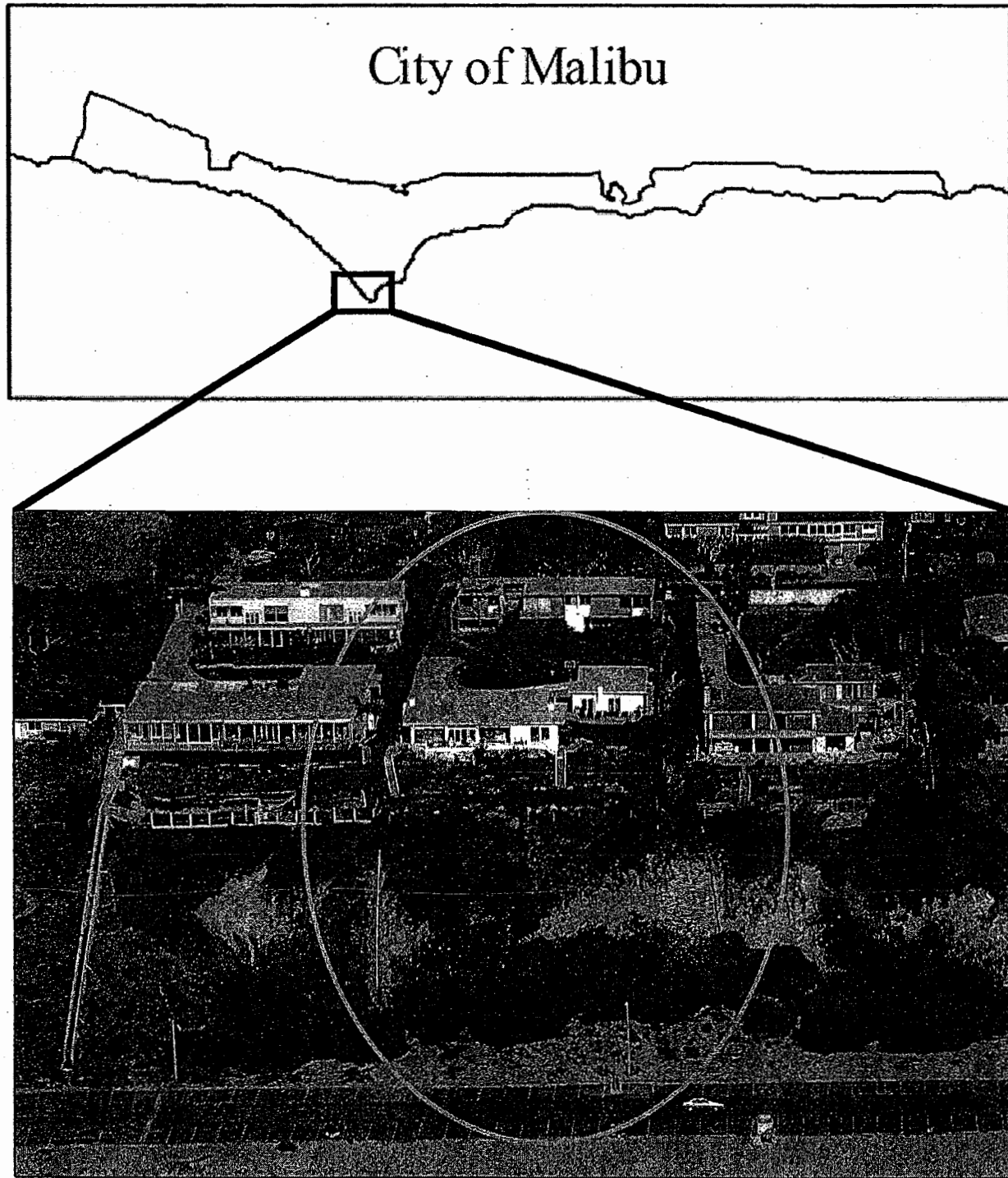
Date Appeal Form and required documents submitted: _____ Received by: _____

Appeal Completion Date: _____ by: _____

(Name, Title)

7273 Birdview Avenue

VICINITY MAP AND SITE PHOTO



BIRDVIEW AVENUE

RECEIVED
AUG 23 2007
PLANNING DEPT



TRIPLEX KNOWN
AS 7273-7277
BIRDVIEW AVE

PARCEL 1 PER
DOC. NO. 94-186682
AND R.S. 198-36.

FD NAIL TIN & TAG
IN SEAWARD SIDE OF
POW. POLE PER
R.S. 198-36.

FD NAIL & TAG

MARKED BLACK CROSS
IN TOP OF BRICK
PLANTER.

MARKED BLACK CROSS
IN CONC WALK AT GATE

PURPOSES
FOR PEDESTRIAN
No. 99-1339203.

LEGEND

□ INDICATES A SET 1' X 2' WOOD STAKE
WITH TAG L.S. 5009, FLUSH W/ GROUND.

MARKED BLACK CROSS
IN CONC LANDING ABOVE STAIRS

MAP SHOWING SURVEY OF A
PORTION OF THE NW'LY LINE OF
PARCEL 25, PER R.S. 57, 40-41,
BEING ALSO THE NW'LY LINE OF A
5' WIDE PED. E'SMNT PER O.R. DOC.
No. 99-1339203,
IN THE CITY OF MALIBU
COUNTY OF LOS ANGELES, CA

SURVEYED IN JUNE, 2006
AT REQUEST OF MR. CLARK DRANE

BY: QUIROS SURVEYING
22249 PCH MALIBU CA 90265
310 456-8022

PT ON PARCEL LINE PRODUCED:
SET NAIL, TIN & TAG L.S. 5009
IN TOP OF ASPHALT CURB,
0.8' SEAWARD OF TRUE CORNER.

PT ON PARCEL LINE PRODUCED:
SET NAIL & PINK RIBBON

WESTWARD BEACH

PARKING LOT

FILE 662-2-A

REPAIR & REPLACES

457-3106

CLARK DRANE

7277 BIRDAVIEW AVE

MAIBU CA 90265

MARY MATZA 457-3106

CONTRACTOR

BICK/CUNNINGHAM

310-633-1254

Note: stairs start at edge
of bluff approx, 110',
At 45° angle down
to beach

Note: All wood to be
Pressure Treated
AND INSTALLED ON
grade

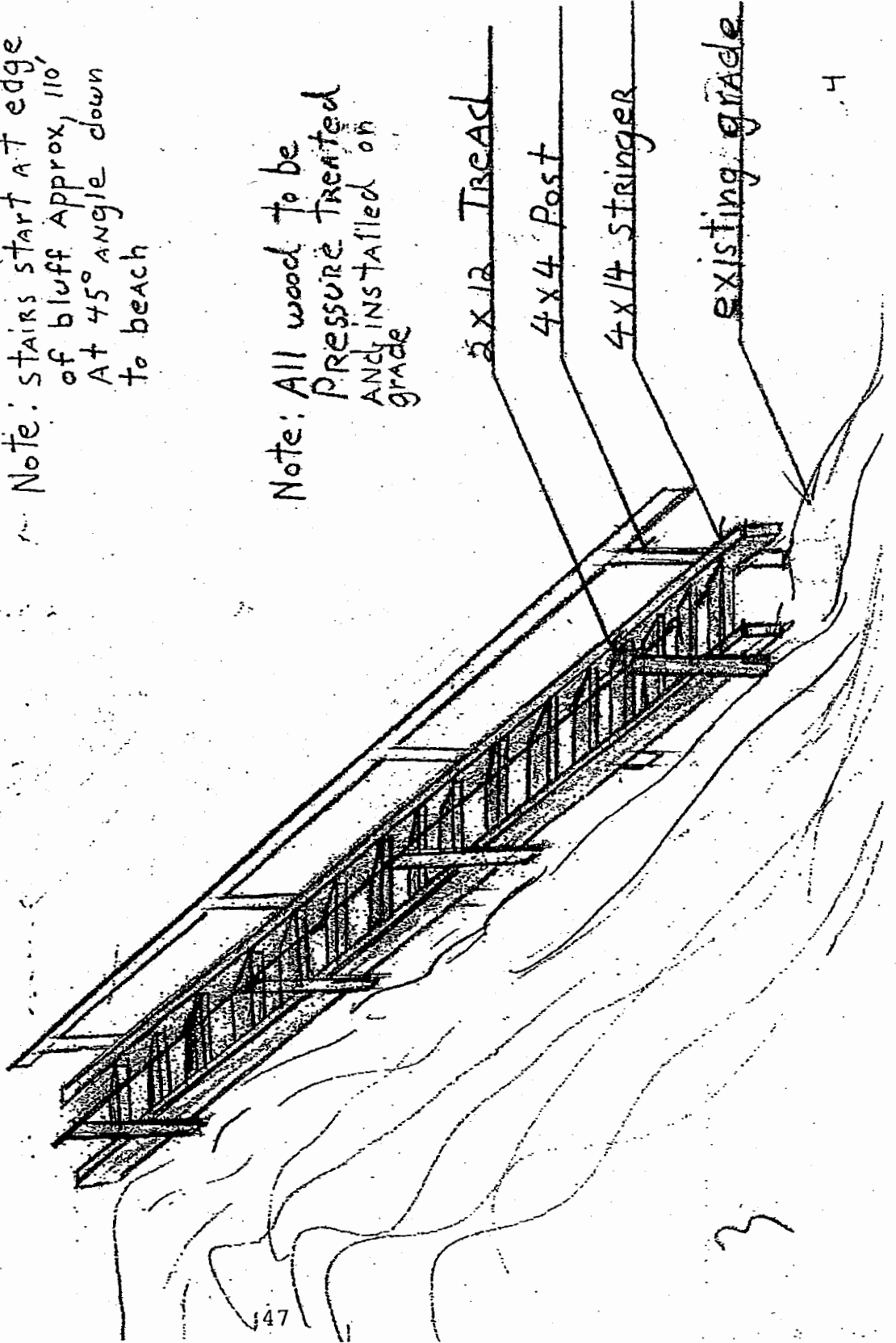
2x12 Tread

4x4 Post

4x14 Stringer

existing grade

DATE:





City of Malibu

23815 Stuart Ranch Rd., Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 456-7650

2875

GEOLOGY REVIEW REFERRAL SHEET

RECEIVED

AUG 27 2007

GEOLOGY

TO: City of Malibu City Geologist
FROM: City of Malibu Planning Department

DATE: 8/23/2007

PROJECT NUMBER: VAR 07-052, CDP 07-106
JOB ADDRESS: 7273 BIRDVIEW AVE
APPLICANT / CONTACT: Richard N. Scott
APPLICANT ADDRESS: 24955 PCA C-202
Malibu, CA 90265
APPLICANT PHONE #: 310 456-5373
APPLICANT FAX #: 310 456-9729
PROJECT DESCRIPTION: New Beach stairs, variance

TO: Malibu Planning Department and/or Applicant

FROM: Mr. Chris Dean, City Geologist

☒ The project is geologically feasible and CAN proceed through the planning process.

☐ The project CANNOT proceed through the planning process until geological feasibility is determined. Depending upon the nature of the project, this may require geology and/or geo-technical engineering (soils) reports which evaluate the site conditions, factor of safety, and potential geologic hazards. The following items are required to begin the review process (see attached.)

SIGNATURE

DATE

Determination of geologic feasibility for planning should not be construed as approval of building and/or grading plans which need to be submitted for Building Department approval. At that time, those plans may require approval of both the City Geologist and Geo-technical Engineer. Additional requirements/conditions may be imposed at the time building and/or grading plans are submitted for review, including requiring geology and geo-technical reports.

The City Geologists, may be contacted at the City Hall Annex counter, Monday through Thursday between 8:00 am and 10:00 am or by calling (310) 456-2489, extension 306.

Rev. 09/21/06 (gs)

* City geotechnical staff to review geologic report regarding footings for stairs in BPC.



City of Malibu

23815 Stuart Ranch Rd., Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 317-1950

BIOLOGY REVIEW REFERRAL SHEET

TO: City of Malibu City Biologist
FROM: City of Malibu Planning Department

DATE: 8/23/2007

PROJECT NUMBER: VAR 07-052, CDP 07-106
JOB ADDRESS: 7273 BIRDVIEW AVE
APPLICANT / CONTACT:
APPLICANT ADDRESS:
APPLICANT PHONE #:
APPLICANT FAX #:
PROJECT DESCRIPTION: New Beach stairs, variance

TO: Malibu Planning Department and/or Applicant
FROM: Dave Crawford, City Biologist

- ☐ The project review package is INCOMPLETE, please submit the following items (See Attached).
- ☐ The project is consistent with policies contained in the LCP and CAN proceed through the Planning process.
- ☐ The project CANNOT proceed through Final Planning Review until corrections and conditions from Biological Review are incorporated into the proposed project design (See Attached).
- ☒ CANNOT BE APPROVED AS SUBMITTED
The project may have the potential to significantly impact the following resources, either individually or cumulatively: Sensitive Species or Habitat, Watersheds, and/or Shoreline Resources, and therefore requires review by the Environmental Review Board (ERB).

SIGNATURE

DATE

10/18/07

Additional requirements/conditions may be imposed upon review of plan revisions.

Dave Crawford, City Biologist, may be contacted at the City Hall Annex counter on Mondays and Thursdays between 8:00 a.m. and 12:30 p.m., by e-mail at dcrawford@ci.malibu.ca.us, or by leaving a detailed message at (310) 456-2489, extension 277.

City of Malibu

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

Planning Department

BIOLOGICAL REVIEW

Site Address: 7273 Birdview Avenue
Applicant/Phone: Richard Scott/ 310.456.5373
Project Type: New Beach Stairs; variance
Project Number: CDP 07-106
Project Planner: Stephanie Danner

RESOURCES: Bluff ESHA

RECOMMENDATIONS:

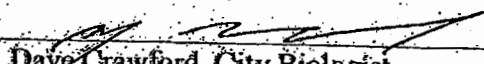
1. The project Cannot Be Approved As Submitted.

Pursuant to LUP Section 3.58, no new structures are permitted on bluff faces except for stairs or other access for public use. The proposed stairs would only be for private access for neighboring adjoining properties.

Additionally, pursuant to provisions provided in LUP Chapter 4, private beach access stairs are not an acceptable use on bluff faces.

Further, LUP Section 4.7 provides for a maximum allowable development where all sites within a property are ESHA or ESHA buffer. However, the subject area is an easement for adjacent private properties. As such, there is no loss of economic viability for any of the properties since they are already built

Reviewed By:


Dave Crawford, City Biologist

Date:

10/18/07

310-456-2489 ext.277 (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.

RECEIVED
MAY 19 2009
PLANNING DIV.

May 11, 2009

Ms. Stephanie Danner
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265

Re: CDP No. 07-106 and Variance No.'s 07-052, 08-057 and 09-012

Dear Ms. Danner:

I have acquired the property commonly known 7271 Birdview Avenue. It is our understanding Mr. Drane is requesting the right to construct a new staircase on the bluff face of our property over a five foot easement he has on our property.

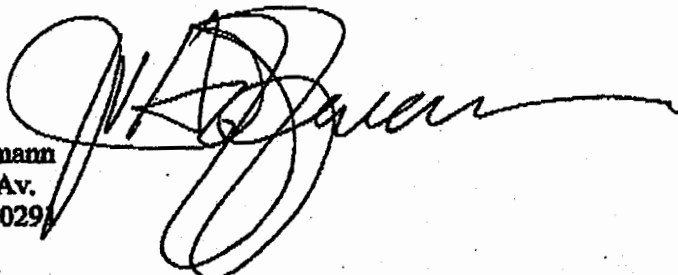
We support the Commission Agenda Report dated April 22, 2009 for the meeting scheduled for May 19, 2009.

If you have any questions, please contact me at the address or phone below.

Best,

Jack V. Hoffmann
1312 Pacific Av.
Venice, CA 90291

310.500.8885.



Date Received 05-19-09 Time 12:00 PM
Planning Commission meeting of 05-19-09
Agenda Item No. 5A
Total No. of Pages 1

**NOTICE OF PUBLIC HEARING
CITY OF MALIBU
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **MONDAY, September 14, 2009, at 6:30 p.m. in the Council Chambers, Malibu City Hall**, 23815 Stuart Ranch Road, Malibu, CA, on the appeal of the denial of the coastal development permit identified below.

APPEAL NO. 09-003 – The Appellant, as listed below, filed an appeal of the Planning Commission's adoption of Planning Commission Resolution No. 09-25, denying Coastal Development Permit (CDP) No. 07-106 and Variance Nos. 07-052 and 08-057 for the construction of a new 110 foot long, three foot wide staircase within a five foot wide easement along a bluff face, as accessory to an existing residential triplex. The grounds for the appeal are: 1) the findings set forth in Planning Commission Resolution No. 09-25 are not supported by the evidence in the record; and 2) the decision was contrary to law.

Applicant/Appellant:	Richard Scott on behalf of Clark Drane, property owner
Appeal Filed:	May 27, 2009
Application Filing Date:	August 23, 2007 (CDP No. 07-106)
Easement Holder:	Clark Drane
Easement Holder Address:	7273 Birdview Avenue (APN 4468-020-022) within the appealable coastal zone
Underlying Fee Holder:	Jack V. Hoffmann
Underlying Property Address:	7271 Birdview Avenue (APN 4468-020-021) within the appealable coastal zone
City Planner:	Stephanie Danner, Senior Planner (310) 456-2489, extension 276

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Division has analyzed the proposal as described above, and has found that this project is listed among the classes of projects, which have been determined not to have a significant effect on the environment, and therefore, would be categorically exempt from the provisions of CEQA, pursuant to California Code of Regulations Section 15303(e). However, pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves.

A written staff report will be available at or before the hearing. Following an oral staff report at the beginning of the hearing, the applicant/appellant may be given up to 15 minutes to make a presentation. Any amount of that time may be saved for rebuttal. All other persons wishing to address the Council will be provided three minutes to address the Council. These time limits may be changed at the discretion of the Council. At the conclusion of the testimony, the Council will deliberate and its decision will be memorialized in a written resolution.

Copies of all related documents, including the grounds for the appeals, are available for review at City Hall during regular business hours. Written comments may be presented to the City Council at any time prior to the close of the public hearing.

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

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

If there are any questions regarding this notice, please contact Stephanie Danner, Senior Planner, at (310) 456-2489, ext. 276.



Stefanie Edmondson, AICP, Acting Planning Manager

Publish Date: September 3, 2009

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 09-25**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU DENYING, WITHOUT PREJUDICE, COASTAL DEVELOPMENT PERMIT NO. 07-106 AND VARIANCE NOS. 07-052 AND 08-057 FOR THE CONSTRUCTION OF A NEW 110 FOOT LONG, THREE FOOT WIDE STAIRCASE WITHIN A FIVE FOOT WIDE PEDESTRIAN EASEMENT ALONG A BLUFF FACE, AS ACCESSORY TO AN EXISTING, RESIDENTIAL TRIPLEX LOCATED AT 7273 BIRDVIEW AVENUE (DRANE)

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

Section 1. Recitals.

A. On August 23, 2007, an application for Coastal Development Permit (CDP) No. 07-106 was submitted by Richard Scott, on behalf of property owner Clark Drane, to the Planning Division for processing. The subject application was routed to the City Biologist and City Geologist for conformance review.

B. On November 9, 2007, a Notice of Application for a new coastal development permit was posted on the subject property.

C. On December 13, 2007, the application was deemed complete for processing.

D. On March 5, 2008, the applicant submitted an application for Local Coastal Program Amendment (LCPA) No. 08-001. The LCPA proposed allowing staircases to be constructed in existing access easements along bluff-faces. The applicant requested that staff place the CDP application on hold and bring both the CDP and LCPA projects together at the same Planning Commission meeting.

E. On October 9, 2008, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

F. On October 21, 2008, the Planning Commission held a duly noticed public hearing, reviewed and considered the staff report (which included a recommendation of denial), reviewed and considered written reports, public testimony and related information. At the conclusion of the hearing the Planning Commission continued the item to a date uncertain and directed staff to prepare the appropriate findings required to approve CDP No. 07-106 and Variance (VAR) Nos. 07-052 and 08-057.

G. At the April 21, 2009 Planning Commission meeting, the Commission continued the hearing to the May 19, 2009 meeting due to a procedural error.

H. On May 7, 2009, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

I. On May 19, 2009, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the Agenda Report, public testimony and all related information. At the conclusion of the hearing the Planning Commission adopted findings to deny CDP No. 07-106 and VAR Nos. 07-052 and 08-057.

Section 2. Environmental Review.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves.

Section 3. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the City Malibu LCP Local Implementation Plan (LIP), the Planning Commission adopts the findings in this resolution. The variances for the reduction in the required bluff setback and for construction on slopes in excess of 2½ to 1 are hereby denied. Therefore, the proposed coastal development permit associated with this application is also denied, without prejudice, on the grounds that the proposed staircase does not conform to LIP Chapter 4 (Environmentally Sensitive Habitat Area) and LIP Chapter 10 (Shoreline and Bluff Development).

A. General Coastal Development Permit

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

The proposed project does not comply specifically with LUP Policies 2.23, 3.58, 3.77, 4.27 and 4.29 and LIP Chapters 4, 6 and 10. The LCP contains provisions to permit accessways to be constructed within Environmentally Sensitive Habitat Area (ESHA) as long as they provide public access. As the proposed staircase will only provide access for one residential parcel, it is considered private access and cannot be approved. Therefore, the project does not conform to the City of Malibu LCP and this finding cannot be made.

B. Environmentally Sensitive Habitat Area

A coastal development permit for a use other than those conditionally permitted in the ESHA overlay chapter may be approved or conditionally approved only if the Planning Commission makes the following supplemental findings in addition to the findings required in LIP Section 13.9. The Planning Commission hereby determines that the evidence in the record does not support the findings required by this chapter.

Finding A. Application of the ESHA overlay chapter would not allow construction of a residence on an undeveloped parcel.

The subject parcel is already developed with a two-story, multi-family residence. Application of this chapter does not disallow the construction of a residence on an undeveloped parcel.

Finding B. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay chapter and it complies with the provisions of Section 4.7 of the Malibu LIP.

LIP Section 4.7 discusses the economically viable use of a property. This section provides development standards for new construction that encroaches into ESHA or ESHA buffer area where no less environmentally damaging alternatives are available. The proposed project is not consistent with all provisions of the certified LCP; and therefore, this finding cannot be made.

Section 4. Variance Findings for the Reduction of the Required Bluff Setback.

Based upon substantial evidence in the record, including all written and oral testimony, the Planning Commission hereby denies VAR No. 07-052 based on the following findings of fact:

1. There are no special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance would deprive the owner of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Indeed, the granting of a variance to allow construction of a private staircase down the face of a bluff would confer a special privilege not enjoyed by other properties. Strict application of the development restrictions set forth in LIP Chapters 4 and 10 would also not deprive the owner of privileges enjoyed by other properties in the vicinity under identical zoning classification. The parcel is currently developed with a multi-family residence, which constitutes reasonable, economically viable use of the property. Construction of a private staircase on the bluff face would confer a special privilege to the property owner.
2. The granting of this variance would be detrimental to the public interest in that it would visually impact the natural beauty of the bluff face and could threaten a sensitive environmental area. It would also confer a special privilege to the owner of this property that is not enjoyed by owners of similar size properties with similar zoning and topography and could threaten a sensitive environmental area. While other properties in the immediate vicinity already have staircases that extend down the bluff face and terminate at Westward Beach, these staircases were constructed prior to the LCP and are presumably legal non-conforming structures. All new development applications for staircases down bluff faces are required to comply with all regulations set forth in the LCP.
3. The variance would constitute a special privilege to the property owner as other properties must comply with LCP development requirements and there is nothing distinguishing about this parcel that justifies a different application of development standards. The property is currently developed with a multi-family residence and the property owner has been provided reasonable use of the property. The easement does not confer a right to construct the bluff staircase and the private accessway is not a legally recognized "use" of property.
4. The variance for the construction of the access staircase only provides private access. LIP Chapter 10 only allows the construction of permanent accessways on a bluff face that provide public beach access where no feasible alternative means of public access exists. The variances are contrary to the LCP in that

they would confer a special privilege to the owner of this property that is not available to other owners of similar size properties with similar zoning and topography.

5. The variance does not comply with all requirements of State and local law. In particular, the request is inconsistent with the LCP. Specifically, there are no special circumstances warranting relief from the development requirements for the required setback from the top of a bluff.

Section 5. Variance Findings for Construction on Slopes in Excess of 2 ½ to 1.

Based upon substantial evidence in the record, including all written and oral testimony, the Planning Commission hereby denies VAR No. 08-057 based on the following findings of fact:

1. There are no special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance would deprive the owner of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. Indeed, the granting of a variance to allow construction of a private staircase down the face of a bluff would confer a special privilege not enjoyed by other properties. Strict application of the development restrictions set forth in LIP Chapters 4 and 10 would also not deprive the owner of privileges enjoyed by other properties in the vicinity under identical zoning classification. The parcel is currently developed with a multi-family residence, which constitutes reasonable, economically viable use of the property. Construction of a private staircase on the bluff face would confer a special privilege to the property owner.

2. The granting of this variance would be detrimental to the public interest in that it would visually impact the natural beauty of the bluff face and could threaten a sensitive environmental area. It would also confer a special privilege to the owner of this property that is not enjoyed by owners of similar size properties with similar zoning and topography and could threaten a sensitive environmental area. While other properties in the immediate vicinity already have staircases that extend down the bluff face and terminate at Westward Beach, these staircases were constructed prior to the LCP and are presumably legal non-conforming structures. All new development applications for staircases down bluff faces are required to comply with all regulations set forth in the LCP.

3. The variance would constitute a special privilege to the property owner as other properties must comply with LCP development requirements and there is nothing distinguishing about this parcel that justifies a different application of development standards. The property is currently developed with a multi-family residence and the property owner has been provided reasonable use of the property. The easement does not confer a right to construct the bluff staircase and the private accessway is not a legally recognized "use" of property.

4. The variance for the construction of the access staircase only provides private access. LIP Chapter 10 only allows the construction of permanent accessways on a bluff face that provide public beach access where no feasible alternative means of public access exists. The variances are contrary to the LCP in that they would confer a special privilege to the owner of this property that is not available to other owners of similar size properties with similar zoning and topography.

5. The variance does not comply with all requirements of State and local law. In particular, the request is inconsistent with the LCP. Specifically, there are no special circumstances warranting relief from the development requirements for construction on slopes.

Section 6. Additional Basis for Denial

The applicant cannot demonstrate a legal right, interest, or other entitlement to use the property for the proposed development. An easement for "pedestrian purposes" does not necessarily include the right to improve the easement area with a stairway.

Section 7. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of May 2009.



JOAN HOUSE, Planning Commission Chair

ATTEST:



ROBERT SANCHEZ, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the ground(s) for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.ci.malibu.ca.us, in person at City Hall, or by calling (310) 456-2489, extension 374.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 09-25 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of May 2009, by the following vote:

AYES: COMMISSIONERS: JENNINGS, MAZZA, SCHAAR, GILLESPIE, & HOUSE
NOES:
ABSTAIN:
ABSENT:



ROBERT SANCHEZ, Recording Secretary