

CALIFORNIA COASTAL COMMISSION

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

Appeal Filed: 10/1/09
49th Day: 11/19/09
Staff: D. Christensen
Staff Report: 10/21/09
Hearing Date: 11/5/09

**STAFF REPORT: APPEAL**
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-MAL-09-072

APPLICANT: Jonathon & Sandy Selig

APPELLANTS: Hamid Roknian, Mohamad & Ashraf Hosseini, and Margaret Herron

PROJECT LOCATION: 6150 Galahad Drive, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a new two-story, 4,490 sq. ft. single-family residence, landscape, hardscape, retaining walls, fencing, gates, and an alternative onsite wastewater treatment system, including variances to reduce the required front yard setback, for construction on slopes in excess of 2 ½ to 1, and to reduce the required ESHA buffer. The project includes a Site Plan Review for construction over 18 feet in height; and a Minor Modification to reduce the required side yard setback.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for City of Malibu Coastal Development Permit No. 08-020, Variance Nos. 08-016, 08-017, 08-018, Site Plan Review No. 08-007, and Minor Modification No. 09-010; City of Malibu Planning Commission Resolution No. 09-52.

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that **no substantial issue exists** with respect to the appellants' assertion that the project is not consistent with the ESHA provisions of the certified Local Coastal Program (LCP). The project, as approved by the City of Malibu, conforms to the ESHA protection policies and standards of the Malibu LCP. While a portion of the required fuel modification of the approved residential project is located within the 100-ft. stream ESHA buffer, the Malibu LCP provides for such encroachments where there is no alternative location for development, and in this case, there are no alternative development locations that could provide the required buffer or significantly increase the buffer. Therefore, the approved project was sited and designed to conform to the provisions of Section 4.7 of the Malibu LCP, including the maximum 10,000 square foot allowable development area, and siting and design measures were included to minimize significant adverse impacts to ESHA. Motion and resolution can be found on **Page 4**.

I. APPEAL JURISDICTION

The project site is located on Galahad Drive in the City of Malibu (**Exhibit 1**). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends to 100 feet from a stream that is located in the eastern portion of the subject property. The approved project includes construction of a single-family residence in a location such that a portion of the Fire Department-required fuel modification zone is located within this appeal area. In this situation, the City's approval of the local Coastal Development Permit (CDP) is appealable to the Commission, but the grounds of appeal are limited to allegations that the "appealable development" (which is only the development located within the Commission's appeal jurisdiction) is not consistent with the standards in the certified LCP or the public access policies of the Coastal Act.

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permit applications for development 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 development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

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

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[b][1])

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the “substantial issue” question. A majority vote of the members of the Commission is required to determine that the Commission will not hear an appeal. If the Commission determines that no substantial issue exists, then the local government’s coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue does exist, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the entire proposed development is in conformity with the certified Local Coastal Program. Thus, the Commission’s review at the de novo hearing is *not* limited to the appealable development as defined in the first paragraph of this Section I. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On September 1, 2009, the City of Malibu Planning Commission approved Coastal Development Permit No. 08-020, Variance Nos. 08-016, 08-017, 08-018, Site Plan Review No. 08-007, and Minor Modification No. 09-010 for the single-family residence project. The Notice of Final Action for the project was received by Commission staff on September 21, 2009. Notice was provided of the ten working day appeal period, which began September 22, 2009 and extended to October 5, 2009.

Three appeals were filed during the appeal period: Hamid Roknian filed an appeal on October 1, 2009, and Mohamad & Ashraf Hosseini and Margaret Herron each filed an appeal on October 5, 2009, during the appeal period. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on October 14, 2009.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-MAL-09-072 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds **No Substantial Issue**, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-MAL-09-072 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The City of Malibu Planning Commission approved Coastal Development Permit (CDP) No. 08-020, Variance Nos. 08-016, 08-017, 08-018, Site Plan Review No. 08-007, and Minor Modification No. 09-010 for construction of a new two-story, 28-ft. tall, 4,490 sq. ft. single-family residence, landscape, hardscape, retaining walls, fencing, gates, and an alternative onsite wastewater treatment system at 6150 Galahad Drive in the City of Malibu (**Exhibits 3-6, 9**). The variances were to reduce the size of the required front yard setback, for construction on slopes in excess of 2 ½ to 1, and to reduce the size of the required ESHA buffer. The City Site Plan Review was for construction over 18 feet in height; and the Minor Modification was to reduce the size of the required side yard setback.

The approved project site is a one-acre vacant parcel located in a residential neighborhood along Galahad Drive, which is on the inland side of Pacific Coast

Highway (PCH) and east of Kanan Dume Road. The parcel is zoned Rural Residential (RR-1). There are existing residences on adjacent parcels to the south, and scattered residential development to the north, west, and across the canyon to the east. A USGS-designated blue-line stream (Walnut Creek) is located in the eastern portion of the subject property, which runs in a general southeast direction in this area (**Exhibit 10**). The stream is mapped as a blue-line stream on the Malibu LCP ESHA maps and the U.S.G.S. topographic quadrangle map.

In 1997, the Coastal Commission approved CDP No. 4-96-095 (Sauter) for the subdivision of an 8.02-acre parcel into eight parcels, including 2,460 cu. yds. of grading for the creation of building pads adjacent to Galahad Drive for each created parcel. The permit was issued on June 8, 1998. The subject parcel is one of the eight created parcels of the approved subdivision (**Exhibit 2**). The City-approved residential development for this property is proposed to be situated on the existing, previously-approved building pad adjacent to Galahad Drive.

A Biological Assessment (Nelson, January 6, 2007) was prepared that characterizes the biological conditions of the property in relation to the proposed development. The report states that much of the property has been disturbed by required fuel modification associated with the adjacent residence and does not contain any habitat that would be considered environmentally sensitive pursuant to the LCP. The report also states that since no riparian vegetation is present along the on-site stream course, just the stream itself, which is approximately 10 feet wide, meets the LCP definition of an environmentally sensitive habitat area (ESHA). At its closest point, the residence is approximately 208 feet away from nearest bank of the stream. The Malibu LCP requires a 100 foot buffer from stream ESHA (LIP Section 4.6.1(A)). No portion of the approved residential development extends into the required 100-foot stream ESHA buffer, with the exception of fuel modification for fire protection purposes as required by the Fire Department. Required fuel modification for the residence per the submitted fuel modification plan extends to a maximum of 200 feet from the structure, which extends into the 100-foot stream ESHA buffer, but does not encroach into the stream ESHA corridor itself.

As discussed previously, the appeal jurisdiction for this area extends to 100 feet from the stream that is located in the eastern portion of the subject property. The approved project includes construction of a single-family residence in which a portion of the Fire Department-required fuel modification zone is located within this appeal area. In this situation, the approval of the local CDP is appealable to the Commission, but the grounds of appeal are limited to allegations that the “appealable development” (which is only the development located within the Commission’s appeal jurisdiction) is not consistent with the standards in the certified LCP or the public access policies of the Coastal Act.

B. APPELLANTS' CONTENTIONS

The City's action was appealed by 1) Hamid Roknian, 2) Mohamad & Ashraf Hosseini, and 3) Margaret Herron. The contentions of each appellant are described separately below.

Hamid Roknian

The appeal filed by Hamid Roknian is attached as **Exhibit 6**. The appeal outlines five primary claims in support of the appeal and references an attached letter that provides a more detailed discussion of the reasons supporting the appeal. The five stated appeal grounds are summarized below.

1. **Private Views.** Project will significantly impact and intrude on the neighbors' view.
2. **Variances and Neighborhood Conformance.** The multiple variances granted allow construction of a project that would not conform to the neighborhood and were not granted to other neighbors in the past.
3. **Private Views.** A critical pole in the view envelope analysis was missing and the true impact of neighbor's views could not be demonstrated as required by the City code.
4. **Private Views.** Applicant did not work with the neighbors to resolve issues and address concerns with their design.
5. **Fairness.** The City Planning Commission hearing and voting process was unfair, ignored the neighbor's rights, and created a double-standard in the neighborhood.

None of these contentions references specific policies or standards of the Malibu LCP or public access policies in the Coastal Act. Pursuant to Coastal Act Section 30603(b)(1) the grounds for an appeal of a local government approval of a coastal development permit shall be limited to an allegation that the appealable development is not consistent with the standards in the certified LCP or the public access policies of the Coastal Act. In fact, neither the Malibu LCP nor the public access policies of the Coastal Act contains any standards related to private view protection or fairness of a City action, which represent the bulk of the appellants' reasons for appeal. Thus, these contentions are not valid grounds for appeal of the approved CDP to the Commission. Moreover, because the locally-approved project would occur in an area that is bisected by the Commission's appeals jurisdiction boundary, the appealable development in this case is limited to the fuel modification, which is the only portion of the development that is located within the Commission's appeal jurisdiction. Thus, even if Mr. Roknian's allegations regarding private view protection and fairness of a City action were legitimate grounds for an appeal, they would only be so with respect to the fuel modification aspect of the project.

However, in the letter that supplemented the subject appeal, the appellant had elaborated on contention No. 2 above, stating that the yard setback variance would

permit development that is not consistent with the neighborhood, the variance for construction on slopes in excess of 2 ½ to 1 would permit development that will block Mr. Roknian's view, and another variance was approved that violates the City's ESHA protection codes. The appellant's only appeal ground that relates to consistency of the appealable portion of the approved development with a standard in the certified LCP is the assertion that the project violates the City's ESHA protection policies.

Mohamad & Ashraf Hosseini

This appeal is attached as **Exhibit 7**. The appeal outlines seven reasons supporting the appeal. The stated appeal grounds are summarized below.

1. **Notice.** Legal rights were violated because they never received notice of the City's hearing.
2. **Variances and Neighborhood Conformance.** The multiple variances granted allow construction of a project that would not conform to the neighborhood.
3. **House Size.** Size of the house is too large for the small pad.
4. **Fairness.** Variance for building on slope unprecedented and not allowed for others. This is a double standard.
5. **Private Views.** A critical pole was missing in view analysis.
6. **ESHA.** ESHA codes allowed to be violated.
7. **Fairness.** A City Planning Commissioner expressed being acquainted with applicant's architect and did not abstain from voting.

None of these contentions references specific policies or standards of the Malibu LCP or public access policies in the Coastal Act. Pursuant to Coastal Act Section 30603(b)(1) the grounds for an appeal of a local government approval of a coastal development permit shall be limited to an allegation that the appealable development is not consistent with the standards in the certified LCP or the public access policies of the Coastal Act. In fact, neither the Malibu LCP nor the public access policies of the Coastal Act contains any standards related to private view protection or fairness of a City action, which represent the bulk of the appellants' reasons for appeal. Thus, these contentions are not valid grounds for appeal of the approved CDP to the Commission. Moreover, because the locally-approved project would occur in an area that is bisected by the Commission's appeals jurisdiction boundary, the appealable development in this case is limited to the fuel modification, which is the only portion of the development that is located within the Commission's appeal jurisdiction. Thus, even if the allegations regarding private view protection and fairness of a City action were legitimate grounds for an appeal, they would only be so with respect to the fuel modification aspect of the project.

Regarding the appellants' assertion that they did not receive notice of the City's hearing, evidence in the City's record indicates that the City mailed public hearing notices to the appellant and other residents within 500 feet of the project and that the appellant testified at the September 1, 2009 Planning Commission hearing on the project. In any

event, inadequate notice at the local level is not, in and of itself, a valid basis for an appeal to the Commission.

These appellants' only appeal ground that relates to consistency of the appealable portion of the approved development with a standard in the certified LCP is the assertion that the project violates the City's ESHA protection policies.

Margaret Herron

The appeal filed by Margaret Herron is attached as **Exhibit 8**. The appeal describes four reasons supporting the appeal. The four stated appeal grounds are summarized below.

1. **House Size.** House is too large for the pad.
2. **Private Views.** Variances that were allowed result in blockage of views.
3. **Fairness.** The City Planning Commission voting process was unfair since a Planning Commissioner was biased.
4. **ESHA.** ESHA protection was ignored.

None of these contentions references specific policies or standards of the Malibu LCP or public access policies in the Coastal Act. Pursuant to Coastal Act Section 30603(b)(1) the grounds for an appeal of a local government approval of a coastal development permit shall be limited to an allegation that the appealable development is not consistent with the standards in the certified LCP or the public access policies of the Coastal Act. In fact, neither the Malibu LCP nor the public access policies of the Coastal Act contains any standards related to private view protection or fairness of a City action, which represent the bulk of the appellants' reasons for appeal. Thus, these contentions are not valid grounds for appeal of the approved CDP to the Commission. Moreover, because the locally-approved project would occur in an area that is bisected by the Commission's appeals jurisdiction boundary, the appealable development in this case is limited to the fuel modification, which is the only portion of the development that is located within the Commission's appeal jurisdiction. Thus, even if the allegations regarding private view protection and fairness of a City action were legitimate grounds for an appeal, they would only be so with respect to the fuel modification aspect of the project.

The appellants' only appeal ground that relates to consistency of the appealable portion of the approved development with a standard in the certified LCP is the assertion that the project violates the City's ESHA protection policies.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally-approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, none of the appellants cited the public access policies of the Coastal Act as a ground for appeal or raised any public access-related issues.

Thus, the only legitimate grounds for this appeal are allegations that the "appealable development" (which is limited to the portion of the development that is located within the Commission's appeal jurisdiction) is not consistent with the standards in the certified LCP. The appellants' only appeal ground that relates to consistency of the appealable portion of the approved development with a standard in the certified LCP is the assertion that the project violates the City's ESHA protection policies.

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 previous decisions on appeals, the Commission has been guided by the following factors:

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

In this case, for the reasons discussed further below, the Commission determines that the appeals raise no substantial issue with regard to the grounds on which the appeals have been filed, as discussed below.

1. Streams and Environmentally Sensitive Habitat Areas

The approved project site is a one-acre vacant parcel located in a residential neighborhood along Galahad Drive. The property extends east from Galahad Drive down to a USGS-designated blue-line stream (Walnut Creek). According to the Malibu LCP ESHA maps, the only portion of the property that is mapped as an ESHA is the blue-line stream itself. A Biological Assessment (Nelson, January 6, 2007) was

prepared that characterizes the biological conditions of the property in relation to the proposed development. The report states that much of the property has been disturbed by required fuel modification associated with the adjacent residence and does not contain any habitat that would be considered environmentally sensitive pursuant to the LCP. The report also states that since no riparian vegetation is present along the on-site stream course, just the stream itself, which is approximately 10 feet wide, meets the LCP definition of an environmentally sensitive habitat area (ESHA).

The appellants contend that the project violates the City's ESHA protection policies, but they do not identify any specific policies or standards of the LCP in regards to this assertion.

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

4.6.1. Buffers

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

A. Stream/Riparian

New development shall provide a buffer of no less than 100 feet in width from the outer edge of the canopy of riparian vegetation. Where riparian vegetation is not present, the buffer shall be measured from the outer edge of the bank of the subject stream.

LIP Section 4.6.4 states the following in regards to variances:

- A. Variances that modify buffers or ESHA protection standards shall not be granted except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.**
- B. Modifications to required development standards that are not related to ESHA protection (street setbacks, height limits, etc.) shall be permitted where necessary to avoid or minimize impacts to ESHA.**
- C. 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.**

LIP Section 4.7 states in part that:

The uses of the property and the siting, design, and size of any development approved in ESHA or ESHA buffer, shall be limited, restricted, and/or conditioned to minimize impacts to ESHA on and adjacent to the property, to the maximum extent feasible. Where all

feasible building sites are ESHA or ESHA buffer, the City may only permit development as specified below in sections 4.7.1 through 4.7.4 of the Malibu LIP in order to provide the owner with an economically viable use of the property.

Applicable Section 4.7.1 states in part:

The allowable development area on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 sq. ft. or 25 percent of the parcel size, whichever is less.

Further, Section 4.8(A) of the Malibu LIP states, in part, the following:

New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected.

The City-approved 4,490 sq. ft. single-family residential development is situated on an existing building pad adjacent to Galahad Drive that was approved by the Coastal Commission in 1997 (CDP No. 4-96-095). Variances were approved by the City to reduce the size of the required front yard setback, for construction on slopes in excess of 2 ½ to 1, and to reduce the size of the required ESHA buffer. Siting and design alternatives were analyzed by the applicant and City staff during the permit process. The approved development has been clustered onto a single pad area in which the required front yard setback was reduced by 56% through a variance in order to maximize the setback from the on-site stream ESHA corridor. By doing so, the project avoids fuel modification in ESHA. At its closest point, the residence is approximately 208 feet away from nearest bank of the stream ESHA. The Malibu LCP requires a 100 foot buffer from stream ESHA. No portion of the approved residential development extends into the required 100-foot stream ESHA buffer, with the exception of fuel modification for fire protection purposes as required by the Fire Department. Required fuel modification for the residence per the submitted fuel modification plan extends to a maximum of 200 feet from the structure, which extends into the 100-foot stream ESHA buffer, but does not encroach into the stream corridor itself.

Any alternative development configuration on this property would still result in a structure's required fuel modification zones to encroach into the required 100 foot stream ESHA buffer. The proposed building site is situated on the flatter, westernmost portion of the parcel that is closest to existing residential development, farthest from the stream, and within an area previously disturbed by neighboring fuel modification requirements. As such, the overall amount of required fuel modification will be minimized because of the overlapping fuel modification provided by clustering residential development. And reducing the size of the structure and pulling it closer to Galahad Drive by 10-20 feet would increase the ESHA buffer somewhat but not significantly. Therefore, as approved, the project has been sited and designed to minimize impacts to ESHA to the maximum extent feasible.

Given that there is no siting alternative that could provide the required ESHA buffer, the City determined that it was necessary to apply the provisions of Section 4.7, which limit

the development area that can be approved in such a case. The proposed development area is approximately 4,000 sq. ft. As such, the project has been designed, as well as conditioned by the City, to conform to the development area limitation of 10,000 sq. ft. to allow for an economically viable use of the property where development encroaches ESHA buffer.

The appeal raises only local issues, not those of regional or statewide significance. The project is relatively small in scale and has avoided adverse impacts to any significant coastal resources. There is substantial factual and legal support in the City's action approving the project and associated variances and finding the development consistent with the LCP. Thus the precedential value of the local government's decision for future interpretations of its LCP is insignificant.

In conclusion, the project, as approved by the City of Malibu, conforms to the ESHA protection policies and standards of the Malibu LCP. While a portion of the project is located within the required ESHA buffer, there are no alternative development locations that could provide the required buffer or significantly increase the buffer, and LIP Section 4.7 of the Malibu LCP provides for approvals that encroach into the ESHA buffers in such cases. Therefore, the approved project was sited and designed to conform to the provisions of Section 4.7 of the Malibu LCP. The project is consistent with the maximum 10,000 square foot allowable development area and siting and design measures were included to minimize significant adverse impacts to ESHA. As such, the Commission finds that the appellant's contentions regarding ESHA protection raise no substantial issue with regard to consistency with the policies and provisions of the certified LCP.

Local Coastal Program - City of Malibu

ESHA Overlay Map 2:

Zuma Beach to Escondido Beach

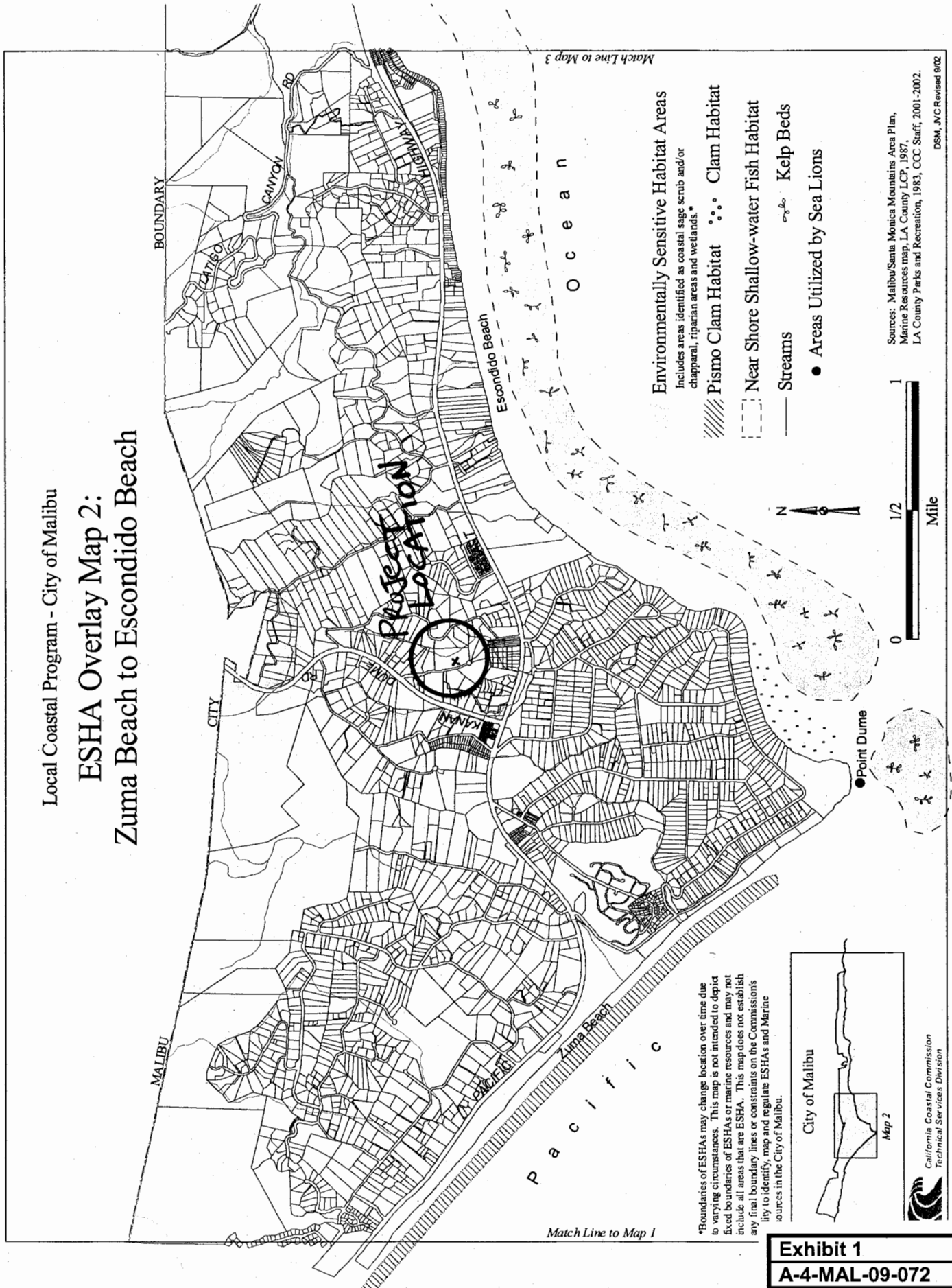
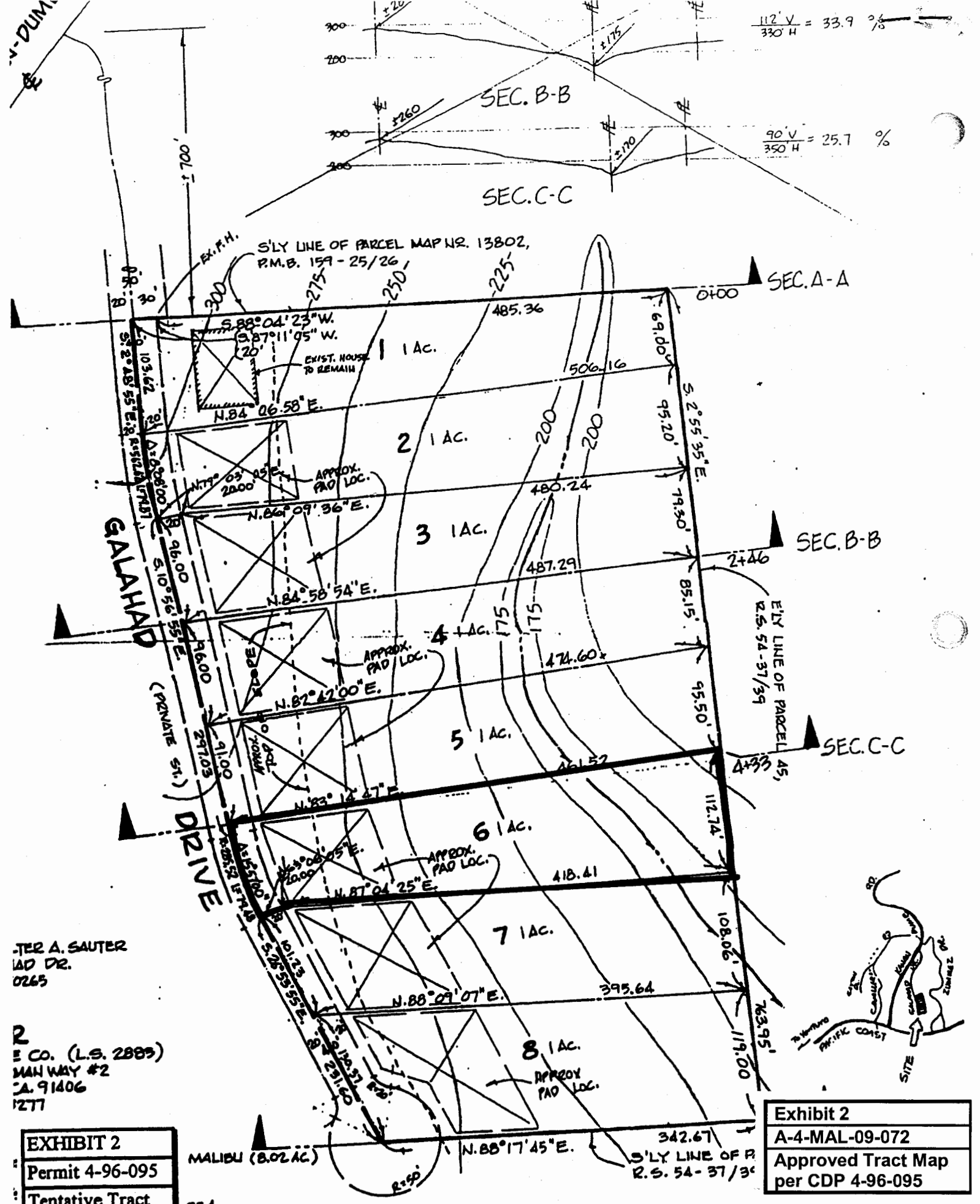


Exhibit 1
A-4-MAL-09-072
Vicinity Map



TER A. SAUTER
LAD DR.
0265

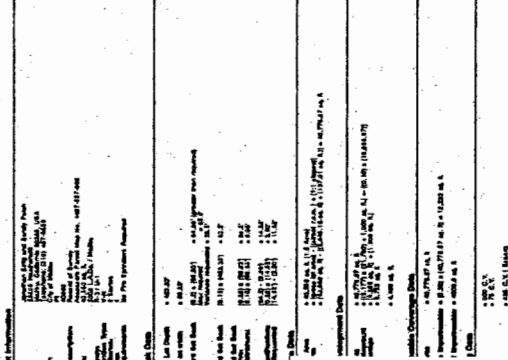
R
E CO. (L.S. 2885)
MAN WAY #2
A. 91406
1277

EXHIBIT 2
Permit 4-96-095
Tentative Tract
Map

234
D., FOR POLE LINES, POWER
131

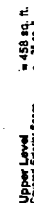
Exhibit 2
A-4-MAL-09-072
Approved Tract Map per CDP 4-96-095

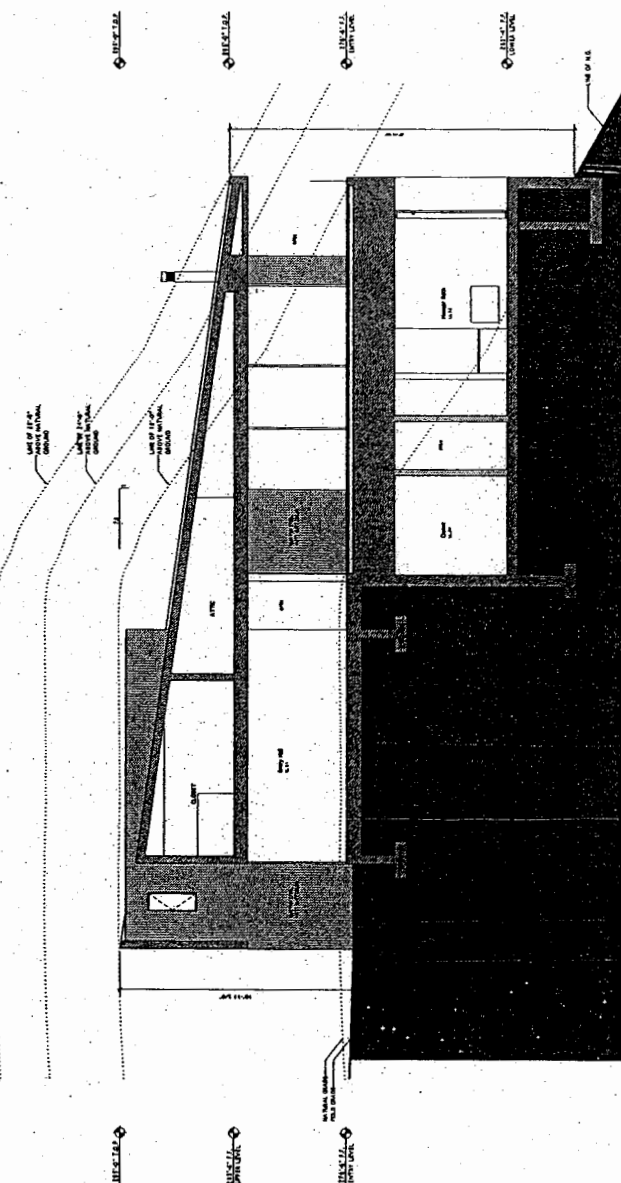
• TENTATIVE TRACT No 40860



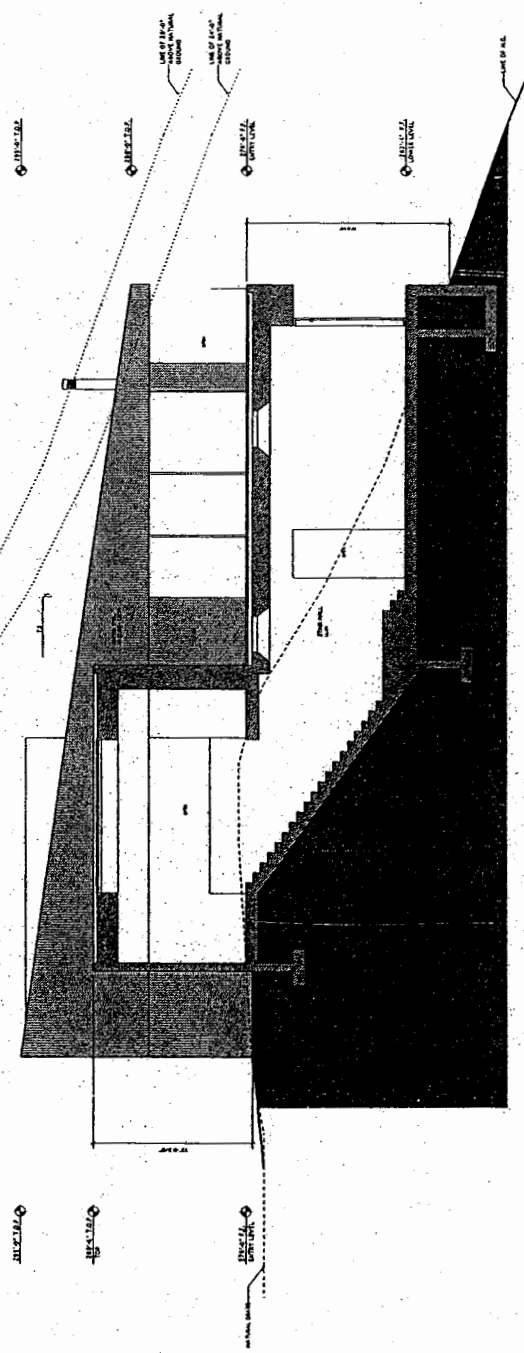
Drawn By	Checked By	Project	Company No.
		Planning	A-001

Exhibit 4
A-4-MAL-09-072
Floor Plans





1 Section / Elevation @ Entry Hall and Kitchen - North



2 Section / Elevation @ Stair and Stair Hall - North

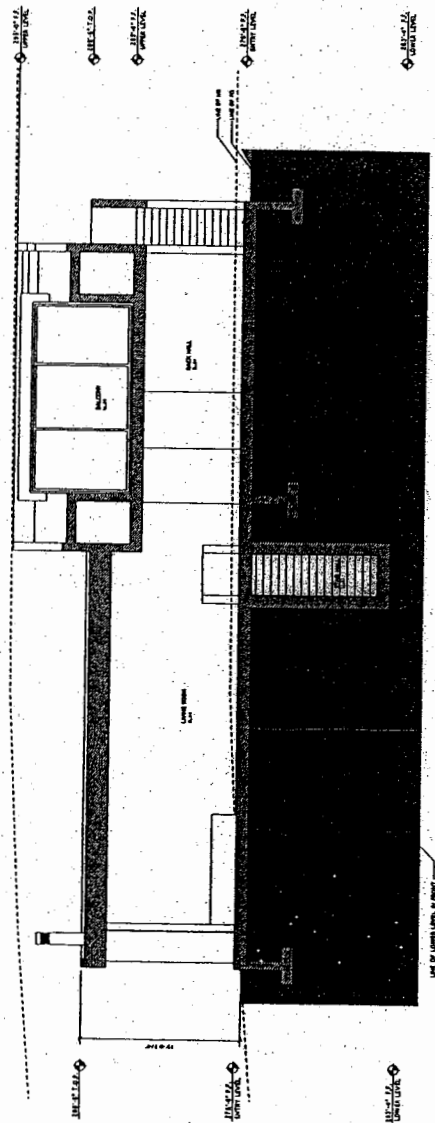
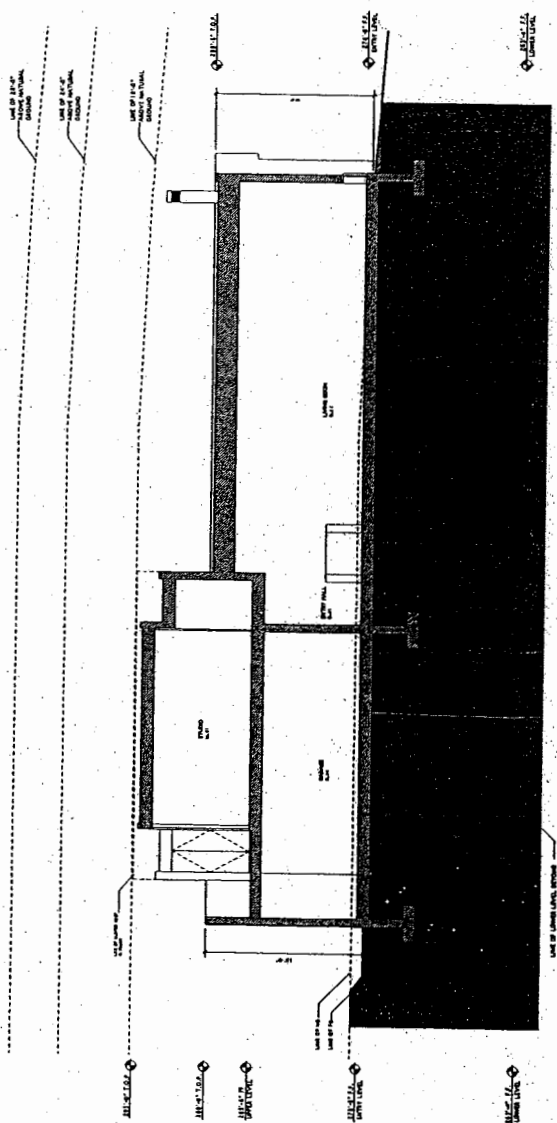
NO.	DATE	DESCRIPTION
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2	10/1/01	REVISION
3	10/1/01	REVISION
4	10/1/01	REVISION
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10	10/1/01	REVISION

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Section	
NO.	DATE
1	10/1/01
2	10/1/01
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9	10/1/01
10	10/1/01



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ALLIANCE ENDOCRINE SYSTEMS
Industry
800-679-2222 • Fax 800-679-2222
1115 W. 1st St., Suite 100
Portland, ME 04101
Tel: 207-773-1100
Fax: 207-773-1100
E-mail: info@allianceendo.com
Web: www.allianceendo.com

Galahad House
Parties / Events
4110 Ocean Blvd Ste. Marina, California 90415
549.92.2

Sections	Scale	Sheet Date	Project	Drawing No.
	1/4"=1'-0"	12.01.05	Planning Submittal	A.302

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
OCT 1 2009

ARNOLD SCHWARZENEGGER, Governor



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)Name: HAHID ROKNIANMailing Address: P.O. BOX 3100City: SANTA MONICA, CALIF. Zip Code: 90408Phone: 310-508-5054Fax: 310-394-7373SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF MALIBU PLANNING COMMISSION
2. Brief description of development being appealed:
SINGLE FAMILY HOUSE OF 4490 SQ. FT. ON A SMALL PAD. THE SIZE IS TOO BIG FOR THE PAD AND AS SUCH REQUIRE MULTI VARIANCES TO FORCE FEED A LARGE HOUSE ON SMALL PAD. THE VARIANCES INCLUDE: SIDEYARD SET BACK, FRONT YARD SET BACK, STRETCHING THE BUILDING 32 FT OVER STEEP SLOP STEEPER THAN 2:1, VARIANCE ON ESHA PROTECTION CODE.
3. Development's location (street address, assessor's parcel no., cross street, etc.):
6150 GALAHAD RD
MALIBU, CALIFORNIA,
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-09-072

DATE FILED:

10/1/09

DISTRICT:

So. Central Coast

Exhibit 6

A-4-MAL-09-072

Roknian 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: SEPT, 1, 2009 , ITEM 6.A.

7. Local government's file number (if any): DEVELOPMENT
COASTAL PERMIT NO. 08-020

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:

JONATHAN AND SANDY SELIG
29206 HEATHER CLIFF ROAD
MALIBU, CALIFORNIA, 90265-4178

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) MO & ASHRAF HOSSINIE
6130 GALAHAD RD
MALIBU, CALIFORNIA, 90265
TEL: # 310-457-4029
- (2) DRS. AHMAD & ROZITA ROKNIAN
P.O. BOX 3100
SANTA MONICA, CALIF. 90408
TEL: # 310-508-5054
- (3) MARGARET HERRON
MAILING ADDRESS
6300 ZUMA MESA DRIVE
MALIBU, CALIFORNIA, 90265
- (4) TEL # 310-457-5122

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

* This is to request to reverse the approval of the several variances by The Malibu Planning commission for subject project at 6150 Galahad Rd. due to following facts and violations ;

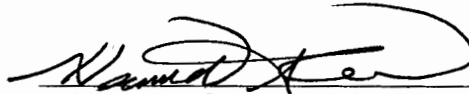
1. The notice of hearing was sent to all the affected immediate neighbors, violated their right as defined by the City Code. They had not given a chance to study the plans in details, assessing the extent of the impact on their properties. The brief review of the indicates a significant impact and intrusion on the neighbors view.
2. The multi variances granted on this project are not conforming to the neighborhood and were not granted to other neighbors in the past. We, the Northern neighbors and other neighbors are severely impacted of the unprecedented and unreasonable multiple variances granted to this project.
3. One of the critical poles that defines the view envelop was missing at the project site as required by the City Code. The true impact on the other neighbor's view could not be demonstrated as required by the code. Neighbors had difficulty to assess and visualize the impact on their view in absence of the critical pole.
4. The neighbors had not given an opportunity to work together and resolve the design issues impacting them. In the past, City of Malibu strongly urged the applicants to work with other neighbors to resolve the issues and address the concerns in their design. In this case the applicant did not do so, and the rights of other neighbors were ignored.
5. In the planning Commission hearing of 9/1/2009, the voting was distorted by at least one of the members who openly discussed knowing the architect since childhood, and many memories of the old days. That changed the outcome of the hearing. The hearing and voting process were unfair, ignored the neighbor's right and created a Double Standard in the neighborhood. Please refer to the video of the entire hearing posted on the City of Malibu Web Site. The duration of the session is recorded from 0:21:18 to Apx 1:55:00.

**PLEASE SEE THE ATTACHED
DOCUMENT AND DIAGRAMS.**

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 9-29-2009

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

Dr. Hamid Roknian

P.O. Box 3100

Santa Monica, Calif. 90408

Tel# 310-508-5054

Email: HRoknian@Roadrunner.com



CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

To:

Date: 9/29/2009

The Honorable Chair and Members Of The Coastal Commission

South Central Coast District office

89 South California Street, Suite 200

Ventura , California, 93001-4508

Tel # 805-585-1800 , Fax # 805-641-1732

Sent: Via Fax and Federal Express mail

Subject: Appealing the Malibu Planning Commission approval of several variances on 09/01/2009. Project at 6150 Galahad Road-Coastal Development Permit No. 08-020. Variance Nos. 08-016. 08-017 and 08-018. Site Plan Review No. 08-007. And Minor Modification No. 09-010 - An application for the construction of a new. Two-story 4490 square foot single-family residence.

The Honorable Chair and Members of The Coastal Commission;

This is to request to reverse the approval of the several variances by The Malibu Planning commission for subject project at 6150 Galahad Rd. due to following facts and violations ;

1. The notice of hearing was NOT sent to all the affected immediate neighbors, violated their right as defined by the City Code. They had not given a chance to study the plans in details, assessing the extent of the impact on their properties. The brief review of this project indicated a significant impact and intrusion on the neighbors view.
2. The multi variances granted on this project are not conforming to the neighborhood and were not granted to other neighbors in the past. We, the Northern neighbors and other neighbors are severely impacted of the unprecedented and unreasonable multiple variances granted to this project
3. One of the critical poles that defines the view envelop was missing at the project site as required by the City Code. The true impact on the other neighbor's view could not be demonstrated as required by the code. Neighbors had difficulty to assess and visualize the impact on their view in absence of the critical pole.

4. The neighbors had not given an opportunity to work together and resolve the design issues impacting them. In the past, City of Malibu strongly urged the applicants to work with other neighbors to resolve the issues and address the concerns in their design. In this case the applicant did not do so , and the rights of other neighbors were ignored.
5. In the planning Commission hearing of 9/1/2009, the voting was distorted by at least one of the members who openly expressed knowing the architect since childhood and recalling many memories from old days , AND that changed the outcome of the hearing. The hearing and voting process were unfair, ignored the neighbor's right and created a Double Standard in the neighborhood. Please refer to the video of the entire hearing posted on the City of Malibu Web Site. The duration of the session is recorded from 0:21:18 to Apx 1:55:00.

Background

1. We are the Northern neighbor of the said project at 6140 Galahad Road . We had submitted our plans and all pertaining engineering studies with all required fees in 2007. Our file to build a two story house was deemed as a completed file by the City of Malibu. The building design deemed in full compliance with the City of Malibu. Our story poles were erected and we were scheduled for The Planning commission hearing in March 2008. The corners and the parameters of the building were all determined in 2008. All these were completed prior to the submittal of the proposed next door neighbor at 6150 Galahad.
2. City of the Malibu strongly urged us to work with the neighbors and address their concern in our design. We followed the City's direction and have been working with the neighbors. We have revised our plans several times to accommodate and protect the neighbor's rights to avoid any intrusion of their view. Our initial two story plan have been changed to be inverse two story, moving the bed rooms below the first floor. The envelop of the building is the same and stops at the edge of the cliff and is in accordance to the City guide lines for the setbacks. I am still working closely and cooperatively with our neighbors as we finalizing our plans. The delay that we have been experiencing is due to investing the time to promote cooperation and insure the protection of the rights of neighbors.
3. During the design of our project we were planning for a 10ft balcony extending over the cliff, we were strongly advised that the building cannot be extended more than approximately 5.0ft over the cliff and any more than that, require a variance which would be **extremely difficult** to get the approval. This discouraged any opportunity to extend the building over the cliff or at least put in a 10ft balcony. We are obeying by the rules and yielded to have a narrow balcony. The other neighbor on our North at 6130 Galahad Rd , who have just completed the construction of their home were also

discouraged by The City of Malibu, from encroaching more than 5.0ft over the cliff . Their building had to stop at or shortly over the cliff and they have a narrow balcony less than 5.0ft . This is extremely important to all of us, since the property is very steep and not possible to have the backyard . The balcony is the only outside space that we have and City have not allowed anyone to stretch over the cliff more than 5.0ft.

The issues:

- 1- The subject project at 6150 Galahad Rd, has a small pad and is planning to build 4490 Sqft of building consist of a Three bedroom House.
- 2- The lot size although support building a large house, but the pad is not enough to support the 4490 sqft house. As the result, they have to resort to several variances and force fitting a large house on that small pad, which causes a sever intrusion on other neighbor's view.
- 3- Since the pad is small, they have to apply for the multiple variances on the Front Yard setback, Side yard setback, which are not consistent with the neighborhood.
- 4- They also requested a variance allowing the building stretch over the steep slop that is over 2 ½ to 1. The building in stretched 32ft over the slop, to support a building size of 4490 sqft and a Roof/Deck garden of about 1200 sqft creating a sever blockage of the S/W view (Our only View). In the past , This type of variance were strongly discouraged by The City Planning to the others neighbors.
- 5- Nobody was allowed to build a large size house on the small pad size requiring multiple variances that will intrude the neighbors view. City of Malibu have been advising the applicant to build a smaller size of the house, in conformance with the City codes set backs which are also consistent with the neighborhood. What were allowed in this case to the subject project are not consistent with the neighborhood and were not allowed in the past. This has created a Double Standard in the neighborhood.
- 6- In addition there is also a variance intruding the ESHA protection codes.
- 7- When we and other neighbors were going through the plan approval process, we had been asked and encouraged to work with the neighbors to make sure that their concerns are heard and addressed in our design and to insure that there is no intrusion or violation of the neighbors rights to the view. We have been complying with that rule , but the applicant were never been required to do so , ignoring the neighbor rights to the view.
- 8- In addition, one of the critical poles defining the envelop of the view and the extent of the blockage of the view was missing. This was over looked by the City Planner and as the result was not erected. No effort was made to correct this critical matter.

Actions Taken:

- 1- We have reached out and met with the owners and assured them of our cooperation's to work together and come up with the mutual beneficial solutions.
- 2- I showed them the envelop of my building which is within the allowed set back and stops at the cliff, and showed him where our Living room and family room would be (As shown by the poles still in my property) and how their 32 ft extension over the cliff would be blocking our ocean view.
- 3- We also mentioned their missing critical pole. This pole would be an excellent visual aid to see the 32.0 ft extension of their building wall. This is a critical pole which is essential in determine the severity of the view blockage.
- 4- The owner was requested to put in the pole before the hearing of 9/1/09. He took some picture to use the photo shop technique, creating the effect of an imaginary pole. The photo shop technique will not be helpful as it would not portray the accurate picture.
- 5- As it is designed, the over building and stretch of 32 ft over the slop would severely block our view of the first floor and will TOTALLY BLOCK the view of our lower floor, where all the bedrooms are located. This would also block the coast line view of our neighbor in the back.
- 6- We discussed a possible remedy that would be mutually beneficial to all of us. This suggest only a slight modification, using the same design but flip flopping the building, as the extended 22.0 ft kitchen wall and its 10 ft balcony would be on the south side rather than on the north side, this will open up the blockage angle and will give us a partial view. But our view from the lower floor will still be completely blocked. This simple modification would also remedy the blockage of the coast line view of the neighbor in the back. But, the applicant was reluctant because their sliding glass doors in the kitchen ,opening in to the garden will not be opening toward the ocean. Despite of the fact that they get ocean view from every window of their house, but reluctant to give others a right to have any ocean view. There are many other simple actions can be taken by the owner and the architect to remedy the situation. The owner has taken No actions to remedy the situation. Because unlike the other applicants in the past, such as myself, City did not require them to work with the neighbors, applying simple modifications to the design to address the concern of the neighbors . PLEASE SEE THE DIAGRAM ATTACHED
- 7- On Behalf of the impacted neighbors, we wrote to the Planning Commission and asked to postpone the hearing until the missing pole is installed and neighbors would have a chance to work together and resolve the issues impacting their view.

Planning Commission hearing of 9/1/2009

In the hearing of 09/01/2009, The Planning Commission Chairman and Vice Chairman had visited the site and had done the extensive studies on the subject project and its impact to the neighborhood, and as such they were adamantly opposed to granting the requested multi variances which would not conform to the neighborhood. The vice Chairman asserted that his analysis of the project had concluded that;

1. The pad size cannot support the 4490 sqft house. He clearly expressed that, in the past, the City and planning commission had opposed approving the large size houses on the small pad and people were urged to cut down the size.
2. Designing a large house on the small pad requires building over the slope which would block the other neighbors view. The smaller size house would not require building over the slop as much as proposed.
3. The side yard variance and the front yard variance do not conform to the neighborhood, as it is evident by the Google map.
4. The Planning Commission and the City, had always opposed to granting the variance to build over the slop for bigger size house, especially, building over the slop that is steeper than 2 1/2 to 1. This case should not be of any exception.
5. The missing pole and the certification of the poles were the issue.
6. Variance on the ESHA codes have not been supported in the past.

The vice Chairman made a motion to; Postpone the hearing until the missing pole is in place and neighbors have a chance to work together and resolve their issues and concerns.

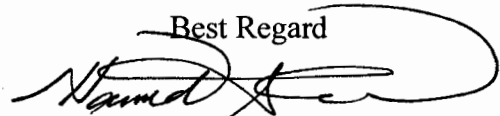
The members who opposed to the Vice Chairmen's motion and supported the approval of the project had not visited the project site, were not familiar with the project and at least one member openly expressed that the architect was her son's high school friends for years. She went on as saying, what a wonderful football player the architect was, when he used to play with her son in high school (Please see the video clip at the 1:39:20). She supported all the unreasonable requests and over ruled any reasonable opposition. Other privileges, such as more time allowed to speak in favor of the project were granted to the applicant and his architect. The five opposing neighbor's concern were ignored, and as a results, the approval of multiple variances that were never granted to other neighbors in the past were granted to this applicant. Please review the video of the hearing posted on the City web site to see how the rights of the others were violated and the Double Standards in the neighborhood and the City of Malibu created?

In closing we are requesting the followings;

- 1- We are praying that, our appeal is approved and The multi variances that were unjustly approved by The Planning Commission will be reversed and the hearing would be postponed , until all the critical poles are erected, and severity of the view blockages are assessed and neighbors have a chance to resolving the issues affecting their view .
- 2- We are requesting the Coastal Commission to urge the owner to work with the affected neighbors, solicit their input in the areas that impacts them, as other applicants were required to do so. Working with the neighbors, solicit their input and concerns and simple modifications to the plan will remedy the current grave situation.
- 3- We request that the owners and the architect to reassess the feasibility of building size of 4490 Sqft on the small pad and urge them to reduce the size. Reduce the building stretching 32 ft over the steep slope, and also reduce the 32ft wide garden on second floor. Flip flopping the building, or reduction of the size, or reducing the 32 building stretching over the slop and many other simple modifications, will all positively remedy the current grave situation. Working with the neighbors will results in various alternative solutions that will be beneficial to everyone. Please see the attached diagrams.
- 4- We pray that the same privileges given to this applicant be given to us and other applicant in the neighborhood. As we now have to redesign our lower level to be in line with this building, filling for the variance extending over the cliff in the same manner and to the same extent or more , to be in line with this building, in order that our bed rooms in the lower level would partially gain the ocean view.

We will continue our sincere cooperation's with the owner of this project. The neighbors will welcome the opportunity to work with them finding a solutions that are mutually beneficial to all of us.

Best Regard

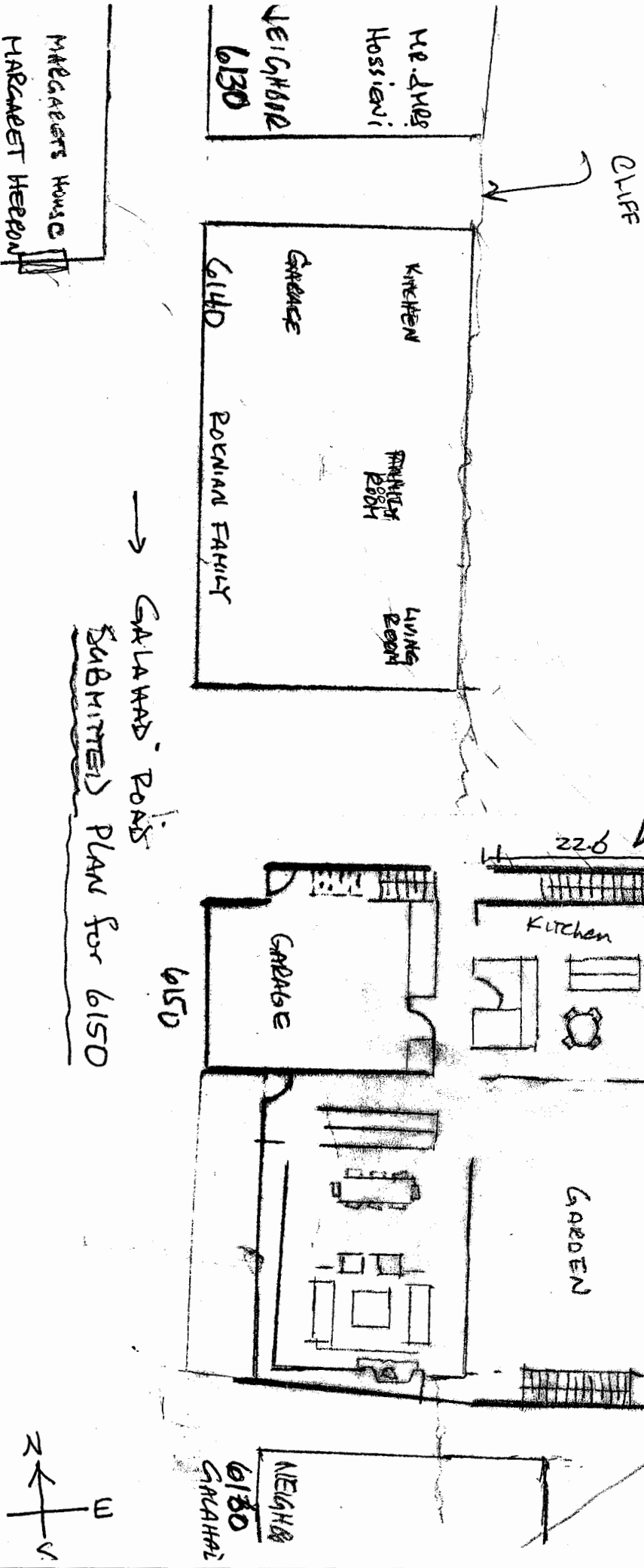


Dr. Hamid Roknian

9/29/09

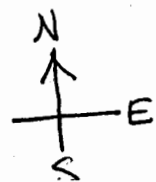
PROBLEM:

- 1- Building of 6150 have stretched 32.0' over the cliff.
 - 2- The 22.0' kitchen wall blocks the view of 6140 and the neighbor in the back.
- OTHER ISSUES WITH 6150
- 1- stretch of 32.0' over the slope of steeper than 2 1/2 TD 1
 - 2- SIDE YARD & FRONT YARD SET BACK VIOLATION
 - 3- ESHA INTENSIFIED



→ GALATHEA POOL

SUBMITTED PLAN for 6150



Ocean

ex. 6

PROPOSED:

1. MODIFY BY Flip Flopping THE PLAN. PUT KITCHEN ON THE SOUTH SIDE INSTEAD OF NORTH SIDE.
2. Meet with neighbors to address their concerns

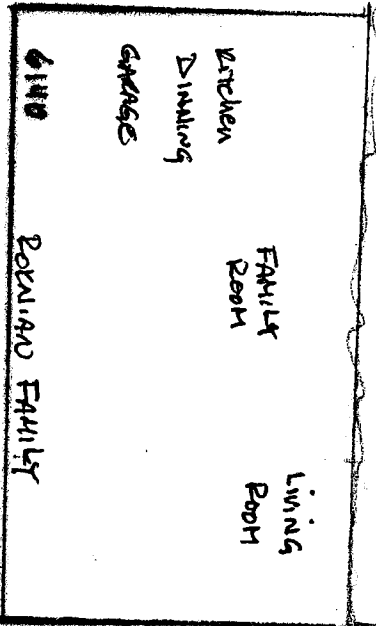
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OCEAN

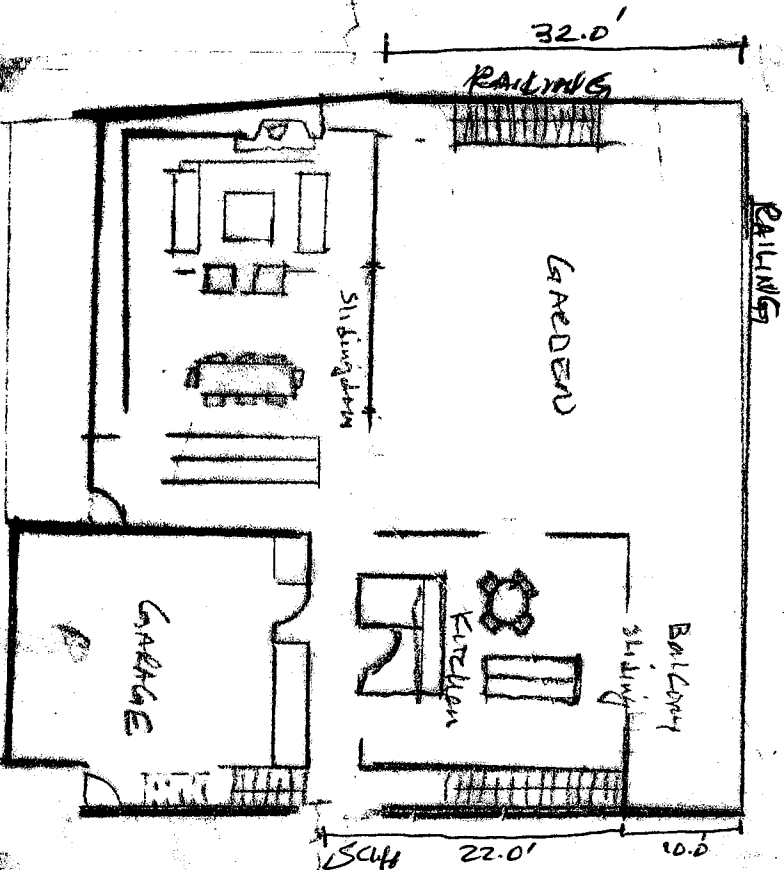
9. x 6

CLIFF

6130
NEIGHBOR



GALAXY ROAD



Proposed Modification Plan - Flip Flopping Kitchen to Other Side



MEGARET
HOUSE

WADSWORTH

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
OCT 5 2009



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: MOHAMMAD HOSSEINI & ASHRAF HOSSEINI

Mailing Address: 6130 GALAHAD RD

City: MALIBU

Zip Code: 90265

Phone: (310) 457-4029

SECTION II. Decision Being Appealed

1. Name of local/port government:

Malibu Planning Commission

2. Brief description of development being appealed:

A Large 4490 Sqft house on a very small lot, requiring unprecedented variances, all of which non conforming to the neighborhood

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

6150 Galahad Rd
Malibu, Calif. 90265

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-4-MAL-09-072

DATE FILED:

DISTRICT:

So. Central Coast

Exhibit 7

A-4-MAL-09-072

Hosseini 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:

9/1/09

7. Local government's file number (if any):

Coastal development NO. 08-020

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:

Jonathon & Sandy Selig
29206 Heather Cliff Rd.
Malibu, California, 90265-4178

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) Harold & Rozita ~~ROKNIAN~~
P.O. Box 3100

Santa Monica, Ca. 90408

310-508-5054

(2) Margarit Herron

6300 Zuma Mesa Dr.

(3) Malibu, Calif. 90265

(4) Mr. & Mrs. M. Hossini

6130 Galahad

Malibu, Ca. 90265

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

We are requesting to reverse the unjust approval of Malibu Planning Commission. The following violations have been made.

1- We never received the notice of hearing, our legal rights were ~~violated~~.

2- The multiple variances requested, are not conforming with neighbor hood.

3- Size of the ^{House} ~~park~~ is too large for the small pad. In the past, people were opposed of building houses that not supported by the pad size and they were forced to reduce the size of this house. Why is it allowed ~~now~~ on this case.

4- The variance of building on slop was unprecedented in the past. It was not granted to us not even 5.0 ~~feet~~ for balcony, but granted 32.0' feet encroachment over the slop to ^{the applic} ~~the~~. This is a double standard.

5- A critical pole was missing

6- Why ESHA codes are allowed to be violated in this case, but never been allowed to any ^{one} ~~one~~ before.

7- One of the planning commission voting members had a past acquaintance with the architect of this project. She should have abstained from voting because of her past relationship with the applicant ~~architect~~.

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

SECTION V. Certification

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

M. Hossain

Signature of Appellant(s) or Authorized Agent

Date:

10 / 11 / 09

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

CALIFORNIA COASTAL COMMISSION

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

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OCT 5 2009



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Margaret Herron Ind. & TRUSTEE
Mailing Address: 6300 Zuma Mesa DR
City: Malibu, CA Zip Code: 90265 Phone: (310) 457-5722

SECTION II. Decision Being Appealed

1. Name of local/port government:

Planning Commission, City of Malibu

2. Brief description of development being appealed:

A large non conforming home
Being built on a small pad of
land extending over a natural

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

6150 GARAHAN DRIVE
Malibu, Cal. 90265

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-4-MAL-09-078

DATE FILED:

DISTRICT:

So. Central Coast

Exhibit 8

A-4-MAL-09-072

Herron 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 1, 2009

7. Local government's file number (if any):

Coastal Dev permit # 08-020

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:

Jonathon & Sandy Selig
29206 Heathercliff Rd
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) Margaret Herron
6300 Zuma Mesa Dr
Malibu, Calif 90265

(2) Dr. Hamid and Dr. Rozita ROKNIAN
Po Box 3100
Santa Monica, Ca 90408

(4) Mr & Mrs Mo Hossinie
6130 Galahad Dr
Malibu, Ca 90265

+ Applicant and Architect

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

I believe the house at 6150 Galahad is far too large for the lot, (pad).

The variances that were allowed block my "blue ^{Designated} water" view. Part of the house (kitchen) extends over the edge of a steep cliff by 32 feet. Plans should be revised.

I do not believe the voting was fair, as a personal relationship was involved. I believe it changed the outcome of the vote, as the final tally was 3-2.

The ESHA protections were ignored.

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

SECTION V. Certification

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

Margaret Herron End & Jr.
Signature of Appellant(s) or Authorized Agent

Date: 10-1-09

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date: _____

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 09-52**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 08-020, VARIANCE NOS. 08-016, 08-017 AND 08-018, SITE PLAN REVIEW NO. 08-007 AND MINOR MODIFICATION NO. 09-010 – AN APPLICATION FOR THE CONSTRUCTION OF NEW TWO-STORY, 4,490 SQUARE FOOT SINGLE-FAMILY RESIDENCE, LANDSCAPE, HARDSCAPE, RETAINING WALLS, FENCING, GATES, AND AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, INCLUDING VARIANCES TO REDUCE THE REQUIRED FRONT YARD SETBACK, FOR CONSTRUCTION ON SLOPES IN EXCESS OF 2½ TO 1 AND TO REDUCE THE REQUIRED RIPARIAN ENVIRONMENTALLY SENSITIVE HABITAT AREA BUFFER SETBACK, A SITE PLAN REVIEW FOR CONSTRUCTION OVER 18 FEET IN HEIGHT, AND A MINOR MODIFICATION TO REDUCE THE REQUIRED SOUTHERN SIDE YARD LOCATED AT 6150 GALAHAD DRIVE IN THE RURAL RESIDENTIAL – ONE ACRE ZONING DISTRICT (SELIG)

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

Section 1. Recitals.

- A. On March 10, 2008, Coastal Development Permit (CDP) No. 08-020 was submitted to the Planning Division for processing.
- B. On February 2, 2009, story poles were placed onsite to demonstrate the height and bulk of the replacement structure.
- C. On April 2, 2009, the applicant submitted revised plans to reduce the height of the portion of the residence that was in a neighboring property's primary view.
- D. On July 30, 2009, the project was deemed complete for processing.
- E. On August 6, 2009, a Notice of Application for CDP No. 08-020 was posted on the subject property.
- F. On August 20, 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.
- G. On September 1, 2009, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and

considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Division has analyzed the proposal as described above. The Planning Division has found that this project is listed among the classes of projects that have been determined to have less than significant adverse effects on the environment and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Sections 15303(a)—New Construction. The Planning Division 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 Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), Sections 13.7.B and 13.9, the Planning Commission adopts the findings in the staff report, the findings of fact below, and approves CDP No. 08-020, Variance (VAR) Nos. 08-016, 08-017 and 08-018, Site Plan Review (SPR) No. 08-007, and Minor Modification (MM) No. 09-010.

The proposed project has been reviewed by the City Biologist, City Geologist, City Environmental Health Administrator, City Public Works Department and the LACFD. The project has been determined to be consistent with all applicable LCP codes, standards, goals and policies.

Pursuant to LIP Section 13.9, the following four findings need to be made for all Coastal Development Permits.

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

Pursuant to LIP Section 13.9, the following four findings need to be made for all CDPs.

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.

As discussed, the project has been reviewed for conformance with all relevant policies and provisions of the LCP. Based on submitted reports, visual analysis and detailed site investigation, the proposed project, as conditioned and with approval of the VARs, SPR, and MM requests, complies with the LCP.

Finding A2. If 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 not located between the first public road and the sea. The project site is located on Galahad Drive which is inland of Pacific Coast Highway. In addition, the project does not contain or offer any opportunities for public recreational opportunities. Given that the project site is not located between the first public road and the sea this finding is not applicable.

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 categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The proposed single-family residence constitutes a permitted use within the Rural Residential one acre minimum lot size (RR-1) zoning classification of the subject property. The project will not result in potentially significant impacts on the physical environment. The proposed location is the least environmentally damaging alternative because the project proposes to utilize an existing foundation and substantially limit landform alteration, Environmentally Sensitive Habitat Area (ESHA) disturbance, or the need for additional discretionary requests to permit the development.

The following alternatives were considered:

No Project – The no project alternative would avoid any change in the project site; however, the project site is zoned RR-1 and was previously graded in anticipation of future residential development. A no project alternative would not accomplish the project objectives and is not a feasible alternative.

Alternate Location – An alternate location could be proposed that complies with front yard and side yard setbacks; however, it is not feasible to develop this lot without a variance. Given the distance between the front property line and the ESHA, it is not possible to develop the site without encroaching into the required ESHA buffer. It is not anticipated that another location would offer significant environmental advantages, since the proposed design avoids encroachment into the required ESHA buffer to the maximum extent feasible.

Proposed Project - The proposed location is sited on a previously graded building pad that was permitted under California Coastal Commission (CCC) CDP No. 4-96-095. By utilizing a previously approved building pad, the applicant can minimize landform alteration and site the majority of the proposed residence in the intended area approved by CCC CDP No. 4-96-095. The project meets the LCP's residential development policies with the inclusion of the VARs, SPR, and MM. The project will not result in potentially significant impacts because: 1) feasible measures and / or alternatives have been incorporated to substantially lessen any potentially significant adverse effects of the development on the environment; and 2) there are no further feasible measures or alternatives that would substantially lessen any potentially significant

adverse impacts of the development on the environment.

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.

The project site contains riparian ESHA in the rear portion of the site. The proposed residence will not impact the riparian ESHA as the proposed project will be constructed within the previously approved building pad and disturbed area. However, the fuel modification zone will extend into the ESHA buffer. Pursuant to LIP Section 4.4.4(D), construction of a new structure within the existing building pad area where no additional fuel modification is required is exempt from requiring a biological study and review by the Environmental Review Board (ERB). The proposed structure is located more than 192 feet from the mapped riparian ESHA. As such, no new biological impacts to the adjacent riparian ESHA are anticipated. The City Biologist has determined that the proposed project consists of a new structure within the existing building pad area; and therefore, is exempt from review by the ERB.

B. Variance for Reduction of the Front Yard Setback (LIP Section 13.26.5)

A variance is requested for a 56.2 percent reduction in the required front yard setback from 65 feet to 28.5 feet. As stated previously, without approval of a variance to reduce the required front yard setback, the proposed residence would not be able to utilize the existing graded pad and would further encroach into the onsite riparian ESHA buffer. The variance allows the residence and its associated fuel modification zones to be sited away from the ESHA buffer to the maximum extent feasible.

Pursuant to LIP Section 13.26.5, the Planning Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes 10 findings of fact. Based on the foregoing evidence contained within the record, staff recommends the approval of VAR No. 08-016.

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.

Special circumstances apply to the project site. In order to minimize environmental impacts, new development within the existing building envelope is constrained to a graded building pad which is located in the required front yard setback. As discussed previously, the siting of the proposed residence is limited due to a previously-engineered slope and required ESHA setbacks. The proposed residence will share a similar setback with neighboring properties located on the east side of Galahad Drive. Strict application of the zoning ordinance would deprive the project site to be developed similar to adjacent properties, including these also established under CCC CDP 4-96-095 which have since been developed.

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 project will meet all applicable building and engineering safety codes and will not be detrimental to the public's interest, safety, health or welfare. As discussed previously, the granting of the variance will allow for the development of a new single-family residence on a previously graded building pad. The proposed project has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and LACFD. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies. The project will not be detrimental to other properties or improvements in the same vicinity and zone.

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

Pursuant to LIP Section 4.6.4(B), modifications to required development standards that are not related to ESHA protection shall be permitted where necessary to avoid or minimize impacts to ESHA. Granting of the variance will not constitute a special privilege to the applicant or property owner because the granting of this variance will allow for development that protects riparian ESHA to the maximum extent feasible. The proposed project is the least environmentally damaging alternative because it places the majority of the development on a previously approved graded building pad. Additionally, neighboring development along the east side of Galahad Drive is located near the street.

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 is not contrary to or in conflict with the general purposes or intent of the zoning provisions, nor contrary to or in conflict with the goals, objectives and policies of the LCP. As discussed in Finding B3, granting the requested variance will allow the subject property to be developed in a manner that maintains ESHA protection standards pursuant to the LIP.

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; however, the proposed variance does not propose the reduction of any ESHA protection standards or result in impacts to ESHA or ESHA buffer. The requested variance is to reduce the front yard setback and place the proposed residence as far as possible from the onsite ESHA and site the majority of the development to the previously graded building pad.

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 a single-family residence and associated development which are permitted uses in the Rural Residential zone.

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

As previously discussed in Finding B1, the proposed development has been located on a previously approved graded pad and oriented away from the onsite ESHA to the maximum extent feasible. In order to maintain ESHA protection standards, any development on the site would need to be sited as close as possible to the front yard property line and would still likely require a variance. The subject site is physically suitable for the proposed variance in that there are no alternate building sites or configurations which would be less environmentally damaging or eliminate the need for the variance request. Furthermore, the variance would allow for a front yard setback consistent with other development along the eastside of Galahad Drive.

In addition, the subject site has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and LACFD as being 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 project will comply with all building code requirements and will incorporate all recommendations from applicable City and County 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 the Reduction in the Required Riparian Buffer (LIP Section 13.26.5)

LIP Section 4.6.1(A) prohibits development within 100 feet of the outermost edge of a jurisdictional drainage. The existing building pad is located approximately 192 feet from the

edge of the jurisdictional drainage. However, the required fuel modification zones will be within the required ESHA buffer. Based on the biological assessment by Steven G. Nelson on January 6, 2007, no project alternatives exist that would avoid any additional impacts to onsite ESHA.

Pursuant to LIP Section 13.26.5, the Planning Commission may approve and / or modify an application for a variance in whole or in part, with or without conditions, provided that it makes ten (10) findings of fact. Based on the evidence in the record, the findings of fact for VAR No. 08-017 are made as follows.

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.

As stated previously in Finding B1, the subject site has a graded building pad that was previously approved by a CDP that was issued by the California Coastal Commission (CCC). To utilize the existing building pad, the project cannot be in any other location that would avoid encroachment into the onsite riparian ESHA buffer due to the required fuel modification zones. Therefore, strict application of the zoning ordinance would deprive the owner of developing a single-family residence on a legally established graded pad designated for such use. No feasible alternative exists to further avoid encroachment into the required riparian ESHA buffer and the project, as proposed, avoids impacts to ESHA to the maximum extent feasible. Strict application of the zoning ordinance would not permit the construction of the residence; and therefore, deprives the property owner of the ability to use their property as other owners have been able to in the vicinity.

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 project will meet all applicable building and engineering safety codes and will not be detrimental to other adjacent properties or improvements. By granting the variance, the ESHA buffer will be reduced and the majority of the proposed residence will be located within the existing building pad.

The proposed project has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and the LACFD. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies and will not be detrimental to the public's interest, safety, health or welfare.

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

As discussed in Finding A3, the proposed project is the least environmentally damaging alternative because it places the majority of development within a previously approved graded building pad. Surrounding properties on the east side of Galahad Drive are similarly developed.

Therefore, granting the variance does not constitute a special privilege to the property owner.

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 is not contrary to or in conflict with the general purposes or intent of the zoning provisions, nor contrary to or in conflict with the goals, objectives and policies of the LCP. As discussed in Finding B3, granting the requested variance will allow the subject property to be developed in a manner that maintains ESHA protection standards pursuant to the LIP.

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 riparian ESHA and the proposed residence will be located within a previously approved graded pad. As stated previously, CCC CDP No. 4-96-095 permitted the establishment of a building pad on this property for a single-family residence. The applicant intends to place the proposed residence within the existing development envelope. Project alternatives are discussed under Finding A3 and the proposed project minimizes encroachment into the onsite ESHA to the maximum extent feasible. Given this, the proposed location would have the least amount of impacts to onsite ESHA and would take advantage of a previously disturbed development envelope intended for such use.

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 a single-family residence and associated development which are permitted uses in the Rural Residential zone.

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

As previously discussed in Finding C1, the residence is sited within a previously approved building pad to avoid encroachment into the required riparian ESHA buffer. Any other project alternative would still result in a structure's required fuel modification zone encroaching into the required ESHA buffer. The subject site is physically suitable for the proposed variance in that

there are no alternate building sites or configurations, which would be less environmentally damaging or eliminate the need for the variance. Furthermore, the variance would allow for development consistent with other development along the east side of Galahad Drive.

In addition, the subject site has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and LACFD as being 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 project will comply with all building code requirements and will incorporate all recommendations from applicable City and County 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 to Allow for Construction on Slopes Steeper than 2.5 to 1 (LIP – Section 13.26.5)

LIP Section 3.6(J) prohibits the construction of structures on slopes steeper than 3 to 1. As discussed throughout this resolution, the residence will be built on a previously approved graded building pad. A portion of this building pad contains previously engineered fill slopes steeper than 3 to 1. The applicant's design attempts to avoid encroachment onto these slopes to the maximum extent feasible. It is not possible to completely avoid encroachment onto this slope given the relatively limited size of the building pad taking into consideration the front yard setback and required onsite parking standards contained in the LIP.

Pursuant to LIP Section 13.26.5, the Planning Commission may approve and / or modify an application for a variance in whole or in part, with or without conditions, provided that it makes ten (10) findings of fact. Based on the evidence in the record, the findings of fact for VAR No. 08-018 are made as follows.

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.

As stated previously in Finding B1, the subject site has a graded building pad that was previously approved by a CCC-issued CDP. To utilize the existing building pad, the project cannot be in any other location that would avoid encroachment into the onsite riparian ESHA buffer due to the required fuel modification zones. No feasible alternative exists to further avoid encroachment onto slopes steeper than 2½ to 1 while still complying with the LIP's onsite

parking requirements. Therefore, strict application of the zoning ordinance would deprive the owner of developing a single-family residence on a legally established graded pad designated for such use.

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. By granting the variance, a portion of the proposed residence will be built on slopes steeper than 2½ to 1; however, all development will take place within the previously approved building envelope.

The proposed project has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and the LACFD. The project, as proposed or conditioned, was found to be consistent with applicable City goals and policies and will not be detrimental to the public's interest, safety, health or welfare.

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

As discussed in Finding A3, the proposed project is the least environmentally damaging alternative because it places the majority of development within a previously approved graded building pad. Surrounding properties on the east side of Galahad Drive are similarly developed. Therefore, 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 is not contrary to or in conflict with the general purposes or intent of the zoning provisions, nor contrary to or in conflict with the goals, objectives and policies of the LCP. As discussed previously, granting the requested variance will allow the subject property to be developed in a manner that is consistent with its zoning.

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 subject parcel contains ESHA; however, the proposed variance does not propose the reduction of any ESHA protection standards or result in impacts to ESHA or ESHA buffer. The requested variance is to allow for development on a previously engineered-fill slope that is steeper than 2½ to 1. Therefore, this finding is not applicable.

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 a single-family residence and associated development which are permitted uses in the Rural Residential zone.

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

As previously discussed in Finding C1, the residence will be sited within a previously approved building area to avoid encroachment onto to a 2½ to 1 slope to the maximum extent feasible. The subject site is physically suitable for the proposed variance in that there are no alternate building sites or configurations which would be less environmentally damaging or eliminate the need for the variance. Furthermore, the variance would allow for development consistent with other development along the east side of Galahad Drive.

In addition, the subject site has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and LACFD as being physically suitable for the proposed variance.

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 project will comply with all building code requirements and will incorporate all recommendations from applicable City and County 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. Site Plan Review for Construction in Excess of 18 Feet (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make six findings in the consideration and approval of a site plan review for construction in excess of the City's base 18 feet in height, up to 24 feet for a flat roof and 28 feet for a pitched roof. The applicant proposes a pitched roof with a

maximum height of 28 feet. Based on the evidence contained within the record and pursuant to LIP Section 13.27, the six required findings for SPR No. 08-007 are made as follows.

Finding E1. The project is consistent with policies and provisions of the Malibu LCP.

As discussed in Finding A1, the project is consistent with all relevant policies and provisions of the LCP.

Finding E2. The project does not adversely affect neighborhood character.

The site is zoned for Rural Residential use. Review of aerial photographs provided by CityGIS software indicates the surrounding residential development consists of one and two-story single-family residences and accessory uses. The residences located on the east side of Galahad are similarly developed.

Finding E3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed residence is located along Galahad Drive, which is not a scenic road pursuant to LIP Chapter 6. The nearest scenic road to the property is Kanan Dume Road which is located approximately 900 feet to the west of the site. Furthermore, the project site is over 2,000 feet from the Coastal Slope Trail alignment. Staff has visited the project site as well as surrounding locations and determined that the site is not visible from Kanan Dume Road. In addition, given the project's distance from the Coastal Slope Trail, it is not anticipated to impact views from the trail. The project, as proposed, is not expected to impact public views.

Nonetheless, conditions of approval are included in this resolution that require the colors and materials used in the development to blend with the natural surroundings as well as requiring non-glare windows. Based on site visits, inspections and review of the visual analysis in the record, staff has determined the project, as conditioned, will have less than significant adverse visual impacts to public views and provides the maximum feasible protection to significant public views.

Finding E4. The proposed project complies with all applicable requirements of state and local law.

The project, with the inclusion of the VARs, SPR and MM, complies with all requirements of state and local law. Construction of the proposed project will comply with all building code requirements and will incorporate all recommendations from applicable City agencies.

Finding E5. The project is consistent with the City's general plan and local coastal program.

The project is consistent with the General Plan and the LCP's Rural Residential designation for the site as discussed in the Land Use Element. As discussed, the project is consistent with the General Plan and LCP.

Finding E6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

Story poles were first placed on the property to demonstrate the project's potential for aesthetic impacts to the area relative to neighboring properties. Staff visited the site and inspected the story poles during February 2009. After the installation of the story poles, staff was contacted by the resident located at 6300 Zuma Mesa Road because of primary view concerns. Staff evaluated the neighbor's primary view and determined that a portion of the proposed structure would impact the neighboring property's primary view. The applicant has redesigned the proposed residence so that the portion that impacted the neighboring primary view is limited to a maximum of 18 feet in height. The portion above 18 feet in height is located down slope and does not protrude above the 18 foot high roof ridge on the street side of the residence. Furthermore, the applicant has adjusted the poles to reflect the project changes. Given the applicant's redesign, the project avoids adverse impacts to private views of neighboring properties.

The proposed residence, as reflected by the story poles, is in line with other development on the east side of Galahad. Based on staff's evaluation and onsite analysis, it was determined that the proposed structure will not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys, or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

F. Minor Modification (LIP Section 13.27) – Reduction of Side Yard Setback

The LCP requires that the City make three findings in the consideration and approval of a minor modification to reduce the required side yard setback by 20 percent. The applicant has requested a MM to reduce the required side yard setback on the south side of the property from 14.62 feet to 11.7 feet. The MM is to allow development of the site, while avoiding encroachment into the ESHA that exists on the rear portion of the parcel.

Based on the evidence in the record, the findings of fact for MM No. 09-010 are made as follows.

Finding F1. That the project is consistent with policies and provisions of the Malibu LCP.

As discussed in Finding A1, the project has been reviewed and analyzed for conformance with the LCP. The project is consistent with the policies and provisions of the LCP.

Finding F2. That the project does not adversely affect neighborhood character.

Properties located on the east side of Galahad drive are dominated by a slope. As discussed, the site of construction is constrained and limited to a previously graded building pad. A reduction of the required side yard setback is not expected to adversely affect neighborhood character as this setback would be similar to neighboring properties. The property located to the south and

directly adjacent to this side yard is approximately 10 feet off the property line. With the inclusion of the minor modification, the subject parcel can be developed in a way that promotes development consistent with the neighborhood and away from the onsite ESHA.

Finding F3. The proposed project complies with all applicable requirements of state and local law.

The proposed project will comply with all applicable requirements of state and local law and is conditioned to comply with any relevant approvals and permits from City and County agencies.

G. Environmentally Sensitive Habitat Area Overlay (LIP Chapter 4)

As discussed previously, riparian ESHA exists onsite. However, the proposed structure is sited on top of a previously approved building pad. Based on the Biological Assessment prepared by Steven G Nelson, and review by the City Biologist, the project is not expected to impact sensitive resources or result in significant loss of vegetation or wildlife. Pursuant to LIP Section 4.7.6(C), the supplemental ESHA findings can be made as follows.

Finding G1. Application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel.

The site contains riparian ESHA. As discussed in Finding A3, given the development restrictions that apply to ESHA, the ESHA overlay ordinance would not permit the construction of a residence on this parcel.

Finding G2. The project is consistent with all provisions of the certified LCP with the exception of the ESHA overlay ordinance and it complies with the provisions of Section 4.7 of the Malibu LIP.

As stated previously, the applicant proposes to develop a single-family residence on a previously graded building pad. Based on the submitted Biological Assessment and review by the City Biologist, the proposed development with the inclusion of the VARs and MM complies with the provisions of LIP Section 4.7. Furthermore, the proposed single-family residence has been sited away from the onsite ESHA to the maximum extent feasible.

H. 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 has at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, 4.5 feet from the ground. The development area does not contain protected native trees that would be affected by this project. Accordingly, the findings in the Native Tree Protection Chapter are not applicable.

I. Scenic, Visual and Hillside Resource Protection Chapter (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, provide views to or is visible from any scenic area, scenic road or public viewing area. Story poles were placed on the site on February 2, 2009, and a substantial number of photos of the site with the story poles in place are included in the record. Based on site visits and review of the visual analysis in the record, staff has determined that the subject site is not visible from scenic roads in the nearby vicinity. The property is over 2,000 feet away from the Coastal Slope Trail Alignment and approximately 900 feet away from Kanan Dume Road. Therefore, the findings below were made in accordance with the Scenic, Visual and Hillside Resource Protection Chapter.

Finding I1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

The project site is located on an approved graded building pad that is not visible from scenic roads. In addition, the nearest trail alignment is over 2,000 feet away. The project, as proposed, will not have significant adverse scenic or visual impacts due to the project design, location on the site and the varying topography that blocks it from the view of scenic areas.

Finding I2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As discussed in Finding I1, the project, as proposed, will not have significant adverse scenic or visual impacts due to the location of the project site. The project will be conditioned to incorporate colors and exterior materials that are compatible with the surrounding environment and a lighting deed restriction shall be recorded prior to final Planning approval.

Finding I3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

The project, as proposed, consists of a single-family residence within a previously approved and developed building envelope. As discussed in Finding A3, the proposed development is the least environmentally damaging alternative.

Finding I4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

The project, as proposed and conditioned, is the most feasible design to avoid and / or substantially lessen adverse significant impacts on scenic or visual resources in that the proposed development is sited among developed properties and within a previously approved development envelope. Furthermore, as stated throughout this section, all scenic resources are located a substantial distance away from the subject parcel.

Finding I5. 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 location does contain riparian ESHA. The proposed project will be located more than 100 feet from the mapped ESHA and no alternative locations exist that may eliminate or minimize impacts to ESHA. The proposed project has already been sited to minimize impacts to onsite riparian ESHA

J. Transfer of Development Credit (LIP Chapter 7)

Pursuant to LIP Section 7.2, the requirement for the transfer of development credit only applies to land division and / or new multi-family development in specified zoning districts. The proposed CDP does not involve land division or multi-family development. Therefore, the findings set forth in LIP Chapter 7 do not apply.

K. 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 hazards must be included in support of all approvals, denials or conditional approvals of development located in or near an area subject to these hazards. The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7) by the City Geologist and City Public Works Department, as well as the LACFD, and has been reviewed and approved for conformance with all relevant policies and regulations of the LCP and M.M.C. Pursuant to LIP Section 9.2(B), all development requiring a CDP on any parcel of land that is located on or near any area subject to hazards cited above shall be governed by the policies, standards and provisions of LIP Chapter 9. Therefore, the findings set forth in LIP Chapter 9 are made as follows.

Finding K1. 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 for potential hazards included review of the submitted geotechnical reports, City of Malibu General Plan, the CityGIS and topographic maps. Based off of those reviews the building pad is not located in an area that has geologic or flood hazards.

The entire city limits of Malibu are located in a high fire hazard area. The City is served by the LACFD, as well as the California Department of Forestry, if needed. In the event of major fires, the County has "mutual aid agreements" with cities and counties throughout the state so that additional personnel and fire-fighting equipment can augment the LACFD. As such, the proposed project as conditioned will not increase the instability of the site or structural integrity involving wild fire hazards.

Nonetheless, a condition of approval has been included in this resolution that 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.

As such, the proposed project will not increase the instability of the site or structural integrity from geologic, flood, fire or other hazards. The project has been reviewed by the City Geologist, City Public Works Department and the LACFD, and has been determined to be consistent with all relevant policies and regulations regarding potential hazards.

Finding K2. 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.

The project has been approved by the City Geologist, City Public Works Department and the LACFD, and the various departments conditioned the project to ensure that it will not have significant adverse impacts on site stability or structural integrity.

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

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

Finding K4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

The proposed project will be placed on a previously graded pad and there are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

Finding K5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As discussed in Finding A3, the proposed development is the least environmentally damaging alternative and no adverse impacts to sensitive resource protection policies are anticipated.

L. Shoreline and Bluff Development (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the proposed project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not located on a shoreline or bluff; therefore, the findings from LIP Section 10.3 are not applicable.

M. Public Access (LIP Chapter 12)

The parcel is located along Galahad Drive. Given the location of the proposed development, there are no opportunities for lateral or vertical access to the beach. Furthermore, there is no access to bluff-tops or bluff-top viewing areas and no recreational access. According to the City's 2004 Trails Master Plan, the Coastal Slope Trail alignment is located over 2,000 feet from the subject parcel. Accordingly, there is no opportunity for trail access on the subject parcel. Based on these factors, the project conforms to LIP Chapter 12 and the findings for lateral, vertical, bluff-top, recreational access and trails do not apply.

N. Land Division (LIP Chapter 15)

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

O. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design, and performance requirements. This project proposes to install 3,436 gallon MicroSeptec ES-12 unit with Ultra Violet disinfection. The proposed AOWTS has been reviewed by the Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. The City Environmental Health Administrator found that the subject system meets all applicable requirements and has adequate capacity to support the proposed project.

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 08-020, Variance Nos. 08-016, 08-017, and 08-018, Site Plan Review No. 08-007 and Minor Modification No. 09-010.

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the project described herein. The scope of work approved includes:
 - a. Construction of new, 28 foot tall, two story, 4,490 square foot single family residence;
 - b. AOWTS;

- c. Hardscape (4,008 square feet of impermeable surface coverage);
- d. Fences;
- e. Gates;
- f. Landscaping; and
- g. Retaining walls.

Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Division, dated, April 2, 2009. In the event the project plans conflict with any condition of approval, the condition shall take precedence.

- 3. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 days of this decision and prior to issuance of any development permits.

- ☐ 4. The applicant shall submit three (3) complete sets of plans to the Planning Division for consistency review and approval prior to the issuance of any buildings or development permit.

- ☐ 5. This resolution, signed Affidavit and all referral sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental and Building Safety Division for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).

- 6. The coastal development permit shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension of 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.

- 7. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.

- 8. All structures shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Geologist, City Environmental Health Administrator, City Biologist, City Public Works Department, Los Angeles County Water District No. 29 and the Los Angeles County Fire Department, as applicable. Notwithstanding this review, all required permits shall be secured.

- 9. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.

10. Pursuant to LIP Section 13.20, development pursuant to an approved coastal development permit shall not commence until the coastal development permit is effective. The coastal development permit is not effective until all appeal, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.

Cultural Resources

11. In the event that 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. Thereafter, the procedures contained in LIP Chapter 11 and M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
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.

Geology

13. 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, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
14. Final plans approved by the City Geologist shall be in substantial conformance with the approved coastal development permit relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment of the coastal development permit or a new coastal development permit
15. Geology and Geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for the project. The Developers Consulting Engineer shall sign the final plans prior to the issuance of permits.

Onsite Wastewater Treatment System

16. Prior to the issuance of a building permit the applicant shall demonstrate, to the satisfaction of the Building Official, compliance with the City of Malibu's Onsite Wastewater Treatment regulations including provisions of LCP Section 18.9 related to

continued operation, maintenance and monitoring of onsite facilities.

17. Final plans shall not include any structures in the drainfield area (the gate shown on the preliminary Grading Plans shall be relocated).
- ☐ 18. Prior to final Environmental Health approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code and the LCP, including necessary construction details, the proposed drainage plan for the developed property and the proposed landscape plan for the developed property. The AOWTS plot plan shall show essential features of the AOWTS and must fit onto an 11 inch by 17 inch sheet leaving a five inch margin clear to provide space for a City applied legend. If the scale of the plans is such that more space is needed to clearly show construction details and/or all necessary setbacks, larger sheets may also be provided (up to a maximum size of 18 inches by 22 inches).
- ☐ 19. A final design and system specifications shall be submitted as to all components (i.e. alarm system, pumps, timers, flow equalization devices, backflow devices, etc.) proposed for use in the construction of the proposed AOWTS. For all AOWTS, final design drawings and calculations must be signed by a California registered civil engineer, a registered environmental health specialist or a professional geologist who is responsible for the design. The final AOWTS design drawings shall be submitted to the City Environmental Health Administrator with the designer's wet signature, professional registration number and stamp (if applicable).
20. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
21. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
22. An operations and maintenance manual specified by the AOWTS designer shall be submitted to the City Environmental Health Administrator. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed AOWTS.
- ☐ 23. Prior to final Environmental Health approval, a maintenance contract executed between the owner of the subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed AOWTS after construction shall be submitted. Please note only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.
- ☐ 24. Prior to final Environmental Health approval, a covenant which runs with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive, notice to any future purchaser for value that the AOWTS serving subject property is an alternative method of onsite wastewater disposal

pursuant to the City of Malibu Uniform Plumbing Code, Appendix K, Section 10). Said covenant shall be provided by the City of Malibu Environmental Health Administrator and shall be submitted to the City of Malibu with proof of recordation with the Los Angeles County Recorder.

25. The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator.
26. The City Biologist's final approval shall be submitted to the City Environmental Health Administrator. The City Biologist shall review the AOWTS design to determine any impact on Environmentally Sensitive Habitat Area if applicable.

Grading / Drainage / Hydrology

27. The non-exempt grading for the project shall not exceed a total of 1,000 cubic yards, cut and fill.
- ☐ 28. The Total Grading Yardage Verification Certificate shall be copied onto the coversheet of the Grading Plan submitted for Building Plan Check. No alternative formats or substitute may be accepted.
- ☐ 29. A Grading and Drainage Plan shall be approved, and submitted to the Public Works Department, containing the following information prior to the issuance of grading permits for the project:
 - a. Public Works Department general notes;
 - b. The existing and proposed square footage of impervious coverage on the property shall be shown on the grading plan (including separate areas for buildings, driveways, walkways, parking, tennis courts and pool decks);
 - c. The limits of land to be disturbed during project development shall be delineated on the Grading Plan and a total area shall be shown on the plan. Areas disturbed by grading equipment beyond the limits of grading, areas disturbed for the installation of the septic system, and areas disturbed for the installation of the detention system shall be included within the area delineated;
 - d. The grading limits shall include the temporary cuts made for retaining walls, buttresses and over excavations for fill slopes; and
 - e. Private storm drain systems shall be shown on the Grading Plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with the Grading Plan; and
 - f. Public storm drain modifications shown on the Grading Plan shall be approved by the Public Works Department prior to the issuance of the Grading Permit.
- ☐ 30. A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the Public Works Department prior to the issuance of grading permits if grading or construction activity is anticipated to occur during the rainy season. The following elements shall be included in this plan:

- a. Locations where concentrated runoff will occur;
- b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures;
- c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing; and
- d. Stabilized construction entrance and a monitoring program for the sweeping of material tracked offsite.



31. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review and approval by the Public Works Department prior to issuance of building permits. This plan shall include:

- a. Dust Control Plan for the management of fugitive dust during extended periods without rain;
- b. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
- c. Designated areas for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
- d. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste.

32. Storm drainage improvements are required to mitigate increased runoff generated by property development. The applicant shall have the choice of one method specified within LIP Section 17.4.2(B)(2)

33. Earthmoving during the rainy season (extending from November 1st to March 31st) shall be prohibited for development that includes grading on slopes greater than 4 to 1. Approved grading operations shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1st, unless the Planning Manager or Deputy Building Official determines that completion of grading would be more protective of resources.

34. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.

35. Exported soil from a site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.

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

- ☐ 37. A Water Quality Management Plan (WQMP) is required for this project. This document is also commonly known as a Standard Urban Stormwater Management Plan (SUSMP). The WQMP shall be supported by a hydrology and hydraulic study that identifies all areas contributory to the property and an analysis of the predevelopment and post development drainage of the site. The following elements shall be included within the WQMP:
- a. Site Design Best Management Practices;
 - b. Source Control BMP;
 - c. Treatment Control BMP;
 - d. Drainage improvements;
 - e. Methods for on-site percolation, site re-vegetation and an analysis for off-site project impacts;
 - f. Measures to treat and infiltrate runoff from impervious areas;
 - g. A plan for the maintenance and monitoring of the proposed BMPs for the expected life of the structure;
 - h. A copy of the WQMP shall be filed against the property to provide constructive notice to future property owners of their obligation to maintain water quality measures installed during construction prior to the issuance of Grading or Building permits; and
 - i. The WQMP (SUSMP) shall be submitted to the Building and Safety Public Counter and the fee applicable at the time of submittal for the review of the WQMP shall be paid prior to the start of technical review. Once the plan is approved and stamped by the Public Works Department, the original signed and notarized document shall be recorded with the County Recorder.

Construction / Framing

38. 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 federal, City-designated holidays.
39. 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.
40. All new development, including construction, grading, and landscaping shall be designed to incorporate drainage and erosion control measures prepared by a licensed engineer that incorporate structural and non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in LIP Chapter 17, including:
- a. Construction shall be phased to the extent feasible and practical to limit the

amount of disturbed areas present at a given time;

- b. Grading activities shall be planned during the southern California dry season (April through October);
- c. During construction, contractors shall be required to utilize sandbags and berms to control runoff during on-site watering and periods of rain in order to minimize surface water contamination; and
- d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within project sites.

- ☐ 41. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the finished ground level elevation and the highest roof member elevation. Said document shall be submitted prior to for verification prior to building inspector sign off on framing and commencement of further construction activities. The Planning Division shall sign off stating that said document has been received and verified.
42. The covered deck on the northeast portion of the structure shall not have a roof that extends beyond two feet from the edge of the habitable space of the structure. In addition, no awnings, trellises, etc., shall be allowed over this deck area that would block neighboring views.

Colors and Materials

43. New development in scenic areas visible from scenic roads or public viewing areas shall incorporate colors and exterior materials that are compatible with the surrounding landscape.
- a. Colors shall be compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
44. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. The color shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.
45. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color and material of all retaining walls shall be reviewed and approved by the Planning Manager and clearly indicated on all grading, improvement and/or building plans.

Lighting

46. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
- a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height that are directed downward, and use bulbs that do not exceed 60 watts or the equivalent;
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 60 watts or the equivalent;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 60 watts or the equivalent;
 - d. Lights at entrances in accordance with Building Codes shall be permitted provided that such lighting does not exceed 60 watts or the equivalent;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited; and
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.
47. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject properties shall not produce an illumination level greater than one foot candle.
48. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas. Direct lighting of the bluff and beach is prohibited.

Biology/Landscaping

49. Invasive plant species, as determined by the City of Malibu, are prohibited.
50. Vegetation shall be situated on the property so as not to significantly obstruct the primary view from private property at any given time (given consideration of its future growth).
51. Any landscaping within the view corridor shall include only low-growing species, not to exceed 6 feet maximum in height, given consideration to future growth, and not to block bluewater views.
52. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.

53. The landscape plan has been conditioned to protect natural resources in accordance with the Local Coastal Program. All areas shall be planted and maintained as described in the final approved landscape plan. Failure to comply with the landscape conditions is a violation of the conditions of approval for this project.
54. Grading shall be scheduled only during the dry season from April 1st – October 31st. If it becomes necessary to conduct grading activities from November 1st – March 31st, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
55. Necessary boundary fencing of any single area exceeding one half acre shall be of an open rail-type design with a wooden rail at the top (instead of wire), be less than 40 inches high, and have a space greater than 14 inches between the ground and the bottom post or wire. A split rail design that blends with the natural environment is preferred. In no case shall fencing be allowed within or across the on-site drainage course.

Fuel Modification

- ☐ 56. The project requires Los Angeles County Fire Department approval of a Final Fuel Modification Plan prior to the issuance of final building permits.

Fencing and Walls

57. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed six feet in height or 12 feet in height for a combination of two or more walls.

Prior to Occupancy

- ☐ 58. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report. This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.
59. Prior to the issuance of Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
- ☐ 60. The applicant shall request a final planning inspection prior to final inspection by the City of Malibu Environmental and Building Safety Division. A Certificate of Occupancy shall not be issued until the Planning Division has determined that the project complies with this coastal development permit. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Manager, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.

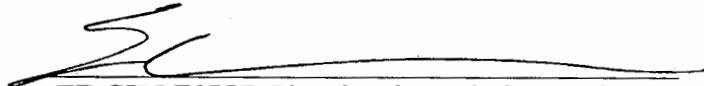
Fixed Conditions

- ☐ 61. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to erosion, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.
- ☐ 62. 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.
- ☐ 63. Prior to final planning approval, the applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in Condition No. 46. The property owner shall provide a copy of the recorded document to Planning Division staff prior to final planning approval.
- 64. This coastal development permit runs with the land and binds all future owners of the property.
- 65. 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.


Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 1st day of September 2009.


ED GILLESPIE, Planning Commission Chair

ATTEST:


JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms may be found online at www.ci.malibu.ca.us, in person at City Hall or by calling (310) 456-2489, extension 245 or extension 256.

COASTAL COMMISSION APPEAL - An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov 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.

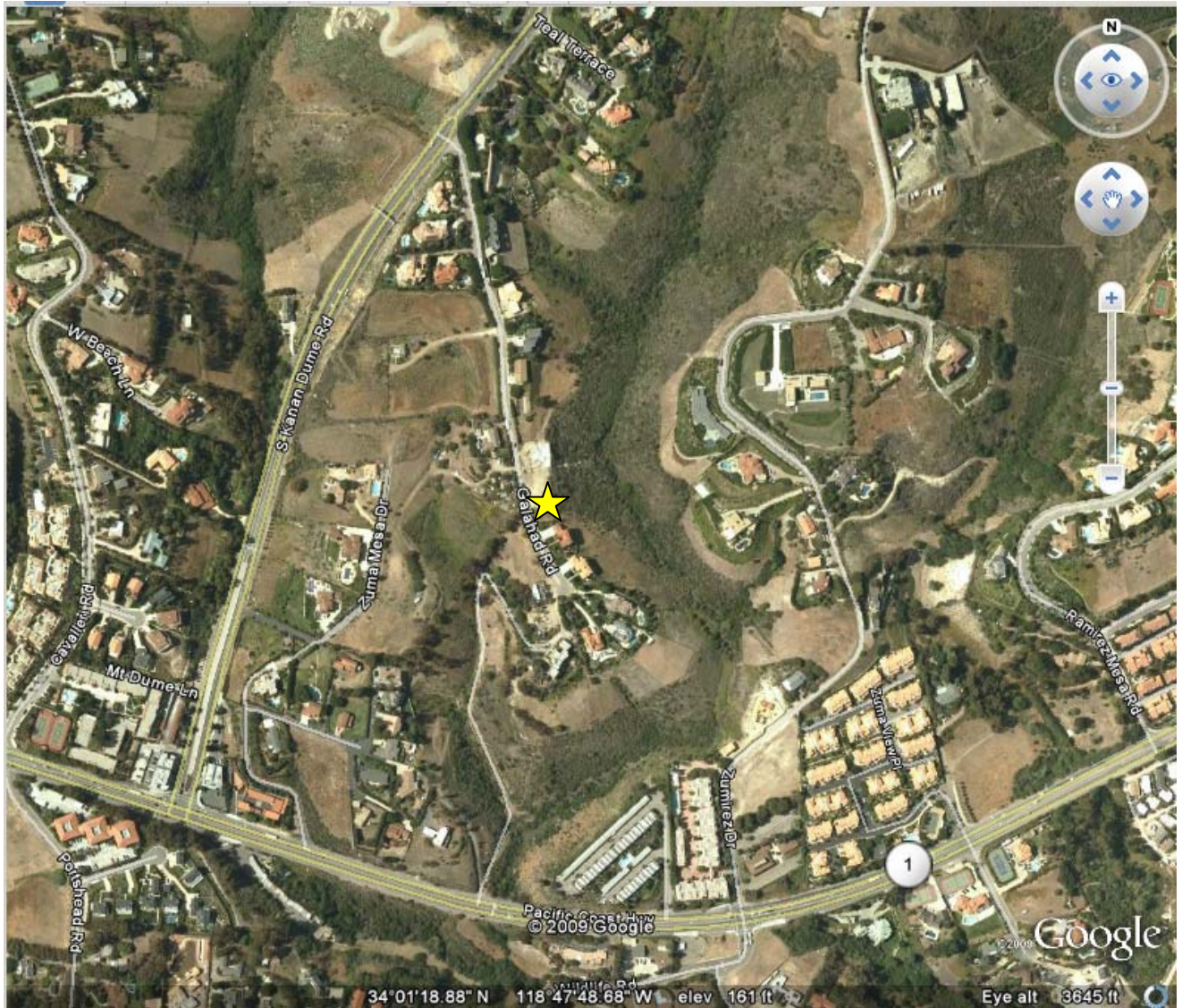


Exhibit 10
A-4-MAL-09-072 (Selig)
Aerial View