

CALIFORNIA COASTAL COMMISSION

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



Item TH 18a

DATE: August 10, 2010

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item 18a, Thursday August 12, 2010, Appeal No. A-4-MAL-10-053

1. Correspondence.

The attached correspondence was received regarding the subject appeal. All of the letters request that the Commission find that the appeal raises a substantial issue.

2. Ex-Parte Communications

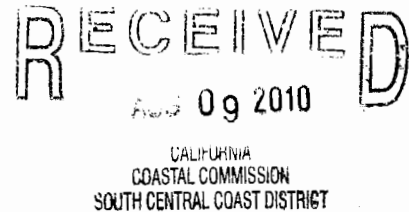
The two attached ex-parte communication disclosures have been received since the staff report was mailed out.

*Victoria B. Hand
29500 Heathercliff Road, #243
Malibu, CA 90265
310 457-7647*

FAY 905 641-1732

August 5, 2010

Coastal Commission
89 South California Street, Suite 200
Ventura, Ca 93001-2801
Att: Coastal Commissioners



Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

Dear Commissioners:

The Malibu Coalition for Slow Growth's doesn't bring frivolous appeals. Their appeals are made only when significant issues are involved.

A Substantial Issue vote is needed so that the City is aware that the Coastal Commission is not condoning the City's violation of its Local Coastal Program.

A finding of no Substantial Issue will legitimize a project that clearly needs to be and can be more thoughtfully redesigned to meet LCP requirements and provide the necessary landscaping and open space to enhance the beauty of the project.

Thank you for considering my comments on this matter.

Sincerely,

Victoria B. Hand

Victoria B. Hand

**Judi Pace
2701 Sea Breeze Drive
Malibu, California 90265**

RECEIVED
AUG 09 2010

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 6, 2010

California Coastal Commission
89 South California Street
Suite 200
Ventura, Ca 93001-2801

Att: California Coastal Commission

Re: 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

Dear Commissioners:

Please find substantial issue in this matter.

Both the Applicant and the Owner are very familiar with the policies and implementation measures of the Malibu LCP but they intentionally choose to create a project that doesn't conform to the LCP.

This choice of the property Owner and Applicant should not be rewarded and it will send the wrong signal to future developers along the coast that LCP rules can be bypassed. The message will get out that the Coastal Commission, the protector of the coast, is not enforcing LCP development standard violations. This bad precedent over time will haunt the Commission.

Reading the Staff Report, it is clear both legally and factually that the Malibu Coalition for Slow Growth has a solid position. We ask that you support them in their effort to protect the Malibu LCP and Malibu itself for all to appreciate and enjoy.

Thank you .

Sincerely,


Judi Pace



MALIBU
TOWNSHIP COUNCIL, INC.
A Community Association
MALIBU, CALIFORNIA
P.O. BOX 803, 90265-0803

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AUG 09 2010
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Email – malibutownshipcouncil@earthlink.net

To Honorable Members of the Coastal Commission
From: Malibu Township Council
Date: August 8, 2010

Re: Thursday 8/12/10 agenda #18
Appeal A-4-10-053 (WFSestar, Malibu)

Honorable Commissioners:

Malibu Township Council is a community organization that for 53 years has supported projects beneficial to Malibu.

We urge you to find Substantial Issue on this project because the project meets three of the criteria that the Commission uses as guidance to determine Substantial Issue.

1. A finding of no Substantial Issue will set a dangerous precedent with respect to the open space and landscaping requirements for commercial projects in Malibu as well as the state.
2. There is strong factual and legal support to show that the city's decision is inconsistent with the certified LCP with respect to open space and landscaping provisions of the LCP. Staff agrees and in great detail describes why this project does not conform to the LCP requirements with respect the open space and landscaping.
3. The extent and scope of development approved by the city. Project site may be small in size but the effect of not finding Substantial Issue will be great setting precedent for commercial project development in Malibu. Structure design is massively overbearing in relation to lot size and the project eliminates required open space and landscaping.

1. Precedent Setting

Most importantly, approval of the project will be precedent-setting in Malibu's future interpretation of the LCP.

2. 3.8 states commercial development standards.

Landscaping:

- LIP provides for the maximum area of the parcel that can be covered with buildings or parking lots in order to ensure visual quality as well as to minimize impermeable surfaces to protect water quality. Lot coverage is controlled through the requirement that 40 percent of the lot area must be landscaped, thus ensuring that this area is permeable and able to absorb runoff and filter it through the ground and through uptake by plants.

Open Space:

- Lot coverage is also addressed through the requirement that an additional 25% of the lot area must be kept in open space. LIP Section 3.8 (A)(5) defines what can and cannot be included in open space area: "Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space".

The entire approved structure within the footprint of the roof is "building" and cannot be counted towards open space.

- Much of the approved landscaping and all of the open space areas are within the overall footprint of the approved structure. As such, they do not serve to control the total lot coverage or provide permeable area for runoff. The approved project does not meet the stated terms or intent of LIP Section 3.8 (A)(5)(b) with regard to landscaping or open space.

3. Structure Size:

- The small parcel size is supposed to be reflected in a small FAR. Here, the actual footprint of the structure is much larger than the maximum FAR because the City approved the project with the FAR only applying to two smaller enclosed lease spaces (as well as the restrooms and elevator shaft).
- There are large areas beneath the roof line that are substantially, although not completely, enclosed that were not included in the FAR calculation.
- These areas could easily be enclosed with walls or with glass in the future greatly increasing the lease area of the building.
- Clearly, a different building design would be feasible for the project that could include only the maximum FAR of 2,742 sq. ft. without the large areas of interior halls, courtyards, etc.

Please find Substantial Issue with this project so the appeal may be heard.

Loreen Hansen, Secretary

Malibu Township Council Board of Directors

805-641-1732

**Malibu Coastal Land Conservancy
PO Box 2553
Malibu, California 90265**

RECEIVED
Aug 09 2010
BR
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Sunday, August 08, 2010

Coastal Commissioners
Coastal Commission
89 S. California Street
Suite 200 Ventura, Ca 93001-2801

Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

Dear Commissioners:

The City of Malibu's plan for dealing with Malibu's LCP is consistent and clear. Malibu views the LCP as a nuisance and accordingly the City gives the LCP a haircut whenever possible. Take a little off the top here and a bit more off the sides over here and soon there will not be enough of the LCP left for anyone in Malibu to worry about.

This project is another example of Malibu's "Haircut" philosophy. This project does not conform to the certified Malibu LCP and if it is allowed to go forward it will provide another precedent for Malibu to ignore its maximum commercial building size, its open space and landscaping criteria in future commercial projects. If Malibu is dissatisfied with the current provisions of the LCP, it should seek an amendment to the Malibu LCP from the coastal Commission.

Please find "Substantial Issue" with regard to the above mentioned Project and vote to have it proceed to a hearing. If the Commission does not move this to a hearing it will be condoning a process where the city and developers circumvent the LCP and that in the long run will make the Malibu LCP meaningless

Thank you in advance for considering my comments.

Sincerely,



Steve Uhring

President MCLC

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 8, 2010

Coastal Commission
89 South California Street
Suite 200
Ventura, Ca 93001-2801
Att: Coastal Commissioners

Re: 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

Dear Commissioners:

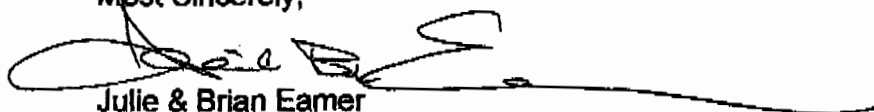
The Malibu Coalition for Slow Growth's appeal has raised excellent points which are supported by the coastal staff report.

In my opinion this project is precedent setting. I ask that you vote to find substantial issue so that the Malibu LCP will not be eroded by the Commissions decision to the contrary.

This project should go to hearing so that the issues raised by the Appellant can be decided rather than overlooked.

Thank you for considering these comments.

Most Sincerely,


Julie & Brian Eamer

To Honorable Members of the Coastal Commission

Date: August 9, 2010

Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053 (WFSeastar, Malibu)

Please find Substantial Issue

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Honorable Commissioners:

Approval of this project as it is, would set an alarming precedent that the LCP in Malibu can be ignored, as this project is far from conforming to certain provisions of the LCP, most notably the provisions about landscaping and open space and the building size.

If the argument is made that the impact is low because it is a small property, the problem with that is, how is it *possible*, to allow one property to ignore the provisions and then not grant the same unrestricted development to the next door neighbor? And then the next. This is always the problem with trying to create long term preservation guidelines, that no one single exception is the one that will destroy the environment. Why would it be right to ignore the LCP just for this one particular property?

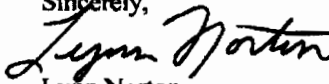
I ask that since it is within the purview of the Coastal Commission to protect the LCP, and since this project is in the appeal zone, please do not let it rely on a handshake with the Malibu city government.

Many of us who pay attention to Malibu politics know we have to rely on the Coastal Commission to protect the coast and our LCP, because the city government in Malibu is hard to rely on in this way. In the recent Trancas Shopping center project, Malibu planning staff and commissioners ignored ESHA setbacks until one citizen made the major investment of his time to take the project to the Coastal Commission. After the Coastal staff findings of violations of the law, the developer negotiated to change his plans. Shortly before that, the Malibu planning staff, planning commissioners, and city council approved a park plan against strong citizen protest, which would knock down 28 feet of an ancient ESHA ridge with bat caves in it, in order to put a dog park in the ESHA! Surely the city biologist should have known this was wrong. But because this project was not in the appeal zone, and the city council turned down two legal appeals to the city, only after the threat and subsequent filing of a lawsuit against the city of Malibu, did the city council change the park plan.

This is what we have to do to protect the environment and beauty in Malibu, and the visitors who travel here and would like there to be a future Malibu, are not aware of this dynamic, but only those of us who live here and pay attention can ask you the Coastal Commission to please keep protecting Malibu.

In this plan before you today, Malibu planning staff and commissioners are again willing to allow a developer to violate our LCP laws. The only reason this has gone as far as to require an appeal, is that without intervention, the city of Malibu would allow ignoring the LCP. If you do not think it would be right to see this project as a precedent in which future developers could follow suit, then I urge you to please find Substantial Issue on this project.

Sincerely,


Lynn Norton

6005 Paseo Canyon Drive

Malibu, Ca. 90265

OZZIE SILNA
23301 PALM CANYON LANE
MALIBU, CA 90265
310-456-8054

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Coastal Commissioners
Coastal Commission
89 S. California Street
Suite 200
Ventura, Ca 93001-2801

Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053 (WFSeastar, Malibu)

Dear Commissioners:

Please find that there is a substantial issue with regard to the above mentioned Project and vote to have it go to a de novo hearing.

This project does not conform to the certified Malibu ^{LCP} and will be precedent setting both locally and statewide. By not finding substantial issue, the Commission will be setting the precedent that LCP development standards can be ignored.

It is the Commissions role to see that Local Coastal Program (LCP) is enforced rather than overlooking blatant non adherence to important polices and implementation measures.

The staff report goes into great detail as to how this project is a gross violation of and doesn't conform to the requirement of LIP Section 3.8 (A)(5)(a) and (b) which states that gross floor area is limited to 15% of the lot area. And 40% of the lot area shall be devoted to landscaping. An additional 25% of the lot area shall be devoted to open space. Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.

The staff report states that the building is larger than the 15 FAR because the city only counts the leasable portion of the building and not the other enclosed portions of the building such as the gallery and covered patios.

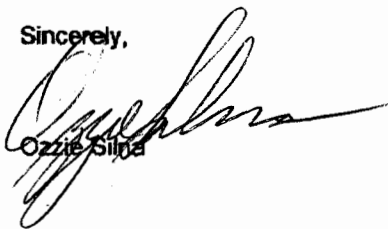
It also states that all the calculated open space is within the building or on the rooftop. Buildings can't be calculated as open space. Staff also says the landscaping is far less than the needed landscape requirement.

Staff states that a redesign of the building can be done with out sacrificing leasable space and that the requirements for open space can probably be meet or almost meet. If they can't be met a variance can be sought.

In conclusion, it is important that you find substantial issue in this matter to prevent a bad precedent being set.

Thank you.

Sincerely,


Ozzie Silna

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 6, 2010

California Coastal Commission
89 South California Street
Suite 200
Ventura, CA 93001-2801

Att: California Coastal Commission

Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

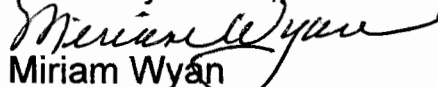
Dear Commissioners:

The coastal staff report confirms that both legally and factually the city erred in approving this precedent setting project which will have local and statewide ramifications. There is more than enough evidence in the record to make a substantial issue finding which we urge you to do.

Although the project is on a small lot, it appears that the building itself is actually three times larger than what is allowed under the LCP. Coastal staff says that a conforming redesign is probably possible without the owner sacrificing rental space. Thus, the proposed building needs to be redesigned to conform to the size allowed and to include the landscaping and open space required by city regulations.

Thank you for your considering this letter.

Sincerely Yours,



Miriam Wyan
30616 Vista Sierra Dr.
Malibu, CA 90265

Anna Belle Heiss

28834
BONIFACE DRIVE MALIBU, CA 90265
TEL 310 457-7181

ahmalibu@verizon.net

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 6, 2010

Coastal Commission
89 S. California Street
Suite 200
Ventura, Ca 93001-2801

Att: Coastal Commission

Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

Dear Commissioners:

Please support the Malibu Coalition for Slow Growth's position of a finding of Substantial Issue. Vote to have this project proceed to a hearing.

This project does not conform to the certified Malibu and meets the criteria for a substantial issue finding as follows:

This project is definitely precedential. It is clear from the staff report that the Applicant is not following the LCP. If Coastal doesn't care, it will be giving the City permission to continue to not follow its LCP.

The staff report confirms the fact that there is a legal and factual basis to find substantial issue.

The scope and extent of the development on such a small parcel is significant. The city is allowing a significant violation (rather than an immaterial one). Please don't allow this to happen.

The precedent by the Commission if it finds no substantial issue is not limited to a local matter, it will have larger ramifications by sending the message that LCP's can be ignored and having large ramifications statewide.

Please act as a compass and set the City on its proper course by finding substantial issue.

Thank you.

Sincerely,

Anna Belle Heiss

Alessandra DeClario, Ph.D.
P.O. Box 2534
Malibu, CA 90265

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

August 5, 2010

Coastal Commission
89 South California Street, Suite 200
Ventura, Ca 93001-2801

Attn: Coastal Commissioners
Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

Dear Commissioners:

The Malibu Coalition for Slow Growth has a very credible position and we ask you please to find Substantial Issue so this matter can go to a hearing before the Commission.

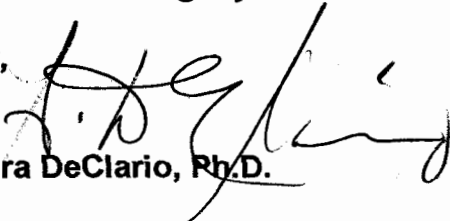
If you don't find Substantial Issue it will be sending a dangerous signal to the City of Malibu indicating that they can ignore the rules on building size and height, and the need for landscaping and open space in commercial projects. This can open a door for future projects to go forward with out following the rules!

Coastal Staff indicates that they can work with city staff to prevent a precedent. Coastal Staff's position on projects have often been ignored by city staff and even if this were the case Coastal Staff's recommendation can be ignored by the Planning Commission and the City Council. Also, city Planning Manager's can change.

Thank you for reading my comments.

Sincerely,

Alessandra DeClario, Ph.D.



**Brenda Martinez
30615 Vista Sierra Dr.
Malibu CA 90265**

August 5, 2010

**California Coastal Commission
89 South California Street
Suite 200
Ventura, Ca 93001-2801**

Att: California Coastal Commission

Re: Thursday 8-12-10 agenda item 18 Appeal No. A-4-MAL-10-053

Dear Commissioners:

I am a strong supporter of the efforts of the Malibu Coalition for Slow Growth and ask you to please make a decision in their favor by voting Substantial Issue.

I would like to point out that this project will not result in a "takings" since the owner currently has a car wash as a tenant and as the staff report points out the LCP requirements can be met or much more closely met with a redesign.

The owner of this project should not be given a dispensation by the Coastal Commission for this project as currently designed for to do so would be precedent setting and various Local Coastal Programs need to be supported by the Coastal Commission.

Thank you for your considering my comments.

Sincerely Yours,

Brenda Martinez
Brenda Martinez

JSR_{ca}

Ja Ruggles
30642 Sycamore Drive
Malibu, California 90265
(310) 457-6629, Fax: (310) 457-6920

RECEIVED
AUG 09 2010
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Date: August 5, 2010

To: California Coastal Commission
Chair, Bonnie Neely and
Honorable Commissioners

Re: 8-12-10, Agenda Item 18
Appeal No. A-4-MAL-10-053 (WF Seastar, Malibu)

Dear Chair Neely and Honorable Commissioners,

After careful review of the staff report on the above-referenced Appeal, I would urge you to make the finding of a "Substantial Issue," because I believe staff's conclusion of no Substantial Issue is in error for the following reasons:

1. I find staff's "opinion" of no Substantial Issue to be in error and contrary to the facts.

I found it rather odd and contradictory that after carefully delineating and listing all the violations of the Commercial Development Standards of the Malibu LCP, as well as the negative impact to the Scenic Resources of a state-designated Scenic Highway created by this overly large project, that staff came to the conclusion that there was no significant impact because of the small(?) nature of the project, hence no Substantial Issue. I beg your pardon...?? This makes no sense.

2. The Commission should make a finding of Substantial Issue, because this project could set a **statewide precedent** for the following reasons:

- (a) This is a "redevelopment" of a small, substandard-sized commercial lot that was grand fathered in at the time of adoption of Malibu's General Plan in 1995, and as such must comply with the Floor Area Ratio (FAR) and Commercial Development Standards as set forth in the Malibu LCP.

However, the developer was unhappy with the constraints of a 2400 sq ft building footprint and the landscape and open space requirements of the Malibu LCP, and put forth a building footprint triple the size allowed under the LCP with an interior hallway and a rooftop parking lot substituting for open space and some potted plants and trees replacing the required landscape requirements. The City of Malibu was an accomplice in this chicanery.

- (b) If the developer is allowed to violate the provisions of the Malibu LCP (Section 3.8 (A)(%)(a) and (b) specifically, and create “new” definitions of landscaping (some potted plants on a roof parking area) and open space (a wide hallway within the interior of a closed building), then what is the purpose of having any Commercial Development Standards at all in the LCP?
- ©) If the Commission fails to make a finding of Substantial Issue and this project is allowed to go forward, it will set a **major precedent for redevelopment of small parcels along the entire coast of California**. It wouldn't be too long before other developers attempt to ignore the LCPs of other cities and counties in the same manner, citing this project as the example of “no Significant Issue.” This is a very slippery slope.

Unfortunately, Malibu has consistently and historically failed to follow the Goals, Objectives and Policies of its General Plan and now the Policies of its certified LIP/LCP.

Consequently, it is up to the Commission to make the correct finding of Substantial Issue on this project, as the staff conclusion of no Substantial Issue is not supported by the facts.

Respectfully submitted,



Jo Ruggles

Former Chair, Malibu Planning Commission

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION

Th 18a.

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CALIFORNIA
COASTAL COMMISSION

Date and time of communication:
(For messages sent to a Commissioner by mail or
facsimile or received as a telephone or other
message, date time of receipt should be indicated.)

August 6, 2010, 10:30am

Location of communication:
(For communications sent by mail or facsimile, or
received as a telephone or other message, indicate
the means of transmission.)

Commissioner Neely's Eureka Office

Person(s) initiating communication:

Maggy Herbelin, Local ORCA Representative

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

Th 18a. Appeal No. A-4-MAL-10-053 (WFS Seastar, Malibu)
Appeal by Malibu Coalition for Slow Growth from decision by
City of Malibu granting permit to WFS Seastar Company, LLC
for demolition of abandoned gas station, and construction of
2,499 sq. ft. commercial office building with rooftop parking lot,
vehicular ramp, septic system, landscaping, and 1,370 cu. yds.
of grading (830 cu. yds. cut and 540 cu. yds. fill) at 22729
Pacific Coast Highway, Malibu, Los Angeles County. (BJC-V)

Detailed substantive description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

Oppose Staff recommendation of NO substantial issue. This is a violation of
the LCP requirement of 40% landscaping and 25% open space. It would be
precedent setting for future statewide projects.

Speaking for Malibu Coalition for Slow Growth.

Date: August 6, 2010


Bonnie Neely, Commissioner

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

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

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

Coastal Commission Fax: 415 904-5400

EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication: Penny Elia - Sierra Club
Person(s) receiving communication: Commissioner Burke
Location of communication: Telephone - 310-351-3333
Time/Date of communication: August 5, 2010 - 4:30 PM
Type of communication: Teleconf

Name or description of the project(s)/topics of discussion:

W.8.a. Appeal No. A-1-MEN-07-28 (Jackson-Grube Family, Inc., Mendocino Co.)

Speaking for Sierra Club Mendocino Group, supporting the staff recommendation to approve. Express our appreciation of the great work staff did on this item.

W.11.a. Appeal No. A-2-SMC-07-01 (Sterling, San Mateo Co.)

Speaking for Committee for Green Foothills. Staff recommending approval with conditions. Staff recommendation is too permissive on future subdivision. CGF asks that Special Condition 2.A.8 be deleted as it inappropriately would encourage future landowner to seek subdivision of this agricultural land into two lots, which would undermine agricultural viability

W.14.c. San Luis Obispo County LCP Amendment No. SLO-2-09 Part 2 (Inclusionary Housing)

W.14.d. San Luis Obispo County LCP Amendment No. SLO-3-09 (Framework for Planning Update)

Speaking for Coastwalk, CA, support staff recommendations.

W.15.a. Appeal No. A-3-SLO-06-043 (SDS Family Trust, Harmony Coast)

Staff is recommending substantial issue, de novo hearing, denial in part and approval in part. Speaking for Coastwalk, CA SLO, support staff recommendation. Important that the portion of the project eliminating the lateral public access trail easement be denied, as that is needed for the CA Coastal Trail.

W.15.d. Appeal No. A-3-SLO-10-031 (Goodan, Harmony)

Staff is recommending finding substantial issue
Speaking for Coastwalk, CA SLO, support staff recommendation to find substantial issue. Please focus on the project's inconsistencies with the County's certified LCP and LUP and Coastal Act sections regarding protection of coastal agriculture, ESHA, hazards, and public services.

Th.6.a. CD-033-10 (Navy, Coronado) Consistency Determination for SSTC

Speaking For San Diego Audubon, SD Coastkeeper, and SD Sierra Club, oppose staff recommendation to approve. Requesting postponement (to October hearing in San Diego/Oceanside), or mitigation for impacts. We feel that the Navy's proposed project is not consistent with section 30231 of the Coastal Act, and the Commission should impose further restrictions on the Navy, which would make the proposed project consistent with the Coastal Act.

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COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Th.18.a. Appeal No. A-4-MAL-10-053 (WFS Seastar, Malibu)

Speaking for Malibu Coalition for Slow Growth. Oppose staff recommendation of No Substantial Issue. Urge finding substantial issue.

1. Staff agrees factually and legally this project is not consistent with the LCP.
2. By not adhering to the LCP the project will be precedential in Malibu's future interpretation of this LCP section. The cumulative impact of this precedent in a visitor serving community will eventually be great.

Th.19a. Application No. 4-07-098 (California Dept. of Parks and Recreation, Malibu)

Speaking for Sierra Club, support staff and 16 conditions.

F.14.5.a. Appeal No. A-5-LGB-10-166 (Skendarian, Laguna Beach)

Speaking for Angeles Chapter, Sierra Club, support staff recommendation to find substantial issue. The applicant and his consultant do not believe the Coastal Act is the standard of review for this project. They are stating that the standard of review is the City's inadequate and outdated LCP that does not properly address lower-cost visitor serving accommodations. However, since this project is located between the first public road and the sea, the Coastal Act is the standard of review. Other issues include viewshed, height and bluff delineation.

F.9a. Appeal No. A-5-PPL-10-156 (Morelli, Pacific Palisades)

Speaking for Sierra Club, support staff on recommendation to find substantial issue. Should SI be found, bring back in de novo hearing and combine with "dual" CDP (dual permit jurisdiction).

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AUG 10 2010

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
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Appeal Filed: 6/29/10
49th Day: 8/17/10
Staff: Barbara Carey
Staff Report: 7/28/10
Hearing Date: 8/12/10



Item Th18a

STAFF REPORT: APPEAL **SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-MAL-10-053

APPLICANT: WFS Seastar Company, LLC

APPELLANTS: Malibu Coalition for Slow Growth

PROJECT LOCATION: 22729 Pacific Coast Highway, Malibu, Los Angeles County

PROJECT DESCRIPTION: Demolition of abandoned gas station, and construction of a 2,499 sq. ft. commercial office building with rooftop parking lot, vehicular ramp, septic system, landscaping, and 1,370 cu. yds. of grading (830 cu. yds. cut and 540 cu. yds. fill).

SUBSTANTIVE FILE DOCUMENTS: Staff Report for City of Malibu Coastal Development Permit No. 08-055, Variance Nos. 10-005, 10-006, Conditional Use Permit No. 10-003, and Demolition Permit No. 08-014; City of Malibu Planning Commission Resolution No. 10-43.

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 policies of the City's certified LCP regarding lot coverage standards (landscaping and open space), visual resources, wastewater treatment, and public use of private parking. The Commission finds that although the approved project does not conform to the lot coverage standard for new commercial development that the City's record adequately supports its position that the proposed project is consistent with the remaining LCP policies. In addition, the development is relatively minor in scope, doesn't have a significant adverse effect on significant coastal resources, has little precedential value, and doesn't raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue as to the City's application of the cited policies of the LCP. The motion and resolution for no substantial issue begin on **Page 3**.

I. APPEAL JURISDICTION

The project site is located on Pacific Coast Highway in the City of Malibu (**Exhibit 1**). The Post LCP Certification Permit and Appeal Jurisdiction map (Exhibit 2) certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends to 300 feet from the bluff that is located inland of the subject property. 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 June 1, 2010, the City of Malibu Planning Commission approved Coastal Development Permit No. 08-055, Variance Nos. 10-005, 10-006, Conditional Use Permit No. 10-003, and Demolition Permit No. 08-014; for the office building project. The Notice of Final Action for the project was received by Commission staff on June 16, 2010. Notice was provided of the ten working day appeal period, which began June 17, 2010.

The subject appeal was filed during the appeal period, on June 29, 2010. 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 July 13, 2010.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-MAL-10-053 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-10-053 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. 08-055, Variance Nos. 10-005, 10-006, Site Plan Review No. 10-012, Conditional Use Permit No. 10-003, and Demolition Permit No. 10-025 for the demolition of an abandoned gas station, and the construction of a 2,499 sq. ft. commercial office building with rooftop parking lot, vehicular ramp, septic system, landscaping, and 1,370 cu. yds. of grading (830 cu. yds. cut and 540 cu. yds. fill) on the inland side of Pacific Coast Highway. The variances were approved to reduce the size of the required rear yard setback, and for construction on slopes in excess of 2 ½ to 1. The City Site Plan Review was for construction over 18 feet in height. The Conditional Use Permit was approved to allow for the construction of over 500 sq. ft. of commercial space.

The project site is on the inland side of Pacific Coast Highway, at the base of steep hillsides to the north. The surrounding area is developed with commercial structures, including the property immediately upslope to the north of the site. Further north there is an area of hillside residential development.

The site is designated "Community Commercial" (CC) by both the City of Malibu LUP and LIP. The LCP states the following regarding this designation:

The CC designation is intended to provide for the resident serving needs of the community similar to the CN designation, but on parcels of land more suitable for concentrated commercial activity. The community commercial category plans for centers that offer a greater depth and range of merchandise in shopping and specialty goods than the neighborhood center although this category may include some of the uses also found in a neighborhood center. Often a supermarket or variety store functions as the anchor tenant. The maximum Floor to Area Ratio (FAR) is 0.15. The FAR may be increased to a maximum of 0.20 where public benefits and amenities are provided as part of the project. Uses that

are permitted and/or conditionally permitted include the following: all permitted uses within the CN designation, financial institutions, medical clinics, restaurants, service stations, health care facilities, offices, and public open space and recreation.

B. APPELLANTS' CONTENTIONS

The City's action was appealed by Patt Healy of the Malibu Coalition for Slow Growth. The appeal is attached as Exhibit 15. The contentions of the appeal relate to several Land Use Plan visual resource policies and several development standards required for commercial development by the Local Implementation Plan. The LIP development standards cited include maximum lot coverage, maximum building height, and onsite wastewater treatment. Each issue area is discussed below.

1. Lot Coverage (Open Space and Landscaping Requirement)

The appellant asserts that the approved project is not consistent with the commercial development standards of LIP Section 3.8 (A)(5)(b), specifically the 40% landscaping and 25% open space requirements. The appeal states that:

Instead of designing a project that meets the LIP open space/landscape requirements or seeking the required variance to reduce the LIP requirements this applicant (and property owner Norm Haney) is attempting to set a very dangerous precedent by seeking the allowance of rooftop open space/landscaping to be included in the calculation of the percentage of lot open space/landscaping.

On page 6 the staff report states that there is nothing in the LIP to prohibit rooftop open space. But that is inaccurate. First, a lot is defined as a parcel, tract or area of land. This automatically excludes anything that is not directly on the land (ground) itself. Second, this section explicitly excludes buildings from being counted as open space. Third, roofs are part of a building and are not on the ground, hence they are not allowed to be counted as open space.

The appeal also claims that the calculation of the landscaping on the roof improperly includes the canopy of plants outside of their planter boxes. The appeal also states that the open space calculation improperly includes the area of the exterior hallway or covered galleria within the structure. The appeal concludes that the subject approval sets a dangerous precedent for the City's future interpretation of this LIP section.

2. Building Height/ Visual Resources

The appeal asserts that the approved structure will exceed the maximum height standard of 28 feet for sloping roofs. The appeal states that:

The absolutely maximum height of a structure excluding chimneys and antenna is 28 ft. measured from finished or natural grade whichever is lower. This structure exceeds this requirement. There is an elevator shaft and a stair well containing stairs that begin at ground level and reach 32 ft. in height. The city erred in allowing the elevator shaft and stairwell to go to 32 feet in height. They will be clearly visible from PCH.

Additionally, the appeal contends that the approved project does not adhere to LUP Policies 6.6, 6.7, 6.8, 6.12 and 6.20 or LIP Sections 6.5(A)(3) and 6.5(B)(1). Specifically, the appeal states that the approved project will block the view of a primary ridgeline.

3. Wastewater Treatment

The appeal contends that the approved project is inconsistent with LUP Policies 3.128, 3.130 and LIP Section 18.4 with regard to the design of the onsite wastewater treatment system (OWTS). The appeal states that:

City Condition of Approval 31 in the final resolution indicates that the OSTs for this project does not have a 100 percent expansion effluent dispersal area which is required in case of a failure under LUP 3.128. The lack of a secondary dispersal field in case of a failure of the first field indicates that there may be a lack of porous open space needed to comply with LUP 3.130.

4. Public Use of Private Parking

The appeal claims that the approved project is inconsistent with LUP Policy 5.13 and Section 3.12.4(D) and (E) of the LIP with regard to the public use of private parking. The appeal states that:

If this project is to be approved because of the project is across the street from two visitor serving restaurants and within walking distance from the Malibu Pier and Surfrider beach, it needs to be approved with the condition that the 25 parking spaces can be used for public use on weekends.

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, the appellant did not cite the public access policies of the Coastal Act as a ground for appeal or raise any public access-related issues. Thus, the only legitimate grounds for this appeal are allegations that the "appealable development" is not consistent with the standards in the certified LCP.

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 appeal raises no substantial issue with regard to the grounds on which the appeal has been filed, as discussed below.

Among the standards established by Local Coastal Programs (and local government zoning codes) for the construction of new commercial development are setbacks, height limits, structure size, and lot coverage. Such specific standards further policy goals relating to the protection of visual resources, environmentally sensitive habitat, and water quality. The appeal asserts that the approved project raises issue with conformity to lot coverage, height, visual resource, wastewater, and parking standards of the Malibu LCP.

1. Commercial Development Standards—Lot Coverage

Section 3.8 (A)(5)(a) and (b) of the Malibu LIP state, in part, that:

3.8 COMMERCIAL DEVELOPMENT STANDARDS

A. All commercial development shall be subject to the following development standards:

...

5. Site Development Criteria. All proposed commercial construction shall comply with the following site development standards:

- a. The gross square footage of all buildings on a given parcel shall be limited to a maximum Floor Area Ratio (F.A.R.) of 0.15 or 15% of the lot area (excluding any street rights of way). Additional gross square footage may be approved, up to a maximum allowed for the parcel under the Land Use Plan provided the increase complies with the provisions of Section e and/or f below where applicable...
- b. 40% of the lot area shall be devoted to landscaping. An additional 25% of the lot area shall be devoted to open space. Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.

The Malibu LCP establishes the maximum density and intensity of new development. In the case of residential development, such standards as density, maximum development area, total development square footage, and maximum impermeable coverage establish the size and location of structures and maximum lot coverage. In the case of commercial development, the maximum intensity is established through the maximum floor area ratio (FAR) and the requirement for landscaping and open space. The LIP defines FAR as: "the formula for determining permitted building area as a percentage of lot area; obtained by dividing the above-ground gross floor area of a building or buildings located on a lot or parcel of land by the total area of such lot or parcel of land". The Community Commercial Zone indicates that the above-ground gross floor area of a commercial building within that zone can be no more than 15% of the total area of the parcel comprising the project site.

The LIP also provides for the maximum area of the parcel that can be covered with buildings or parking lots in order to ensure visual quality and compatibility, as well as to minimize impermeable surfaces to protect water quality. Lot coverage is controlled through the requirement that 40 percent of the lot area must be landscaped, thus ensuring that this area is permeable and able to absorb runoff and filter it through the ground and through uptake by plants. "Landscaping" is not specifically defined in the LIP, but a dictionary defines the term as: "to adorn or improve (a section of ground) by contouring and by planting flowers, shrubs, or trees"¹. Therefore, a common sense interpretation of the term "landscaping" is open ground covered with plants.

Lot coverage is also addressed through the requirement that an additional 25 percent of the lot area must be kept in open space. "Open Space" is not specifically defined in Chapter 2 of the LIP, but LIP Section 3.8 (A)(5)(b) states what can and cannot be included in open space area: "Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space".

So, the required open space area of the site may be maintained in natural habitat area, it may be additional landscaped area (over and above the required 40%) or it may be utilized for courtyards or patios. While the permeability of the open space area is not assured because courtyards or patios are allowed, it will be open area that is free of buildings or parking and will benefit visual resources. The area devoted to parking lot, building, exterior hallways or stairs cannot be counted towards the open space requirement.

The subject project site is relatively small for a property within the Community Commercial Zone at 18,283 sq. ft. Application of the maximum FAR of 15% would allow for a maximum building area of 2,742 sq. ft. The City found that the applicant's proposed building of 2,499 sq. ft. conforms to the maximum FAR. However, the figure of 2,499 sq. ft only includes two enclosed leasable spaces (2,270 sq. ft. total), an elevator

¹ landscaping. (n.d.). *The American Heritage® Dictionary of the English Language, Fourth Edition*. Retrieved July 22, 2010, from Dictionary.com website: <http://dictionary.reference.com/browse/landscaping>

shaft (37 sq. ft.), and two restrooms (192 sq. ft.). Review of the approved plans (Exhibit 6) shows that there are large additional areas that are between and around the leasable space, that are shown as a gallery and courtyards. These areas are completely covered by the roof of the structure and are substantially enclosed. So, although the commercial lease space of the project meets the FAR, the building itself is actually much larger.

The 40% required landscaped area on the site amounts to 7,313 sq. ft. and the additional 25% open space totals 4,571 sq. ft. The City found that the applicant's calculation of landscaping (7,313 sq. ft.) and open space (4,571 sq. ft.) provided met the standard as proposed. This determination was shown in a chart regarding project conformity, but no analysis was provided in the report regarding the various areas of the site that make up the landscaping or open space. The applicant's agent prepared an exhibit showing the areas the applicant considered to comprise the landscaped and open space areas of the site (Exhibits 10 through 12).

Review of the applicant's exhibit (Exhibit 10 and Exhibit 12) indicates that many of the "landscaped" areas of the site proposed by the applicant to count towards the 40% requirement are not appropriate as landscaping. A portion of the "landscaping" approved is in the ground within the side yard and rear yard setback areas (It should be noted that even this area includes the trash enclosure within it. There is no explanation regarding how the trash dumpster can be emptied over the "landscaping"). However, the landscaping includes many areas that are beneath the roof overhang of the structure, including those within small planters at the front or rear of the structure. Two other areas would be on the roof of the restrooms and mechanical room and beneath the roof of the second floor parking deck. Other areas are in small strips between the ground level parking lot and the sidewalk, including one strip which contains "grasscrete" over half of its width. Finally, 1,477 sq. ft. of plants in pots on a rooftop deck are counted as "landscaping".

Similarly, review of the applicant's exhibit indicates that the "open space" areas proposed to count towards the 25% requirement are not appropriate. Included in open space is a gallery that runs between the two commercial lease spaces that is completely covered and enclosed at the rear by the restrooms. Also included are several courtyards that are also covered and substantially enclosed. A small covered entry patio within the parking lot at the front of the building is also included as open space. Finally, a rooftop patio is counted as open space. In this way, all of the "open space" area approved is within the footprint of the approved building, either on the first floor or as part of the second floor roof deck. The LIP is specific that area devoted to building cannot be counted as open space. The term "building" is defined in Chapter 2 of the LIP as: "any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials or any kind or nature". So, the entire approved structure within the footprint of the roof is "building" and cannot be counted towards the open space requirement.

Therefore, it is clear that much of the approved landscaping and all of the open space areas are within the overall footprint of the approved structure. As such, they do not

serve to control the total lot coverage or provide permeable area for runoff, or to provide open area not covered by parking or structures in order to benefit visual resources. The approved project does not meet the stated terms or intent of LIP Section 3.8 (A)(5)(b) with regard to landscaping or open space.

The applicant did not propose, nor did the City approve any variance from the landscaping or open space standards. The City staff report (Exhibit 13) does state the following regarding the landscaping and open space requirements:

The project proposes to place approximately 2,664 sq. ft. of open space and landscaping on the rooftop in order to comply with required 65 percent of open space and landscaping pursuant to LIP Section 3.8(A)(5)(b). While there are few projects within the City that have been approved (prior to Cityhood and/or by California Coastal Commission) with rooftop open space and landscaping to satisfy this provision, there is nothing in the LIP that would prohibit this approach. More recent commercial projects have been approved with a variance for the reduction of either landscaping or open space. The proposed project does not include a variance for the reduction of landscaping or open space; however, it proposes to place approximately 22 percent of the required open space and landscaping on the roof.

The proposed project would not be able to provide the required 11,884 sq. ft. of landscaping and open space on grade unless proposed on grade parking is eliminated. Eliminating on grade parking in front of the commercial office would negatively impact the viability of the project because visitors driving on Pacific Coast Highway (PCH) would have to slow to a pace in which they could read signage that would direct them to proceed to an adjacent driveway for 22741 PCH, an existing commercial office located north of the project site. In addition, the applicant has indicated that subterranean parking is not possible due to the high water table in the area. As designed, the proposed project would not be able to comply with LIP Section 3.8(A)(5)(b) without placing a portion of the required open space or landscaping on the rooftop or without a variance request.

The subject parcel at 18,283 sq. ft. is quite small for a commercial development. The Community Commercial Zone requires new parcels created within this zone to have a minimum size of 5-acres. The small parcel size is supposed to be reflected in a small FAR. Here, the actual footprint of the structure is much larger than the maximum FAR because the City approved the project with the FAR only applying to two smaller enclosed lease spaces (as well as the restrooms and elevator shaft). There are large areas beneath the roof line that are substantially, although not completely, enclosed that were not included in the FAR calculation. These areas could easily be enclosed with walls or with glass in the future greatly increasing the lease area of the building. The extra parking spaces provided in the approved project could be utilized to serve this additional commercial square footage.

Clearly, a different building design would be feasible for the project that could include only the maximum FAR of 2,742 sq. ft. without the large areas of interior halls, courtyards, etc. This smaller building size would allow for much larger areas of landscaping and open space outside of the building footprint. Additionally, the project

provides between 5 and 12 more parking spaces than is required by the LIP, depending on the type of office or retail uses that are ultimately developed in the building (General office use requires 10 spaces, dental or medical office use requires 17 spaces, and general retail use requires 12 spaces). Reduction in the amount of street level parking could allow for additional landscaping or open space. Conversely, a different redesign could include the elimination of the rooftop parking (the 13 street level parking spaces provided are adequate to allow the 2,499 sq. ft. building to be developed with either general office or general retail use). In this way, the building could be one story (18 ft. high) and the connector ramp to the adjacent building eliminated.

It is not clear if the full 40% landscaping and 25% open space could feasibly be provided with such a redesign, but the amounts provided would be much closer to the requirement. If the size of the parcel would not allow for such a redesigned project to provide the required amounts of landscaping and open space, the City could then consider the appropriateness of approving a variance from those standards. The City's staff report stated that recent commercial projects have been approved with variances to the landscaping or open space standards, although there was no discussion of why recent projects could not meet the standards. If the City Council considers the FAR standard to be too low, or the open space and/or landscaping coverage standards to be too high, such that projects cannot meet the standards, then it should consider modifying such standards through amendments to its municipal code and LCP.

The first factor in evaluating the issue of whether the appeal raises a substantial issue, is the degree of factual and legal support for the City's decision that the development is consistent with the provisions of LIP Section 3.8 (A)(5) (b). The issue of lot coverage, including landscaping and open space, was addressed in the staff report and the Planning Commission resolution of approval. As discussed above, the approved project is not consistent with LIP Section 3.8 (A)(5) (b). There is not adequate factual evidence and legal support for the City's analysis and decision with regard to the landscaping and open space requirements.

The second factor in evaluating the issue of whether the appeals raise a substantial issue is the extent and scope of the development as approved by the City. As described above, the subject project is a small commercial office or retail building on a relatively small parcel. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, there would be no significant coastal resources affected by the decision. As previously discussed, the project is not consistent with the open space or landscape lot coverage requirements of the LIP, as asserted by the appeal. However, the project site is a small lot that was previously developed and that is located in an area that is developed with commercial uses. As such, there is no environmentally sensitive habitat area (ESHA) or other significant coastal resources on the site that would be negatively affected by the project. The project will not provide the amount of open space or landscaping that is required and will therefore affect visual resources. However, given the location of the

parcel and the existing commercial development on surrounding parcels, this impact will not be significant.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the City's decision for future interpretation of its LCP. As discussed in detail above, the City did not interpret the provisions of LIP Section 3.8 (A)(5)(b) appropriately. In this particular case, the project is small in extent and the inappropriate interpretation does not result in any significant impact to environmentally sensitive habitat area (ESHA) or other coastal resources. In this unique factual circumstance, the City's decision will not be an adverse precedent for future interpretation of these standards. Commission staff will coordinate with the City on any commercial developments in the future to ensure that adequate landscaping and open space is provided.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The appeal raises issues with regard to lot coverage standards that in the case of the subject project only relate to local issues, and does not have regional or statewide significance.

So, in conclusion, the Commission finds that although the approved project does not conform to the lot coverage standard for new commercial development (LIP Section 3.8 (A)(5) (b)), the extent and scope of the subject project is minor. No significant coastal resources would be affected. The project approval will not be a precedent for future commercial developments and the lot coverage issues raised by the appeal relate only to local issues. Therefore, the Commission finds that the non-conformance of the approved project with LIP Section 3.8 (A)(5) (b) does not raise a substantial issue.

2. Commercial Development Standards–Building Height and Visual/Scenic Resources

Policy 6.6 of the LUP and LIP Section 6.5(A)(3) each state that:

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

Policy 6.7 of the LUP and LIP Section 6.5(B)(1) state that:

The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.

Policy 6.8 of the LUP states that:

Prominent ridgelines and other intervening ridgelines that are visible from a public road, a beach, public viewing areas, or public hiking trails, shall be protected by setting structures below the ridgeline to avoid intrusions into the skyline where feasible. Where there are no feasible alternative building sites below the ridgeline or where the only alternative building site would result in unavoidable adverse impacts to ESHA, structures shall be limited to one-story (18 feet maximum from existing or finished grade, whichever is lower) in height to minimize visual impacts.

Policy 6.12 of the LUP states that:

All new structures shall be sited and designed to minimize impacts to visual resources by:

- Ensuring visual compatibility with the character of surrounding areas.
- Avoiding large cantilevers or understories.
- Setting back higher elements of the structure toward the center or uphill portion of the building.

Policy 6.20 of the LUP states that:

New development on properties visible from and inland of Pacific Coast Highway shall be sited and designed to protect public views of the ridgelines and natural features of the Santa Monica Mountains through measures including, but not limited to, restricting the building maximum size, reducing maximum height limits, clustering development, incorporating landscape elements, and, where appropriate, berming.

The Malibu LCP contains policies and provisions that require new development to minimize impacts to visual resources through measures that include, but are not limited to, the siting and design of structures, limiting building height, and protecting views of ridgelines. The proposed project includes a commercial building with one story of lease space with a rooftop parking lot and patio above (Exhibits 4 through 7). A parapet wall with a sloping lip to the front and side edge of the flat roof is included to block views of the rooftop parking from below (Exhibit 8). The City considered this to constitute a sloping roof and approved a Site Plan Review to allow the maximum height of the approved structure to extend to 28 ft.

While the elevator/stair tower will extend above the roofline of the rest of the structure, this feature covers a very minor amount of the width of the structure and will not present an adverse visual resource impact, particularly because there is an existing large structure directly behind and above the subject building. The topography of the site is such that there is a flat pad at street level, with a steep slope adjacent to the rear property line. LUP Policy 6.7 and LIP Section 6.5(B)(1) require the maximum height limit to be measured from either the existing grade or finished grade, whichever is lower. In this case, the proposed project will result in some cut from the steep slope (Exhibit 8). As such, the finished grade in the area of the elevator and stairs is lower. The elevator/stair tower will conform to the 28 ft. maximum height limit.

The project site is on the inland side of Pacific Coast Highway, at the base of steep hillsides to the north. The surrounding area is developed with commercial structures, including the property immediately upslope to the north of the site. Further north there is an area of hillside residential development. The approved project will be unavoidably visible from Pacific Coast Highway. The development will be compatible with the character of surrounding development. The approved structure will not be located on a ridgeline nor will it impact views of prominent ridgelines as seen from Pacific Coast Highway.

With regard to project alternatives, given the size and configuration of the subject property, there are no siting alternatives that could be implemented to further reduce visual impacts. As described above, the approved project contains large interior areas of substantially enclosed space that is not counted in the maximum FAR. So, there are design alternatives that could result in a smaller overall structure with more landscaping and open space area on the parcel. Such redesign would reduce impacts to visual resources, but not significantly. As such, the approved project is consistent with the visual resource protection provisions of LUP Policies 6.6, 6.7, 6.8, 6.12 and 6.20 and LIP Sections 6.5(A)(3) and 6.5(B)(1).

The first factor in evaluating the issue of whether the appeal raises a substantial issue, is the degree of factual and legal support for the City's decision that the development is consistent with the provisions of LUP Policies 6.6, 6.7, 6.8, 6.12 and 6.20 and LIP Sections 6.5(A)(3) and 6.5(B)(1). The City's approval of the structure was supported by the architectural plans, including cross sections prepared by the applicant's consultants as well as City staff's review of story poles placed on the site to simulate the bulk of the structure. The issue of public views and compatibility were addressed by the Planning Commission. As such, the City's record indicates that there is adequate factual evidence and legal support for the City's analysis and decision with regard to visual resources.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved by the City. As described above, the subject project is a small commercial office or retail building on a relatively small parcel. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, there would be no significant coastal resources affected by the decision. As previously discussed, the project is not consistent with the open space or landscape lot coverage requirements of the LIP, as asserted by the appeal. However, the project site is a small lot that was previously developed and that is located in an area that is developed with commercial uses. As such, there is no ESHA or other significant coastal resources on the site that would be negatively affected by the project. The project will not provide the amount of open space or landscaping that is required and will therefore affect visual

resources. However, given the location of the parcel and the existing commercial development on surrounding parcels, this impact will not be significant.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the City's decision for future interpretation of its LCP. In this case, the project approved for the project is consistent with the policies and provisions of the LCP and will minimize impacts to visual resources. As such, the City's decision will have no adverse precedential value for future CDP decisions.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The appeal raises issues with regard to visual resources that in the case of the subject project only relate to local issues, and does not have regional or statewide significance.

In conclusion, the Commission finds that the approved project conforms to the visual resource policies and provisions of the LCP, that the extent and scope of the subject project is minor, and that no significant coastal resources would be affected. The project approval will not be a precedent for future commercial developments and the visual resource issues raised by the appeal relate only to local issues. Therefore, the Commission finds that the assertion of the appeal that the approved project does not conform to LUP Policies 6.6, 6.7, 6.8, 6.12 and 6.20 and LIP Sections 6.5(A)(3) and 6.5(B)(1) does not raise a substantial issue.

3. Water Quality—Septic System

LUP Policy 3.128 states that:

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

LUP Policy 3.130 states that:

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

The Malibu LCP contains policies and provisions regarding the siting, design and maintenance of onsite wastewater treatment systems (OWTS) in order to ensure that such systems function properly and not adversely impact water quality. The approved project includes the installation of an "alternative" OWTS to treat and discharge effluent from the commercial development (Exhibit 5). The system is designed to provide secondary ultraviolet disinfection, denitrification, as well as tertiary UV disinfection. The system comprises two tanks, present leach line, and future leach line. The OWTS was reviewed by the City Environmental Health Department and found to meet the minimum requirements of the plumbing code as well as the LCP.

In order to ensure the long-term function of the OWTS, the City approval includes conditions that require final design plans, a contract between the City and landowner to ensure maintenance of the system, and a recorded covenant putting future owners on notice that the system is an alternative method of disposal under the City plumbing code. Finally, the permit includes Condition of Approval No. 31 (Exhibit 14) which requires the owner to record a covenant that puts future owners on notice that:

...1) the private sewage disposal system serving the development on the property does not have a 100 percent expansion effluent dispersal area (i.e. replacement disposal field(s) or seepage pit(s)), and 2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures, including, but not limited to, limitations on water use enforced through operating permit and/or repairs, upgrades or modifications to the private sewage disposal system...

It is not clear why the approval includes this requirement because the evidence in the record, including the staff report, project plans, and the applicant's "Preliminary Engineering Report for Alternative Onsite Wastewater System" all identify a future leach field as part of the project. Staff has confirmed with City staff that the approved OWTS includes a full 100 percent expansion dispersal area and that it is a sufficient size to meet the requirements. Condition of Approval No. 31 was included in error.

The first factor in evaluating the issue of whether the appeal raises a substantial issue, is the degree of factual and legal support for the City's decision that the development is consistent with LUP Policies 3.128 and 3.130. The City's approval of the OWTS was supported by the technical reports and system design carried out by the applicant's consultants. Additionally, the OWTS was reviewed by the City's own environmental health professionals and granted preliminary approval, indicating that the system conforms to the standards of the plumbing code and the LCP. As such, the City's record indicates that there is adequate factual evidence and legal support for the City's analysis and decision with regard to the OWTS.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved by the City. As described above, the subject project is a small commercial office or retail building on a relatively small parcel. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, there would be no significant coastal resources affected by the decision. The project site is a small lot that was previously developed and that is located in an area that is developed with commercial uses. As such, there is no ESHA or other significant coastal resources on the site that would be negatively affected by the project. The project will incorporate an OWTS that meets the requirements of the LCP. Conformance with these standards will ensure that the OWTS will not adversely impact water quality. Therefore, the City's approval of the project will not affect coastal resources.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the City's decision for future interpretation of its LCP. In this case, the OWTS approved for the project is consistent with the policies and provisions of the LCP and will minimize impacts to water quality. As such, the City's decision will have no adverse precedential value for future CDP decisions.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. With regard to the approval of the OWTS, the appeal raises only local issues and does not have regional or statewide significance.

In conclusion, the Commission finds that the approved project conforms to the water quality requirements with regard to OWTSs, that the extent and scope of the subject project is minor, and that no significant coastal resources would be affected. The project approval will not be a precedent for future commercial developments and the OWTS issues raised by the appeal relate only to local issues. Therefore, the Commission finds that the assertion of the appeal that the approved project does not conform to LUP Policies 3.128 and 3.130 does not raise a substantial issue.

4. Public Access—Joint Use Parking

LUP Policy 5.13 states that:

Public use of private parking facilities currently underutilized on weekends (i.e. serving office buildings) adjacent to the beach shall be a permitted use in all commercial zones.

Sections 3.12.4(D) and (E) of the LIP state that:

3.12.4 Joint Use and Common Parking Facilities

The Planning Commission may permit the joint use of parking facilities to meet the standards for certain commercial, office, or mixed uses under the following conditions:

- A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use; provided, that such reciprocal parking arrangement shall comply with subsection C of this section.
- B. The Planning Commission may reduce parking requirements for common parking facilities by up to twenty-five percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.
- C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.
- D. Parking facilities for new development of general office or commercial use, which may cumulatively impact public access and recreation, shall be designed to serve not only the

development during ordinary working hours, but also public beach parking during weekends and holidays, in conjunction with public transit or shuttle buses serving beach recreation areas.

- E. A program to utilize existing parking facilities for office and commercial development located near beaches for public access parking during periods of normal beach use when such development is not open for business should be developed. As feasible, new non-visitor serving office or commercial development shall be required to provide public parking for beach access during weekends and holidays.

The LCP requires new general office or general commercial developments to be evaluated for impacts to public access and to provide joint use parking spaces for public use during off hours as mitigation of such impacts. In the case of the subject project, the commercial building was approved for general commercial or offices uses. No specific tenants were proposed or considered by the City in its review of the CDP. Certain visitor-serving commercial uses are permitted within the "Community Commercial", but such uses are not required or given priority.

The City staff report concludes that the project is not located between the first public road and the ocean, near any trails, or other designated recreation area, and no findings regarding public access are required. So, the City did not analyze whether the project would have individual or cumulative impacts on public access or whether joint use of the project's parking spaces by the general public during off hours should be required pursuant to Section 3.12.4(D) and (E) of the LIP.

Commission staff's review of the administrative record indicates that the project is unlikely to have impacts on public access. The project site was previously developed with a gas station, but has been vacant for some time. So, although the eventual use of the approved structure is not assured to be visitor-serving commercial, there is currently no visitor serving use existing on the site, so there would be no net loss of existing visitor serving commercial opportunities. The street in front of the site is "red-curbed", and no parking is currently allowed. So no public parking available for public access would be lost as a result of the development. Finally, there is a bus stop on Pacific Coast Highway directly adjacent to the project site that will remain after completion of the approved development. Therefore, although the City did not address the provisions of LUP Policy 5.13 and Section 3.12.4(D) and (E) of the LIP, the project is unlikely to have impacts on public access that would necessitate the provision of joint-use public parking spaces as mitigation.

The first factor in evaluating the issue of whether the appeal raises a substantial issue, is the degree of factual and legal support for the City's decision that the development is consistent with the provisions of LUP Policy 5.13 and Section 3.12.4(D) and (E) of the LIP. The issue of impacts to public access and the requirement to provide for public co-use of parking spaces on the project site were not addressed by the Planning Commission in its approval of the subject CDP.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved by the City. As described

above, the subject project is a small commercial office or retail building on a relatively small parcel. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, there would be no significant coastal resources affected by the decision. As previously discussed, the project does not address the public access or joint parking requirements of the LIP, as asserted by the appeal. However, the project site is a small lot that was previously developed and that is located in an area that is developed with commercial uses. As such, there is no ESHA or other significant coastal resources on the site that would be negatively affected by the project. The project is unlikely to have significant adverse impacts on public access. However, given the location of the parcel and the existing commercial development on surrounding parcels, this impact will not be significant.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the City's decision for future interpretation of its LCP. As discussed above, the City did not consider the provisions of LUP Policy 5.13 and Section 3.12.4(D) and (E) of the LIP. In this particular case, the project is small in extent and the inappropriate interpretation does not result in any significant impact to public access, ESHA or other coastal resources. In this unique factual circumstance, the City's decision will not be an adverse precedent for future interpretation of these standards. Commission staff will coordinate with the City on any commercial developments in the future to ensure that the protection of public access is addressed.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The appeal raises issues with regard to joint use parking standards that in the case of the subject project only relate to local issues, and does not have regional or statewide significance.

So, in conclusion, the Commission finds that although the approved project does not address the provisions of LUP Policy 5.13 and Section 3.12.4(D) and (E) of the LIP, the extent and scope of the subject project is minor. No significant coastal resources would be affected. The project approval will not be a precedent for future commercial developments and the lot coverage issues raised by the appeal relate only to local issues. Therefore, the Commission finds that the assertion of non-conformance with LUP Policy 5.13 and Section 3.12.4(D) and (E) of the LIP does not raise a substantial issue.

D. APPLICANT'S RESPONSE

The applicant has submitted three responses to the appeal (Exhibit 16). The responses relate to two issues raised by the appeal: the open space requirements; and ridgeline views. The applicant has also submitted several color photos of rooftop decks and

courtyards located at undisclosed locations in the City of Malibu. These photos are part of the file but are not reproduced here.

Open Space Requirements

The applicant states that there is no specific definition of “open space” in the LCP, and the LCP specifies what is not to be included. The applicant states that:

Malibu has defined the term “Open Space” by specifying what it is NOT and by what the City has approved in the past and what has been approved by the Coastal Commission.

“Open Space” is not landscaped areas, it is not driveways or parking areas, and it is not enclosed rental area. The City and the L.C.P. do not say what it is: however, the City has a 20 year history of approving areas open to the public with views of the ocean, and areas where food and beverages can be served and/or consumed outside as “Open Space”, including terraces and roof decks. The Coastal Commission is also on record as approving all of the types of “Open Space” areas that the City has approved as “Open Space”...

The applicant also argues that if patios, terraces and rooftop decks with public seating areas are not to be included as part of the required “Open Space” area then visitor serving parking will have to be substantially reduced to provide more open space at ground level.

The applicant has provided no specific examples where the City or Commission has permitted rooftop decks to count towards the open space requirement. In fact, the City staff report acknowledges that there are very few projects within the City that have been approved with rooftop open space and landscaping. The Commission has not approved any commercial project since the certification of the LCP, so it has not previously applied the requirements of LIP Section 3.8 (A)(5)(b).

While the term “Open Space” is not specifically defined in Chapter 2 (Definitions) of the LIP, the Commission disagrees that the LCP does not specify what is meant by the term. As discussed above, Section 3.8 (A)(5)(b) of the LIP states what can and cannot be included in open space area: “Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space”.

The LCP does not only require that enclosed rental area not be counted in the required open space area, it states that area devoted to buildings cannot qualify. The term “building” does not only include enclosed rental area, it includes any structure having a roof supported by columns or walls, so the entire approved structure within the footprint of the roof is “building” and cannot be counted towards the open space requirement. Further, with regard to the applicant’s argument that the proposed rooftop “landscaping” and “open space” areas are public amenities where food can be served or consumed and ocean views can be enjoyed, the Commission must disagree that the roof deck approved in this project will be used in that way. For one thing, the project was not

approved to include any food service, on the roof or otherwise. It was approved for general office or general retail use and there are no commercial services on the upper level. Additionally, no ocean views will be provided for anyone sitting on the benches on the roof deck because the approved project includes a 4.5 foot high parapet wall around the deck and parking area. Finally, although the applicant discusses a trade-off between provision of ground level open space area and visitor-serving parking spaces, this is not particularly relevant in this case. The approved project may include visitor serving commercial uses, but there is no requirement to do so under the requirements of the CC zoning or any condition of the CDP.

Ridgeline Views

The applicant also argues that the contentions of the appeal regarding ridgeline views and the maximum height of the elevator and stairs are not correct. As discussed above, the approved project is consistent with the visual resource policies cited in the appeal.

E. CONCLUSION

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the City's certified LCP regarding lot coverage standards (landscaping and open space), visual resources, waster water treatment, and public use of private parking. Applying the five factors identified above, the Commission finds although the approved project does not conform to the lot coverage standard for new commercial development that the City's record adequately supports its position that the proposed project is consistent with the remaining LCP policies. In addition, the development is relatively minor in scope, doesn't have a significant adverse effect on significant coastal resources, has little precedential value, and doesn't raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue as to the City's application of the cited policies of the LCP.

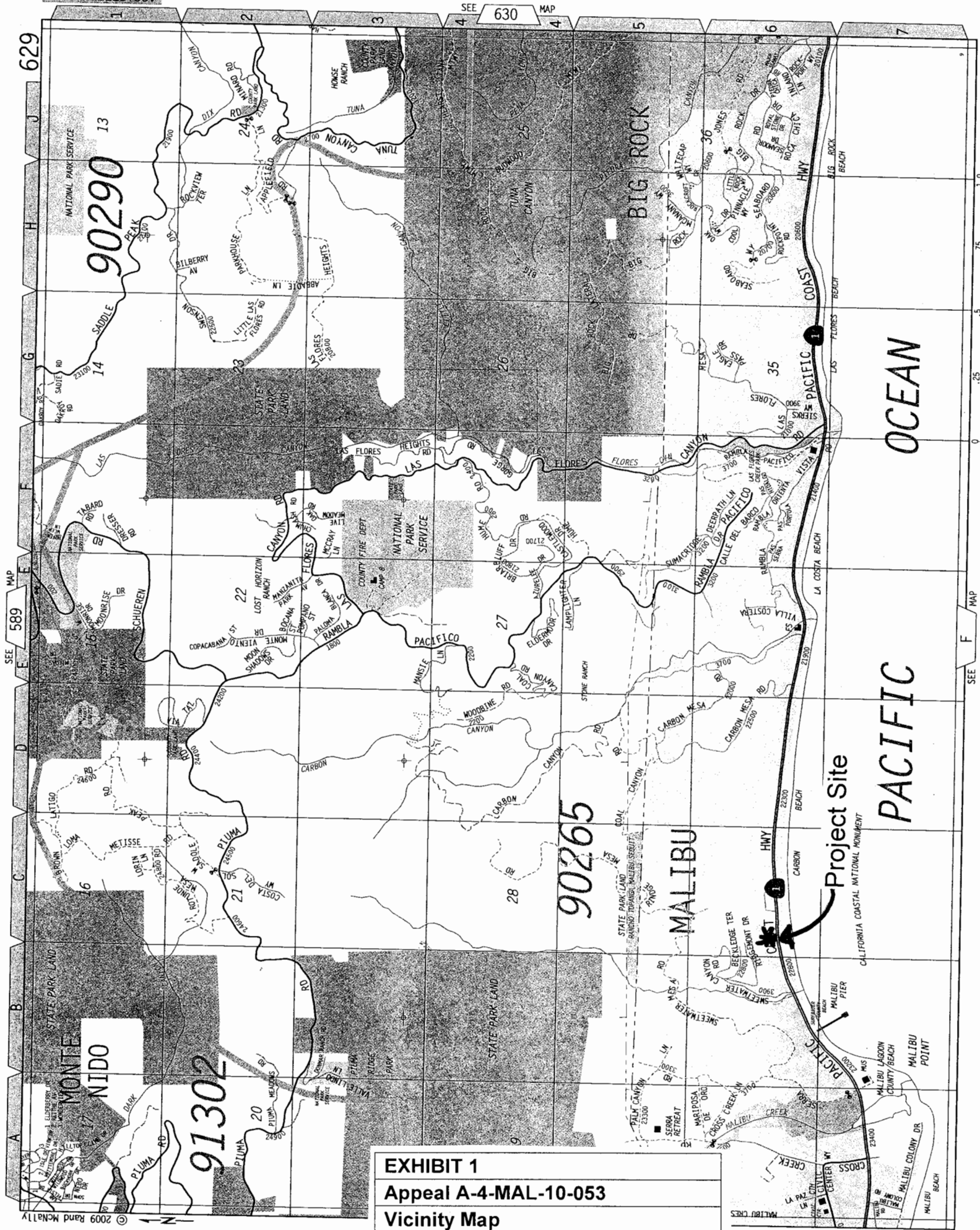


EXHIBIT 1
Appeal A-4-MAL-10-053
Vicinity Map



EXHIBIT 2

Appeal A-4-MAL-10-053

Post Certification Map

Post-LCP Certification Permit and Appeal Jurisdiction City of Malibu

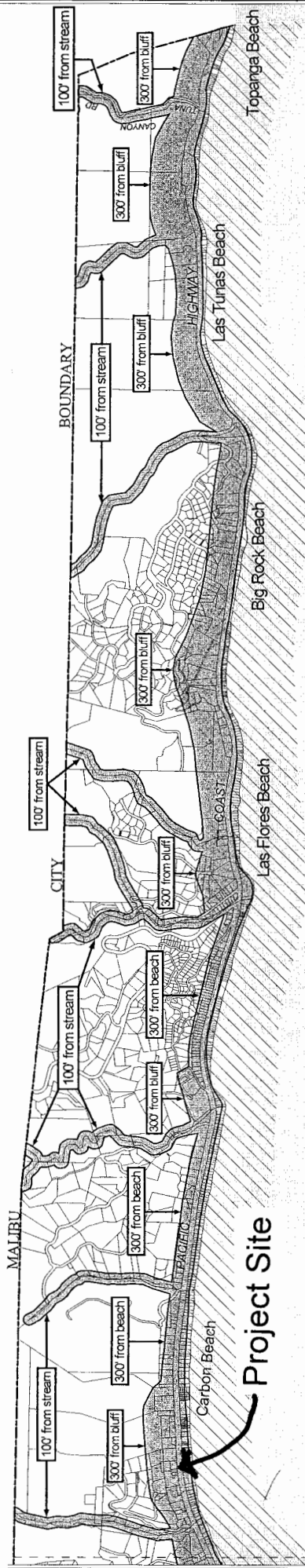
Permit Jurisdiction

This area includes only lands below the mean high tide line and lands where the public trust may exist.

Appeal Jurisdiction

This area includes lands between the sea and the designated first public road and lands where the public trust may exist. Also, lands within 300' of the top of the seaward face of any coastal bluff.

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit jurisdiction pursuant to P.R.C. 30515(b), and sections (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), and (aa). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This map may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.



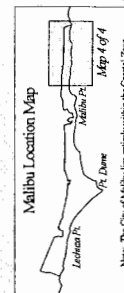
P a c i f i c

O c e a n

I hereby certify that this map portrays the boundaries for

City of Malibu

adopted by the California Coastal Commission September 13, 2002.



Note: The City of Malibu lies entirely within the Coastal Zone.

California Coastal Commission
Technical Services Division



In addition to these geographic areas of appeal jurisdiction the following types of development are appealable throughout the coastal zone pursuant to P.R.C. Section 30503: (1) Any development that is not designated as a principal permitted use under zoning approved pursuant to the applicable Local Coastal Program; (2) Any development that constitutes a major public works project or a major energy facility.

In some areas parcels are bisected by the appeal jurisdiction boundary. All development proposed within the appeal area defined as appealable is subject to the Commission's jurisdiction. In addition, if a development is proposed partly on the portion of the parcel that forms the basis for geographic appeal jurisdiction, and partly on the remainder of the parcel, and the Commission decides to hear the appeal, then the entire parcel is subject to the Commission's jurisdiction (Section 30503(a)), which encompasses all the development that was authorized in the permit.

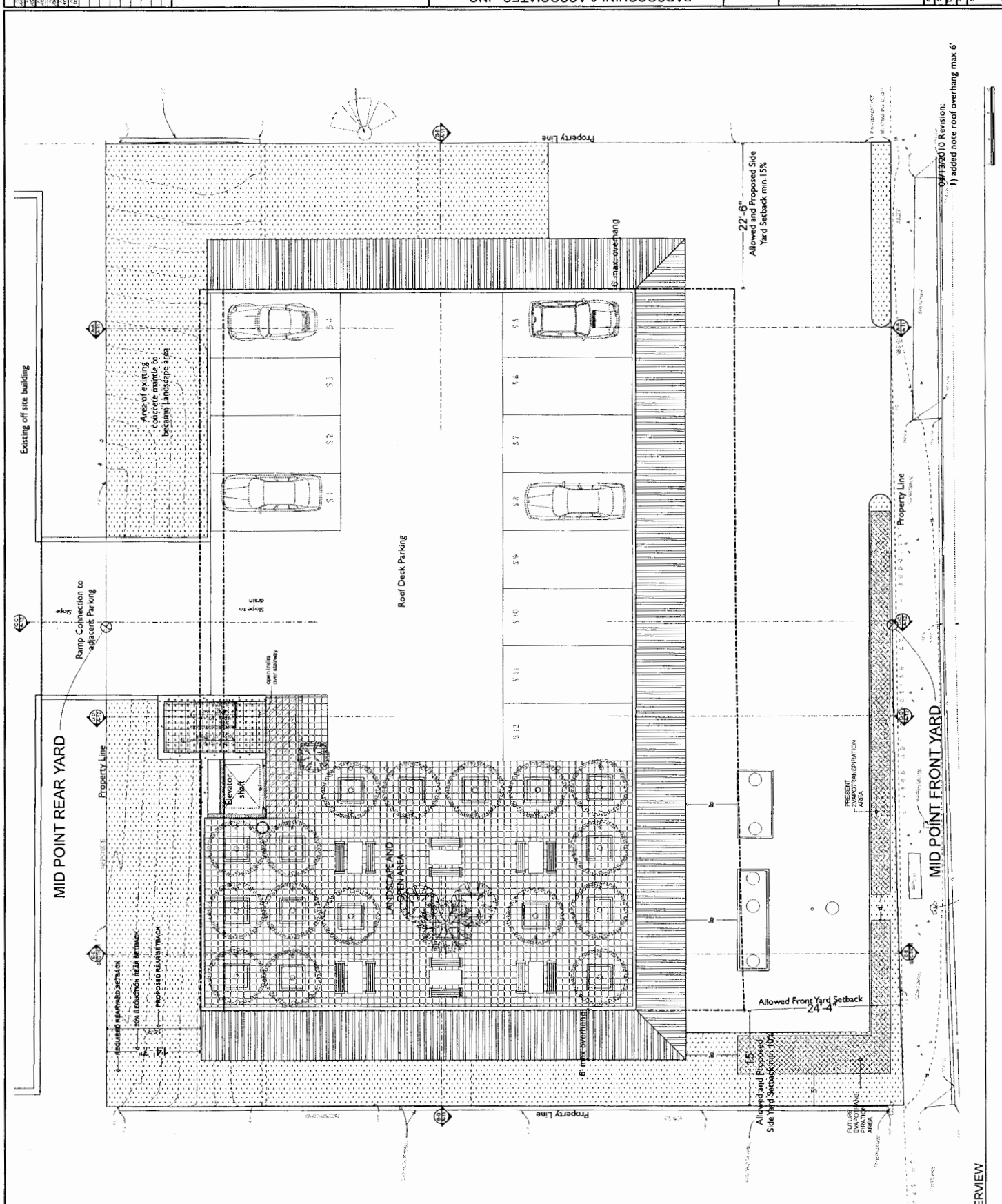


EXHIBIT 3
Appeal A-4-MAL-10-053
Site Plan

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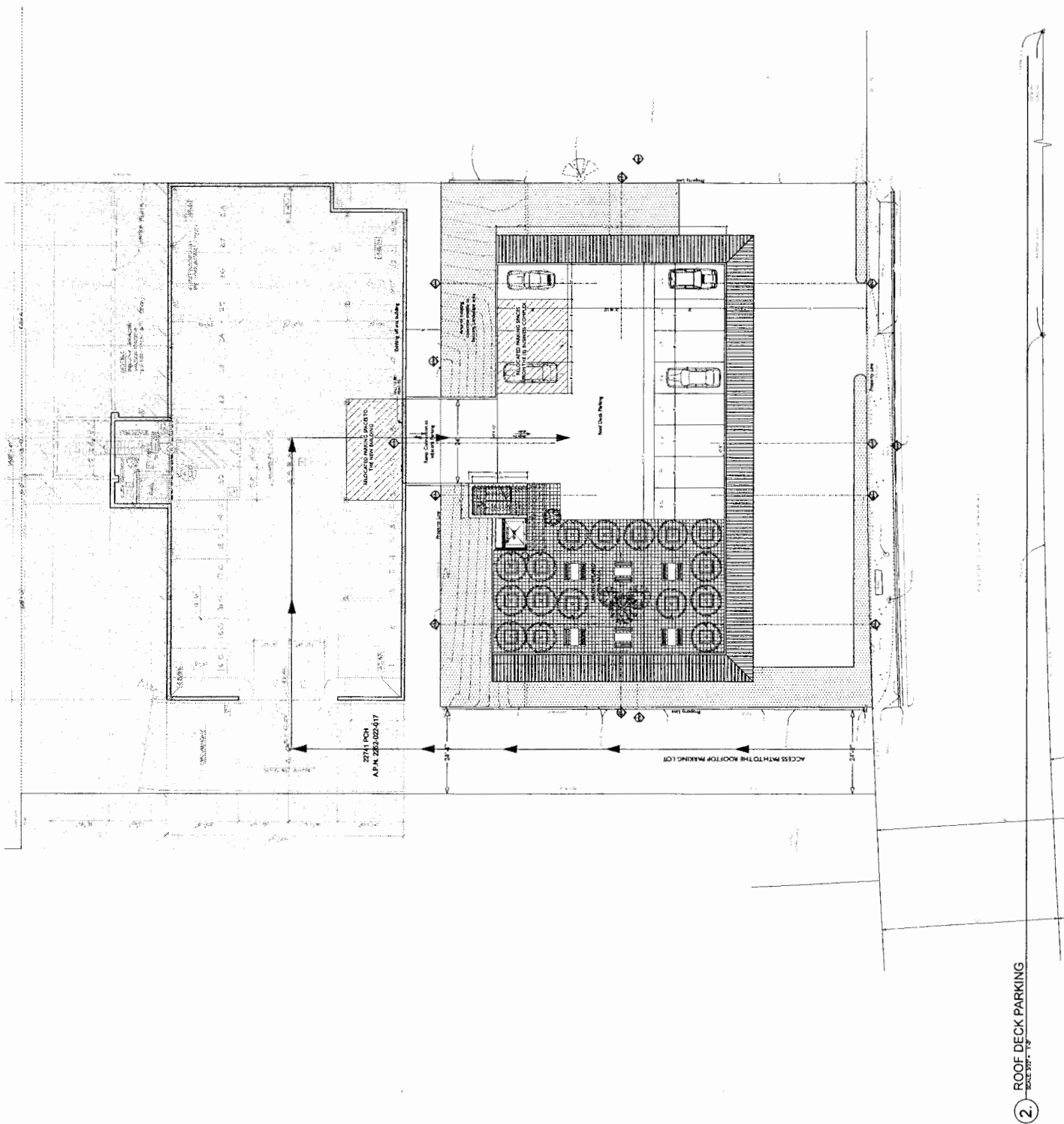
SEA VIEW TERRACE, LLC
22729 Pacific Coast Highway
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ARCHITECTS
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CONNECTIVITY TO
(E) BUSINESS CENTER

DATE: 11/11/10
SCALE: AS SHOWN
PROJECT: A-4-MAL-10-053
SHEET: 15A
SHEETS: 15A

A-05
OF 17 SHEETS



2. ROOF DECK PARKING
SHEET 15A-1

EXHIBIT 4
Appeal A-4-MAL-10-053
Ramp Connection

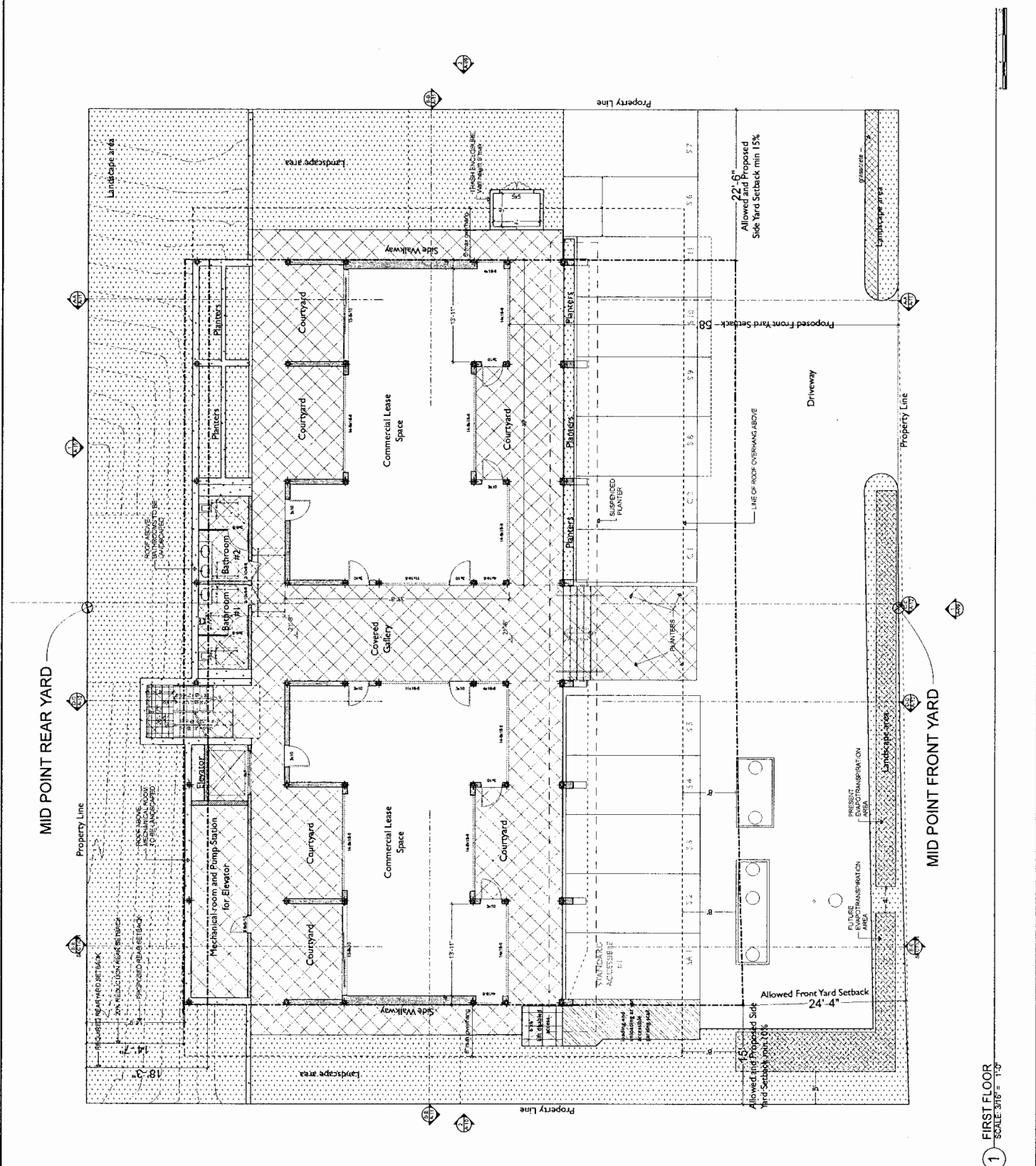


EXHIBIT 5
Appeal A-4-MAL-10-053
OWTS Plan

REVISIONS	DATE	BY	CHKD
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9. 2.1.1.9	10/10/10	AS SHOWN	AS SHOWN
10. 2.1.1.10	10/10/10	AS SHOWN	AS SHOWN

SEA VIEW TERRACE, LLC
22729 Pacific Coast Highway
MALIBU, CA 90265

BARSOCCCHINI & ASSOCIATES, INC.
MICHAEL E. BARSOCCCHINI, AIA (310) 456-3625
ARCHITECTS

FIRST FLOOR PLAN
A-07
OF 17 SHEETS

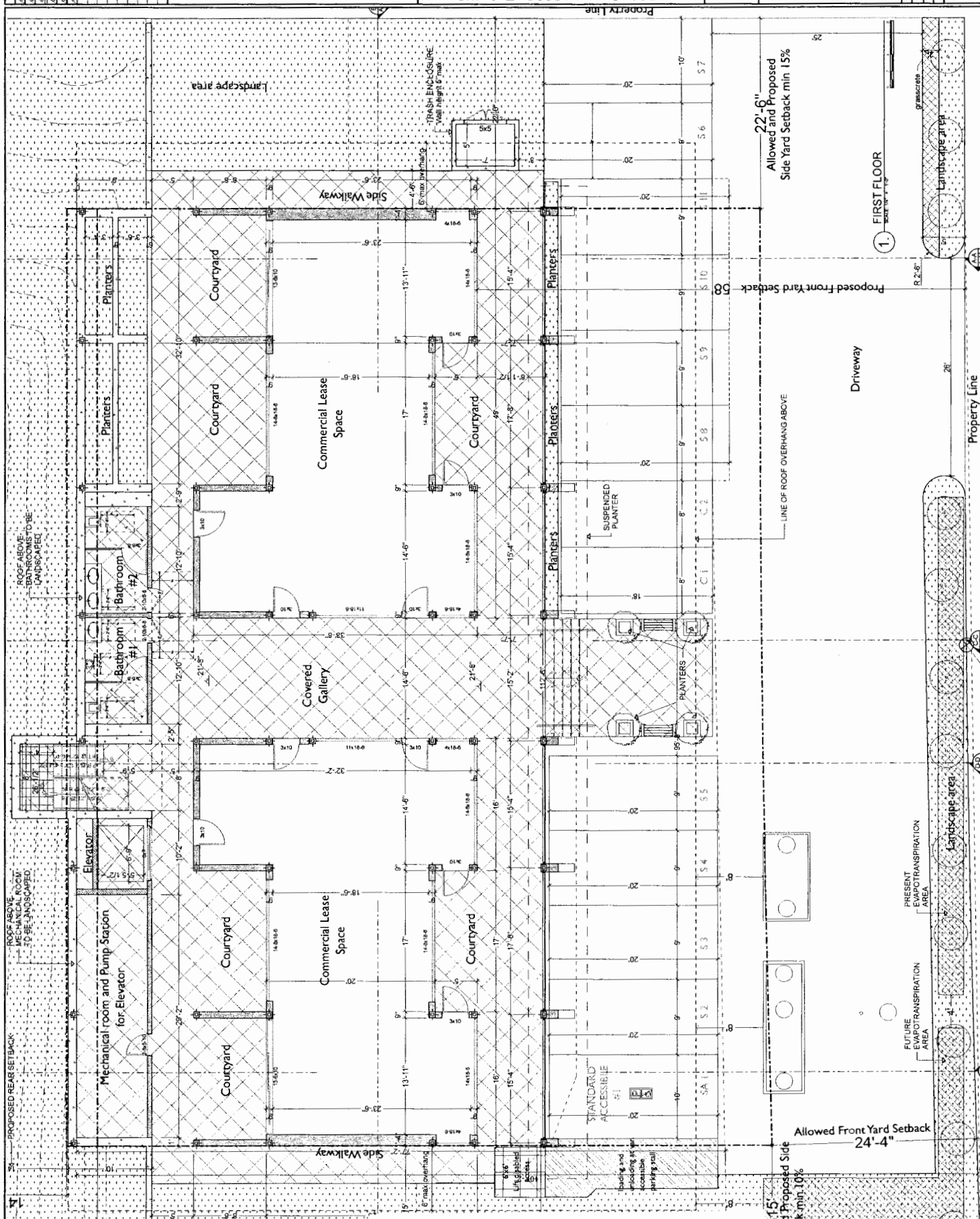


EXHIBIT 6
Appeal A-4-MAL-10-053
Floor Plans (2 pages)

REVISION	DATE	BY	CHK
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2	11/11/11	MM	MM
3	11/11/11	MM	MM
4	11/11/11	MM	MM
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8	11/11/11	MM	MM
9	11/11/11	MM	MM
10	11/11/11	MM	MM

SEA VIEW TERRACE, LLC
22729 Pacific Coast Highway
MALIBU, CA 90265

BARSOCCCHINI & ASSOCIATES, INC.
ARCHITECTS
MICHAEL E. BARSOCCCHINI, AIA
(310) 456-3625

ELEVATIONS SOUTH & EAST
SHEET NO. 2 OF 2
SCALE: AS SHOWN
PROPERTY: A-4-MAL-10-053
PROJECT: 100
DATE: 11/11/11

A-09
OF 17 SHEETS

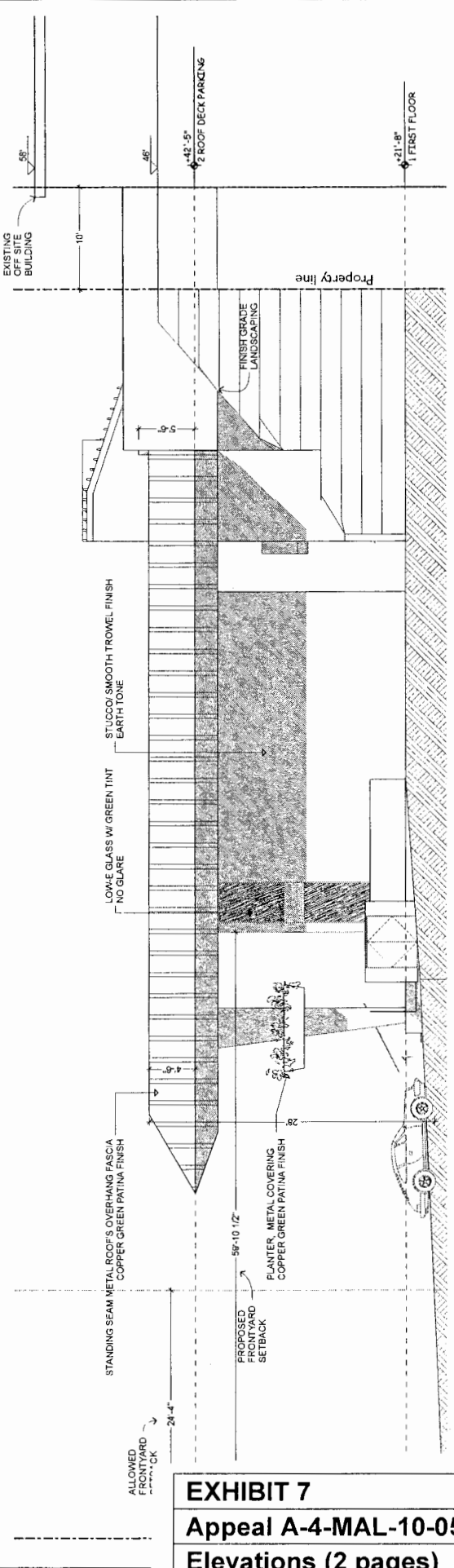
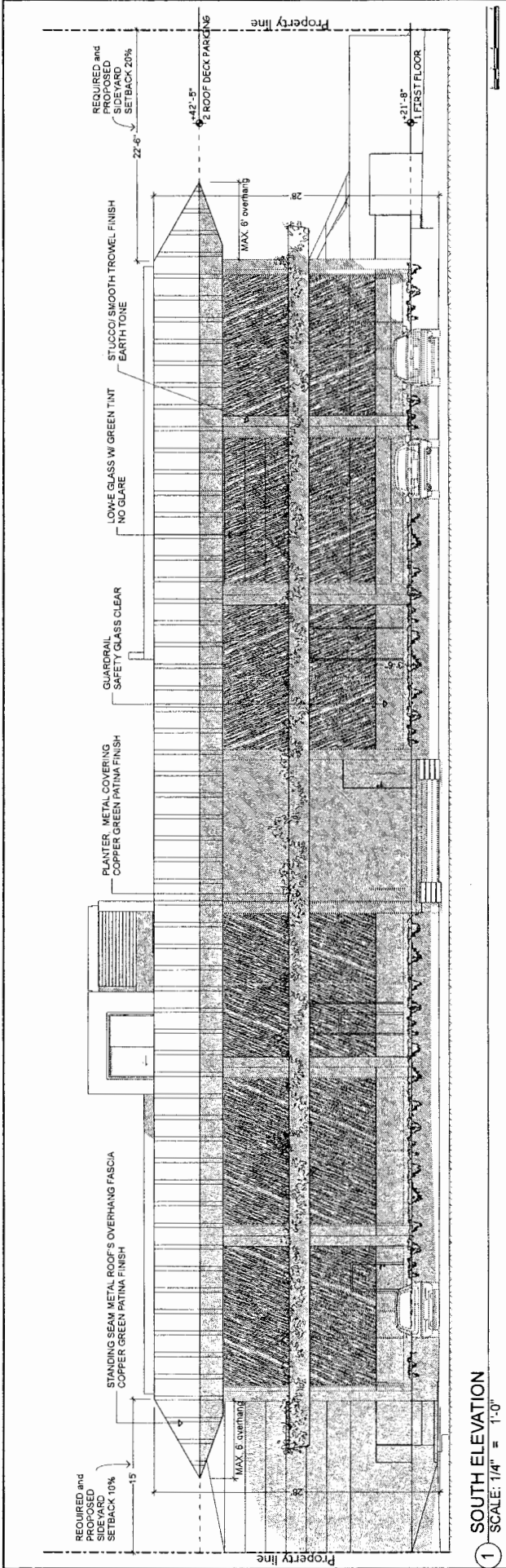


EXHIBIT 7
Appeal A-4-MAL-10-053
Elevations (2 pages)

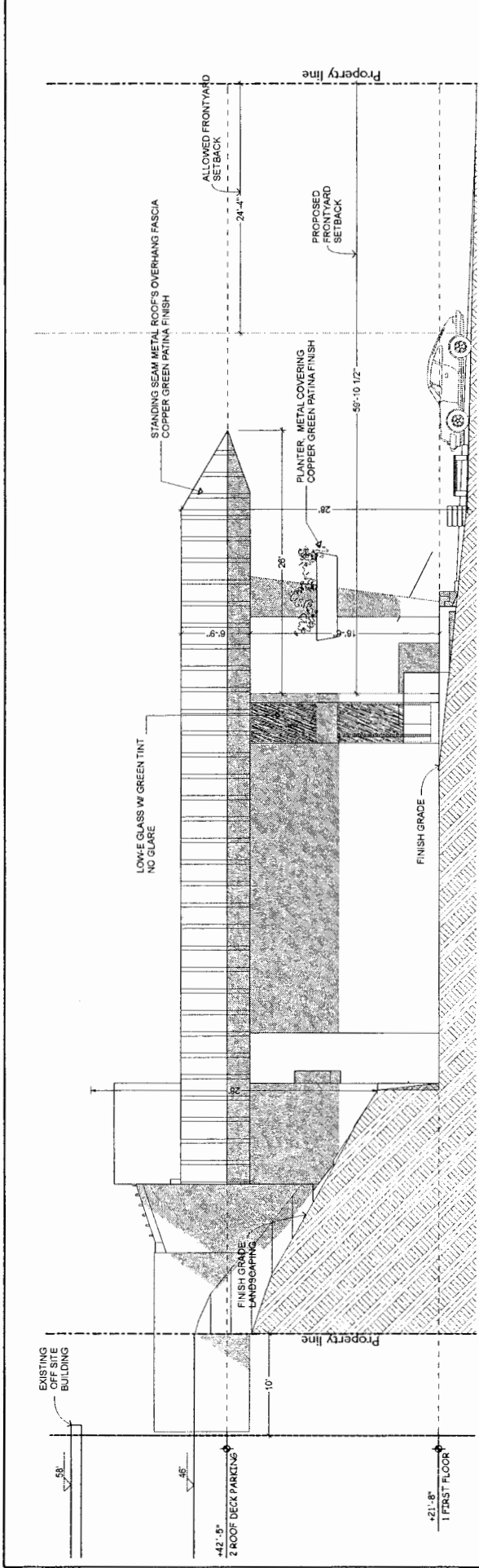
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SEA VIEW TERRACE, LLC
22729 Pacific Coast Highway
MALIBU, CA 90265

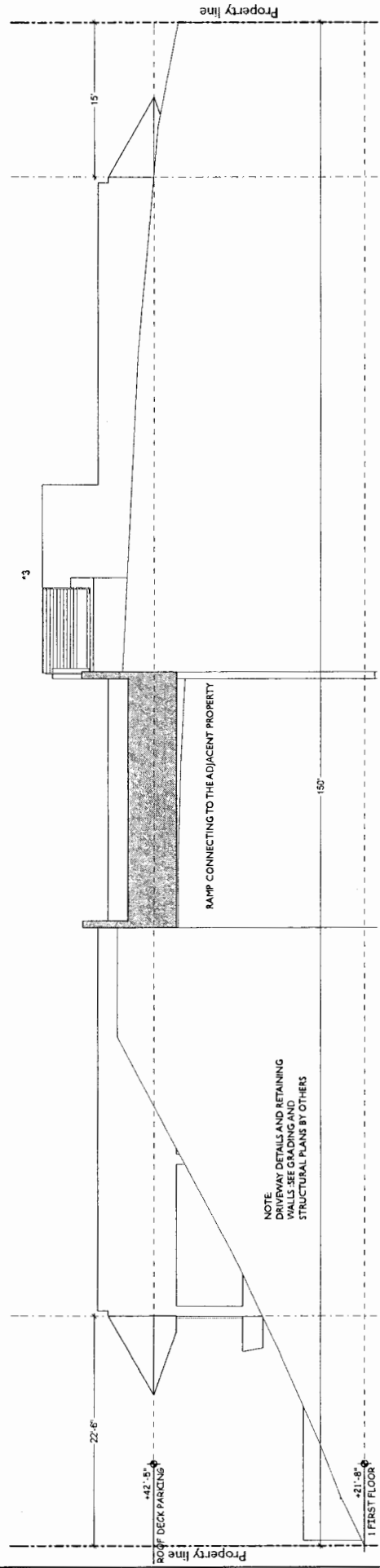
BARSCOCCHINI & ASSOCIATES, INC.
ARCHITECTS
MICHAEL E. BARSCOCCHINI, AIA (310) 456-3625
2200 ROCKWELL DRIVE, MALIBU, CA 90265

ELEVATIONS WEST & NORTH
DATE: APR 9, 2010
SCALE: AS SHOWN
DRAWING: 11/10/10
SHEET: 12
A-10

04/13/2010 Revision:
1) added note roof overhang max 6'



2 WEST ELEVATION
SCALE: 1/4" = 1'-0"



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

[illegible]

BARSOCCHINI & ASSOCIATES, INC.
A R C H I T E C T S
MICHAEL E. BARSOCCHINI, A.I.A. • (310) 456-3625
1550 COAST HIGHWAY, MALIBU, CA 90265

DATE Apr 9, 2008
SCALE AS SHOWN
DRAWN BY A. MATTEO
JCS/NO 1104-

SHEET 11
A-11
OF 17 SHEETS



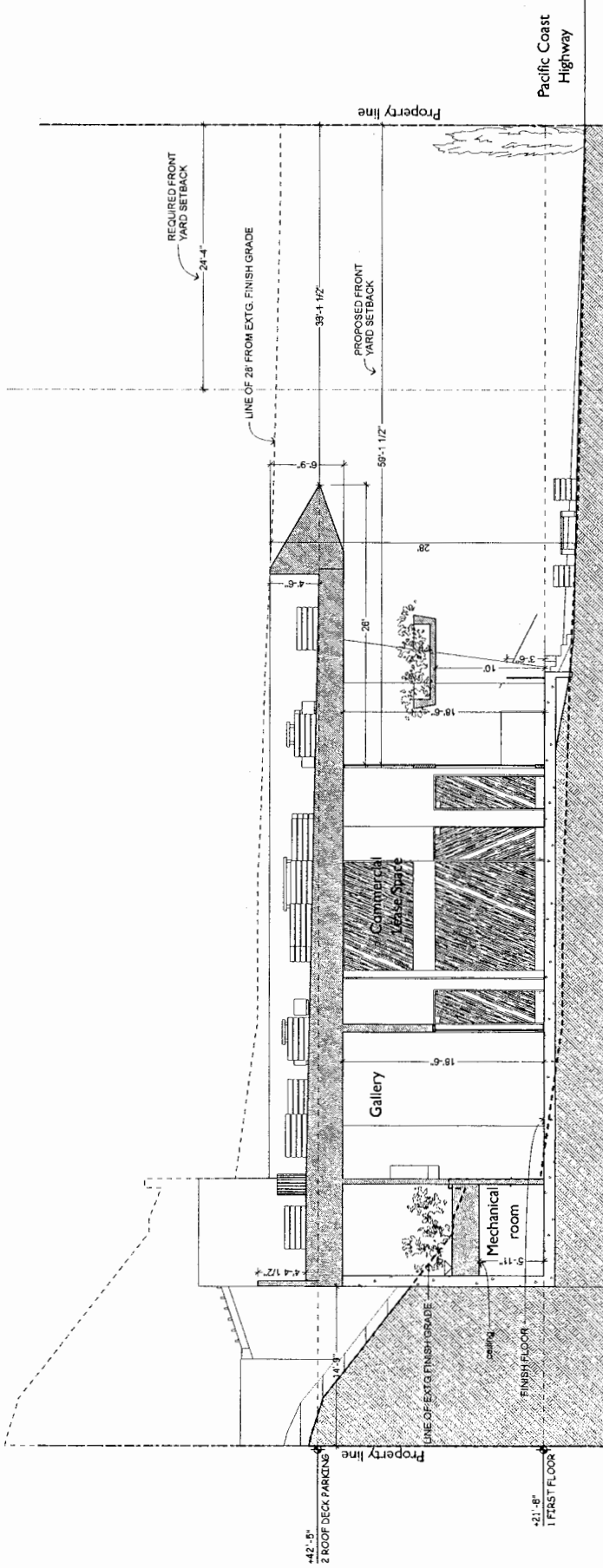
2 B-B SECTION
SCALE: 1/4" = 1'-0"

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100	11/11/2011	Final Design

SEAVIEW TERRACE, LLC
22729 Pacific Coast Highway
MALIBU, CA 90265

BARSOCCCHINI & ASSOCIATES, INC
ARCHITECTS
MICHAEL E. BARSOCCCHINI, AIA - (310) 456-3625
MALIBU, CA 90265

SECTION E-E
DATE: 11/11/2011
SCALE: AS SHOWN
DESIGNED BY: M. BARSOCCCHINI
DRAWN BY: M. BARSOCCCHINI
CHECKED BY: M. BARSOCCCHINI
PROJECT NO.: 1104
SHEET NO.: 13
A-13
OF 17 SHEETS



① E-E SECTION
SCALE: 1/4" = 1'-0"

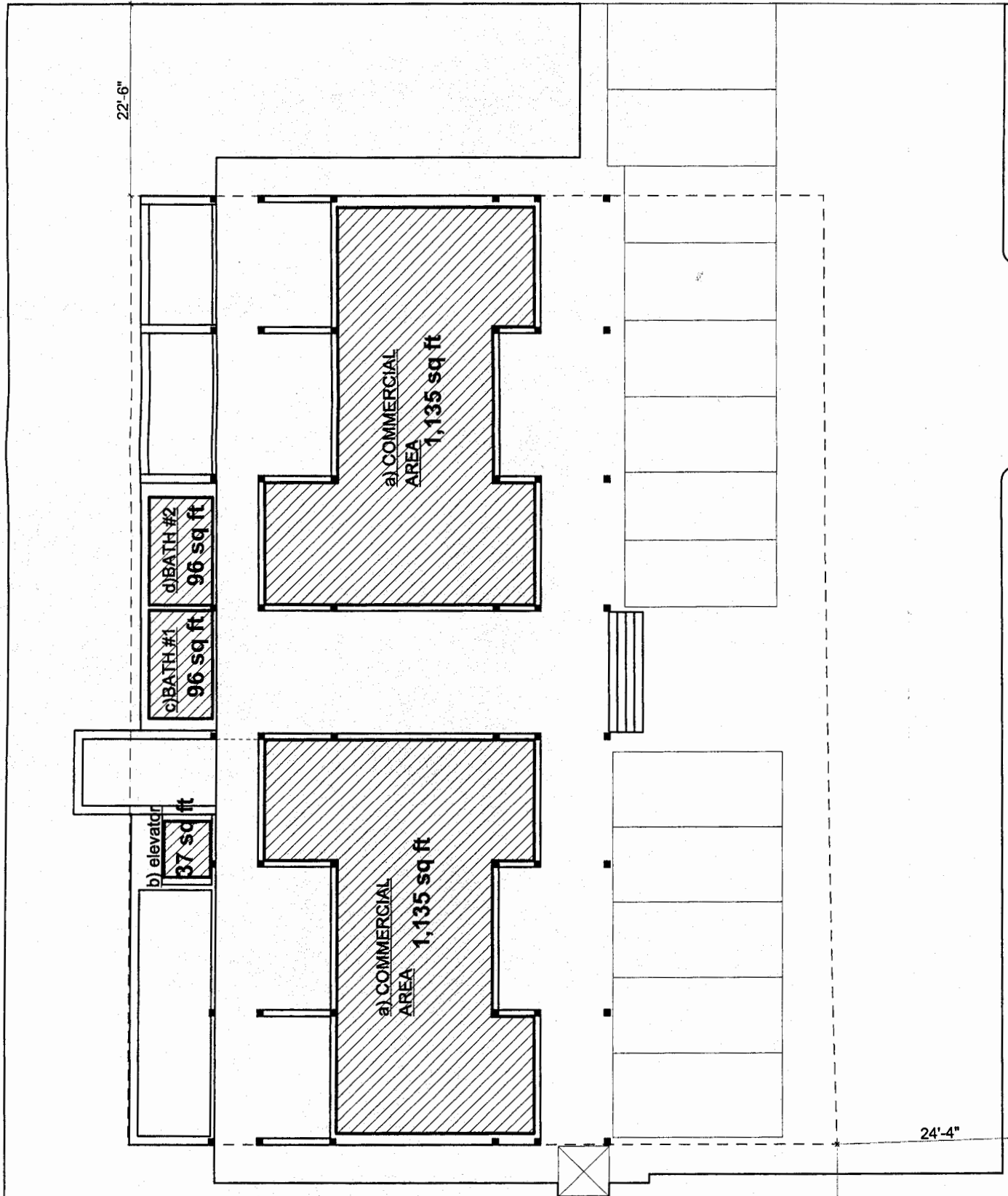


EXHIBIT 9

Appeal A-4-MAL-10-053

Areas used in Applicant's "F.A.R." Calculation

A) NEW
LANDSCAPE AREA

5,599 sq ft

22'-6"

C) PLANTERS

97 sq ft

B) LANDSCAPE
AREA

140 sq ft

EXHIBIT 10

Appeal A-4-MAL-10-053

Areas used in Applicant's
"Landscape" Calculation (1st level)

24'-4"

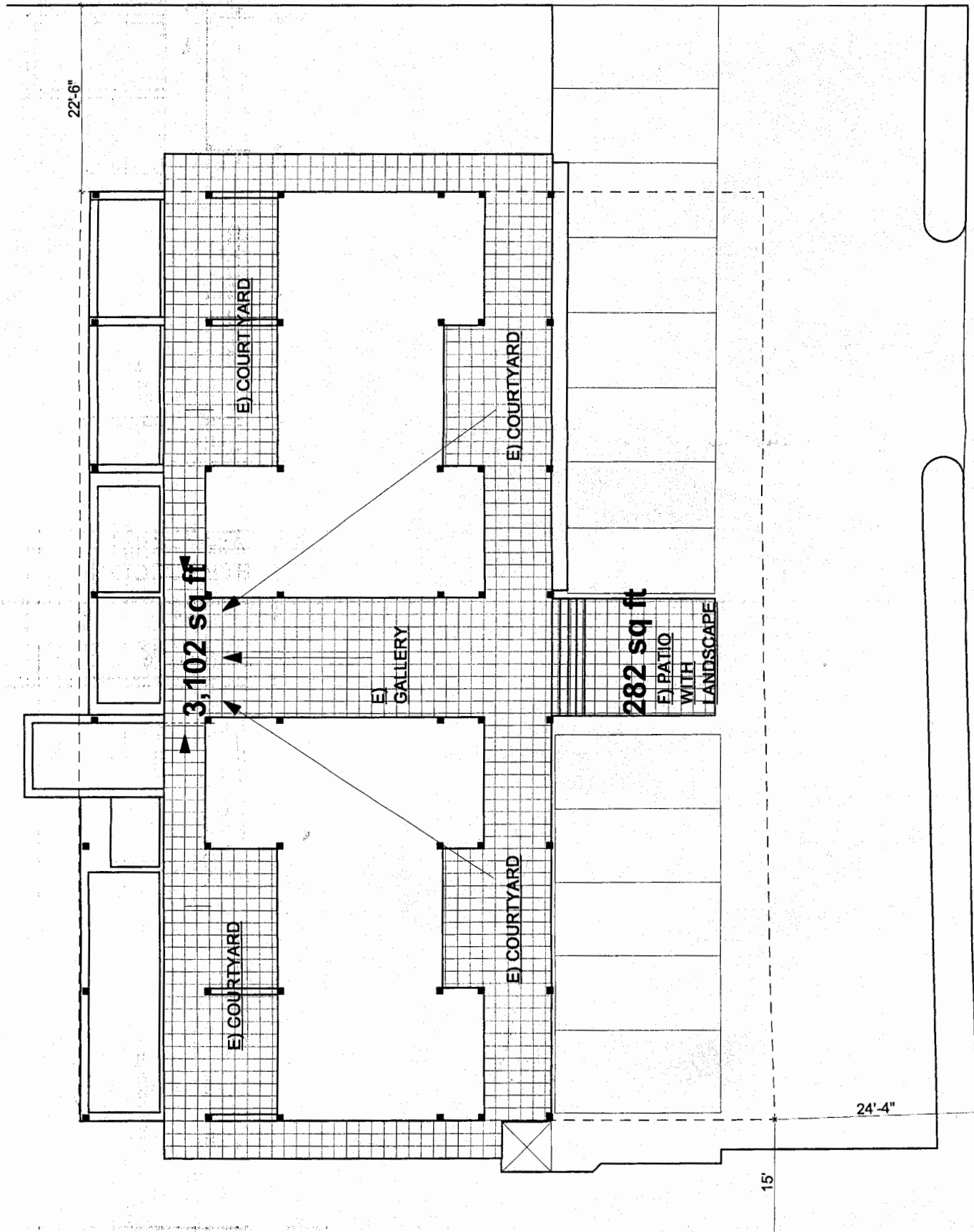
15'

1'

EXHIBIT 11

Appeal A-4-MAL-10-053

Areas used in Applicant's "Open Space" Calculation (1st level)



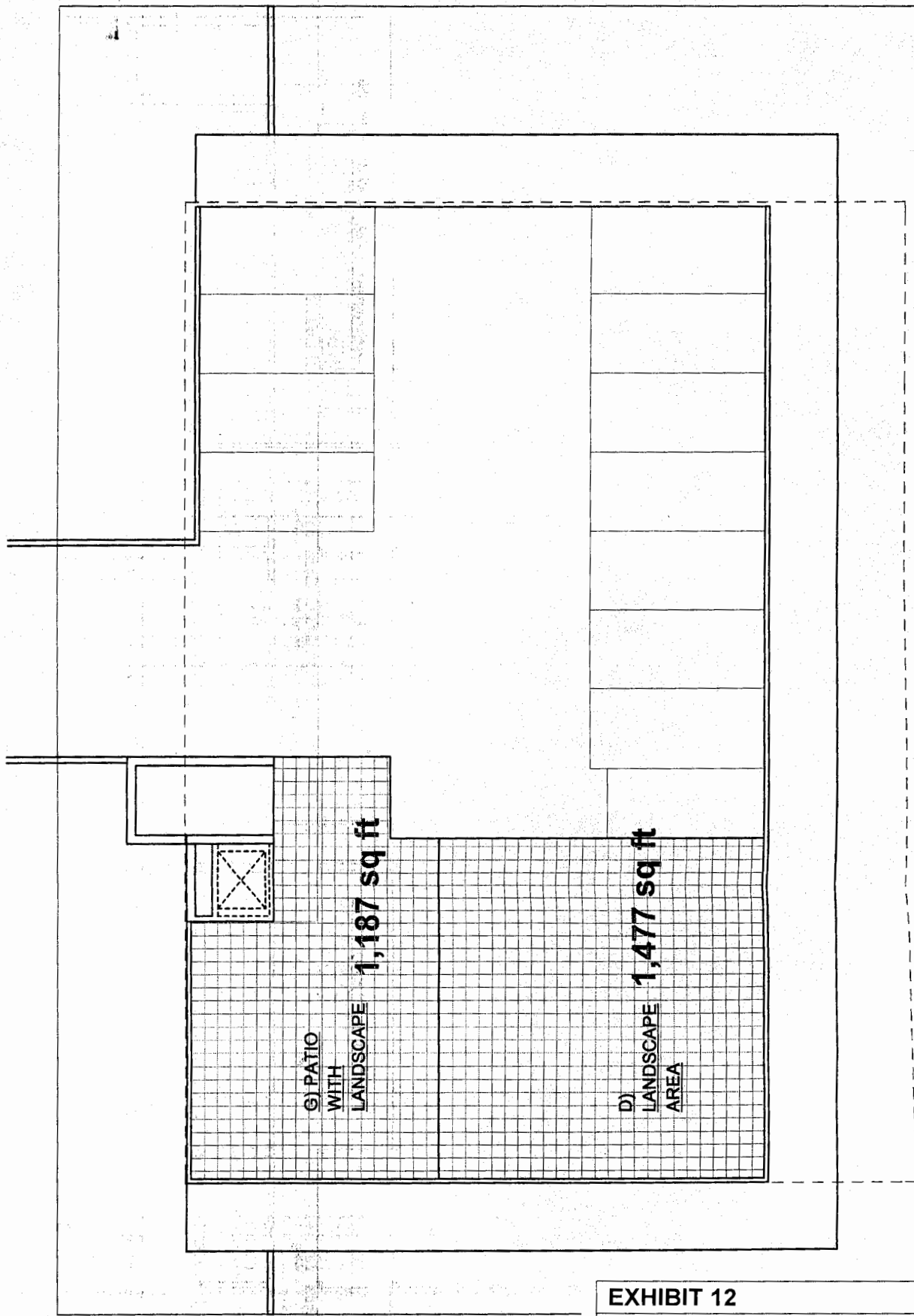


EXHIBIT 12

Appeal A-4-MAL-10-053

**Areas used in Applicant's 2nd level
Calculations**



EXHIBIT 13

Appeal A-4-MAL-10-053

City of Malibu Staff Report
(without attachments)

Supplemental Commission Agenda Report

5.A.

RECEIVED
JUL 13 2010

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

To: Chair and Members of the Planning Commission

Prepared by: Ha Ly, Associate Planner

Reviewed by: Joyce Parker-Bozylinski, AICP, Planning Manager

Approved by: Victor Peterson, Community Development Director

Date prepared: May 25, 2010 Meeting date: June 1, 2010

Subject: Coastal Development Permit No. 08-055, Site Plan Review No. 10-012, Variance Nos. 10-005 and 10-006, Conditional Use Permit No. 10-003, and Demolition Permit No. 08-014 – An application for the demolition of existing remnant structures associated with an abandoned gas station, construction of a new, 2,499 square foot commercial office building with a rooftop parking lot, a vehicular ramp connecting the rooftop parking to an existing parking lot located directly north of the subject property, the installation of an alternative onsite wastewater treatment system, hardscape, landscaping, and grading; including a site plan review for construction in excess of 18 feet in height, variances for construction on slopes in excess of 2½ to 1 and reduction of the required rear yard setback, and a conditional use permit to allow for the construction of over 500 square feet of commercial development (Continued from May 18, 2010)

Application Filing Date: July 8, 2008
Applicant: Mike Barsocchini, Barsocchini & Associates
Owner: WFS Seastar Company, LLC
Location: 22729 Pacific Coast Highway,
within the appealable coastal zone
APN: 4452-022-010
Zoning: Community Commercial (CC)

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 10-43 (Attachment 1) approving Coastal Development Permit (CDP) No. 08-055, Site Plan Review (SPR) No. 10-012, Variance (VAR) Nos. 10-005 and 10-006, Conditional Use Permit (CUP) No. 10-003 and Demolition Permit No. 08-014, approving an application

Construction of:

- a. 2,499 square foot, one-story, commercial office building with rooftop parking; 24 feet maximum for areas with flat roofs and 28 feet maximum for areas with pitched roof;
- b. 25 parking spaces (including 3 parking spaces reserved for 22741 PCH), consisting of rooftop parking and on grade parking;
- c. 24 foot wide, rooftop connector ramp (1 percent slope) from the subject property to 22741 PCH;
- d. 1,370 total cubic yards of exempt grading;
- e. Landscaping (40 percent);
- f. Open space (25 percent)
- g. Hardscape; and
- h. Alternative onsite wastewater treatment system (AOWTS)

The project includes a floor area ratio (F.A.R.) equal to .14 (.1367). A F.A.R. of .15 is permitted in the CC zone. The building is proposed with stucco finish in an earth tone and a copper green patina finish roof.

The project includes the following discretionary requests:

SPR No. 10-012 – for the construction over 18 feet in height. The proposed structure is 24 feet maximum for areas with a flat roof and 28 feet maximum for areas with a pitched roof. The required findings can be made and are discussed in this report.

VAR No. 10-005 – for the construction on slopes in excess of 2½ to 1. The proposed structure is located on 1½ to 1 manufactured slopes. The required findings can be made and are discussed in this report.

VAR No. 10-006 – for the reduction of the required rear yard setback. Pursuant to LIP Section 3.8(A)(2), the required rear yard setback is 15 percent of the lot depth or 15 feet, whichever is greater. The majority of the building is set approximately 15 feet from the rear property line, with the exception of a stairway that is eight feet from the property line and the rooftop ramp with zero setback. The required findings for the variance can be made and are discussed in this report.

CUP No. 10-003 – for the construction of over 500 square feet of commercial space. Pursuant to Malibu Municipal Code (M.M.C.) 17.22.040, any permitted use involving new construction or expansion over 500 square feet, is a conditionally permitted use with the CC zone. The required findings for the CUP can be made and are discussed in this report.

DP 10-025 – for the demolition of remnants of previously existing development, including a convenience store, pump station canopies, and hardscape.

ie project proposes 4,571 square feet of open space and 7,313 square feet of landscaping. Approximately 9,220 square feet of open space and landscaping are provided on grade, with the reminder 2,664 square feet located on the rooftop parking area as depicted on the Sheet A-02 of the project plans, included as Attachment 3.

Chronology of Project

On July 8, 2008, an application for CDP No. 08-055 and associated request was submitted to the City for review. The application was routed to the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, City Environmental Assessment consultant, and the Los Angeles County Fire Department (LACFD) for M.M.C. and LCP conformance review (Attachment 4).

On October 21, 2008, a courtesy notice of the proposed project was mailed to all property owners and occupants within a 500 foot radius of the subject property.

On September 29, 2009, revised plans were submitted to the City for review. The revised plans showed the elimination of a subterranean garage that was included in the initial submittal.

On January 6, 2010, revised plans were submitted to the City for review. The revised plans reflect a project similar to the proposed project but included a variance for reduction of landscaping requirements.

On March 3, 2010, story poles were placed on the subject property to illustrate the location, height, and bulk of the proposed project. A story pole certification prepared by a licensed surveyor has been submitted.

On March 11, 2010, staff conducted a site visit and documented the story poles with an extensive amount of photographs (Attachment 7). On March 12, 2010, the story poles were permitted to be removed at the discretion of the Planning Manager, due to the impact on a hand car wash onsite.

On April 13, 2010, a Notice of Application sign for the subject application was posted on the project site.

On April 15, 2010 the project was deemed complete.

On April, 22, 2010, 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.

On May 7, 2010, the applicant submitted revised plans which reflect the current project proposal. The revised project eliminated the need for a variance for the reduction of

required landscaping.

On May 18, 2010, the Planning Commission continued the item to the June 1, 2010 Regular Planning Commission meeting at the applicant's request.

Local Coastal Program

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

There are 13 sections within the LIP that potentially require findings to be made, depending on the nature and location of the proposed project. Of these 13, three are for conformance review only and require no specific findings. These three sections, which include Zoning, Grading and Archaeological/Cultural Resources, are discussed under the Conformance Analysis section below.

There are 10 remaining sections that potentially require specific findings to be made. These findings are found in the following LIP sections: 1) General Coastal Development Permit Findings, including VAR and SPR findings; 2) Environmentally Sensitive Habitat Area; 3) Native Tree Protection; 4) Scenic, Visual, and Hillside Protection; 5) Transfer of Development Credits; 6) Hazards; 7) Shoreline and Bluff Development; 8) Public Access; 9) Land Division; and 10) Onsite Wastewater Treatment Systems. Of these 10, for the reasons discussed below, only three, General Coastal Development Permit including VAR and SPR findings; Scenic, Visual, and Hillside Protection; and Hazards; apply and warrant further discussion.

The findings required by M.M.C. Section 17.66.080 for CUP No. 10-003 are discussed in Section N of this agenda report. The demolition permit findings required by M.M.C. Section 17.70.060 are included in Section O of this document.

Conformance Analysis

As shown in Table 3, the proposed project complies with LIP Chapter 3 regarding commercial development standards. The project, with the inclusion of two variances and a site plan review, has been determined to be consistent with all applicable LCP codes, standards, goals, and policies.

The project proposes to place approximately 2,664 square feet of open space and landscaping on the rooftop in order to comply with required 65 percent of open space and landscaping pursuant to LIP Section 3.8(A)(5)(b). While there are very few projects within the City that have been approved (prior to Cityhood and/or by California Coastal Commission) with rooftop open space and landscaping to satisfy this provision, there is nothing in the LIP that would prohibit this approach. More recent commercial projects have been approved with a variance for the reduction of either landscaping or open

space. The proposed project does not include a variance for the reduction of landscaping or open space; however, it proposes to place approximately 22 percent of the required open space and landscaping on the rooftop.

The proposed project would not be able to provide the required 11,884 square feet of landscaping and open space on grade unless proposed on grade parking is eliminated. Eliminating on grade parking in front of the commercial office would negatively impact the viability of the project because visitors driving on Pacific Coast Highway (PCH) would have to slow to a pace in which they can read signage that would direct them to proceed to an adjacent driveway for 22741 PCH, an existing commercial office located north of the project site. In addition, the applicant has indicated that subterranean parking is not possible due to the high water table in the area. As designed, the proposed project would not be able to comply with LIP Section 3.8(A)(5)(b) without placing a portion of the required open space or landscaping on the rooftop or without a variance request.

Zoning (LIP Chapter 3)

Table 3 – Zoning Conformance (Commercial)			
Development Requirement	Required/Allowed	Proposed	Comments
SETBACKS			
Front Yard (20%)	24.32 feet minimum	57.16 feet	Complies
Rear Yard (15%)	18.23 feet minimum	0 feet	VAR No. 10-006
Side Yard (10% min.)	15 feet minimum	15 feet	Complies
Side Yard (15% min.)	22.5 feet minimum	22.5 feet	Complies
PROJECTION INTO YARDS	6 feet maximum into required yard	6 feet maximum into required (side) yard setback	Complies
PARKING REQUIREMENTS, IF USED AS			
General office, other business, technical service, administrative, or professional offices (1 space per 250 sq. ft. gross floor area)	10 off-street parking spaces minimum; 8 standard and 2 compact	22 off-street parking spaces; 18 standard, 3 compact, and 1 van-accessible	Complies
Dental and medical offices or other similar uses (1 space per 150 sq. ft. gross floor area)	17 off-street parking spaces; 14 standard and 3 compact	22 off-street parking spaces; 18 standard, 3 compact, and 1 van-accessible	Complies
General retail stores, except as otherwise provided in LIP Section	12 off-street parking spaces minimum; 10	22 off-street parking spaces; 18 standard, 3 compact, and 1 van-	Complies

3.12 (1 space per 225 sq. ft. gross floor area)	standard and 2 compact	accessible	
ADA Accessible (1-25 parking spaces must provide 1 van-accessible space)	1 van-accessible space	1 van-accessible space	Complies
Turning Radius	25 feet	25 feet	Complies
OPEN SPACE REQUIREMENT (25 %)	4,570.75 square feet minimum	4,571 square feet	Complies
LANDSCAPING REQUIREMENT (40 %)	7,313 square feet minimum	7,313 square feet	Complies
FLOOR AREA RATIO (.15)	.15 F.A.R. or 2,742.45 square feet maximum	.14 F.A.R. (.1367) or 2,499 square feet	Complies
HEIGHT	24 feet (flat) 28 feet (pitched)	24 feet (flat) 28 feet (pitched)	Complies
STRUCTURES ON SLOPES	3 to 1 and less	<i>Greater than 3 to 1 but less than 1 to 1</i>	VAR No. 10-005
FENCES/WALLS			
Retaining Walls	6 feet maximum	6 feet maximum	Complies
Front Yard Planters	42 inches solid, up to 6 feet visually permeable	42 inches solid, up to 6 feet visually permeable	Complies

The project proposes 2,499 square feet, which is 13.67 percent of the gross lot area and is below the permitted .15 F.A.R. The proposed structure is 24 feet maximum for areas with a flat roof and 28 feet maximum for areas with a pitched roof.

The parking areas and onsite circulation have been designed to allow easy and safe ingress and egress and provides the required 25 foot turn out radius pursuant to LIP Section 3.12.5(D)(1). The proposed project would maintain vehicular access to the parking spaces proposed at the front of the building via a curb cut on PCH. Additionally, landscaping with a minimum of 5 foot in width is proposed along the front property line to screen on-grade parking from view from PCH as required by LIP Section 3.12.5. The project proposes 13 parking spaces on grade, consisting of 10 standard spaces, two compact spaces, and one ADA van loading accessible space. The proposed project does not require a loading space because the proposed commercial office is less than 3,000 square feet.

As shown on Sheet A5 of the project plans, access to the rooftop parking lot is provided offsite, via an existing 24 foot wide driveway which serves 22741 PCH, a 10,320 square foot commercial office building located directly north of the project site. The driveway leads to the lower level parking area of 22741 PCH. The office building at 22741 PCH requires 42 parking spaces, three of which will be displaced by the construction of the

connector ramp. The project proposes 12 parking spaces on the rooftop, three of which will be reserved for operations at 22741 PCH. The project has been conditioned to require the submittal of a recorded easement that (1) provides for shared use of the existing access driveway; (2) permits the construction of the connector ramp across property lines; and (3) provides for the shared parking arrangement; prior to issuance of building permits.

Parking requirements are dependent on the use of the proposed structure. If the proposed structure is used for general office, 10 parking spaces are required. If the proposed structure is used for medical offices, 17 parking spaces are required. If the proposed structure is used for general retail (certain retail uses subject to approval of a CUP and more specific parking requirements), 12 parking spaces are required. The project includes 22 parking spaces, which comply with both uses. According to the California Building Code (CBC 2007 TAB 11B-6), one ADA van accessible parking space is required. The proposed project complies with this provision by providing one ADA van-accessible space on the ground level adjacent to an elevator.

Grading (LIP Chapter 8)

Pursuant to LIP Section 8.3, removal and recompaction, understructure and safety grading are considered exempt grading. The maximum quantity of non-exempt grading for commercially-zoned parcels is limited to 1,000 cubic yards per acre (total cut and fill). The project includes 1,370 total cubic yards of grading, all of which is exempt grading. The project includes 290 cubic yards of earth material proposed to be exported offsite. The project is consistent with the LCP's grading provisions.

Table 4 – LCP Grading Conformance						
	Exempt**			Non-Exempt	Remedial	Total
	R&R*	Understructure	Safety***			
Cut	540	290	0	0	0	830
Fill	540	0	0	0	0	540
Total	1,080	290	0	0	0	0
Import	0	0	0	0	0	0
Export	0	290	0	0	0	290

Archaeological/Cultural Resources (LIP Chapter 11)

The Malibu City Cultural Resources Map indicates that the subject parcel has a low potential to contain archaeological or related resources; therefore, no additional archaeological study is required at this time. However, condition of approval pertaining to the protection of cultural resources have been including in Planning Commission Resolution No. 10-43. Should any potentially important cultural resources be found in the course of geologic testing or during construction, work shall immediately cease until

a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Manager can review this information.

LCP Findings

The proposed project has been reviewed for conformance with the LCP by Planning Division staff, City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and the LACFD (Attachment 4). Staff has determined that, subject to the proposed conditions of approval, the project conforms to the LCP. The required findings are made below.

A. General Coastal Development Permit (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.

The proposed project has been reviewed for conformance with the LCP by the Planning Division, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The proposed project, as conditioned, conforms to the LCP in that it meets all commercial development standards as demonstrated by Table 3.

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

The project site is not 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 Section 30200 of the Public Resources Code).

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

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project allows for demolition of remnant structures at an abandoned gas station and the construction of a new 2,499 square foot commercial office building, which is a permitted use within the CC zoning classification of the subject property. The project will not result in potentially significant impacts on the physical environment.

Three alternatives were considered to determine which was the least environmentally damaging.

1. No Project – The no project alternative would avoid any change to the project site, and hence, any change to visual resources. The project site is zoned CC which allows commercial development. The no project alternative would not accomplish any of the project objectives; and therefore, is not viable. Furthermore, the existing abandoned gas station would remain as visual blight.
2. Remodel/Addition of Existing Structures – Existing onsite development could be remodeled, however, the existing convenience store and the pump station would not serve the purpose of a new commercial office building. It is not anticipated that a remodel and addition would offer any environmental advantages over the proposed project as the proposed project will not result in significant impacts on the environment.
3. Proposed Project – The project consists of the demolition of remnant structures associated with an abandoned gas station and the construction of a new 2,499 square foot commercial office building. The proposed project conforms to all commercial development criteria with the inclusion of the VAR and SPR requests, as demonstrated by Table 3. The project includes a new AOWTS to serve the new commercial office building, which will provide secondary and tertiary treatment. The proposed project also provides adequate parking spaces pursuant to LIP Section 3.12 and a safe ingress and egress circulation plan for vehicles.

The selected location has been reviewed and conditionally approved by the City Environmental Health Administrator, City Biologist, City Geologist, City Public Works Department, and the LACFD, and meets the City's commercial development policies. Therefore, the project, as proposed, is the least damaging alternative.

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

The subject parcel is not located in ESHA, an ESHA buffer zone or adjacent to any streams as designated in the LCP and does not require review by the ERB.

B. Site Plan Review for Construction in Excess of 18 Feet in Height (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four 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 a maximum of 28 feet with a pitched roof. Two additional findings are required pursuant to M.M.C. Section 17.62.050.

The applicant has proposed to construct a new, single-story, commercial office building that is 24 feet maximum for areas with a flat roof and 28 maximum for areas with a pitched roof. Pedestrian access to the rooftop parking is provided by a proposed elevator and stairway, both of which projects above the roof. However, due to the topography of the site; both the elevator and the stairway are under the permitted 28 foot pitched roof maximum height. The proposed roof-top parking lot is shielded from view by the 28 foot tall pitched roof parapet that acts as a screen. Based on the evidence in the record, the findings in support of SPR No. 10-012 are made as follows:

Finding B1. The project is consistent with policies and provisions of the Malibu LCP.

As discussed in Finding A1, the project has been reviewed for all relevant policies and provisions of the LCP. Based on submitted plans, reports, visual impact analysis, and detailed site investigation, it has been determined that the project is consistent with all policies and provisions of the LCP.

Finding B2. The project does not adversely affect neighborhood character.

As discussed in the City's General Plan, Land Use Element, "the stretch of PCH just west of Carbon Canyon Road through the Civic Center represents the commercial core/strip of the City." The proposed project is located within this area. The project site is surrounded by two fast food restaurants and two commercial buildings. Residential development is located within the project vicinity; however, it is located to the south across PCH and north at a higher elevation. Story poles were placed on the site in March 2010 to demonstrate the size, mass, and bulk of the proposed project. Story pole photographs are included as Attachment 7. The story poles demonstrated that the project is compatible with the commercial nature of the surrounding development. Therefore, the project does not adversely affect neighborhood character.

Finding B3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The California Department of Transportation (Caltrans) has officially designated PCH in the City of Malibu as an "eligible scenic highway." LIP Chapter 6 (Scenic, Visual and Hillside Resources) 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. LIP Chapter 6 contains specific design standards for new development in scenic areas and the proposed project has been designed to adhere to this criteria.

In particular, LIP Section 6.5(H)(1) states that the PCH corridor "shall be protected as a scenic highway and significant viewshed by requiring that development conform to the following standards:

- a) *Landscaping improvements, including plantings, may be permitted along PCH. Any proposed landscaping shall be comprised of primarily drought tolerant plant species. Landscaping shall be designed and maintained to be subordinate to the character of the area, and not block ocean or mountain views at maturity.*

While some vegetation may be removed as necessary for construction, replacement would occur resulting in more landscaping than in the pre-project condition. The proposed landscaping will not block ocean or mountain views at maturity due to the proposed placement and location of the landscaping. Additionally, conditions of approval regarding maximum height of landscaping have been included in the resolution to restrict landscaping along the front property line to be no more than 42 inches tall and to restrict landscaping from exceeding the roofline.

- b) *New commercial development that includes a parking lot visible from PCH shall include landscaping and/or berming to screen the view, so long as measures do not obscure or block views of the ocean.*

In accordance with the LIP Section 6.5(H)(1)(B), the rooftop parking lot, which would be visible from PCH, is proposed to be screened from view by a sloping roof eave. The proposed parking area located on the ground floor in front of the commercial office is screened from view by proposed planters and landscaping (not to exceed 42 inches) located along the front property line.

- c) *Any telecommunications facilities approved along PCH shall place support facilities underground, where feasible. New transmission lines shall be sited and designed to be located underground, except where it would present or contribute to geological hazards. Existing transmission lines should be relocated underground when they are replaced or when funding for undergrounding is available.*

The project has been conditioned to underground any new facilities along PCH and underground transmission line should they be replaced or when funding is available.

In this area of PCH, the scenic resources are the ocean to the south, and the mountains to the north of the site which are located at a higher elevation than the project site and blocked from view by existing development. The project site is located on the north side

of PCH, and thus, would not interfere with any views of the ocean from PCH. The proposed development is not anticipated to impede significant public views due to existing development located directly north of the proposed project site. The proposed project is not visible from the Malibu Pier.

The project also includes a variance to site the structure adjacent to the rear property line. The proposed siting would allow development to be sited away from PCH and closer to existing commercial development in the rear. When viewing the project area from PCH, the proposed development does not block any visually impressive views or scenic vistas of the Santa Monica Mountains or Pacific Ocean.

The project would add additional vegetation to the site along the perimeter of the project site, adding a beneficial scenic element to the development. A condition of approval will be added that requires all vegetation to 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). Additionally, in accordance with LIP Section 6.5, "standard conditions" of approval are required to ensure that the proposed design and materials of the development will avoid impact to scenic resources to the extent feasible. With implementation of standard conditions of approval, the project would have less than significant impacts to scenic vistas and provides the maximum feasible protection to significant public views as required by LIP Chapter 6.

Finding B4. 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, permits and licenses from the City of Malibu and other related agencies, such as the Regional Water Quality Control Board (RWQCB), and the LACFD.

Finding B5. The project is consistent with the City's general plan and local coastal program.

As discussed in Finding A1, the proposed project is consistent with the LCP in that the proposed project is located in an area that has been identified for commercial use. As discussed in Finding B2, the proposed project is located within a strip of commercial properties intended for commercial use and the project is consistent with land use designated for this area in the General Plan. The proposed project is consistent with the LCP in that it conforms to the commercial land use designation.

Finding B6. 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).

Based on the visual impact analysis (aerial photographs, site visits and story poles), it has been determined that the proposed development does not impact the primary view of neighboring residential properties. The proposed project is located at a lower elevation than the residential properties located north of the property on a hill. Primary views of residential properties located across PCH are oriented south, away from the project site and toward the Pacific Ocean. Story poles were placed on the site to demonstrate the maximum height of the proposed structures and to assess the visual impact of the proposed development on public and private views. Courtesy notices of application were sent to properties within a 500 foot radius of the subject property. No comments from the public were received regarding primary views.

C. Variance for Construction on Slopes Greater Than 2½ to 1 - (LIP Section 13.26)

The applicant is requesting a variance to LIP Section 13.27.1(A)(4) which allows for construction on slopes greater than 3 to 1 but less than 2½ to 1 with a SPR. The proposed project includes construction on 1½ to 1 slopes. 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 findings of fact. Based on the evidence in the record, the findings in support of VAR No. 10-005 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.

The rear portion of the project site is dominated by manufactured slopes that were created when the commercial property at 22741 PCH (directly north of the project site) was constructed. Currently¹, the City does not differentiate between slopes created by natural processes and those previously manufactured in accordance with recommendations of a geotechnical engineer and permitted by a regulatory agency. All slopes, regardless if they are natural or manufactured, are subject to the same development requirements.

Granting of such variance would allow the proposed commercial office building to be sited on manufactured slopes that were created previously during construction. The proposed building pad location is set back from PCH and would result in less significant impacts to scenic visual resources than if the structure was to be located near the front property line. There are special circumstances applicable to the subject property that

¹ On August 10, 2009, City Council adopted Ordinance No. 339, approving a Zoning Text Amendment (ZTA) and a Local Coastal Program Amendment (LCPA) which modified the language in the M.M.C. and LCP to differentiate between "natural" slopes and "manufactured" slopes. However, Ordinance No. 339 is not effective until the LCPA is certified by the California Coastal Commission (CCC). Staff is preparing the LCPA for submittal to CCC for certification.

strict application of the zoning ordinance deprives the subject property of privileges enjoyed by other properties in the vicinity and under the same zoning designation.

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 the public's interest, safety, health or welfare. Only a portion of the proposed structure will be located on manufactured slopes; the remaining portion of the proposed structure will be located on slopes 3 to 1 or flatter. The project will not be detrimental to other properties or improvements in the same vicinity and zone.

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.

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

As discussed in Finding C1, granting the variance will not constitute a special privilege to the applicant or property owner because there are special circumstances on the project site that strict application of the zoning ordinance would deprive the property to be developed similarly to other properties within the vicinity and under the same zoning designation.

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 C1, granting the requested variance will allow the subject property to be developed in a way that allows for construction of a new commercial office building.

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 proposed variance does not propose the reduction of ESHA protection standards. Therefore, this finding is not applicable.

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 proposed 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 or activity not otherwise permitted in the CC zoning district. The requested variance is for the development of a commercial office building, which is an allowed use in the CC zoning district.

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

Granting of the variance will allow construction of a new commercial office building on the project site. The proposed project, including building pad location, has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department, and the LACFD as being physically suitable for the proposed variance. Additionally, the project will be required to satisfy all Building and Safety standards in the Building Plan Check process.

Finding C9. The variance complies with all 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, permits and licenses from the City of Malibu and other related agencies, such as the RWQCB and the LACFD.

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 proposed project does not include any reduction or elimination of public parking for access to the beach, public trails or parklands.

D. Variance for Reduction of the Required Rear Yard Setback - (LIP Section 13.26)

The majority of the proposed structure is located 14.6 feet from the rear property line (a 20 percent reduction of the required rear yard setback that may be permitted with a minor modification pursuant to LIP Section 13.26); however, a portion of the project (connector ramp and stairway from the ground floor to the rooftop parking level) are

located beyond what is permitted with a minor modification. Therefore, a variance is requested.

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 findings of fact. The applicant is requesting a variance to LIP Section 3.8(2)(B) which requires a rear yard setback of 18.23 feet. The project proposes a zero setback in order to construct a rooftop ramp across property line to connect the proposed rooftop parking area to the lower level of an existing parking area of a commercial office building located north of the project site at 22741 PCH. The project has been conditioned so that construction of the connector ramp shall not commence until evidence of a recorded easement allowing the ramp to cross property lines has been submitted to staff. Based on the evidence in the record, the findings in support of VAR No. 10-007 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.

Pursuant to LIP Section 3.3, newly created parcels in the CC zone should have a minimum lot size of five acres or 217,800 square feet and a minimum lot depth of 500 feet. The project site is .42 acres in size or 18,283 square feet and has a lot depth of 121 feet, 7 inches, which is substantially smaller than what a parcel in the CC zone was intended to be. The project proposes a 2,499 square foot commercial building which is less than the maximum .15 F.A.R. permitted on the property. Of the 18,282 square feet, 2,499 square feet is proposed for the commercial office building, 5,836 square feet is proposed to be landscaping, 3,384 square feet is proposed to be open space, and the remainder 6,563 square feet is proposed for parking spaces, vehicular access, and a trash enclosure.

Due to the relatively small size and narrow lot depth of the parcel, the project would not be able to meet the required 65 percent of open space and landscaping without utilizing the rooftop parking area unless on grade parking is eliminated. Eliminating on-grade parking in front of the commercial office would negatively impact the viability of the proposed commercial office. Without parking located in front of the proposed commercial office, visitors traveling on PCH would have to slow a pace that would allow them to read signage directing them to park on the rooftop via an existing driveway serving 22741 PCH. The project proposes 13 on grade parking spaces; hence eliminating the need for visitors to slow to a pace on PCH that may pose a public safety hazard.

Furthermore, the proposed commercial office could be located as close as 24 feet, 7 inches from PCH, which would result in the proposed project having a significant visual

impact on the scenic highway. Granting of the variance would allow the proposed structure to be set back from PCH and allow on-grade parking for safe and easy ingress and egress.

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 the public's interest, safety, health or welfare. Granting of such variance would allow the proposed structure is set back from PCH and abuts an existing commercial office building near the rear property line, minimizing impacts to scenic, visual resources when viewed from PCH. Granting of the variance would also allow the proposed parking area on grade to provide sufficient turn out radius for safe vehicular maneuvering.

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.

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

Granting of the variance will not constitute a special privilege to the applicant or property owner because the granting of this variance will allow the proposed commercial office building to be located away from PCH which would minimize impact on scenic resources. Granting of the variance will also allow safe maneuvering of vehicles in the proposed parking lot. The proposed project utilizes the entire site to comply with landscaping, open space, and parking standards; therefore granting of the variance will not constitute a special privilege.

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 in Finding D1, granting the requested variance will allow the proposed project to be set away from PCH, a designated scenic highway and allow safe maneuvering of vehicles.

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 proposed variance does not pertain to ESHA buffer standards; 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 proposed 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 or activity not otherwise permitted in the CC zoning district. The proposed project is for the construction of a new commercial office building which is an allowed use in the CC zoning district.

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

The project has been conditioned so that construction of the connector ramp shall not commence until evidence of a recorded easement allowing the ramp to cross property lines and shared access to the rooftop parking lot has been submitted to staff. The proposed project, including project location, has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and the LACFD as being physically suitable for the proposed variance. Additionally, the project will be required to satisfy all Building and Safety standards in the Building Plan Check process. The subject site is physically suitable for the proposed variance.

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

As discussed in Finding C9, the project, including the variance request, complies with all requirements of state and local law.

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 proposed project does not include any reduction or elimination of public parking for access to the beach, public trails or parklands.

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

The project site does not contain ESHA; therefore, the findings in LIP Chapter 4 are not applicable.

F. Native Tree Protection (LIP Chapter 5)

No native trees are proposed to be removed as part of the project scope of work. Therefore, the findings in LIP Chapter 5 are not applicable.

G. 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 in March 2010. Based on site visits, aerial photographs, and review of the visual analysis in the record, it has been determined that the subject site is visible from PCH, a designated scenic highway.

However, the proposed development is not anticipated to impact significant public views because it is located on the inland side of PCH. Public scenic views of the ocean are oriented to the south, away from the proposed project. The proposed project will not block scenic impressive views of Santa Monica Mountains as existing commercial development surrounds the project site. Nonetheless, LIP Chapter 6 applies and the five findings set forth in LIP Section 6.4 are made as follows.

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

Story poles were placed on the site to aid in the completion of a visual analysis of public view impacts. The proposed commercial office building is set back from PCH and located near the rear property line, in close proximity to an existing commercial office building at a higher elevation. Due to the existing commercial office building located directly north of the project site, the proposed project will not impact scenic views of the Santa Monica Mountains to the north. Scenic views of ocean are oriented to the south of PCH and the project site is located north of PCH. The project, as proposed, will not have significant adverse scenic or visual impacts due to the project design and location on the site.

Finding G2. 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 G1, the project, as conditioned, will not have significant adverse scenic or visual impacts due to the location of proposed structure in relations to existing

development. Conditions of approval have been included in Planning Commission Resolution No. 10-43 to require building material and colors to be compatible with the surrounding environment and restrictions on lighting. The project also proposes approximately 4,163 square feet of new landscaping onsite to minimize adverse scenic or visual impacts when viewed from PCH.

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

As discussed in Finding A3, the proposed development is the least environmentally damaging alternative.

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

As previously discussed in Findings A3 and G3, the project, as proposed and conditioned, is the most feasible design to avoid adverse significant impacts on scenic or visual resources. The proposed project is sited away from PCH and located within other commercially developed properties.

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

The project, as proposed, does not have the potential to significantly degrade the quality of the environment, nor does it have impacts which are individually limited but cumulatively considerable, because the nature of the development will remain consistent with the LCP. The project's use is consistent with its LCP zoning.

H. Transfer of Development Credit (LIP Chapter 7)

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

I. Hazards (LIP Chapter 9)

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

The applicant submitted a series of geologic reports with subsequent supplemental and addendum reports, all of which have been reviewed by the City Geologist for the hazards listed in LIP Section 9.2(A)(1-7). In addition, the project has been routed to the City's Environmental Assessment consultant for review. Staff's analysis also included review of the City of Malibu General Plan and review of the hazards designation in the City of Malibu's Geographic Information System (GIS).

The vast amount of geologic information obtained on the subject property has been reviewed in its entirety by the City Geologist whose professional opinions are based on the sum of this data. The City Geologist reviewed the project and associated technical submittals and approved the project in concept, subject to conditions. 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

Faulting

According to the Geotechnical Investigation Report prepared by Stratum Geotechnical Consultants on October 8, 2007, "no active faults have been mapped traversing through the building site. However, the entire Southern California is, seismically active with numerous faults capable of causing ground shaking at the site." As indicated in the City of Malibu General Plan, Safety and Health Element, "there are numerous faults surrounding and traversing the Malibu area including the Malibu Coast Fault, the Santa Monica Fault, the Los Flores Reverse Fault and the Anacapa Fault." Each of these faults "may generate strong ground shaking impacting the Malibu area". Alleviation of ground-shaking effects is provided through enforcement of structural and nonstructural seismic design provisions defined in the Uniform Building Code. Application of these design provisions to the proposed project would minimize potential effects of ground shaking to a level considered less than significant.

Liquefaction

The Malibu General Plan, Safety and Health Element, states that "liquefaction and subsidence is a process by which water-saturated sediment suddenly loses strength, which commonly accompanies strong ground motions caused by earthquakes." During an extended period of ground shaking or dynamic loading, porewater pressures increase and the ground is temporarily altered from a solid to a liquid state. Liquefaction is most likely to occur in unconsolidated, sandy sediments, which are water-saturated within less than 50 feet of the ground surface. Few areas of significant liquefaction susceptibility exist in the City of Malibu. These few areas are located along the beaches and in the flood plains of the major streams, such as Malibu Creek. A liquefaction analysis was performed, which concluded that post-liquefaction settlement is estimate to be less than 3 inches. The foundation design will mitigate the effects of liquefaction.

Landslide

The potential for landslides is virtually non-existent due to the relatively flat topography of the project area. Landslides are not identified as a site concern in the geotechnical reports completed for the subject property.

Flood

According to the Flood Insurance Rate (FIRM) Map Panel No. 1541F, the project site is not located within the 100 year FEMA flood zone.

Fire Hazard

The entire city limits of Malibu are located within the fire hazard zone. 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 firefighting equipment can augment the LACFD. As such, the proposed project as conditioned will not be subject to nor increase the instability of the site or structural integrity involving wild fire hazards.

Nonetheless, conditions of approval have been included in Planning Commission Resolution No. 10-43 which require 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 development on a beach and wildfire exists as an inherent risk to life and property.

Petroleum Contamination

The project was referred to the City's Environmental Assessment consultant, Cotton, Shires and Associates. In May 2005, the California Regional Water Quality Control Board (RWQCB) confirmed that the underground storage tanks have been removed. The following documents, including reports prepared by Wayne Perry Inc, the project Environmental Remediation and Construction consultant, were routed to the City's Environmental Assessment consultant for review:

- Evaluation of Closure Conditions, 22729 PCH, Malibu, Wayne Perry, Inc., August 6, 2009;
- Site Assessment Report, 22729 PCH, Sea View Terrace Property, Wayne Perry Inc., August 20, 2009;
- Underground Storage Tank Removal and Soil Sampling Report, Former Shell Service Station, 22729 PCH, Wayne Perry, Inc., July 9, 2002;
- Underground Storage Tank (UST) Program – Case Closure Letter, California Regional Water Quality Control Board, May 23, 2005 (Attachment 5); and
- Geotechnical reports prepared by Stratum Geotechnical Consultants, October 2007 and November 2007.

According to a Memorandum prepared by Cotton, Shire and Associates on December 8, 2009 (Attachment 6), based on the listed reports and follow-up conversations with the project consultant, the project has "adequately addressed" any concerns regarding petroleum contamination. Additionally, the project consultant concluded "that there is no gross petroleum fuel contaminants on the site that are associated with historic gasoline station operations" in response to the City Environmental Assessment consultant request for clarification. The City Environmental Assessment consultant recommended the following conditions to be included as conditions of approval:

1. During demolition and construction, the project engineer shall direct crews to monitor excavated soil and/or waters (surface water or groundwater) for stain, odor or other indicators of impacted media;
2. If, during demolition, construction or any later phase, stained or odorous soil or waters (surface water or groundwater) are detected, the applicant shall provide the following to the City:
 - a. Non-emergency notification that stained or odorous soil or water (surface water or groundwater) has been detected;
 - b. Plan to address the further assessment of the extent of impacted media;
 - c. Contingency plans to address the possible impacts to site works or the public;
 - d. Plan for legal profiling, transportation and disposal at an offsite location; and
 - e. Notification of other agencies (e.g. RWQCB, LACFD, Department of Toxic Substance Control, etc.).

The project will incorporate all recommendations contained in the above cited geotechnical reports on file with the City and conditions required by the City Geologist, City Environmental Assessment consultant and the LACFD. As such, the proposed project will not increase instability of the site or structural integrity from geologic, flood or any other hazards. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a building permit.

Based on the evidence in the record, the findings of fact are made as follows:

Finding 11. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project will incorporate all recommendations contained in the geotechnical reports prepared by Stratum Geotechnical Consultant, Wayne Perry Environmental Remediation and Construction consultant, City Environmental Assessment consultant, and the City Geologist. As such, the proposed project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, fire or any other hazards.

Finding 12. 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 proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies, such as the RWQCB and LACFD.

Finding 13. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

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

Finding 14. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

The project site is subject to seismic activity and liquefaction, however, with the recommended engineering techniques, the appropriate factors of safety can be met. Additionally, conditions of approval have been incorporated in Planning Commission Resolution No. 10-43 to ensure petroleum contamination of the project site does not exist. There are no alternatives that would avoid or substantially lessen impacts on site stability or structural integrity.

Finding 15. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As stated in Findings I1 and I4, the proposed project as designed and conditioned, will have no significant adverse impacts on site stability, structural integrity or sensitive resources. Therefore, no adverse impacts are anticipated to result from hazards or conflict with sensitive resource protection policies contained in the LCP.

J. Shoreline and Bluff Development (LIP Chapter 10)

The project is not located on a shoreline or bluff. Therefore, the findings from LIP Section 10.3 are not applicable.

K. Public Access (LIP Chapter 12)

The project is not located between the first public road and the ocean, near any trails, or other designated recreation area; therefore, the findings in LIP Chapter 12 are not applicable.

L. Land Division (LIP Chapter 15)

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

M. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design and performance requirements. The project includes an AOWTS to replace an existing OWTS, which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. The subject system will meet all applicable requirements and operating permits will be required. The project will include a 2000 gallon Jensen primary tank, a 1,500 gallon Septitech gallon processor tank, an ultra violet disinfection system, and two leach fields. The new AOWTS will provide the proposed development with secondary and tertiary treatment.

An operation and maintenance contract and recorded covenant covering such must be in compliance with City of Malibu Environmental Health requirements. Conditions of approval have been included in Planning Commission Resolution No. 10-43 which require continued operation, maintenance and monitoring of onsite facilities.

M.M.C. Findings

N. Conditional Use Permit to Allow for the New Construction of 500 square feet or more to a New Commercial Use (M.M.C. Section 17.66.080)

The applicant has requested a CUP for the construction of over 500 square feet of commercial space. Pursuant to M.M.C. Section 17.66.080, the Planning Commission may approve, deny and/or modify an application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. Based on the evidence within the record, the findings of fact for CUP No. 10-003 are made as follows:

Finding N1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

Pursuant to M.M.C. Section 17.22.040, any permitted use involving new construction or expansion over 500 square feet, is a conditionally permitted use with the CC zone. The project has been conditioned to comply with all applicable provisions of the M.M.C.

Finding N2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

As discussed in Finding N1, the proposed office building square footage is conditionally permitted within the CC zoning designation. The proposed use will be within "the stretch of PCH just west of Carbon Canyon Road through the Civic Center" identified in the City's General Plan, Land Use Element, as the "commercial core/strip of the City." The proposed project would not impair the integrity and character of the zoning district in which it is located. The proposed commercial office building complies with the maximum F.A.R. allowed onsite.

Finding N3. The subject site is physically suitable for the type of land use being proposed.

The proposed project has been reviewed by the appropriate City agencies and the LACFD. As conditioned, the subject site is physically suitable for the proposed use and the project has been determined to be in conformance with the applicable development standards for the parcel.

Finding N4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The land uses presently on the project site include an abandoned gas station and a hand carwash operation. The carwash operation will be removed prior to construction of the proposed commercial office building. Surrounding development includes fast food restaurants, commercial offices, a hotel and other commercial operations. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

Finding N5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

As discussed in Findings N2 and N4, the proposed use would be compatible with existing and future land uses within the zoning district.

Finding N6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

The applicant has submitted a Will Serve Letter from the Los Angeles County Waterworks District 29 which has confirmed water will be provided to the subject property. The project also includes the installation of a new AOWTS to serve the proposed commercial office building. Additionally, because the proposed structure is set back from PCH and located at a lower elevation than residential properties constructed on the hillside in the north, it is not anticipated that the project will not impact solar

access. As described in Section B of this report, the structure will not negatively impact or public and private views.

Finding N7. There would be adequate provisions for public access to serve the subject proposal.

Adequate provisions for public access to serve the site are included in the project proposal. Access to the proposed office building is provided via a curb cut on PCH and through a connector ramp which connects the proposed structure to an existing commercial office building at 22741 PCH. Additionally, the project includes two ADA accessible parking spaces onsite.

Finding N8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

As discussed in Finding O2, the proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

Finding N9. The proposed project complies with all applicable requirements of state and local law.

As discussed in Findings C9, D9, and E9, the proposed project will comply with all applicable requirements of State and local law.

Finding N10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

As discussed in Findings C2, D2, and E2, the proposed project would not be detrimental to the public interest, health, safety, convenience or welfare.

Finding N11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

As discussed in detail in Section I of this agenda report, there is evidence that the proposed development is not at risk from earth movement, flooding or liquefaction.

O. Demolition Permit (M.M.C. Section 17.70.060)

M.M.C. Section 17.70.060 requires that a demolition permit be issued for projects that result in the demolition of any building or structure. The project proposes the demolition of an existing single-family residence and detached garage. The findings for DP No. 08-014 are made as follows.

Finding O1. The demolition permit is conditioned to assure that it will be conducted in a manner that will not create significant adverse environmental impacts.

Conditions of approval included in Planning Commission Resolution No. 10-43 will ensure that the project will not create significant adverse environmental impacts.

Finding O2. A development plan has been approved or the requirement waived by the City.

A CDP application is being processed concurrently with DP No. 08-014. Therefore, approval of the DP is subject to the approval of CDP No. 08-055.

ENVIRONMENTAL REVIEW:

CEQA Evaluation

Pursuant to the authority and criteria contained in CEQA, the Planning Division has analyzed the proposal as described above. The Planning Division has found this project listed among the classes of projects determined to have less than significant adverse effect on the environment and therefore, exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared pursuant to CEQA Guidelines 15301(l)(3) – Existing Facilities and 15303(c) – New Construction or Conversion of Small Structures. The Planning Division further determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

Environmental Review Board

The project was not required to be reviewed by the ERB because the subject parcel is not located in ESHA, an ESHA buffer zone or adjacent to any streams as designated in the LCP.

CORRESPONDENCE: To date, staff has received two items of written correspondence regarding the subject application, a letter from the California Department of Transportation (Caltrans) and a letter from a Planning Commissioner requesting clarification after reviewing the agenda report prepared for the May 18, 2010 meeting (Attachment 8). Staff also spoke to an interested member of the public on the phone who wanted to know whether the project could be restricted to eliminate compact parking spaces and be conditioned to provide only standard parking spaces. Staff explained that the project provides adequate parking spaces without including any compact parking spaces.

The letter from the Caltrans conveyed several issues, including requiring the applicant to (1) obtain an encroachment permit from Caltrans prior to commencement of any work in

the State right-of-way, (2) submit a construction management plan, (3) obtain a Caltrans Transportation Permit should any oversized vehicle be required during construction, and (4) provide for stormwater run-off prevention. These issues have all been included as conditions of approval in Section 5 of the Planning Commission Resolution No. 10-43.

The electronic mail from Commission Mazza included the following questions. Staff response is provided immediately following each question.

1. *Rear yard setback. LIP 3.8.A.2.c states "Rear yard setback SHALL be at least 15 feet whichever is greater" Other provisions of that chapter allow variances but I cannot find a provision for variance on the rear yard setback for commercial.*

Staff response: A variance may be requested for relief from a specific development standard. LIP Section 13.26 states that "the purpose of this section is to provide a mechanism for applicants to make an application for a coastal development permit variance from standards or requirements of the Malibu LIP and to provide specific findings for approval or denial or variances."

2. *F.A.R. calculation states that the structure is 2499 sq ft which does not seem to jive with other calculations.*

A. The roof structure (not counting the ramp) is approximately 112 1/2 ft by 65 ft or 7312 sq ft which is approximately three times the size of the building. This does not count an additional 6 ft overhang around the whole roof structure. Is it a parking structure or an office building? It appears that about half of the property is under roof or ramp.

B. There is an interior hallway between what appears to be two structures with the same roof structure that was not counted in the TDSF. The City Council, when considering the appeal on 24903 PCH (office building) determined that such an interior hallway MUST be considered in the TDSF and sent the project back for redesign.

C. It appears that none of the overhangs were counted in TDSF

Staff response: Staff calculated the proposed F.A.R. using the definition provided in LIP Section 2.1, which is defined as "the formula for determining permitted building area as a percentage of lot area; obtained by dividing the above-ground gross floor area of a building or buildings located on a lot or parcel of land by the total area of such lot or parcel of land." Subsequently, staff referred to the definition of "gross floor area" in LIP Section 2.1 which is "the sum of the gross horizontal areas of the several floors of a building measured from the interior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading space for motor vehicles, vehicular maneuvering areas, or any space where the floor-to-ceiling height is less than six feet."

- A. Although the roof structure of the proposed building spans a greater area than the commercial office building located below the roof structure, it does not meet the definition of F.A.R. provided in LIP Section 2.1. Additionally, the roof and overhangs provide three functional objectives: 1) it provides solar shading for the proposed commercial office building; 2) it provides additional roof-top parking; and 3) the sloping eaves shields the roof-top parking from view.
- B. TDSF does not apply to commercial properties. Commercial properties are restricted to a maximum .15 F.A.R. The breezeway (gallery) does not meet the definition of F.A.R. Staff reviewed the video recording of the October 11, 2004 City Council meeting in which the Council heard an appeal of a commercial building with large overhangs and a covered breezeway. One of the points that the appellant made was that the breezeway and overhangs should be included into the F.A.R. due to massing. Staff at that time also determined that the definition of F.A.R. does not require unenclosed or covered areas, such as the breezeway and the overhangs to be included.

The breezeway considered at the Council hearing was approximately 161 square feet, had an enclosed second floor above it, and had two openings, one at the front and one at the back for ingress and egress. The proposed gallery is approximately 667 square feet, does not have an enclosed story above it, and also has two openings, one at the front and one at the back for ingress and egress.

Prior to a motion being made, a Council member asked if the applicant would be willing to include the breezeway into the F.A.R. to appease the appellant. The applicant stated that he would be willing to include the breezeway into F.A.R. and he would agreed with a condition of approval requiring him to do so. A Council member then asked the appellant whether his concerns were addressed since the applicant has agreed include to the breezeway into F.A.R. The appellant indicated he also wanted the overhangs to be included in the F.A.R. A motion was made and passed by Council which ultimately included a condition of approval to include the breezeway into F.A.R. since the applicant agreed to it, but not did require overhangs to be included.

- C. TDSF does not apply to commercial properties; commercial properties are restricted to a maximum .15 F.A.R. The definition of F.A.R. provided in Section 2.1 does not require unenclosed or covered areas, such as the proposed gallery or overhangs to be included into F.A.R.
3. *Open Space. LIP section 3.8.A.5.b "Open space (includes courtyards, patios, natural open space and additional landscaping. Parking lots, BUILDINGS, EXTERIOR HALLWAYS and stairways shall not qualify as open space." Although the interior hallway described as "Central Gallery" on page 71 of the staff report must be*

counted in TDSF some could call it an exterior hallway. It is included in the calculation of "open space" which is not allowed in either case.

Staff response: The gallery includes benches and planters to accommodate people who use this area as open space. The gallery is not enclosed and does not meet the definition of F.A.R. provided in LIP Section 2.1; therefore, is not included into the F.A.R. calculation.

- 4. The staff report states that the project could not be built unless roof top parking is allowed yet the parking requirement is 10 spaces and there are 13 parking spaces provided on grade.*

Staff response: As designed, the required 10 spaces may be provided entirely on grade only because landscaping and open space are proposed to be located on the rooftop. If landscaping and open space are required to be on grade, the area required to satisfy the 65 percent landscaping and open space requirement would eliminate a large portion of the area currently proposed for parking. The alternatives for the subject project include a subterranean parking lot so that the existing on grade parking area can be dedicated to open space and landscaping, a complete redesign to a two-story commercial office building, or for Planning Commission to grant a variance. The applicant has indicated that subterranean parking is not "geotechnically advisable" due to the high water table and that a two-story structure would not be ideal for visitor-serving uses, including retail.

- 5. Open space is provided on the roof structure. The City Council determined in the case of La Paz's first application that roof top open space is not allowed. La Paz was redesigned to have underground parking for this reason. I believe Stephanie Edmondson was the planner on that version of La Paz and also the PCH office building and she can verify this. It makes sense that the roof cannot be open space. See #4 Buildings cannot be open space.*

Staff response: Staff acknowledges that very few projects within the City have been approved with rooftop landscaping and open space. More recent commercial projects that have difficulty satisfying open and landscaping have been approved with a variance. The alternatives for the subject project include a subterranean parking lot so that the existing on grade parking area can be dedicated to open space and landscaping, a complete redesign to a two-story commercial office, or for Planning Commission to grant a variance. The applicant has indicated that subterranean parking is not "geotechnically advisable" due to the high water table and that a two-story structure would not be ideal for visitor-serving uses, including retail.

- 6. Finding C requires a finding that without the variance the city would "deprive the subject property of privileges enjoyed by other properties..." Most of the commercial properties in the area are two stories and can easily qualify. Directly across the street the Windsail and Pier View were not granted this finding, when permitted.*

Staff response: Commercial properties in this area vary in sizes and in height. There are commercial developments that are single-story, two-stories, and some that are more than two-stories. However, most commercial properties that are in this area have been developed prior to Cityhood under County standards and are existing non-confirming in one way or another. Some existing commercial developments have greater F.A.R. than currently permitted, fewer parking spaces than currently required, exceed height restrictions, less landscaping or open space than currently required, and/or reduced setbacks. Nonetheless, every development project is unique. For example, Windsail and Pierview included two variances, one variance for parking in the front yard setback and one variance for the reduction of landscaping and both restaurants were able to utilize a joint parking agreement.

7. *How will the height requirements be determined? The staff report proposes landscaping on the roof and although the roof is flat the structure has "sloping roof eaves" which are a substantial distance from the structure.*

Staff response: Any area that is 3:12 or steeper is considered a pitched roof and any area flatter than 3:12 is considered a flat roof. The maximum height proposed for areas with a pitched roof is 28 feet in height. The maximum height proposed for areas with a flat roof is 24 feet in height. The project includes a site plan review for construction over 18 feet in height (refer to Section B for required findings).

On May 17, 2010, staff met with Commissioner Mazza to review the plans and discuss the issues in his electronic letter. Commissioner Stack was also present at the meeting. Another issue that came up during staff's meeting with Commissioners was the issue of how to calculate landscaping if Planning Commission is willing to consider landscaping on the rooftop as an approach to satisfy the 40 percent landscaping requirement. There are two methods of calculating landscaping on the rooftop. Landscaping may be calculated by the area in which it occupies in a planter box or landscaping may be calculated by the area in which foliage provides coverage. For example, a tree trunk may fit in a 4 x 4 planter box; however, the branches of the tree may extend out of the planter box and cover a larger area. As discussed previously in this agenda report, very few projects within the City have been approved with rooftop landscaping and open space; therefore staff cannot provide any examples of how landscaping on rooftops in other projects were calculated. A condition of approval may be added to the project once a determination has been made by the Planning Commission.

PUBLIC NOTICE: Staff published a Public Hearing Notice in a newspaper of general circulation within the City of Malibu on April 22, 2010, and mailed the notice to all property owners and occupants within a 500 foot radius of the subject property (Attachment 9).

SUMMARY: The required findings can be made that the project complies with the LCP. Further, the Planning Division's findings of fact are supported by substantial evidence in

the record. Based on the analysis contained in this report, staff recommends approval of this project subject to the conditions of approval contained in Section 5 (Conditions of Approval) of Planning Commission Resolution No. 10-43. The project has been reviewed and conditionally approved for conformance with the LCP and M.M.C. by staff and appropriate City and County agencies.

ATTACHMENTS:

1. Planning Commission Resolution No. 10-43
2. Aerial Photo
3. Project Plans
4. Department Review Sheets
5. Case Closure Letter; California Regional Water Quality Control Board - May 23, 2005
6. Memorandum; Cotton, Shire and Associates - December 8, 2009
7. Story Pole Photographs
8. Correspondence
9. Public Hearing Notice / Mailer

All referenced reports not included in the attachments can be viewed in their entirety in the project file located at Malibu City Hall.

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 10-43**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, APPROVING COASTAL DEVELOPMENT PERMIT NO. 08-055, SITE PLAN REVIEW NO. 10-012, VARIANCE NOS. 10-005 AND 10-006, CONDITIONAL USE PERMIT NO. 10-003, AND DEMOLITION PERMIT NO. 08-014, FOR THE DEMOLITION OF EXISTING REMNANT STRUCTURES ASSOCIATED WITH AN ABANDONED GAS STATION, CONSTRUCTION OF A NEW, 2,499 SQUARE FOOT COMMERCIAL STRUCTURE WITH A ROOF-TOP PARKING LOT, A VEHICULAR RAMP CONNECTING THE ROOFTOP PARKING TO AN EXISTING PARKING LOT LOCATED DIRECTLY NORTH OF THE SUBJECT PROPERTY, THE INSTALLATION OF AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM, HARDSCAPE, LANDSCAPING AND GRADING; INCLUDING A SITE PLAN REVIEW FOR CONSTRUCTION IN EXCESS OF 18 FEET, VARIANCES FOR CONSTRUCTION ON SLOPES IN EXCESS OF 2½ TO 1 AND REDUCTION OF THE REQUIRED REAR YARD SETBACK, A CONDITIONAL USE PERMIT TO ALLOW FOR THE CONSTRUCTION OF OVER 500 SQUARE FEET OF COMMERCIAL DEVELOPMENT, AND A DEMOLITION PERMIT FOR THE DEMOLITION OF EXISTING REMNANT STRUCTURES, IN THE COMMUNITY COMMERCIAL ZONING DISTRICT, LOCATED AT 22729 PACIFIC COAST HIGHWAY (WFS SEASTAR COMPANY, LLC)

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

Section 1. Recitals.

- A. On July 8, 2008, an application for Coastal Development Permit (CDP) No. 08-055, Site Plan Review (SPR) No. 10-012, Variance (VAR) Nos. 10-005, 10-006, and 10-007, Conditional Use Permit (CUP) No. 10-003 and Demolition Permit No. 08-014 was submitted to the City for review. The application was routed to the City Geologist, City Biologist, City Environmental Health Administrator, City Public Works Department, City Environmental Assessment consultant, and the Los Angeles County Fire Department (LACFD) for Malibu Municipal Code (M.M.C.) and Local Coastal Program (LCP) conformance review.
- B. On October 21, 2008, a courtesy notice of the proposed project was mailed to all property owners and occupants within a 500 foot radius of the subject property.
- C. On September 29, 2009, revised plans were submitted to the City for review. The revised plans show the elimination of a subterranean garage that was included in the initial submittal.
- D. On January 6, 2010, revised plans were submitted to the City for review. The revised plans reflect a project similar to the proposed project but included a variance for reduction of landscaping requirements.

- E. On March 3, 2010, story poles were placed on the subject property to illustrate the location, height, and bulk of the proposed project. A story pole certification prepared by a licensed surveyor has been submitted.
- F. On March 11, 2010, a site visit was conducted to document the story poles with an extensive amount of photographs. On March 12, 2010, the story poles were permitted to be removed at the discretion of the Planning Manager, due to the impact on a hand car wash onsite.
- G. On April 13, 2010, a Notice of Application sign for the subject application was posted on the project site.
- H. On April 15, 2010 the project was deemed complete.
- I. On April, 22, 2010, 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.
- J. On May 7, 2010, the applicant submitted revised plans which reflect the current project proposal. The revised project eliminated the need for a variance for the reduction of required landscaping.
- K. On May 18, 2010, the Planning Commission continued the item to the June 1, 2010 Regular Planning Commission meeting at the applicant's request.
- L. On June 1, 2010, the Planning Commission held a duly noticed public hearing on the subject applications, reviewed and considered the staff report, reviewed and considered written reports, public testimony and other information in the record.

Section 2. Environmental Review Findings.

Pursuant to the authority and criteria contained in California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal as described above. The Planning Commission has found this project listed among the classes of projects determined to have less than significant adverse effect on the environment and therefore, exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared pursuant to CEQA Guidelines 15301(l)(3) – Existing Facilities and 15303(c) – New Construction or Conversion of Small Structures. The Planning Commission further determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

Section 3. Local Coastal Program and Malibu Municipal Code Findings.

A. General Coastal Development Permit (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.

The proposed project has been reviewed for conformance with the LCP by the Planning Division, City Environmental Health Administrator, City Geologist, City Public Works Department, City Biologist, and the LACFD. The proposed project, as conditioned, conforms to the LCP in that it meets all commercial development standards.

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

The project site is not 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 Section 30200 of the Public Resources Code).

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

Pursuant to the California Environmentally Quality Act (CEQA), this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project allows for demolition of remnant structures at an abandoned gas station and the construction of a new 2,499 square foot commercial office building, which is a permitted use within the CC zoning classification of the subject property. The project will not result in potentially significant impacts on the physical environment.

Three alternatives were considered to determine which was the least environmentally damaging.

1. No Project – The no project alternative would avoid any change to the project site, and hence, any change to visual resources. The project site is zoned CC which allows commercial development. The no project alternative would not accomplish any of the project objectives; and therefore, is not viable. Furthermore, the existing abandoned gas station would remain as visual blight.
2. Remodel/Addition of Existing Structures – Existing onsite development could be remodeled, however, the existing convenience store and the pump station would not serve the purpose of a new commercial office building. It is not anticipated that a remodel and addition would offer any environmental advantages over the proposed project as the proposed project will not result in significant impacts on the environment.
3. Proposed Project – The project consists of the demolition of remnant structures associated with an abandoned gas station and the construction of a new 2,499 square foot commercial office building. The proposed project conforms to all commercial development criteria with the inclusion of the VAR and SPR requests. The project includes a new AOWTS to serve the new commercial office building, which will provide secondary and tertiary treatment. The proposed project also provides adequate parking spaces pursuant to LIP Section 3.12 and a safe ingress and egress circulation plan for vehicles.

The selected location has been reviewed and conditionally approved by the City Environmental Health Administrator, City Biologist, City Geologist, City Public Works Department, and the LACFD, and meets the City's commercial development policies. Therefore, the project, as proposed, is the least damaging alternative.

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

The subject parcel is not located in ESHA, an ESHA buffer zone or adjacent to any streams as designated in the LCP and does not require review by the ERB.

B. Site Plan Review for Construction in Excess of 18 Feet in Height (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four 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 a maximum of 28 feet with a pitched roof. Two additional findings are required pursuant to M.M.C. Section 17.62.050.

The applicant has proposed to construct a new, single-story, commercial office building that is 24 feet maximum for areas with a flat roof and 28 maximum for areas with a pitched roof. Pedestrian access to the rooftop parking is provided by a proposed elevator and stairway, both of which projects above the roof. However, due to the topography of the site; both the elevator and the stairway are under the permitted 28 foot pitched roof maximum height. The proposed roof-top parking lot is shielded from view by the 28 foot tall pitched roof parapet that acts as a screen. Based on the evidence in the record, the findings in support of SPR No. 10-012 are made as follows:

Finding B1. The project is consistent with policies and provisions of the Malibu LCP.

As discussed in Finding A1, the project has been reviewed for all relevant policies and provisions of the LCP. Based on submitted plans, reports, visual impact analysis, and detailed site investigation, it has been determined that the project is consistent with all policies and provisions of the LCP.

Finding B2. The project does not adversely affect neighborhood character.

As discussed in the City's General Plan, Land Use Element, "the stretch of PCH just west of Carbon Canyon Road through the Civic Center represents the commercial core/strip of the City." The proposed project is located within this area. The project site is surrounded by two fast food restaurants and two commercial buildings. Residential development is located within the project vicinity; however, it is located to the south across PCH and north at a higher elevation. Story poles were placed on the site in March 2010 to demonstrate the size, mass, and bulk of the proposed project. The story poles demonstrated that the project is compatible with the commercial nature of the surrounding development. Therefore, the project does not adversely affect neighborhood character.

Finding B3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The California Department of Transportation (Caltrans) has officially designated PCH in the City of Malibu as an "eligible scenic highway." LIP Chapter 6 (Scenic, Visual and Hillside Resources) 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. LIP Chapter 6 contains specific design standards for new development in scenic areas and the proposed project has been designed to adhere to this criteria.

In particular, LIP Section 6.5(H)(1) states that the PCH corridor "shall be protected as a scenic highway and significant viewshed by requiring that development conform to the following standards:

- a) Landscaping improvements, including plantings, may be permitted along PCH. Any proposed landscaping shall be comprised of primarily drought tolerant plant species. Landscaping shall be designed and maintained to be subordinate to the character of the area, and not block ocean or mountain views at maturity.*

While some vegetation may be removed as necessary for construction, replacement would occur resulting in more landscaping than in the pre-project condition. The proposed landscaping will not block ocean or mountain views at maturity due to the proposed placement and location of the landscaping. Additionally, conditions of approval regarding maximum height of landscaping have been included in the resolution to restrict landscaping along the front property line to be no more than 42 inches tall and to restrict landscaping from exceeding the roofline.

- b) New commercial development that includes a parking lot visible from PCH shall include landscaping and/or berming to screen the view, so long as measures do not obscure or block views of the ocean.*

In accordance with the LIP Section 6.5(H)(1)(B), the rooftop parking lot, which would be visible from PCH, is proposed to be screened from view by a sloping roof eave. The proposed parking area located on the ground floor in front of the commercial office is screened from view by proposed planters and landscaping (not to exceed 42 inches) located along the front property line.

- c) Any telecommunications facilities approved along PCH shall place support facilities underground, where feasible. New transmission lines shall be sited and designed to be located underground, except where it would present or contribute to geological hazards. Existing transmission lines should be relocated underground when they are replaced or when funding for undergrounding is available.*

The project has been conditioned to underground any new facilities along PCH and underground transmission line should they be replaced or when funding is available.

In this area of PCH, the scenic resources are the ocean to the south, and the mountains to the north of the site which are located at a higher elevation than the project site and blocked from view by

existing development. The project site is located on the north side of PCH, and thus, would not interfere with any views of the ocean from PCH. The proposed development is not anticipated to impede significant public views due to existing development located directly north of the proposed project site. The proposed project is not visible from the Malibu Pier.

The project also includes a variance to site the structure adjacent to the rear property line. The proposed siting would allow development to be sited away from PCH and closer to existing commercial development in the rear. When viewing the project area from PCH, the proposed development does not block any visually impressive views or scenic vistas of the Santa Monica Mountains or Pacific Ocean.

The project would add additional vegetation to the site along the perimeter of the project site, adding a beneficial scenic element to the development. A condition of approval will be added that requires all vegetation to 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). Additionally, in accordance with LIP Section 6.5, "standard conditions" of approval are required to ensure that the proposed design and materials of the development will avoid impact to scenic resources to the extent feasible. With implementation of standard conditions of approval, the project would have less than significant impacts to scenic vistas and provides the maximum feasible protection to significant public views as required by LIP Chapter 6.

Finding B4. 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, permits and licenses from the City of Malibu and other related agencies, such as the Regional Water Quality Control Board (RWQCB), and the LACFD.

Finding B5. The project is consistent with the City's general plan and local coastal program.

As discussed in Finding A1, the proposed project is consistent with the LCP in that the proposed project is located in an area that has been identified for commercial use. As discussed in Finding B2, the proposed project is located within a strip of commercial properties intended for commercial use and the project is consistent with land use designated for this area in the General Plan. The proposed project is consistent with the LCP in that it conforms to the commercial land use designation.

Finding B6. 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).

Based on the visual impact analysis (aerial photographs, site visits and story poles), it has been determined that the proposed development does not impact the primary view of neighboring residential properties. The proposed project is located at a lower elevation than the residential properties located north of the property on a hill. Primary views of residential properties located across PCH are oriented south, away from the project site and toward the Pacific Ocean. Story poles were placed on the site to demonstrate the maximum height of the proposed structures and to assess

the visual impact of the proposed development on public and private views. Courtesy notices of application were sent to properties within a 500 foot radius of the subject property. No comments from the public were received regarding primary views.

C. Variance for Construction on Slopes Greater Than 2½ to 1 - (LIP Section 13.26)

The applicant is requesting a variance to LIP Section 13.27.1(A)(4) which allows for construction on slopes greater than 3 to 1 but less than 2½ to 1 with a SPR. The proposed project includes construction on 1½ to 1 slopes. 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 findings of fact. Based on the evidence in the record, the findings in support of VAR No. 10-005 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.

The rear portion of the project site is dominated by manufactured slopes that were created when the commercial property at 22741 PCH (directly north of the project site) was constructed. Currently¹, the City does not differentiate between slopes created by natural processes and those previously manufactured in accordance with recommendations of a geotechnical engineer and permitted by a regulatory agency. All slopes, regardless if they are natural or manufactured, are subject to the same development requirements.

Granting of such variance would allow the proposed commercial office building to be sited on manufactured slopes that were created previously during construction. The proposed building pad location is set back from PCH and would result in less significant impacts to scenic visual resources than if the structure was to be located near the front property line. There are special circumstances applicable to the subject property that strict application of the zoning ordinance deprives the subject property of privileges enjoyed by other properties in the vicinity and under the same zoning designation.

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 the public's interest, safety, health or welfare. Only a portion of the proposed structure will be located on manufactured slopes; the remaining portion of the proposed structure will be located on slopes 3 to 1 or flatter. The project will not be detrimental to other properties or improvements in the same vicinity and zone.

¹ On August 10, 2009, City Council adopted Ordinance No. 339, approving a Zoning Text Amendment (ZTA) and a Local Coastal Program Amendment (LCPA) which modified the language in the M.M.C. and LCP to differentiate between "natural" slopes and "manufactured" slopes. However, Ordinance No. 339 is not effective until the LCPA is certified by the California Coastal Commission (CCC). Staff is preparing the LCPA for submittal to CCC for certification.

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.

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

As discussed in Finding C1, granting the variance will not constitute a special privilege to the applicant or property owner because there are special circumstances on the project site that strict application of the zoning ordinance would deprive the property to be developed similarly to other properties within the vicinity and under the same zoning designation.

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 C1, granting the requested variance will allow the subject property to be developed in a way that allows for construction of a new commercial office building.

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 proposed variance does not propose the reduction of ESHA protection standards. Therefore, this finding is not applicable.

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 proposed 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 or activity not otherwise permitted in the CC zoning district. The requested variance is for the development of a commercial office building, which is an allowed use in the CC zoning district.

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

Granting of the variance will allow construction of a new commercial office building on the project site. The proposed project, including building pad location, has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works

Department, and the LACFD as being physically suitable for the proposed variance. Additionally, the project will be required to satisfy all Building and Safety standards in the Building Plan Check process.

Finding C9. The variance complies with all 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, permits and licenses from the City of Malibu and other related agencies, such as the RWQCB and the LACFD.

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 proposed project does not include any reduction or elimination of public parking for access to the beach, public trails or parklands.

D. Variance for Reduction of the Required Rear Yard Setback - (LIP Section 13.26)

The majority of the proposed structure is located 14.6 feet from the rear property line (a 20 percent reduction of the required rear yard setback that may be permitted with a minor modification pursuant to LIP Section 13.26); however, a portion of the project (connector ramp and stairway from the ground floor to the rooftop parking level) are located beyond what is permitted with a minor modification. Therefore, a variance is requested.

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 findings of fact. The applicant is requesting a variance to LIP Section 3.8(2)(B) which requires a rear yard setback of 18.23 feet. The project proposes a zero setback in order to construct a rooftop ramp across property line to connect the proposed rooftop parking area to the lower level of an existing parking area of a commercial office building located north of the project site at 22741 PCH. The project has been conditioned so that construction of the connector ramp shall not commence until evidence of a recorded easement allowing the ramp to cross property lines has been submitted. Based on the evidence in the record, the findings in support of VAR No. 10-007 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.

Pursuant to LIP Section 3.3, newly created parcels in the CC zone should have a minimum lot size of five acres or 217,800 square feet and a minimum lot depth of 500 feet. The project site is .42 acres in size or 18,283 square feet and has a lot depth of 121 feet, 7 inches, which is substantially smaller than what a parcel in the CC zone was intended to be. The project proposes a 2,499 square foot commercial building which is less than the maximum .15 F.A.R. permitted on the property. Of the 18,282 square feet, 2,499 square feet is proposed for the commercial office building, 5,836 square feet is proposed to be landscaping, 3,384 square feet is proposed to be open space, and the remainder 6,563 square feet is proposed for parking spaces, vehicular access, and a trash enclosure.

Due to the relatively small size and narrow lot depth of the parcel, the project would not be able to meet the required 65 percent of open space and landscaping without utilizing the rooftop parking area unless on grade parking is eliminated. Eliminating on-grade parking in front of the commercial office would negatively impact the viability of the proposed commercial office. Without parking located in front of the proposed commercial office, visitors traveling on PCH would have to slow a pace that would allow them to read signage directing them to park on the rooftop via an existing driveway serving 22741 PCH. The project proposes 13 on grade parking spaces; hence eliminating the need for visitors to slow to a pace on PCH that may poise a public safety hazard.

Furthermore, the proposed commercial office could be located as close as 24 feet, 7 inches from PCH, which would result in the proposed project having a significant visual impact on the scenic highway. Granting of the variance would allow the proposed structure to be set back from PCH and allow on-grade parking for safe and easy ingress and egress.

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 the public's interest, safety, health or welfare. Granting of such variance would allow the proposed structure is set back from PCH and abuts an existing commercial office building near the rear property line, minimizing impacts to scenic, visual resources when viewed from PCH. Granting of the variance would also allow the proposed parking area on grade to provide sufficient turn out radius for safe vehicular maneuvering.

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.

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

Granting of the variance will not constitute a special privilege to the applicant or property owner because the granting of this variance will allow the proposed commercial office building to be located away from PCH which would minimize impact on scenic resources. Granting of the variance will also allow safe maneuvering of vehicles in the proposed parking lot. The proposed project utilizes the entire site to comply with landscaping, open space, and parking standards; therefore granting of the variance will not constitute a special privilege.

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 in Finding D1, granting the requested variance will allow the proposed project to be set away from PCH, a designated scenic highway and allow safe maneuvering of vehicles.

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 proposed variance does not pertain to ESHA buffer standards; 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 proposed 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 or activity not otherwise permitted in the CC zoning district. The proposed project is for the construction of a new commercial office building which is an allowed use in the CC zoning district.

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

The project has been conditioned so that construction of the connector ramp shall not commence until evidence of a recorded easement allowing the ramp to cross property lines and shared access to the rooftop parking lot has been submitted. The proposed project, including project location, has been reviewed and approved by the City Biologist, City Environmental Health Administrator, City Geologist, City Public Works Department and the LACFD as being physically suitable for the proposed variance. Additionally, the project will be required to satisfy all Building and Safety standards in the Building Plan Check process. The subject site is physically suitable for the proposed variance.

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

As discussed in Finding C9, the project, including the variance request, complies with all requirements of state and local law.

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 proposed project does not include any reduction or elimination of public parking for access to the beach, public trails or parklands.

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

The project site does not contain ESHA; therefore, the findings in LIP Chapter 4 are not applicable.

F. Native Tree Protection (LIP Chapter 5)

No native trees are proposed to be removed as part of the project scope of work. Therefore, the findings in LIP Chapter 5 are not applicable.

G. 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 in March 2010. Based on site visits, aerial photographs, and review of the visual analysis in the record, it has been determined that the subject site is visible from PCH, a designated scenic highway.

However, the proposed development is not anticipated to impact significant public views because it is located on the inland side of PCH. Public scenic views of the ocean are oriented to the south, away from the proposed project. The proposed project will not block scenic impressive views of Santa Monica Mountains as existing commercial development surrounds the project site. Nonetheless, LIP Chapter 6 applies and the five findings set forth in LIP Section 6.4 are made as follows.

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

Story poles were placed on the site to aid in the completion of a visual analysis of public view impacts. The proposed commercial office building is set back from PCH and located near the rear property line, in close proximity to an existing commercial office building at a higher elevation. Due to the existing commercial office building located directly north of the project site, the proposed project will not impact scenic views of the Santa Monica Mountains to the north. Scenic views of ocean are oriented to the south of PCH and the project site is located north of PCH. The project, as proposed, will not have significant adverse scenic or visual impacts due to the project design and location on the site.

Finding G2. 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 G1, the project, as conditioned, will not have significant adverse scenic or visual impacts due to the location of proposed structure in relations to existing development. Conditions of approval have been included in this resolution to require building material and colors to be compatible with the surrounding environment and restrictions on lighting. The project also proposes approximately 4,163 square feet of new landscaping onsite to minimize adverse scenic or visual impacts when viewed from PCH.

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

As discussed in Finding A3, the proposed development is the least environmentally damaging alternative.

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

As previously discussed in Findings A3 and G3, the project, as proposed and conditioned, is the most feasible design to avoid adverse significant impacts on scenic or visual resources. The proposed project is sited away from PCH and located within other commercially developed properties.

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

The project, as proposed, does not have the potential to significantly degrade the quality of the environment, nor does it have impacts which are individually limited but cumulatively considerable, because the nature of the development will remain consistent with the LCP. The project's use is consistent with its LCP zoning.

H. Transfer of Development Credit (LIP Chapter 7)

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

I. Hazards (LIP Chapter 9)

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

The applicant submitted a series of geologic reports with subsequent supplemental and addendum reports, all of which have been reviewed by the City Geologist for the hazards listed in LIP Section 9.2(A)(1-7). In addition, the project has been routed to the City's Environmental Assessment consultant for review. Analysis also included review of the City of Malibu General Plan and review of the hazards designation in the City of Malibu's Geographic Information System (GIS).

The vast amount of geologic information obtained on the subject property has been reviewed in its entirety by the City Geologist whose professional opinions are based on the sum of this data. The City Geologist reviewed the project and associated technical submittals and approved the project in concept, subject to conditions. 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.

Faulting

According to the Geotechnical Investigation Report prepared by Stratum Geotechnical Consultants on October 8, 2007, "no active faults have been mapped traversing through the building site.

However, the entire Southern California is, seismically active with numerous faults capable of causing ground shaking at the site." As indicated in the City of Malibu General Plan, Safety and Health Element, "there are numerous faults surrounding and traversing the Malibu area including the Malibu Coast Fault, the Santa Monica Fault, the Los Flores Reverse Fault and the Anacapa Fault." Each of these faults "may generate strong ground shaking impacting the Malibu area". Alleviation of ground-shaking effects is provided through enforcement of structural and nonstructural seismic design provisions defined in the Uniform Building Code. Application of these design provisions to the proposed project would minimize potential effects of ground shaking to a level considered less than significant.

Liquefaction

The Malibu General Plan, Safety and Health Element, states that "liquefaction and subsidence is a process by which water-saturated sediment suddenly loses strength, which commonly accompanies strong ground motions caused by earthquakes." During an extended period of ground shaking or dynamic loading, porewater pressures increase and the ground is temporarily altered from a solid to a liquid state. Liquefaction is most likely to occur in unconsolidated, sandy sediments, which are water-saturated within less than 50 feet of the ground surface. Few areas of significant liquefaction susceptibility exist in the City of Malibu. These few areas are located along the beaches and in the flood plains of the major streams, such as Malibu Creek. A liquefaction analysis was performed, which concluded that post-liquefaction settlement is estimate to be less than 3 inches. The foundation design will mitigate the effects of liquefaction.

Landslide

The potential for landslides is virtually non-existent due to the relatively flat topography of the project area. Landslides are not identified as a site concern in the geotechnical reports completed for the subject property.

Flood

According to the Flood Insurance Rate (FIRM) Map Panel No. 1541F, the project site is not located within the 100 year FEMA flood zone.

Fire Hazard

The entire city limits of Malibu are located within the fire hazard zone. 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 firefighting equipment can augment the LACFD. As such, the proposed project as conditioned will not be subject to nor increase the instability of the site or structural integrity involving wild fire hazards.

Nonetheless, conditions of approval have been included in this resolution which require 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 development on a beach and wildfire exists as an inherent risk to life and property.

Petroleum Contamination

The project was referred to the City's Environmental Assessment consultant, Cotton, Shires and Associates. In May 2005, the California Regional Water Quality Control Board (RWQCB) confirmed that the underground storage tanks have been removed. The following documents, including reports prepared by Wayne Perry Inc, the project Environmental Remediation and Construction consultant, were routed to the City's Environmental Assessment consultant for review:

- Evaluation of Closure Conditions, 22729 PCH, Malibu, Wayne Perry, Inc., August 6, 2009;
- Site Assessment Report, 22729 PCH, Sea View Terrace Property, Wayne Perry Inc., August 20, 2009;
- Underground Storage Tank Removal and Soil Sampling Report, Former Shell Service Station, 22729 PCH, Wayne Perry, Inc., July 9, 2002;
- Underground Storage Tank (UST) Program – Case Closure Letter, California Regional Water Quality Control Board, May 23, 2005; and
- Geotechnical reports prepared by Stratum Geotechnical Consultants, October 2007 and November 2007.

According to a Memorandum prepared by Cotton, Shire and Associates on December 8, 2009, based on the listed reports and follow-up conversations with the project consultant, the project has "adequately addressed" any concerns regarding petroleum contamination. Additionally, the project consultant concluded "that there is no gross petroleum fuel contaminants on the site that are associated with historic gasoline station operations" in response to the City Environmental Assessment consultant request for clarification. The City Environmental Assessment consultant recommended the following conditions to be included as conditions of approval:

1. During demolition and construction, the project engineer shall direct crews to monitor excavated soil and/or waters (surface water or groundwater) for stain, odor or other indicators of impacted media;
2. If, during demolition, construction or any later phase, stained or odorous soil or waters (surface water or groundwater) are detected, the applicant shall provide the following to the City:
 - a. Non-emergency notification that stained or odorous soil or water (surface water or groundwater) has been detected;
 - b. Plan to address the further assessment of the extent of impacted media;
 - c. Contingency plans to address the possible impacts to site works or the public;
 - d. Plan for legal profiling, transportation and disposal at an offsite location; and
 - e. Notification of other agencies (e.g. RWQCB, LACFD, Department of Toxic Substance Control, etc.).

The project will incorporate all recommendations contained in the above cited geotechnical reports on file with the City and conditions required by the City Geologist, City Environmental Assessment consultant and the LACFD. As such, the proposed project will not increase instability of the site or structural integrity from geologic, flood or any other hazards. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a building permit.

Based on the evidence in the record, the findings of fact are made as follows:

Finding I1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The project will incorporate all recommendations contained in the geotechnical reports prepared by Stratum Geotechnical Consultant, Wayne Perry Environmental Remediation and Construction consultant, City Environmental Assessment consultant, and the City Geologist. As such, the proposed project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, fire or any other hazards.

Finding I2. 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 proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies, such as the RWQCB and LACFD.

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

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

Finding I4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

The project site is subject to seismic activity and liquefaction, however, with the recommended engineering techniques, the appropriate factors of safety can be met. Additionally, conditions of approval have been incorporated in this resolution to ensure petroleum contamination of the project site does not exist. There are no alternatives that would avoid or substantially lessen impacts on site stability or structural integrity.

Finding I5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As stated in Findings I1 and I4, the proposed project as designed and conditioned, will have no significant adverse impacts on site stability, structural integrity or sensitive resources. Therefore, no adverse impacts are anticipated to result from hazards or conflict with sensitive resource protection policies contained in the LCP.

J. Shoreline and Bluff Development (LIP Chapter 10)

The project is not located on a shoreline or bluff. Therefore, the findings from LIP Section 10.3 are not applicable.

K. Public Access (LIP Chapter 12)

The project is not located between the first public road and the ocean, near any trails, or other designated recreation area; therefore, the findings in LIP Chapter 12 are not applicable.

L. Land Division (LIP Chapter 15)

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

M. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. LIP Section 18.7 includes specific siting, design and performance requirements. The project includes an AOWTS to replace an existing OWTS, which has been reviewed by the City Environmental Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the M.M.C. and the LCP. The subject system will meet all applicable requirements and operating permits will be required. The project will include a 2000 gallon Jensen primary tank, a 1,500 gallon Septitech gallon processor tank, an ultra violet disinfection system, and two leach fields. The new AOWTS will provide the proposed development with secondary and tertiary treatment.

An operation and maintenance contract and recorded covenant covering such must be in compliance with City of Malibu Environmental Health requirements. Conditions of approval have been included in this resolution which requires continued operation, maintenance and monitoring of onsite facilities.

M.M.C. Findings

N. Conditional Use Permit to Allow for the New Construction of 500 square feet or more to a New Commercial Use (M.M.C. Section 17.66.080)

The applicant has requested a CUP for the construction of over 500 square feet of commercial space. Pursuant to M.M.C. Section 17.66.080, the Planning Commission may approve, deny and/or modify an application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. Based on the evidence within the record, the findings of fact for CUP No. 10-003 are made as follows:

Finding N1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

Pursuant to M.M.C. Section 17.22.040, any permitted use involving new construction or expansion over 500 square feet, is a conditionally permitted use with the CC zone. The project has been conditioned to comply with all applicable provisions of the M.M.C.

Finding N2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

As discussed in Finding N1, the proposed office building square footage is conditionally permitted

within the CC zoning designation. The proposed use will be within "the stretch of PCH just west of Carbon Canyon Road through the Civic Center" identified in the City's General Plan, Land Use Element, as the "commercial core/strip of the City." The proposed project would not impair the integrity and character of the zoning district in which it is located. The proposed commercial office building complies with the maximum F.A.R. allowed onsite.

Finding N3. The subject site is physically suitable for the type of land use being proposed.

The proposed project has been reviewed by the appropriate City agencies and the LACFD. As conditioned, the subject site is physically suitable for the proposed use and the project has been determined to be in conformance with the applicable development standards for the parcel.

Finding N4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The land uses presently on the project site include an abandoned gas station and a hand carwash operation. The carwash operation will be removed prior to construction of the proposed commercial office building. Surrounding development includes fast food restaurants, commercial offices, a hotel and other commercial operations. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

Finding N5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

As discussed in Findings N2 and N4, the proposed use would be compatible with existing and future land uses within the zoning district.

Finding N6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

The applicant has submitted a Will Serve Letter from the Los Angeles County Waterworks District 29 which has confirmed water will be provided to the subject property. The project also includes the installation of a new AOWTS to serve the proposed commercial office building. Additionally, because the proposed structure is set back from PCH and located at a lower elevation than residential properties constructed on the hillside in the north, it is not anticipated that the project will not impact solar access. As described in Section B of this resolution, the structure will not negatively impact or public and private views.

Finding N7. There would be adequate provisions for public access to serve the subject proposal.

Adequate provisions for public access to serve the site are included in the project proposal. Access to the proposed office building is provided via a curb cut on PCH and through a connector ramp which connects the proposed structure to an existing commercial office building at 22741 PCH. Additionally, the project includes two ADA accessible parking spaces onsite.

Finding N8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

As discussed in Finding O2, the proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

Finding N9. The proposed project complies with all applicable requirements of state and local law.

As discussed in Findings C9, D9, and E9, the proposed project will comply with all applicable requirements of State and local law.

Finding N10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

As discussed in Findings C2, D2, and E2, the proposed project would not be detrimental to the public interest, health, safety, convenience or welfare.

Finding N11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

As discussed in detail in Section I of this resolution, there is evidence that the proposed development is not at risk from earth movement, flooding or liquefaction.

O. Demolition Permit (M.M.C. Section 17.70.060)

M.M.C. Section 17.70.060 requires that a demolition permit be issued for projects that result in the demolition of any building or structure. The project proposes the demolition of an existing single-family residence and detached garage. The findings for DP No. 08-014 are made as follows.

Finding O1. The demolition permit is conditioned to assure that it will be conducted in a manner that will not create significant adverse environmental impacts.

Conditions of approval included in this resolution will ensure that the project will not create significant adverse environmental impacts.

Finding O2. A development plan has been approved or the requirement waived by the City.

A CDP application is being processed concurrently with DP No. 08-014. Therefore, approval of the DP is subject to the approval of CDP No. 08-055.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 08-055, Site Plan Review No. 10-012, Variance Nos. 10-005, 10-006, and 10-007, Conditional Use Permit No. 10-003 and Demolition Permit No. 08-014, subject to the conditions listed in the following section.

Section 5. Conditions of Approval

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 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:

Demolition of:

- a. Two remnant gasoline pumping station canopies;
- b. A convenience store structure; and
- c. Removal of the existing onsite wastewater treatment system.

Construction of:

- a. 2,499 square foot, one-story, commercial office building with rooftop parking; 24 feet maximum for areas with flat roofs and 28 feet maximum for areas with pitched roof;
- b. 25 parking spaces (including 3 parking spaces reserved for 22741 PCH), consisting of rooftop parking and on grade parking;
- c. 24 foot wide, rooftop connector ramp (1 percent slope) from the subject property to 22741 PCH;
- d. 1,370 total cubic yards of exempt grading;
- e. Landscaping (40 percent);
- f. Open space (25 percent)
- g. Hardscape; and
- h. Alternative onsite wastewater treatment system (AOWTS)

Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Division, dated **May 7, 2010**. 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 building or development permits.

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 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 Coastal Engineer, 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 CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the California Coastal Commission denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.

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 those in 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.

Building Plan Check

Demolition/Solid Waste

13. Prior to demolition activities, the applicant shall receive Planning Division approval for compliance with conditions of approval.
14. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
15. Prior to the issuance of a building/demolition permit, a Waste Reduction and Recycling Plan (WRRP) shall be submitted to the Public Works Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion goal.
16. Upon plan check approval of demolition plans, the applicant shall secure a demolition permit from the City. The applicant shall comply with all conditions related to demolition imposed by the Deputy Building Official.
17. No demolition permit shall be issued until building permits are approved for issuance. Demolition of the existing structure and initiation of reconstruction must take place within a six month period. Dust control measures must be in place if construction does not commence within 30 days.
18. The project developer shall utilize licensed subcontractors and ensure that all asbestos-containing materials and lead-based paints encountered during demolition activities are removed, transported, and disposed of in full compliance with all applicable federal, state and local regulations.
19. Any building or demolition permits issued for work commenced or completed without the benefit of required permits are subject to appropriate "Investigation Fees" as required in the Building Code.
20. Upon completion of demolition activities, the applicant shall request a final inspection by the Building Division.

Geology

21. All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
22. 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.

Onsite Wastewater Treatment System

23. 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 LIP Section 18.9 related to continued operation, maintenance and monitoring of onsite facilities.
24. Prior to final Environmental Health approval, a final alternative onsite wastewater treatment system (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).
25. 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).
26. Final approval of the AOWTS design from TetraTech RTW, a consultant to the City of Malibu that provides contract wastewater engineering review, must be obtained prior to City Environmental Health approval.
27. The final design report shall contain the following information (in addition to the items listed above).
 - a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment system shall be specified in the final design;
 - b. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;
 - c. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system's geometric dimensions and

basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak OWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics; and

- d. All final design drawings shall be submitted with the wet signature and typed name of the OWTS designer. If the scale of the plan is such that more space is needed to clearly show construction details, larger sheets may also be provided (up to a maximum size of 18 inch by 22 inch, for review by Environmental Health). Note: For AOWTS final designs, full-size plans are required for review by Building Safety and/or Planning.
28. Any proposed reduction in setbacks from the OWTS to buildings or structures (i.e. setbacks less than those shown in MPC Table K-1) must be supported by a letter from a Structural Engineer and a letter from a Soils Engineer (i.e. a Geotechnical Engineer or Civil Engineer practicing in the area of soils engineering). Both engineers must certify unequivocally that the proposed reduction in setbacks from the treatment tank and effluent disposal area will not adversely affect the structural integrity of the OWTS, and will not adversely affect the structural integrity of the buildings or structures for which the MPC Table K-1 setback is reduced. Construction drawings submitted for plan check must show OWTS components in relation to those structures from which the setback is reduced.
 29. The following note shall be added to the plan drawings included with the OWTS final design: "Prior to commencing work to abandon, remove, or replace the existing Onsite Wastewater Treatment System (OWTS) components, an 'OWTS Abandonment Permit' shall be obtained from the City of Malibu. All work performed in the OWTS abandonment, removal or replacement area shall be performed in strict accordance with all applicable federal, state, and local environmental and occupational safety and health regulatory requirements. The obtainment of any such required permits or approvals for this scope of work shall be the responsibility of the applicant and their agents."
 30. Final plans shall clearly show the locations of all existing OWTS components (serving pre-existing development) to be abandoned and provide procedures for the OWTS' proper abandonment in conformance with the MPC.
 31. A covenant running with the land shall be executed by the property owner and recorded with the Los Angeles County Recorder's Office. Said covenant shall serve as constructive notice to any successors in interest that: 1) the private sewage disposal system serving the development on the property does not have a 100 percent expansion effluent dispersal area (i.e., replacement disposal field(s) or seepage pit(s)), and 2) if the primary effluent dispersal area fails to drain adequately, the City of Malibu may require remedial measures including,

but not limited to, limitations on water use enforced through operating permit and/or repairs, upgrades or modifications to the private sewage disposal system. The recorded covenant shall state and acknowledge that future maintenance and/or repair of the private sewage disposal system may necessitate interruption in the use of the private sewage disposal system and, therefore, any building(s) served by the private sewage disposal system may become non-habitable during any required future maintenance and/or repair. Said covenant shall be in a form acceptable to the City Attorney and approved by the Environmental and Building Safety Division.

32. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
33. 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.
34. 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. Only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.
35. 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 OWTS 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.
36. The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator.
37. 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.
38. Los Angeles County construction permit records on file at the City of Malibu indicate the historical construction of a grease trap as a part of the private sewage disposal system at the subject property. It is unclear as to whether this grease trap was intended to serve oil/water clarifier, such as could have been used in processing wastewater for an automobile service station. However, no such clarifier has been located on the property. Final Environmental Health approval can be issued only with a condition that if, during construction, a clarifier is discovered, then a permit to abandon the device will be obtained from the California of Malibu Environmental Health Building safety Division.

Environmental Assessment

39. During demolition and construction, the project engineer shall direct crews to monitor excavated soil and/or waters (surface water or groundwater) for stain odor or other indicators of impacted media.
40. If, during demolition, construction or any later phase, stained or odorous soil or waters (surface water or groundwater) are detected, the applicant shall provide the following to the City:
 - a. Non-emergency notification that stained or odorous soil or water (surface water or groundwater) has been detected;
 - b. Plan to address the further assessment of the extent of impacted media;
 - c. Contingency plans to address the possible impacts to site works or the public;
 - d. Plan for legal profiling, transportation and disposal at an offsite location; and
 - e. Notification of other agencies (e.g. RWQCB, LACFD, Department of Toxic Substance Control, etc.).

Grading/Drainage/Hydrology

41. The project shall not include any non-exempt grading.
42. The Total Grading Yardage Verification Certificate (dated September 29, 2009) shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitute may be accepted.
43. A Grading and Drainage Plan containing the following information shall be approved, and submitted to the Public Works Department, 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, and decks);
 - c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on this 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 this plan. Systems greater than 12 inch in diameter shall also have a plan and profile for the system included with this plan.
44. 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.
45. 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.
46. 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).
47. Earthmoving during the rainy season (extending from November 1 to March 31) 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 31, unless the Planning Manager or Deputy Building Official determines that completion of grading would be more protective of resources.
48. Grading during the rainy season may be permitted to remediate hazardous geologic conditions that endanger public health and safety.
49. 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.
50. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
51. A Storm Water Management Plan (SWMP) shall be submitted for review and approval of the Public Works Director. The SWMP shall be prepared in accordance with the LIP Section 17.3.2 and all other applicable ordinances and regulations.
52. A Water Quality Management Plan (WQMP) shall be submitted for review and approval of the Public Works Director. The WQMP shall be prepared in accordance with the LIP Section 17.3.3 and all other applicable ordinances and regulations. 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 on the site. The following

elements shall be included within the WQMP:

- a. Site Design Best Management Practices (BMPs);
- b. Source Control BMPs;
- c. Treatment Control BMPs;
- d. Drainage improvements;
- e. Methods for onsite 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 treatment 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 the water quality measures installed during construction prior to the issuance of grading or building permits; and
- i. The WQMP shall be submitted to the Building and Safety Public Counter and the fee applicable at the time of submittal for review of the WQMP shall be paid prior to the start of the 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. A certified copy of the WQMP shall be submitted prior to the Public Works Department approval of building plans for the project.

Water Quality/ Water Service

53. Prior to the issuance of a building permit, the applicant shall submit an updated Will Serve letter from Los Angeles County Waterworks District No. 29 indicating the ability of the property to receive adequate water service.

Construction / Framing

54. A construction staging plan shall be reviewed and approved by the Planning Manager prior to plan check submittal.
55. 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 or City-designated holidays.
56. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall 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.
57. 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.
- d. Filter fences designed to intercept and detain sediment while decreasing the velocity of runoff shall be employed within the project site.

58. 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. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning Division for review and sign off on framing.

Colors and Materials

59. 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. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones.
 - 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.
60. All driveways (including the connector ramp) 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.
61. 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

62. 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

- c. 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 as required by the Building Code 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
 - e. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.
63. 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 property(ies) shall not produce an illumination level greater than one foot candle.
64. Lighting, where provided to illuminate a parking area, shall be hooded and so arranged and controlled so as not to cause a nuisance either to highway traffic or to adjacent properties.

Biology/Landscaping

65. Invasive plant species, as determined by the City of Malibu, are prohibited.
66. 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).
67. The use of building materials treated with toxic compounds such as copper arsenate is prohibited.
68. All street frontage trees and shrubs shall include only species native to the Santa Monica Mountains.
69. The applicant shall submit a new, revised, landscaping plan, prepared in compliance with the Malibu Landscape Water Conservation Ordinance to the City Biologist for review and approval.
70. The applicant shall submit a new, revised, landscaping plan, in compliance with the required 40 percent landscaping and additional landscaping to be considered as open space.

Fuel Modification

71. The project shall receive Los Angeles County Fire Department approval of a Final Fuel Modification Plan prior to the issuance of final building permits.

Fencing and Walls

72. The height of fences, walls and front yard planters 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.

Site Specific Conditions

73. Conditional Use Permit No. 08-017, for the operation of a hand carwash at the subject location, shall become null and void once grading or building permits are issued for the construction of the proposed commercial structure.
74. The applicant shall submit a recorded easement that (1) provides for shared use of the existing access driveway; (2) permits the construction of the connector ramp across property lines; and (3) provides for the shared parking arrangement; prior to issuance of building permits to Planning staff.
75. Existing transmission lines shall be relocated underground when they are replaced or when funding for undergrounding is available.
76. Tire stops shall be provided within all parking areas.
77. All parking areas shall be surfaced with asphaltic or cement concrete paving which is at least three inches thick or permeable paving on comparable load-carrying capacity and durability.
78. All plantings shall be permanently and regularly maintained free of debris and in conformity with the accepted practices for landscape maintenance.
79. Required landscaping shall be irrigated with greywater, where feasible.
80. All commercial developments shall be designed to control the runoff of pollutants from structures, parking and loading docks. The following measures shall be implemented to minimize the impacts of commercial developments on water quality:
 - a. Properly designed parking lots (5,000 square feet of impervious surface or 25 parking spaces.):
 - i. Minimize impervious surfacing for parking area;
 - ii. Infiltrate runoff before it reaches a storm drain system;
 - iii. Treat to remove oil and petroleum hydrocarbons at parking lots that are heavily used; and
 - iv. Ensure adequate operation and maintenance of treatment systems particularly sludge and oil removal and system fouling and plugging prevention control.
 - b. Trash Storage Areas
 - i. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area; and
 - ii. Trash container areas must be covered, screened or walled to prevent off-site transport of trash.

California Department of Transportation (Caltrans)

81. Encroachment permits from the California Department of Transportation (Caltrans) shall be obtained prior to any construction on Caltrans public right-of way, as applicable.
82. A Caltrans Transportation permit shall be obtained prior to any transportation of heavy construction equipment and / or materials which requires the use of oversized-transport vehicles on State highways (such as Pacific Coast Highway).
83. The applicant must obtain all applicable permits from Caltrans for the transportation of construction equipment, including large size truck trips.
84. A truck / traffic construction management plan shall be submitted to the City Planning Department for review and approval during Building Plan Check and prior to issuance of grading or building permit.

Prior to Occupancy

85. Prior to issuing a Certificate of Occupancy, the City Biologist shall inspect the project site and determine that all planning conditions to protect natural resources are in compliance with the approved plans.
86. 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.
87. 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.

Deed Restrictions

88. 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.
89. The property owner is required to acknowledge, by recordation of a deed restriction, that the project is subject to the conditions included in this Resolution. The applicant shall be required to record the executed Planning Commission Resolution with the Los Angeles

County Records' Office within 10 days of the Notice of Final Action.

Fixed Conditions

90. This coastal development permit shall run with the land and bind all future owners of the property.
91. 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.

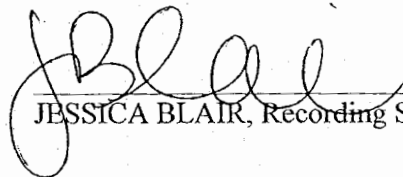
The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 1st day of June 2010.



JOHN MAZZA, Planning Commission Vice Chair

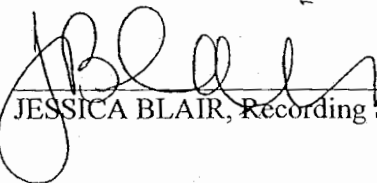
ATTEST:



JESSICA BLAIR, Recording Secretary

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 10-43 was passed and adopted by the Planning Commission of the City of Malibu at the special meeting thereof held on the 1st day of June 2010, by the following vote:

AYES: COMMISSIONERS: HOUSE, STACK, TOLEDO AND JENNINGS
NOES: COMMISSIONERS: MAZZA
ABSTAIN:
ABSENT:



JESSICA BLAIR, Recording Secretary

Malibu Coalition for Slow Growth 403 San Vicente Blvd Santa Monica CA 90402

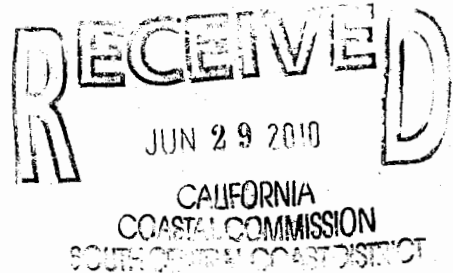
To: California Coastal Commission

From Patt Healy

Re: Appeal of 22729 PCH Malibu

Pages: faxed 9 including cover

Date faxed: June 27, 2010



I am faxing you an appeal of the Malibu Planning Commission's approval of a project located at 22729 PCH. If you do not receive all 9 pages including cover or need to reach me please call 310 393 1818. Thank you.

A handwritten signature in cursive script, appearing to read "Patt Healy".

EXHIBIT 15

Appeal A-4-MAL-10-053

Appeal Form

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE

29 SOUTH CALIFORNIA STREET, SUITE 200

MILPITAS, CA 95001-4508

VOICE (805) 585-1800 FAX (805) 641-1732

RECEIVED
JUN 29 2010

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Malibu Coalition for Slow Growth and /or Patt Healy

Mailing Address: 403 San Vicente Blvd

City: Santa Monica

Zip Code: 90402

Phone: 310 393 1818

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Proposed office building that violates Malibu LCP development standards visual standards

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

22729 Pacific Coast Highway, Malibu APN 4452-022-010

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-10-053

DATE FILED:

6/29/10

DISTRICT:

So. Central Coast

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

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

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

6. Date of local government's decision: June 1, 2010

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

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:

Mike Barsocchini and Associates 3502 coast View Terrace 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) Malibu Township Council P.O. Box 803 Malibu CA 90265

(2) John Mazza 6613 Zumeriz Drive Malibu, CA 902651

(3)

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

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

OPEN SPACE/ LANDSCAPING VIOLATION

This project violates the LIP development standard 3.8A5b. Allowing what Applicant proposes will set a very dangerous precedent.

LIP 3.8A5b

40% of the lot area shall be devoted to landscaping. An additional 25% of the lot area shall be devoted to open space. Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space.

Instead of designing a project that meets the LIP open space/ landscape requirements or seeking the required variance to reduce the LIP requirements this applicant (and property owner Norm Haney) is attempting to set a very dangerous precedent by seeking the allowance of rooftop open space/ landscaping to be included in the calculation of the percentage of lot area open space/landscaping.

On page 6 the staff report the city staff states that there is nothing in the LIP to prohibit rooftop open space. But that is inaccurate.

First, a lot is defined as a parcel, tract or area of land. This automatically excludes anything that is not directly on the land (ground) itself. Second, This section explicitly excludes buildings from being counted as open space Third, roofs are part of a building and are not on the ground, hence they are not allowed to be counted as open space.

In this instance, the applicant to fulfill the LIP landscaping and open space requirements has calculated landscaping / open space on the roof itself (i.e. building roof that extends beyond the building as well as the portion of the roof covering the building (see sheet A-04 and A 2 area calculation 2& drawing 4). In putting open space on the roof cantilevered extension and also the ground directly below the roof extension, the applicant is counting the open space twice. (see sheet A-02 drawings 3&4)

The applicant can have rooftop open space/ landscaping but it is not allowed to be considered in the calculation of the open space/landscape requirement since it is not on the ground.

In addition, this applicant is pushing the envelope by claiming 1,477 sq. ft. of landscaping (see sheet A-02) where a portion of this 1477sq.ft. of so called landscaping is actually hardscape. It appears from the drawing on sheet A-04 that the applicant thinks that the alleged canopy of the plants in the planter also counts toward the landscape calculation. In this project, the plants in the planters are limited to 42 inches in height due to limit the plant's total height to 28 feet and thus there will be very little canopy

coverage of the hardscape by the plants beyond the planters. In the broader context, if canopies existing beyond the planter bed or the ground are allowed to be part of the landscape calculation another unacceptable precedent is being set since at the hearing staff seemed to be supporting the theory that canopy outside a planting bed/ground can be considered in the landscape calculation. If this is allowed, in the future the canopy of trees above structures and over parking lots could be counted as a landscaped area making a mockery out of the landscaping provision. In effect the result would then be allowing parking areas to be counted toward the landscaping /open space requirement.

The applicant is creating "open space" merely by placing benches on the roof of the building. LIP 3.8A5b does not allow open space on buildings. It is very specific. If this precedent is allowed to stand every commercial building in Malibu need only to build a stairway to the roof and place a bench on it to satisfy the LIP requirements. This is absurd on its face.

In another dubious way, this applicant is also counting the exterior hallway between the 2 structures (or covered galleria) as open space in violation of this LIP section. (See A-02 drawing 3)

The applicant can either redesign his project to meet this to meet this LIP requirement or revise his application to seek the required variance.

We are very concerned with the city's allowance of rooftop landscaping and their condoning of foliage canopy outside the planting bed or beyond the ground being allowed in the landscape calculation. From what we have observed, we believe that the city will consider this approval precedent setting in order to make this LIP section moot. Since most of the designated commercial property in Malibu is outside the appeal zone it is important that the Coastal Commission weigh in on this important issue. If the city doesn't want to comply with this LIP section, it should seek an LCP amendment of LIP 3.8A5b.

HEIGHT VIOLATION

The allowable development standard for height under LIP 3.8A 1a. and b. is being exceeded.

3.8. A. 1. Height

a. Non-Beachfront lots. Every building or structure, including satellite dish antenna, shall not be higher than 18 feet above natural or finished grade, whichever results in a lower building height, except for chimneys and rooftop antenna other than satellite dish antenna.

b. Notwithstanding any provision of this section, the Planning Commission, pursuant to Section 13.27 of the Malibu LIP , may allow heights up to 24 feet for flat roofs and 28 feet for pitched or sloped roofs. In no event shall the maximum number of stories above grade be greater than two.

The absolutely maximum height of a structure excluding chimneys and antenna is 28 ft.measured from finished or natural grade whichever is lower. This structure exceeds this requirement There is an elevator shaft and a stair well containing stairs which begin at ground level and reach 32 ft in height. The city erred in allowing the elevator shaft and stairwell to go to 32 feet in height. They will be clearly visible from PCH. (See sheet A9)

VISUAL RESOURCE VIOLATIONS

The following visual resource provisions of the LIP are not being adhered to:

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

6.7 The height of structures shall be limited to minimize impacts to visual resources. The maximum allowable height, except for beachfront lots, shall be 18 feet above existing or finished grade, whichever is lower. On beachfront lots, or where found appropriate through Site Plan Review, the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower. Chimneys and rooftop antennas may be permitted to extend above the permitted height of the structure.

6.8 Prominent ridgelines and other intervening ridgelines that are visible from a public road, a beach, public viewing areas, or public hiking trails, shall be protected by setting structures below the ridgeline to avoid intrusions into the skyline where feasible. Where there are no feasible alternative building sites below the ridgeline or where the only alternative building site would result in unavoidable adverse impacts to ESHA, structures shall be limited to one-story (18 feet maximum from existing or finished grade, whichever is lower) in height to minimize visual impacts.

6.12 All new structures shall be sited and designed to minimize impacts to visual resources by:

- Ensuring visual compatibility with the character of surrounding areas.
- Avoiding large cantilevers or understories.
- Setting back higher elements of the structure toward the center or uphill portion of the building.

6.20 New development on properties visible from and inland of Pacific Coast Highway shall be sited and designed to protect public views of the ridgelines and natural features of the Santa Monica Mountains through measures including, but not limited to, restricting the building maximum size, reducing maximum height limits, clustering development, incorporating landscape elements, and, where appropriate, berming.

This proposed project will block out the majority of a remaining view of a primary ridgeline that is visible from PCH through the applicant's lot. Please see staff report attachment 7 see first photo taken from a western elevation. In this photo you will see that the story poles indicate that the height of the proposed building(s) are higher than the ridgeline as viewed from PCH.

The applicant's lot abuts PCH, a scenic highway. The design of the project significantly increases the bulk and mass of this structure as well as blotting out a significant portion of a primary ridgeline view

Support system necessary for the additional 12 rooftop spaces since there are 13 on ground level when 10 are all that is required.

ONSITE WASTE WATER TREATMENT VIOLATION

LUP 4 d. policies

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

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

LUP 18.4. O. All OSTSS shall be designed, sited, installed, operated, and maintained in full compliance with the requirements contained in this LCP.

City Condition of Approval 31 in the final resolution indicates that the OSTSS for this project does not have a 100 percent expansion effluent dispersal area which is required in case of a failure under LUP

3.128

The lack of a secondary dispersal field in case of a failure of the first field indicates that there may be a lack of porous open space needed to comply with LUP 3.130

6/s

PUBLIC USE OF PRIVATE PARKING

5.13 Public use of private parking facilities currently underutilized on weekends (i.e. serving office buildings) adjacent to the beach shall be a permitted use in all commercial zones.

If this project is to be approved because of the project is across the street from two visitor serving restaurants and within walking distance from the Malibu Pier and Surfrider beach, it needs to be approved with the condition that the 25 parking spaces can be used for public use on weekends.

CONCLUSION

The project is a parking facility currently underutilized on weekends (i.e. serving office buildings) adjacent to the beach shall be a permitted use in all commercial zones.

If this project is approved because of the project is across the street from two visitor serving restaurants and within walking distance from the Malibu Pier and Surfrider beach, it needs to be approved with the condition that the 25 parking spaces can be used for public use on weekends.

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.

March Coalition for Slow Growth +/or Anthony
by Pat Healey - Co-founder *Pat Healey*

Signature of Appellant(s) or Authorized Agent

Date: June 23, 2010

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: _____

March Coalition for Slow Growth
by Pat Healey - Co-founder

Signature of Appellant(s)

Date: _____

I. DEFINITION OF A "LANDSCAPED AREA"

The Malibu L.U.P. and L.I.P. are written with an emphasis on what a person cannot do rather than what a person is permitted to do. Accordingly, if a type of development is not prohibited then it is reasonable to declare that it is permissible. This is also true of the City's development standards.

The City's development standards and the L.I.P. require that an area equal to 40% of a commercially zoned parcel is to be landscaped area. The requirement does not say where the landscaped area must be or that certain areas shall not be used for landscaping. Therefore, it is reasonable to assert that the landscaped area can be on any area that is capable of supporting it.

According to Webster's Dictionary, landscaping is defined as "to modify or ornament by altering the plant cover." A "plant cover" includes all types of plants including flowers, shrubs, trees, etc. and these plants can cover an area using pots and/or soil not in pots.

When a deck is covered with beautiful potted plants the area is landscaped. Until the City specifically amends its development standards and the L.C.P. to state that decks, terraces or other areas covered with potted plants will not qualify as landscaped areas then these areas should be included as landscaped areas.

II. DEFINITION OF "OPEN SPACE"

The requirement that an area equal to 25% of a commercial parcel must be allocated to "open space" requires a definition of "open space." The L.I.P. tells us that open space is the following:

"Open space areas may include courtyards, patios, natural open space and additional landscaping. Parking lots, buildings, exterior hallways and stairways shall not qualify as open space."

Clearly open space includes "patios" and traditionally patios are located adjacent to buildings, on decks, and in areas such as downtown Los Angeles and New York there are many patios on rooftops along with paddle courts, swimming pools, shuffle board courts, dining areas, etc. It is clear that patios and landscaped areas have been and still are located on terraces, decks, and rooftops throughout the United States and until an amendment is filed and approved by the City and the Coastal Commission with the exception of parking lots and inside buildings, patios and landscaping areas can occur on terraces, decks, and rooftops.

III. DEFINITION OF "COURTYARDS"

Courtyards are included as "open space".

EXHIBIT 16
Appeal A-4-MAL-10-053
Applicant's Responses

Malibu has many examples of covered courtyards including the area adjacent to and west of the City Hall building and the covered courtyard areas between the buildings where Taverna Tony's is located.

According to Webster's Dictionary, courtyard" is defined as follows:

"A court or enclosure adjacent to a building"

I believe that the 14.5 foot wide courtyard that is completely open on the north and south between the two enclosed buildings does meet this definition. Its primary purpose is to provide a feeling of being outside, subject to the ocean breeze, but covered by a 20 foot high roof to shield the area from rain and sun. This courtyard will contain benches, tables and chairs, potted plants, and large trees. Patrons will have a covered area to sit and enjoy a frozen yogurt, a cold or hot drink, or other form of eating experience. This "courtyard" is the same as a covered patio. It is important to also state that the proposed project provides a public area that has direct access to the public restrooms. This area will not be used for private use or any retail sales and can only be considered public serving open space.

RE: VISITOR SERVING COMMERCIAL PROJECT AT 22729 PACIFIC COAST HIGHWAY

RESPONSE TO APPEAL

The project site is an old, abandoned Shell gas station that currently is 99% covered with abandoned buildings, concrete and paving.

The primary issue raised by the appeal is the City of Malibu's interpretation of the development standards that require that areas equal to a certain percentage of the total parcel size be allocated to "Open Space" and "Landscaping". Both of these terms came directly from the City's commercial development standards that have been in effect for 20 years and which the City incorporated into the L.C.P.

It is noted that there is no definition for "Open Space" in the development standards except that it is not enclosed areas and it is not parking or access drive areas. The City has a 20 year history of interpreting the term "Open Space" to mean public walkways, sculptures, and public viewing and seating areas such as patios, terraces and decks where people can sit and enjoy beverages and food. Decks and terraces with public seating areas have always been interpreted by the City as fulfilling this "Open Space" area requirement.

If patios, terraces, and rooftop decks with public seating areas are not included as part of the required "Open Space" area then visitor serving parking will have to be substantially reduced to provide even more areas for patios and then the City would have to issue variances because the project would not be providing the required public parking spaces; clearly, this would be inconsistent with the primary objectives of the City's L.C.P. and the Coastal Act.

It is noted that before and after the City's L.C.P. was certified the Coastal Commission has a long history of approving outdoor patios, terraces, and decks that provide public areas with seating and views of the ocean. The only issue that is being discussed is that the appellant does not agree with the City's long term, 20 year interpretation of what qualifies as, and what areas can be used to satisfy, the "Open Space" and landscaping requirements specified in the City's development standards.

If the appellant's objections to the long term interpretation by the City with respect to what qualifies as "Open Space" and landscaping are agreed with by the Coastal Commission it will be impossible for the property owner to provide the required visitor serving parking spaces. It is noted that without visitor serving parking it is impossible to have visitor serving commercial uses.

The appellant's claim that the elevator shaft providing disabled persons access to the rooftop patio deck is higher than 28 feet is simply an error on the part of the appellant to measure the height from the adjacent sloping soil. The elevator and stairs are not higher than 28 feet as measured from the adjacent sloping soil.

Finally, the appellant's claim that the proposed building is higher than the ridgeline is ridiculous; the building is no more than 28 feet above the existing graded site while the top of the ridgeline is more than 450' above the highest part of the proposed building. In fact, there is an office building that is located up the slope above the subject proposed 2,499 square foot building that is 48 feet higher than the proposed building. The proposed project will not have a negative impact on visual resources.

The appeal opposes the construction of a very small, 2,499 square foot, visitor serving commercial building located on an abandoned Shell Gas Station site between Kentucky Fried Chicken restaurant and McDonald's restaurant.

This appeal is being brought by one person who 1) does not agree with the City of Malibu's interpretation of what areas can be used for "Open Space" and 2) believes the project blocks views of a ridgeline.

The correct response to the appeal as indicated by your Staff is as follows:

1. Malibu has defined the term "Open Space" by specifying what it is NOT and by what the City has approved in the past and what has been approved by the Coastal Commission.

"Open Space" is not landscaped areas, it is not driveways or parking areas, and it is not enclosed rental area. The City and the L.C.P. do not say what it is; however, the City has a 20 year history of approving areas open to the public with views of the ocean, and areas where food and beverages can be served and/or consumed outside as "Open Space", including terraces and roof decks. The Coastal Commission is also on record as approving all of the types of "Open Space" areas that the City has approved as "Open Space". The appellant disagrees with the City and the Coastal Commission; she believes that public seating and ocean viewing areas should only be on the ground level. However, in the case of the subject project the public viewing areas are at ground level and on the roof deck where the ocean views are spectacular.

2. The appellant believes that the project would block views of the ridgeline.

The appellant is simply not being truthful. The building and roof overhang are more than 32 feet from the Pacific Coast Highway sidewalk and more than 50 feet from the closest traffic lane. The building is only 28 feet above the existing building site while the ridgeline is more than 450 feet above the top of the building! Additionally, there is an existing building that is 48 feet above the proposed building and located between the ridgeline and the proposed building. The statement that the proposed building would block views of a ridgeline is not true!

As stated above, the 2,499 square foot proposed visitor serving commercial building is very small and is located on the land side of Pacific Coast Highway between Kentucky Fried Chicken and the McDonald's restaurant. If the Coastal Commission were to change the City's interpretation of what qualifies as "Open Space" then the 13 public parking spaces in front of the building would be eliminated and the area would then be converted to open space due to one person who is opposed to the project. Clearly, the elimination of visitor parking would eliminate the use of the building for Visitor Serving Commercial.