

CALIFORNIA COASTAL COMMISSION

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

W 11.5a



Appeal Filed: 7/20/12
49th Day: 9/7/12
Staff: D. Christensen
Staff Report: 7/27/12
Hearing Date: 8/8/12

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Malibu

LOCAL DECISION: Approval with Conditions of CDP 11-050

APPEAL NO.: A-4-MAL-12-048

APPLICANT: Stephen and Jean Moran Kaplan

APPELLANTS: Commissioner Zimmer and Commissioner Brennan

PROJECT LOCATION: 31302 Broad Beach Road, City of Malibu, Los Angeles County
(APN 4470-016-005)

PROJECT DESCRIPTION: Demolition of an existing two-story single-family residence and associated development, and construction of a new 5,064 sq. ft. single-family residence, a 2,012 sq. ft. detached accessory structure (consisting of a 659 sq. ft. garage and 375 sq. ft. theater on the first story and 597 sq. ft. guest house and 381 sq. ft. gym on the second story), a connector bridge between the residence and accessory structure, 1,237 sq. ft. of covered patios, new spa, firepit, roof deck, roof-top solar panels, hardscape, new alternative wastewater treatment system, a new foundation system consisting of grade beams and 37 piles, and a 14.8 ft. wide contiguous public view corridor.

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed relative to the approved project's conformity to the policies and provisions of the certified City of Malibu Local Coastal Program (LCP) and the access and public recreation policies of the Coastal Act. The **motion** and **resolution** for a "substantial issue" finding are found on **page 5**. The appellants contend that the development approved in CDP 11-050 is not consistent with the policies and provisions of the LCP with regard to shoreline development and public access. The standard of review at this stage of an appeal requires the Commission to determine whether the appeal raises a substantial issue with respect to the grounds stated in the appeal relative to the conformity of the approved

development to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act.

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

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EXHIBITS

Exhibit 1.	Appeal
Exhibit 2.	City of Malibu Planning Commission Resolution 12-56
Exhibit 3.	Vicinity Map
Exhibit 4.	Project Plans

Exhibit 5. Aerial View (2010)

Exhibit 6. Broad Beach Existing Temporary Revetment

I. APPEAL JURISDICTION

The project site is located on Broad Beach Road in the City of Malibu (**Exhibit 3**). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the City of Malibu (Adopted September 13, 2002) indicates that the appeal jurisdiction for this area extends 300 feet inland from the most landward extent of the beach. The entire project site is within this appeal area. As such, the City's coastal development permit for the subject project is appealable to the Commission.

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of 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 County approval of development that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of the geographic location of the proposed development within the Coastal Zone. (Coastal Act Section 30603[a][4]). Finally, any local government action on proposed development that constitutes a 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 a finding that a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue, and the Commission votes to find that no substantial issues exist. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three (3) minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised by the appeal.

4. De Novo Permit Hearing

If a substantial issue is found to exist, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and, for projects between the sea and the first public road parallel to the sea, with the public access and recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

In this case, if the Commission finds a substantial issue to be raised, staff anticipates de novo permit consideration by the Commission at a future Commission hearing.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On June 19, 2012, the City of Malibu Planning Commission approved Coastal Development Permit No. 11-050 and Demolition Permit No. 11-021 for the residential project (**Exhibit 2**). The Notice of Final Action for the project was received by Commission staff on July 10, 2012. Notice was provided of the ten working day appeal period, which began July 11, 2012.

The subject appeal was filed during the appeal period, on July 20, 2012. 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. Pursuant to §30621 of the Coastal Act, a hearing on an appeal shall be set no later than 49 days after the date on which the appeal is filed with the Commission. The only available Commission hearing within 49 days of the filing of the subject appeal is the August 2012 Commission hearing.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION:

I move that the Commission determine that Appeal No. A-4-MAL-12-048 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 **NO** vote. Following the staff recommendation will result in de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-MAL-12-048 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The project approved by the City of Malibu is for the complete demolition of an existing beachfront single-family residence, and construction of a new 5,064 sq. ft. single-family residence with 2,012 sq. ft. detached accessory structure, new pile/grade beam foundation system, covered patios, a new spa, firepit, roof deck, roof-mounted solar panels, hardscape, and a new alternative onsite wastewater treatment system (**Exhibit 4**). The approved project also includes a 14.8 foot wide contiguous public view corridor. The project site is located on Broad Beach (**Exhibit 5**).

The project (involving demolition of an existing residential structure and construction of an entirely new residence) constitutes a substantial redevelopment of the subject site. The existing residence was originally constructed in the 1950's.

In 1996 the Commission approved a remodel of the existing 3,268 sq. ft. residence and 1,207 sq. ft. garage/accessory structure, involving a 1,267 sq. ft. addition to the residence, relocation of the garage structure, and new septic system pursuant to CDP No. 4-95-206-W.

During the winter storm season of 1997/1998, the project site was subject to severe wave caused erosion. The previous property owner submitted an application for an emergency permit application (CDP 4-98-107-G) for temporary authorization of a rock revetment to protect the existing residential development on site. However, the emergency permit was not issued. Regardless, it appears that a rock revetment was constructed on the applicant's parcel in 1998 without the required coastal development permit. The unpermitted rock revetment was placed seaward of the existing residence and several other adjacent residences to prevent erosion. In subsequent years this rock was eventually buried by accumulated sand on the beach and later become exposed in 2008/2009 due to significant wave-caused erosion.

In addition, the subject property, experienced severe shoreline erosion during the 2008, 2009, and 2010 winter storm seasons. In fact, in order to halt significant erosion from high surf and tides of the 2009/2010 winter season that was threatening 77 Broad Beach residences, including the subject property, a temporary 4,100 linear ft. rock revetment was installed in 2010 (pursuant to Emergency Coastal Development Permit 4-10-003-G, issued by the Coastal Commission) on the subject property. The revetment that was temporarily authorized pursuant to the emergency permit in 2010 is located approximately 30 ft. seaward of the seawardmost dripline of the new at-grade deck approved by the City.

The subject property is situated at the upcoast end of Broad Beach, where damage from erosion during 2008, 2009, and 2010 winter seasons was most significant. The subject property is located approximately 500 feet from the upcoast terminus of the temporary revetment, at 31346 Broad Beach Road (**Exhibit 6**).

Specifically, Emergency CDP 4-10-003-G granted temporary authorization for the rock revetment until January 25, 2013 (the Executive Director may extend this time by an additional two years for good cause). Thus, the applicant must either remove the temporary emergency revetment in its entirety or obtain a regular coastal development permit for its permanent authorization. The applicant is a part of the Broad Beach Geologic Hazard Abatement District that has recently applied to the Commission for a regular coastal development permit for, among other things, the permanent retention of the existing rock revetment. This application is incomplete; however, one of the filing requirements for the application is a full evaluation of all other feasible alternative forms of shoreline protection that would serve to minimize adverse impacts to coastal resources. Such alternative forms of permanent shoreline protection would include, but not be limited to, construction of a vertical sea wall and/or relocation/removal of some or all portions of the revetment to the farthest feasible landward location in order to minimize adverse impacts to coastal resources while protecting existing residential development.

C. APPELLANTS' CONTENTIONS

The City's action was appealed by Commissioner Zimmer and Commissioner Brennan. The appeal is attached as **Exhibit 1**. The contentions of the appeal relate to the public access and recreation policies and provisions of the Coastal Act and Malibu LCP, and the shoreline protection policies of the Malibu LCP, discussed below.

D. 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 cites the public access policies of the Coastal Act as a ground for appeal, in addition to the public access and shoreline development standards of the Malibu 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 a substantial issue with regard to the grounds on which the appeal has been filed.

1. Public Access and Shoreline Development

Applicable Coastal Act Policies

Coastal Act Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required

by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Applicable Land Use Plan Policies

2.1 *The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.*

2.2 *New development shall minimize impacts to public access to and along the shoreline and inland trails. The City shall assure that the recreational needs resulting from proposed development will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and/or development plans with the provision of onsite recreational facilities to serve new development.*

2.5 *New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.*

2.6 *Mitigation shall not substitute for implementation of a feasible project alternative that would avoid impacts to public access.*

2.63 *Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.*

2.64 *An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to*

adverse public access impacts. Such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, drip line of deck, or toe of bluff.

4.22 Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered. Development shall be set back a sufficient distance landward and elevated to a sufficient foundation height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.

4.23 New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.

4.33 All new beachfront and blufftop development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development.

4.35 All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.

4.36 New development on or along the shoreline or a coastal bluff shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.

Applicable Implementation Plan Provisions

LIP Section 12.4. - Access Required

As a condition of approval and prior to issuance of a permit or other authorization for any new development identified in A through D of this section, except as provided in Section 12.5 of the Malibu LIP, an offer to dedicate an easement or a grant of easement (or other legal mechanism pursuant to Section 12.7.1 (b) of the Malibu LIP) for one or more of the types of access identified in

Section 12.2 (a-e) of the Malibu LIP shall be required and shall be supported by findings required by Sections 12.7.3-12.9 of the Malibu LIP; provided that no such condition of approval shall be imposed if the analysis required by Sections 12.7.3 (a) through (d) of the Malibu LIP establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified.

A. New development on any parcel or location specifically identified in the Land Use Plan or in the LCP zoning districts as appropriate for or containing an historically used or suitable public access trail or pathway.

B. New development between the nearest public roadway and the sea.

C. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a blufftop trail or an inland trail acquired through use or a public right of access through legislative authorization.

D. New development on any site where a trail, bluff top access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.

LIP Section 12.5. - Exceptions

Section 12.4 of the Malibu LIP shall apply except in the following instances:

A. Projects excepted from the definition of "new development" at Section 2.1 of the Malibu LIP.

B. Where findings required by Sections 12.7.3 and 12.8.1 of the Malibu LIP establish any of the following:

1. Public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources.

2. Adequate access exists nearby.

C. Exceptions identified in (b) shall be supported by written findings required by Section 12.9 of the Malibu LIP.

LIP Section 12.6. – Standards for Application of Access Conditions

12.6.1 Lateral Public Access

The public access required pursuant to Section 12.4 of the Malibu LIP shall conform to the standards and requirements set forth in Sections 12.6 through 12.7.2 of the Malibu LIP.

A. Minimum requirements. [Also to be used for blufftop access or trail access, as applicable.] A condition to require an offer to dedicate an easement or a grant of easement for lateral access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 12.4 of the Malibu LIP shall provide the public with the permanent right of lateral public access and passive recreational use along the shoreline (or public recreational area, bikeway, or blufftop area, as applicable); provided that in some cases controls on the time, place and manner of uses, such as limiting access to pass and repass or restricting .hours of use, may be justified by site characteristics including sensitive habitat values or fragile topographic features or by the need to protect the privacy of residential development.

...

10.4.A. *Siting and design of new shoreline development and shoreline protective devices shall take into account anticipated future changes in sea level. In particular, an acceleration of the historic rate of sea level rise shall be considered and its potential impact on beach erosion, shoreline retreat, and bluff erosion rates shall be evaluated. Development shall be set back a sufficient distance landward and elevated to a sufficient finished floor height to eliminate or minimize to the maximum extent feasible hazards associated with anticipated sea level rise over the expected 100 year economic life of the structure.*

10.4.B. *New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave run-up) at any time during the full projected 100 year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and sited as far landward as possible to the maximum extent practicable. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.*

10.4.H. *All new beachfront and bluff-top development shall be sized, sited and designed to minimize risk from wave run-up, flooding and beach and bluff erosion hazards without requiring a shoreline protection structure at any time during the life of the development.*

10.4.I. *All new beachfront development shall be required to utilize a foundation system adequate to protect the structure from wave and erosion hazard without necessitating the construction of a shoreline protection structure.*

10.4.J. *New development shall include, at a minimum, the use of secondary treatment waste disposal systems and shall site these new systems as far landward as possible in order to avoid the need for protective devices to the maximum extent feasible.*

10.4.K. *Shoreline and bluff protection structures shall not be permitted to protect new development, except when necessary to protect a new septic system and there is no feasible alternative that would allow residential development on the parcel. Septic systems shall be located as far landward as feasible. Shoreline and bluff protection structures may be permitted to protect existing structures that were legally constructed prior to the effective date of the Coastal Act, or that were permitted prior to certification of the Malibu LCP only when it can be demonstrated that existing structures are at risk from identified hazards, that the proposed protective device is the least environmentally damaging alternative and is designed to eliminate or mitigate adverse impacts to local shoreline sand supply and public access. Alternatives analysis shall include the relocation of existing development landward as well as the removal of portions of existing development. "Existing structures" for purposes of this policy shall consist only of enclosed buildings used for living space or required parking, e.g. residential dwelling, guesthouse, or garage, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.*

10.4.L. *No shoreline protection structure shall be permitted for the sole purpose of protecting an ancillary or accessory structure. Such accessory structures shall be removed if it is determined that the structure is in danger from erosion, flooding or wave run-up. Such structures shall be considered threatened if the bluff edge encroaches to within 10 feet of the structure as a result of erosion, landslide or other form of bluff collapse. Accessory structures, including but not limited to, patios, stairs, recreational facilities, landscaping features, and similar design elements shall be constructed and designed to be removed or relocated in the event of threat from erosion, bluff failure or wave hazards.*

10.6.C. *As a condition of approval of new development on a vacant beachfront or bluff-top lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be sited and designed so as to not require a shoreline protection structure as part of the proposed development or at any time during the life of the development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235.*

Discussion

The project approved by the City of Malibu is for the complete demolition of an existing beachfront single-family residence, and construction of a new 5,064 sq. ft. single-family beachfront residence with 2,012 sq. ft. detached accessory structure, new pile/grade beam foundation system, covered patios, a new spa, firepit, roof deck, roof-mounted solar panels, hardscape, and a new alternative onsite wastewater treatment system. The City's approved findings state that the applicant's coastal engineering consultant has indicated that no shoreline protective device is required to protect the proposed residence, septic system and leachfield, and associated development. The City's approved findings indicate that this determination was made under the assumption of an unprotected beach (without the existing temporary rock revetment).

However, it should be noted that there is an unpermitted rock revetment on the subject property that was installed in 1998 in response to significant winter storms, and a permitted temporary rock revetment that was installed, apparently on (or approximately in the same location as), the existing rock pursuant to an emergency permit following significant erosion from the 2009-2010 winter storm season. Further, the applicant's property is a part of the Broad Beach Geologic Hazard Abatement District (BB GHAD) that has recently applied to the Commission for a regular coastal development permit for the permanent authorization of the existing temporary rock revetment, based on a stated need to provide shoreline protection for all of the 114 beachfront residences within the BB GHAD area, including the subject property. The City's findings of approval failed to demonstrate how the coastal engineering analysis for the subject development can determine that there is no necessity for a shoreline protective device for protection of the development, yet the coastal engineering analysis submitted as part of the application for the permanent authorization of the rock rip on the subject property can conclude that the same property (as part of the entire GHAD area) requires the construction of a rock revetment (among other improvements). The City's findings fail to address these inconsistent determinations.

Further, there are no findings in the City's action regarding the projected life of the structures or whether the applicant's coastal engineering consultant has determined that no shoreline protective device will be necessary *at any time during the 100-year economic life of the structure*, based on projections of future beach conditions taking into account sea level rise. Thus, in this case, the City's approved findings fail to adequately support the finding that the approved project (including the septic system, the at-grade patio/deck located seaward of the residence, and the large area of non-native landscaping and private yard area which the City approved on the sandy beach area on site) has been designed to accommodate the maximum expected wave uprush and wave height limits to ensure future stability of the development without requiring shoreline protection for the economic life of the development, consistent with the shoreline development provisions of the Malibu LCP. The City's approved findings also do not demonstrate that the approved development has been sited and designed to minimize risk from wave run-up, flooding, and beach erosion hazards without requiring shoreline protection at any time during the life of the development, given that the wave uprush limit, as shown on the City's approved plans, indicate that the wave uprush limit on site would extend approximately 15-20 ft. landward of the seaward dripline of the at-grade deck. In addition, it is unclear from the City's approved findings whether the siting and design of the new shoreline development

takes into account anticipated future changes in sea level, and an acceleration of the historic rate of sea level rise.

Malibu LIP Section 10.6 (C) requires that as a condition of approval of new development on a beachfront lot, or where demolition and rebuilding is proposed, where geologic or engineering evaluations conclude that the development can be sited and designed so as to not require a shoreline protection structure as part of the proposed development or at any time during the life of the development, the property owner shall be required to record a deed restriction against the property that ensures that no shoreline protection structure shall be proposed or constructed to protect the development approved and which expressly waives any future right to construct such devices that may exist pursuant to Public Resources Code Section 30235. In this case, the City's action on the subject permit did not include this requirement as a condition of approval of the permit, inconsistent with this shoreline development provision of the City's LCP.

Further, the approved project includes an at-grade deck/patio, spa, and landscaping seaward of the approved residence and within the wave uprush limit delineated by the applicant's coastal engineering consultant. This accessory development on site, at-grade deck, landscaping, spa, etc. would clearly be subject to potential wave action if not for the existing rock revetment on site. Given that this development is not supported on caisson-grade beam foundations, it has not been designed to maintain structural stability when subject to flooding or wave action. As such, it appears that this accessory development is dependent on the existing temporary rock revetment on the property in order to ensure that they are not damaged or undermined by wave run-up. Since LIP Section 10.4 (L) does not allow shoreline protection for the sole purpose of protecting ancillary or accessory structures, even if retention of some form of the existing revetment is ultimately approved, it could not be approved in a location designed to protect these structures. Moreover, the current siting of such accessory structures within existing wave run-up areas is inconsistent with LUP Policy 4.33 and LIP Section 10.4 (H), which require that beachfront development be sited to minimize risk from wave run-up and flooding among other things, "without requiring a shoreline protection structure at any time during the life of the development. The City's action on the CDP fails to demonstrate how the approved accessory development is consistent with the shoreline development provisions of the LCP. In addition, the approved accessory development seaward of the residence would potentially foreclose potential options and limit the range of alternatives that can be considered for the BB GHAD's shoreline protection project (including but not limited to, relocation of the rock revetment on site to a further landward location adjacent to the residence) in the separate pending permit application in order to minimize impacts to coastal resources.

The City's approved public access findings state that the proposed development does not change existing conditions because the development would be located landward of the existing development that is to be demolished, thus, no impacts to public access are anticipated. However, since the existing structure was originally constructed in the 1950's, it was not evaluated for consistency with the Coastal Act, so it may have had impacts that are inconsistent with current standards, and once it is gone, the new structure must be reviewed in relation to those standards. There is no discussion in the City's findings about the existing development's footprint with regard to shoreline processes or public access. More importantly, the City's findings fail to adequately address the changes in shoreline conditions that have occurred since

the original construction of the residence. Although Broad Beach was historically much wide, substantial erosion in recent years has resulted in significant narrowing of the shoreline and area of sandy beach available for the public to use. Therefore, the conclusion that the location of the new structure on the site will not have adverse impacts on public access because it will not extend further seaward than the previously existing structure on site is not adequately supported by the City's analysis or findings of approval.

Pursuant to Section 30212 of the Coastal Act, public access along the coast shall be provided in new development projects. Pursuant to section 30212(b)(2), new development includes the demolition and reconstruction of a single-family residence where the reconstructed residence exceeds either the floor area, height or bulk of the former structure by more than 10 percent or where the reconstructed residence is not sited in the same location on the affected property as the former structure. In this case, the approved project is considered new development since the approved residence exceeds the floor area and bulk of the former structure by more than 10 percent.

Further, LUP Policy 2.64 specifically requires that an Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. The approved residence and associated development is located on Broad Beach, near several recorded public lateral and vertical accessways to and along the beach. Commission staff review of permit records indicate that there is no existing recorded lateral public access easement on the subject property. Members of the public who access the beach via the nearby public vertical accessways from Broad Beach Road often walk along the shoreline, up and down the coast between Lechuza Point and the public recreation areas such as Zuma Beach County Park and Point Dume.

The occupation of sandy beach area by the approved residence and associated development would have potential effects on shoreline sand supply and public access along the beach.

With limited exceptions not relevant here, the State owns all tidelands within the State, which are those lands located seaward of the mean high tide line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the City must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

Where development is proposed that may impair public use and ownership of tidelands, the City must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is related to the ordinary high water mark. In parts of California where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide

with the shore profile. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an “ambulatory” or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

A project’s direct and indirect effect on public tidelands must be considered. To protect public tidelands when beachfront development is proposed, the City must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands. In the case of the proposed project, the State Lands Commission presently does not assert a claim that the project intrudes onto sovereign lands.

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. Moreover, such structures may have direct adverse impacts on public access and recreation due to occupation of an area of sandy beach that may otherwise be available for public use, in the event that there are no other areas of dry sand for the public to walk on. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. The City approved a new beachfront residence supported on a new grade beam and pile foundation system, and associated accessory development, including but not limited to hardscape and patios, septic system, spa, etc. Although the City found that the proposed project has been designed to not require a shoreline protection device, given the questions raised above, the direct occupation of sandy area by the proposed residence, and related accessory development, including the at-grade deck, spa, and landscaping locating on the sandy beach seaward of the approved residence, may result in adverse impacts to public access along the sandy beach.

In past Commission actions, including CDP 4-99-146 (Saban), 4-99-185 (Broad), 4-99-153 (Ioki), 4-99-266 (Daly), 4-99-154 (Montanaro), 4-99-155 (Ioki), the Commission has found that even structures sited above the mean high tide line and that don’t require a shoreline protective device may still result in potential adverse effects to public access along the beach by the structures’ direct occupation of sandy beach area.

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 local government’s decision that the development is consistent with the subject provisions of the certified LCP. In this case, the City approved the

proposed project with no requirement to mitigate for impacts on public access, because the city found that the project would have no impacts on public access. However, there is inadequate factual evidence and legal support for the City's findings that there will be no potential adverse impacts to public access.

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. As described above, the subject project is complete redevelopment of a beachfront property with a new residence and accessory development, where relatively recently the existing residence was in immediate danger from wave action and scour during the 2009/2010 winter season and necessitated construction of a shoreline protection device. As such, the extent and scope of the development is significant.

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, shoreline processes, sand supply, and public access along the beach are significant coastal resources that are affected by the decision.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the primary issue raised relates to the approved development's consistency with the public access and recreation policies and provisions of the Coastal Act and Malibu LCP, and the shoreline protection policies of the Malibu LCP. As such, the City's decision could have significant 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 public access along the shoreline and new beachfront development, which have local, regional, and statewide significance.

In conclusion, the Commission finds that each of the factors listed above, used to evaluate whether a substantial issue exists, is satisfied in this case. For the reasons discussed in detail above, the appeal raises a substantial issue with respect to the consistency of the approved development with the policies and provisions of the City of Malibu's certified LCP and the Coastal Act public access policies regarding shoreline development and public access and recreation. In evaluating the whether the subject appeal raises a substantial issue, the Commission has explicitly addressed several factors that play a part in identifying if the issues raised in an appeal are "significant". The Commission finds that there is not adequate factual and legal support for the City's position that the proposed project complies with LCP policies. Further, because the City has not ensured that the project conforms to the existing policies and provisions of the LCP and has not provided sufficient evidence to support its decision, the project will have adverse precedential value regarding interpretation of the City's LCP for future projects. Finally, the issues involved affect similar shoreline development statewide. Therefore, the Commission finds that a substantial issue exists with respect to the grounds raised by Commissioners Zimmer and Brennan in Appeal No. A-4-MAL-12-048, relative to the approved project's conformity to the policies and provisions of the certified City of Malibu Local Coastal Program.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-4508
VOICE (805) 585-1801 FAX (805) 641-1732

JUL 20 2012

California Coastal Commission
South Central Coast District



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Commissioner Brennan, Commissioner Zimmer

Mailing Address: 89 S. California Street, Suite 200

City: Ventura

Zip Code: 93001

Phone: 805-585-1800

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

Demolition of an existing two-story single-family residence and associated development, and construction of a new 5,064 sq. ft. single-family residence, a detached accessory structure consisting of a 659 sq. ft. garage and 375 sq. ft. theater on the first story and 597 sq. ft. guest house and 381 sq. ft. gym on the second story, a connector bridge between the residence and accessory structure, 1,237 sq. ft. of covered patios, new spa, firepit, roof deck, roof-top solar panels, hardscape, new alternative wastewater treatment system, a new foundation system consisting of grade beams and 37 piles, and a 14.8 ft. wide contiguous public view corridor.

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

31302 Broad Beach Road, Malibu
APN 4470-016-005

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-12-048

DATE FILED:

7/20/12

DISTRICT:

South Central Coa

Exhibit 1

Appeal A-4-MAL-12-048
(Kaplan)

Appeal

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

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

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

6. Date of local government's decision: June 19, 2012

7. Local government's file number (if any): CDP 11-050

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:

Stephen and Jean Moran Kaplan
c/o Robert Ramirez
Ramirez Design Inc.
428 Alta Avenue
Santa Monica, CA 90402

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

(1)

(2)

(3)

(4)

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.

See Attached



SECTION IV. Reasons Supporting This Appeal

The project approved by the City of Malibu is for the complete demolition of an existing beachfront single-family residence, and construction of a new 5,064 sq. ft. single-family residence with 2,012 sq. ft. detached accessory structure, new pile/grade beam foundation system, covered patios, a new spa, firepit, roof deck, roof-mounted solar panels, hardscape, and a new alternative onsite wastewater treatment system. The approved project also includes a 14.8 foot wide contiguous public view corridor.

The grounds for appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the California Coastal Act. In this case, the project is appealed on the grounds that it is inconsistent with the shoreline development and public access policies of the City of Malibu Local Coastal Program (LCP) and the public access policies of the Coastal Act.

The project (involving demolition of an existing residential structure and construction of an entirely new residence) constitutes a substantial redevelopment of the subject site. The existing residence was originally constructed in the 1950's. In 1995 the Commission approved a remodel of the existing residence with 1,267 sq. ft. addition, relocation of the garage structure, and new septic system pursuant to CDP No. 4-95-206-W.

The project site is located on Broad Beach where a temporary 4,100 linear ft. rock revetment was installed in 2010 (pursuant to Emergency Coastal Development Permit 4-10-003-G issued by the Coastal Commission) in front of the subject property and 76 other adjacent properties.

The City's approved findings state that the proposed project has been sited and designed to not require a shoreline protective device and that this determination was made under the assumption of an unprotected beach (without the existing temporary rock revetment).

However, the applicant is a part of the Broad Beach Geologic Hazard Abatement District that has applied to the Commission for a regular coastal development permit for the permanent authorization of the existing rock revetment.

Thus, in this case, it is unclear whether the approved project has been designed to accommodate the maximum expected wave uprush and wave height limits to ensure future stability of the development with anticipated sea level rise without requiring shoreline protection for the economic life of the development, consistent with the shoreline development provisions of the Malibu LCP (Malibu LUP Policies 4.22, 4.23, 4.33, 4.35, 4.36 and Malibu LIP Sections 10.4(A), 10.4(B), 10.4(H)-(N)).

The Malibu LCP contains several policies to ensure the protection and provision of public access in new development along the shoreline, in consideration of public safety needs, private property rights, and the protection of natural resources, where applicable (LUP Policies 2.63 - 2.86 and LIP Section 12.4 and 12.7). LUP Policy 2.64 specifically requires that an Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. In addition, the public access policies of the Coastal Act (Sections 30210, 30211, and 30212) mandate that maximum public access and recreational opportunities be provided, including use of dry sand and rocky coastal beaches, and that development not interfere with the public's right to access the coast.

The City's public access findings state that the proposed development does not change existing conditions because the development would be located landward of the existing development that is to be demolished, so no impacts to public access are anticipated.

Issue is raised regarding the approved development's occupation of sandy beach area by a structure and potential effects on shoreline sand supply, which sustains public access opportunities, in contradiction of the public access and recreation policies of the Coastal Act and the certified LCP. The subject site is located on Broad Beach, near several recorded public lateral and vertical accessways to and along the beach. Commission staff review of permit records indicate that there is no existing recorded lateral public access easement on the subject property. Members of the public who access the beach via the public vertical accessways from Broad Beach Road often walk along the shoreline, including the southern beachfront portion of the subject site, up and down the coast between Lechuza Point and the public recreation areas such as Zuma Beach County Park and Point Dume.

In past Commission actions, including CDP 4-99-146 (Saban), 4-99-185 (Broad), 4-99-153 (Ioki), 4-99-266 (Daly), 4-99-154 (Montanaro), 4-99-155 (Ioki), the Commission has found that even structures sited above the mean high tide line and that don't require a shoreline protective device may still result in potential adverse effects to public access along the beach by the structures' direct occupation of sandy beach area, such is the case with the approved project. In addition, a City of Malibu permit for a similar project on Broad Beach raising similar issues was appealed by two Commissioners in July 2011 (Appeal No. A-4-MAL-11-037 (Marine)). The appeal was later withdrawn after the applicant amended their CDP to address the impacts to public access by offering to dedicate a lateral public access easement on the subject property.

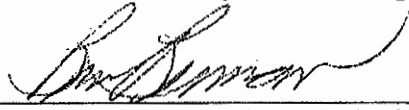
In this case, the approved project (involving demolition of an existing residential structure and construction of an entirely new residence) constitutes a substantial redevelopment of a beachfront property. The proposed project will effectively

extend the life of an existing beachfront residential development that occupies sandy beach and has effects on shoreline sand supply. The direct occupation of sandy area by the approved development will result in potential adverse effects to public access along the beach. As such, an easement for lateral public access should have been required in this case in order to minimize any adverse effects to public access. Therefore, issue is raised regarding the approved development's consistency with the public access and recreation policies and provisions of the Coastal Act and Malibu LCP, and the shoreline protection policies of the Malibu LCP.

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

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 7/19/12

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: _____

Received

JUL 20 2012

California Coastal Commission
South Central Coast District

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

CDP 11-050 M.S.W.

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date:

7.19.2012

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:

Received

JUL 20 2012

California Coastal Commission
South Central Coast District

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 12-56**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 11-050, AND DEMOLITION PERMIT NO. 11-021 FOR THE DEMOLITION OF AN EXISTING TWO-STORY SINGLE-FAMILY RESIDENCE AND ASSOCIATED DEVELOPMENT, CONSTRUCTION OF A NEW, 5,064 SQUARE FOOT SINGLE-FAMILY RESIDENCE, A DETACHED ACCESSORY STRUCTURE CONSISTING OF A 659 SQUARE FOOT GARAGE AND 375 SQUARE FOOT THEATER ON THE FIRST STORY AND 597 SQUARE FOOT GUEST HOUSE AND 381 SQUARE FOOT GYM ON THE SECOND STORY, A CONNECTOR BRIDGE WHICH CONNECTS THE SINGLE-FAMILY RESIDENCE TO THE ACCESSORY STRUCTURE, 1,237 SQUARE FOOT OF COVERED AREAS, NEW SPA, FIREPIT, ROOF DECK, SOLAR PANELS ON THE ROOF OF THE ACCESSORY STRUCTURE, HARDSCAPE, NEW ONSITE WASTEWATER TREATMENT SYSTEM, A NEW FOUNDATION SYSTEM CONSISTING OF GRADE BEAMS AND 37 PILES AND A 14.8 FOOT WIDE CONTIGUOUS VIEW CORRIDOR, LOCATED AT 31302 BROAD BEACH ROAD (KAPLAN)

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

Section 1. Recitals.

A. On October 20, 2011, an application for Coastal Development Permit (CDP) No. 11-050 was submitted by the applicant, Robert Ramirez, on behalf of property owners, Stephen and Jean Moran Kaplan, to the Planning Department for processing.

B. On February 15, 2012, a site visit was conducted to document existing site conditions.

C. On March 13, 2012, a Notice of Application for the coastal development permit was posted on the subject property.

D. On May 1, 2012, story poles were installed to demonstrate the location, height, and bulk of the proposed project. The story poles were certified by a licensed surveyor.

E. On May 11, 2012, a site visit was conducted to determine visual impacts and to photograph story poles.

F. On May 22, 2012, the application was deemed complete for processing.

G. On June 7, 2012, 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.

Exhibit 2
Appeal A-4-MAL-12-048 (Kaplan)
City of Malibu Resolution 12-56 Approving Project

H. On June 19, 2012, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal as described. The Planning Commission has found that this project is listed among the classes of projects that have been determined to have less than significant adverse effects on the environment and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared pursuant to CEQA Guidelines Sections 15301(l)(1) and 15303(a) and (e) – New Construction. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines Section 15300.2).

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 13.7(B) and 13.9, the Planning Commission hereby adopts the findings in the agenda report, the findings of fact below, and approves CDP No. 11-050, and Demolition Permit (DP) No. 11-021 for the demolition of an existing, two-story single-family residence and associated development, construction of a new, 5,064 square foot single-family residence, a detached accessory structure consisting of a 659 square foot garage and 375 square foot theater on the first story and 597 square foot guest house and 381 square foot gym on the second story, a connector bridge which connects the single-family residence to the accessory structure, 1,237 square foot of covered areas, new spa, firepit, roof deck, solar panels on the roof of the accessory structure, hardscape, a new alternative onsite wastewater treatment system, new foundation system consisting of grade beams and 37 piles; and a 14.8 foot wide contiguous view corridor, at 31302 Broad Beach Road.

The proposed project has been reviewed by the City Biologist, City Coastal Engineer, City Environmental Health Administrator, City Geologist, City Public Works Department and the Los Angeles County Fire Department (LACFD). The project is consistent with the LCP zoning and grading requirements. The project site has been evaluated for potential impacts to archaeological resources per the adopted City of Malibu Cultural Resources Map and it has been determined to have a very low probability of containing cultural resources. The project is consistent with all applicable LCP codes, standards, goals and policies. The required findings are made herein.

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 Department,

City Biologist, City Coastal Engineer, City Geologist, City Environmental Health Administrator, the City Public Works Department and LACFD. The proposed project, as conditioned, conforms to the certified Malibu LCP in that it meets all the beachfront residential development standards.

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

The project is located between the first public road and the sea. There are no trails located near the parcel. The project site is currently developed with an existing single-family residence which will be demolished and replaced with the proposed two-story single-family residence. According to the LCP Public Access Map, a vertical public accessway is located approximately 360 feet to the west of the property between 31340 and 31346 Broad Beach Road. An inquiry to the property owner has been made as to whether the property owner is willing to offer to dedicate a lateral access easement across the beach portion of the project site. To date, the property owner has not provided a response. Nonetheless, the applicant has provided a California State Lands Commission letter asserting no claims that the proposed project will intrude onto sovereign lands. The proposed project will not affect the public's use of the beach. Therefore, 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).

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

Pursuant to CEQA, this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA, based on CEQA Guidelines Sections 15301(l)(1) and 15303(a) and (e) – New Construction. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment.

Four alternatives were considered to determine the least environmentally damaging alternative.

1. No Project – The no project alternative would avoid any change to the project site. The objective of the proposed project is to demolish the existing single-family residence and construct a new single-family residence and associated development. The no project alternative would not accomplish the goals of the project.
2. Smaller Project – A smaller project could be proposed on the project site. However, the proposed single-family residence conforms to all residential development criteria. It is not anticipated that a smaller project would offer significant environmental advantages.
3. Alternative Location – An alternative location could be proposed; however, the proposed project is within the general vicinity of existing development and the proposed project is constrained by the building stringline, deck stringline, view corridor regulations and a minimum of a 10 foot setback from the mean high tide line. It is not anticipated that an alternative project would offer significant environmental advantages.

4. Proposed Project – The proposed project consists of the demolition of an existing single-family residence and associated development, eliminating all existing nonconforming conditions on the project site. The proposed development will provide a 14.8 foot wide view corridor and be located landward of the required stringlines. The majority of the project will be located within the existing building's footprint, therefore, eliminating the need for grading in undisturbed areas. In addition, the new single-family residence with the AOWTS is environmentally superior to the existing residence with OWTS. The proposed location is proposed landward of the existing development and is the least environmentally damaging alternative.

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

Per the LCP Environmentally Sensitive Habitat Area (ESHA) Overlay Map, the property is not designated as an ESHA; however, properties along Broad Beach Road in this area are known to contain sand dune ESHA on the beach portion of the parcels. Due to erosion, a temporary beachwide rock revetment has been installed in front of the subject property and 76 other adjacent properties under ECDP No. 09-021 and CCC Permit No. 4-10-003-G and the impacts of the rock revetment on sand dune ESHA will be addressed under the follow-up CDP for permanent shoreline protection at Broad Beach. The findings in this report are made without the assumption that the temporary beachwide rock revetment would become permanent. The City Biologist has reviewed the project and determined that review by the Environmental Review Board is not applicable to this project.

B. Environmentally Sensitive Habitat Area (LIP Chapter 4)

Pursuant to LIP Section 4.4.4(C), projects that include "demolition of an existing structure and construction of a new structure within the existing building pad area where no additional fuel modification is required" are not subject to a detailed biological study of the site or review by the Environmental Review Board. As discussed previously, the subject parcel is not located in an ESHA. The project will result in less than significant impacts to sensitive resources, significant loss of vegetation or wildlife, or encroachments into an ESHA. Therefore, according to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

C. Native Tree Protection (LIP Chapter 5)

No native trees will be removed or impacted as part of this project. Therefore, according to LIP Section 5.7, the native tree findings are not applicable.

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

The Scenic, Visual and Hillside Resource Protection Chapter governs CDP applications for any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The project site is visible from the beach and from Broad Beach Road (an LUP designated scenic road); therefore, the required findings are made below.

Finding D1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

Affected public viewing areas include the beach and Broad Beach Road. The applicant installed story poles on the subject property to depict the location, height and mass of the proposed project. An analysis of the project's visual impact was conducted from public viewing areas through site reconnaissance, a review of the story poles, architectural plans and an investigation of the character of the surrounding properties. Photographs of the story poles are included as Attachment 5.

The project site contains an existing two-story single-family residence. When viewed from Broad Beach Road and the beach, the project will have no significant adverse scenic or visual impacts because an existing two-story residence is sited on the parcel. In addition, the existing nonconforming two-story deck located seaward of the deck stringline is proposed to be demolished, eliminating the massing closest to the beach. The proposed project will provide a 14.8 foot wide view corridor where no view corridor exists now. The proposed project will have no significant adverse scenic or visual impacts due to the project design and location on the site.

Finding D2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As described in Finding D1, the project will not result in significant adverse scenic or visual impacts.

Finding D3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

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

Finding D4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As discussed in Findings D1 and D2, no significant adverse impacts on scenic and visual resources are expected to result from the project.

Finding D5. 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.

As discussed in Findings D1 and D2, no significant adverse impacts on scenic and visual resources are expected to result from the project.

E. Transfer of Development Credits (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 coastal development permit does not involve a land division or multi-family development; therefore, LIP Chapter 7 does not apply.

F. Hazards (LIP Chapter 9)

The project was analyzed for the hazards listed in LIP Section 9.2(A)(1-7). No substantial risks to life and/or property are anticipated provided the recommendations of the geotechnical reports prepared for the project are followed. The applicant has submitted a Preliminary Geologic and Geotechnical Engineering Investigation Report prepared on August 23, 2011 by GeoConcepts, Inc. and a Coastal Engineering Report prepared on September 13, 2011 by David C. Weiss Structure Engineer & Associates, Inc. The required findings in LIP Chapter 9 are made as follows.

Finding F1. 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.

Based on review of the above referenced reports, City GIS and associated information, it has been determined that:

1. The project site is not located within an earthquake fault zone;
2. The project site is not located within an earthquake-induced landslide hazard zone;
3. There is a potential for inundation of the site from a tsunami event; however, the topography of the sea floor and Channel Islands may minimize the risk of a large tsunami generated from a distance offshore earthquake to impact the southern California coast;
4. The project site is located within the liquefaction zone;
5. The development site is located in a Federal Emergency Management Agency (FEMA) identified flood hazard area; and
6. The project site is located within an extreme fire hazard area.

The project will incorporate all recommendations contained in the above cited geotechnical report and conditions required by the City Coastal Engineer, City Geologist, and City Public Works Department. 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 and City Coastal Engineer prior to the issuance of a building permit.

Liquefaction

Based on the liquefaction analysis, liquefaction induced settlement is estimated to be 2.88 inches and differential settlement is estimated to be 1.88 inches. The project geotechnical engineer included specific recommendations for the foundation which include minimum pile diameter size and depth into bedrock. All piles will be designed to resist a lateral force as recommended by the project geotechnical engineer.

Flood

The proposed site was evaluated for flood hazards. The FEMA Flood Insurance Rate Map for the project area designates the northern 170 feet of the lot as Zone D and the southern half of the lot in Zone VE with a base floor elevation of +13 feet NAVD. The proposed structure and AOWTS are outside of the VE zone. According to the Coastal Engineering Report, the lowest recommended finished floor is 19.3 feet NAVD88. Subsequently, the proposed residence lowest finished floor on

the beachfront portion is 19.3 feet NAVD88.

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.

A condition of approval has been included in Section 5 of 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.

Finding F2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As discussed in Finding G1, the proposed project, as designed, conditioned, and approved by City departments will not have any significant adverse impacts on the site stability or structural integrity.

Finding F3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

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

Finding F4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As discussed in Finding G1, the proposed project, as conditioned and approved by City departments will not have any significant adverse impacts on the site stability or structural integrity.

Finding F5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As discussed in Finding G1, the proposed project, as conditioned and approved by City departments will not have any significant adverse impacts on site stability or structural integrity. Therefore, no adverse impacts are anticipated to hazards or to sensitive resource protection policies contained in the LCP.

G. Shoreline and Bluff Development (LIP Chapter 10)

LIP Section 10.3 requires that shoreline and bluff development findings be made if the project is anticipated to result in potentially significant adverse impacts on coastal resources, including public access and shoreline sand supply. The project is not anticipated to result in such impacts. The project is sited and designed to minimize risks and assure stability and structural integrity while neither creating nor contributing significantly to erosion or adverse impacts on public access. The project site is seaward of Broad Beach Road. The required findings in LIP Section 10.3 are made as follows.

Finding G1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

The project is located on the seaward side of Broad Beach Road. The project site currently does not offer public vertical access or lateral access and the proposed

The proposed project includes a new AOWTS located between the proposed residence and the road and associated leachfield between the proposed residence and accessory structure. Both the new AOWTS and the associated leachfield were determined to be located as far landward as feasible by the City Coastal Engineer and City Environmental Health Administrator. A Wave Uprush Report prepared on September 13, 2011 by David C. Weiss Structural Engineer & Associates, Inc. determined that the new OWTS will not be in danger of encroaching storm waves, uprush or beach scour. According to the Wave Uprush Addendum Report, all calculations assumes "a smooth unprotected beach slope. It disregards any existing or future protective shoreline device(s) for the subject property." Furthermore, "if all recommendations are adhered to within the project design and construction..., then the proposed project...will not require the construction of a shoreline protection device...". The proposed project, including the single-family residence, AOWTS, leachfield, and associated development does not necessitate a new shoreline protective device; this finding of fact was made without the assumption that the temporary beachwide rock revetment would be permanent.

The project is not anticipated to result in any new significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding G2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding G1, the proposed amendment will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

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

As discussed in Finding A3, the proposed amendment does not alter the determination that the proposed project, as conditioned, is the least environmentally damaging alternative.

Finding G4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As discussed in Finding G1, the project will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding G5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The project does not include a shoreline protective device; furthermore, all findings of facts are made using calculations that assume a "smooth, unprotected impermeable beach and a worst case scenario storm occurrence"; therefore, this finding is not applicable.

H. Public Access (LIP Chapter 12)

No issue of public prescriptive rights has been raised.

Bluff-Top, Trail, and Recreational Access – The project is not located on a bluff-top, adjacent to a trail or include any public access ways to existing or planned public recreational areas; therefore, no conditions or findings are required.

Lateral Access - The proposed development is located landward of the existing development and does not impact existing conditions. No potential project related or cumulative impact on lateral access is anticipated. Therefore, no conditions or findings are required. An inquiry for lateral access easement on the project site has been made to the property owner and to date, the property owner has not provided a response.

Vertical Access- Public vertical access can be obtained approximately 360 feet to the west of the property between 31340 and 31346 Broad Beach Road. Adequate vertical access is provided in the vicinity of the project site. Consistent with LIP Section 12.6, due to the ability of the public, through other reasonable means, to reach nearby coastal resources, no condition for vertical access has been required. The project, as proposed, does not block or impede access to the ocean. No legitimate governmental or public interest would be furthered by requiring vertical access at the project site because of the ability of the public to access nearby public coastal tidelands from the public beaches located east of the project site. Therefore, no conditions or findings for vertical access are required.

I. 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.

J. 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 serve the proposed single-family residence located between the proposed residence and the road, which has been reviewed by the City Environmental

Health Administrator and found to meet the minimum requirements of the Malibu Plumbing Code, the Malibu Municipal Code (M.M.C.) and the LCP. The subject system will meet all applicable requirements and operating permits will be required. The new system will utilize a 3,436 gallon MicroSepTec with an ultraviolet disinfection unit. The new system will provide existing onsite 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 Section 5 of this resolution which require continued operation, maintenance and monitoring of onsite facilities.

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

Pursuant to the M.M.C., a demolition permit shall be required for the demolition of any building or structure, or for a substantial remodel, except for a demolition initiated by the City and ordered or authorized under the provisions of the Building Code. This project includes the demolition of the existing residence, spa, fire pit and other hardscape and the required findings must be made. The review and approval body shall approve a demolition permit application provided that all of the findings of fact are made in a positive manner.

Finding K1. The demolition permit is conditioned to assure that it will be conducted in a manner that will not create significant adverse environmental impacts.

The project includes conditions of approval regarding Best Management Practices (BMPs) to manage the effects of the demolition on surrounding properties and to ensure that the project will not create significant adverse environmental impacts. The City Public Works Department has also conditioned the project to submit a Waste Reduction and Recycling Plan (WRRP) to indicate means and measures to meet a minimum of 50 percent recycling goal.

Finding K2. A development plan has been approved or the requirement waived by the City.

A CDP application is being processed concurrently with the demolition permit. The demolition permit will not be approved unless the associated CDP is approved.

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. 11-050 and Demolition Permit No. 11-021, subject to the following conditions.

Section 5. Conditions of Approval

Standard Conditions

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any

of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application is to allow for the project described herein. The scope of work approved includes:

Demolition:

- a. Two-story single-family residence;
- b. Two-story deck;
- c. Spa; and
- d. Removal of existing OWTS.

Construction:

- e. 5,064 single-family residence;
- f. Detached accessory structure consisting of a 659 square foot garage and 375 square foot theater on the first story and 597 square foot guest house and 381 square foot gym on the second story;
- g. A connector bridge which connects the single-family residence with the accessory structure;
- h. 1,237 square foot of covered areas;
- i. Spa;
- j. Firepit;
- k. Roof deck over the main residence;
- l. Solar panels over the accessory structure;
- m. Various hardscape;
- n. Landscaping;
- o. 278 cubic yards of non-exempt grading;
- p. New foundation system consisting of grade beams and 37 piles;
- q. Installation of AOWTS; and
- r. A 14.8 foot wide view corridor.

3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning department, dated, **March 13, 2012**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. 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 Department within 10 days of this decision and prior to issuance of any development permits.
5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Acceptance of Conditions Affidavit and all Department Review 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 Sustainability Department for plan check, and the City of Malibu Public Works/Engineering Services Department for an encroachment permit (as applicable).

7. The CDP shall be null and void if the project has not commenced within two (2) years after issuance of the permit, unless a time extension has been granted, or work has commenced and substantial progress made (as determined by the Building Official) and the work is continuing under a valid building permit. If no building permit is required, the coastal development permit approval shall expire after two years from the date of final planning approval if construction is not completed. 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.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All structures shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Geologist, City Environmental Health Administrator, City Biologist, City Coastal Engineer, City Public Works Department, Los Angeles County Water District No. 29 and the LACFD, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, 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.
11. 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 (CCC), have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the coastal development permit approved by the City is void.
12. The property owner must submit payment for all outstanding fees payable to the City prior to issuance of any building permit, including grading or demolition.

Cultural Resources

13. 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 Director 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.
14. 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

15. Prior to demolition activities, the applicant shall receive Planning Department approval for compliance with conditions of approval.
16. 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.
17. Prior to the issuance of a building/demolition permit, an Affidavit and Certification to implement a Waste Reduction and Recycling Plan (WRRP) shall be signed by the Owner or Contractor and submitted to the Environmental Sustainability Department. The WRRP shall indicate the agreement of the applicant to divert at least 50 percent of all construction waste generated by the project.
18. 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.
19. 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.
20. 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.
21. 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.
22. Upon completion of demolition activities, the applicant shall request a final inspection by the Building Division.

Geology

23. 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.

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

Onsite Wastewater Treatment System

25. 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 the AOWTS.
26. Prior to final Environmental Health approval, a final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the Malibu Plumbing Code (MPC) 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).
27. 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).
28. Any above-ground equipment associated with the installation of the AOWTS shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
29. 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 AOWTS 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 AOWTS 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.
30. Prior to final Environmental Health approval, the construction plans for all structures and/or buildings with reduced setbacks must be approved by the Environmental and Building Safety Division. The architectural and/or structural plans submitted to Building and Safety plan check must detail methods of construction that will compensate for the reduction in setback (e.g., waterproofing, concrete additives, etc.). For complex waterproofing installations, submittal of a separate waterproofing plan may be required. The architectural/structural/waterproofing plans must show the location of OWTS components in relation to those structures from which the setback is reduced, and the plans must be signed and stamped by the architect, structural engineer, and geotechnical consultants (as applicable).
31. Prior to final Environmental Health approval, the applicant shall provide engineer's certification for reduction in setbacks to buildings or structures: All proposed reductions in setback from the OWTS to structures (i.e., setbacks less than those shown in Malibu Plumbing Code Take K-1) must be supported by a letter from the project structural engineer and a letter from the project 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 dispersal area will not adversely affect the structural integrity of the OWTS, and will not adversely affect the structural integrity of the structures for which the 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.

32. 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."
33. 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.
34. 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.
35. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.
36. 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 submitted to the owner and/or operator of the proposed AOWTS following installation.
37. 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.
38. Prior to final Environmental Health approval, a covenant which runs with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to subject real property and recorded with the Los Angeles County Recorder's Office. Said covenant

shall serve as constructive, notice to any future purchaser for value that the AOWTS serving subject property is an alternative method of onsite wastewater disposal pursuant to the City of Malibu Uniform Plumbing Code, Appendix K, Section 10). Said covenant shall be provided by the City of Malibu Environmental Health Administrator and shall be submitted to the City of Malibu with proof of recordation by the Los Angeles County Recorder.

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

Grading/Drainage/Hydrology

41. The non-exempt grading for the project shall not exceed a total of 1,000 cubic yards, cut and fill.
42. The Total Grading Yardage Verification Certificate (dated March 13, 2012) shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitute may be accepted.
43. The ocean between Latigo Point and the west City limits has been established by the State Water Resources Control Board as an Area of Special Biological Significance (ASBS) as part of the California Ocean Plan. This designation prohibits the discharge of any waste, including stormwater runoff, directly into the ASBS. The applicant shall provide a drainage system that accomplishes the following:
 - a. Retains all non-storm water runoff on the property without discharge to the ASBS; and
 - b. Maintains the natural water quality within the ASBS by treating storm runoff for the pollutants in residential storm runoff that would cause a degradation of ocean water quality is the ASBS. These pollutants include trash, oil and grease, metals, bacteria, nutrients, pesticides, herbicides and sediments.
44. 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, tennis courts and pool 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 limits to land to be disturbed during project development shall be delineated and a total area of disturbance should be shown on this plan. Areas disturbed by grading

- e. equipment beyond the limits of grading shall be included within the area delineated; If the property contains rare, endangered or special status species as identified in the Biological Assessment, this plan shall contain a prominent note identifying the areas to be protected (to be left undisturbed). Fencing of these areas shall be delineated on this plan is required by the City Biologist;
 - f. The grading limits shall include the temporary cuts made for retaining walls, buttresses and over excavations for fill slopes; and
 - g. 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.
 - h. Public storm drain modifications shown on the grading plan shall be approved by the City Public Works Department prior to issuance of the Grading Permit. The existing 30 inch CMP is shown in one place on sheet T2 and in a different place on sheet A2.1. The exact location of this City facility must be determined prior to the issuance of a Grading permit. Submit documentation on how the pipe location was determined in the field.
45. 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.
46. 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.
47. 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 17.3.2.B.2.
48. 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.

49. 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 Director or Deputy Building Official determines that completion of grading would be more protective of resources.
50. The Deputy Building Official may approve grading during the rainy season to remediate hazardous geologic conditions that endanger public health and safety.
51. Exported soil from a site shall be taken to the Los Angeles 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.
52. All cut and fill slopes shall be stabilized with landscaping at the completion of final grading.
53. 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.

Floodplain Management

54. The proposed improvements appear to be located outside the Special Flood Hazard Area (SFHA), and while the portion of the parcel is to found to be within the SFHA the project may be subject to the National Flood Insurance Program (NFIP) regulations. Floodplain determination for the project will be conducted during the review of construction plans in Building Plan Check and prior to final Public Works approval.

Water Quality/ Water Service

55. 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 to the Planning department indicating the ability of the property to receive adequate water service.

Shoreline Protection

56. All construction debris shall be removed from the beach daily and at the completion of development.
57. No stockpiling of dirt or construction materials shall occur on the beach.
58. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work.
59. The applicant shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion.
60. No machinery shall be placed, stored or otherwise located in the intertidal zone at any time, unless necessary for protection of life and/or property.
61. Construction equipment shall not be cleaned on the beach.
62. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

Construction / Framing

63. A construction staging plan shall be reviewed and approved by the Planning Director prior to plan check submittal.
64. 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.
65. 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 rinsed prior to leaving the property.

66. 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.
67. 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 department for review and sign off on framing.

Colors and Materials

68. The project is visible from scenic roads or public viewing areas, therefore, 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. Colors shall be reviewed and approved by the Planning Director and clearly indicated on the building plans.
 - 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.
69. All driveways shall be a neutral color that blends with the surrounding landforms and vegetation. Retaining walls shall incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape. The color of driveways and retaining walls shall be reviewed and approved by the Planning Director and clearly indicated on all grading, improvement and/or building plans.

Lighting

70. Exterior lighting shall be minimized, shielded, or concealed and restricted to low intensity features, so that no light source is directly visible from public view. 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 and are directed downward, and limited to 850 lumens (equivalent to a 60 watt incandescent bulb);
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 850 lumens;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 850 lumens;
 - d. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 850 lumens;
 - e. Site perimeter lighting shall be prohibited; and
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited.
71. Night lighting for sports courts or other private recreational facilities shall be prohibited.
72. No permanently installed lighting shall blink, flash, or be of unusually 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.
73. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded directed downward and inward so there is no offsite glare or lighting of natural habitat areas. High intensity lighting of the shore is prohibited.

Biology/Landscaping

74. No new development, planting, or irrigation is permitted within public easements. Any new structure, plant or irrigation system occurring in the public easement shall be removed at the owner's expense.
75. Prior to Final Plan Check Approval, if your property is serviced by the Los Angeles County Waterworks Department, please provide landscape water use approval from that department.
76. Invasive plant species, as determined by the City of Malibu, are prohibited.
77. 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).
78. Vegetation forming a view impermeable condition (hedge), serving the same function as a

fence or wall, occurring within the side or rear yard setback shall be maintained at or below six (6) feet in height. View impermeable hedges occurring within the front yard setback serving the same function as a fence or wall shall be maintained at or below 42 inches in height.

79. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenate.
80. Prior to final Plan Check, a detailed irrigation plan shall be submitted to Building Safety Department for review and approval.
81. Prior to final landscape inspection, provide a signed copy of the Certificate of Completion, certifying the irrigation installation and operational efficiency is consistent with the approved plans.
82. Grading/excavation shall be scheduled only during the dry season from April 1-October 31st. If it becomes necessary to conduct grading activities from November 1 –March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.
83. Construction fencing shall be installed within five (5) feet of the seaward limits of work prior to the beginning of any construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.

Fuel Modification

84. The project shall receive LACFD approval of a Final Fuel Modification Plan prior to the issuance of final building permits.

Spa

85. Onsite noise, including that which emanates from swimming pool and air conditioning equipment, shall be limited as described in Malibu Municipal Code (M.M.C.) Chapter 8.24 (Noise).
86. Pool and air conditioning equipment that will be installed shall be screened from view by a solid wall or fence on all four sides. The fence or walls shall not be higher than 42 inches tall.
87. Pursuant to the Clean Water Act and the Malibu Water Quality Ordinance, discharge of water from a pool / spa is prohibited. Provide information on the plans regarding the type of sanitation proposed for pool.
 - a. Ozonization systems are an acceptable alternative to chlorine. The discharge of clear water from ozonization systems is not permitted to the street;
 - b. Salt water sanitation is an acceptable alternative to chlorine. The discharge of salt water is not permitted to the street; and

- c. Chlorinated water from pools or spas shall be trucked to a publicly-owned treatment works (POTW) facility for discharge.
- 88. The discharge of chlorinated and non-chlorinated pool / spa water into streets, storm drains, creeks, canyons, drainage channels, or other locations where it could enter receiving waters is prohibited.
- 89. A sign stating "It is illegal to discharge pool, spa, or water feature waters to a street, drainage course, or storm drain per M.M.C. Section 13.04.060(D)(5)" shall be posted in the filtration and/or pumping equipment area for the property.
- 90. Pursuant to M.M.C. Section 9.20.040(B), all ponds, decorative fountains shall require a water recirculating/recycling system.

Fencing and Walls

- 91. The height of fences and walls shall comply with LIP Section 3.5.3(A). No retaining wall shall exceed six feet in height or 12 feet in height for a combination of two or more walls.
- 92. Any fencing across the view corridor shall be visually permeable.

Site Specific Conditions

- 93. For development on beachfront parcels, beach access stairs shall maintain a 3 feet setback from all property lines unless stairs are located behind the most landward point end of bulkhead, if applicable.
- 94. This project proposes to construct improvements within the public right-of-way. The applicant shall obtain encroachment permits from the Public Works Department prior to the commencement of any work within the public right-of-way.
- 95. The applicant/property owner shall obtain all required permits, including approval for mechanized equipment to access to the beach, from Beaches and Harbor prior to commencement of construction.

View Corridor

- 96. Pursuant to LIP Section 6.5(E)(2)(e) and in order insure the protection of scenic and visual resources, the applicant is required to maintain:
 - a. A view corridor a minimum of 14.8 feet wide adjacent to the eastern property line extending the length of the property.
 - b. No portion of any structure shall extend into the view corridor above the elevation of the adjacent street.
 - c. Any fencing across the view corridor shall be visually permeable.
 - d. Any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.

- e. If at any time the property owner allows the view corridor to become impaired or blocked, it would constitute a violation of the coastal development permit and the Coastal Act and be subject to all civil and criminal remedies.

Prior to Occupancy

97. 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.
98. Prior to Final Building inspection, the applicant shall provide the Environmental Sustainability Department with a Final Waste Reduction and Recycling Summary Report (Summary Report). The Final Summary Report shall designate all material that were land filled or recycled, broken down by material types. The Environmental Sustainability Department shall approve the final Summary Report.
99. 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 Department 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 Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
100. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval, and if applicable, the issuance of the certificate of occupancy.

Deed Restrictions

101. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning department staff prior to final planning approval.
102. 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 department staff prior to final planning approval.
103. Prior to final planning approval, the applicant shall be required to execute and record a deed

restriction reflecting lighting requirements set forth in Condition Nos. 70-73. The property owner shall provide a copy of the recorded document to Planning department staff prior to final planning approval.

Fixed Conditions

104. This coastal development permit shall run with the land and bind all future owners of the property.
105. 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 6. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19th day of June 2012.



JOHN MAZZA, Planning Commission Chair

ATTEST:



JESSICA BLAIR, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals), a decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and proper appeal fee. The appellant shall pay fees as specified in the Council adopted fee resolution in effect at the time of the appeal. Appeal forms and fee schedule may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, extension 374.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 12-56 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 19th day of June 2012, by the following vote:

AYES: COMMISSIONERS: BROTMAN, PIERSON AND MAZZA

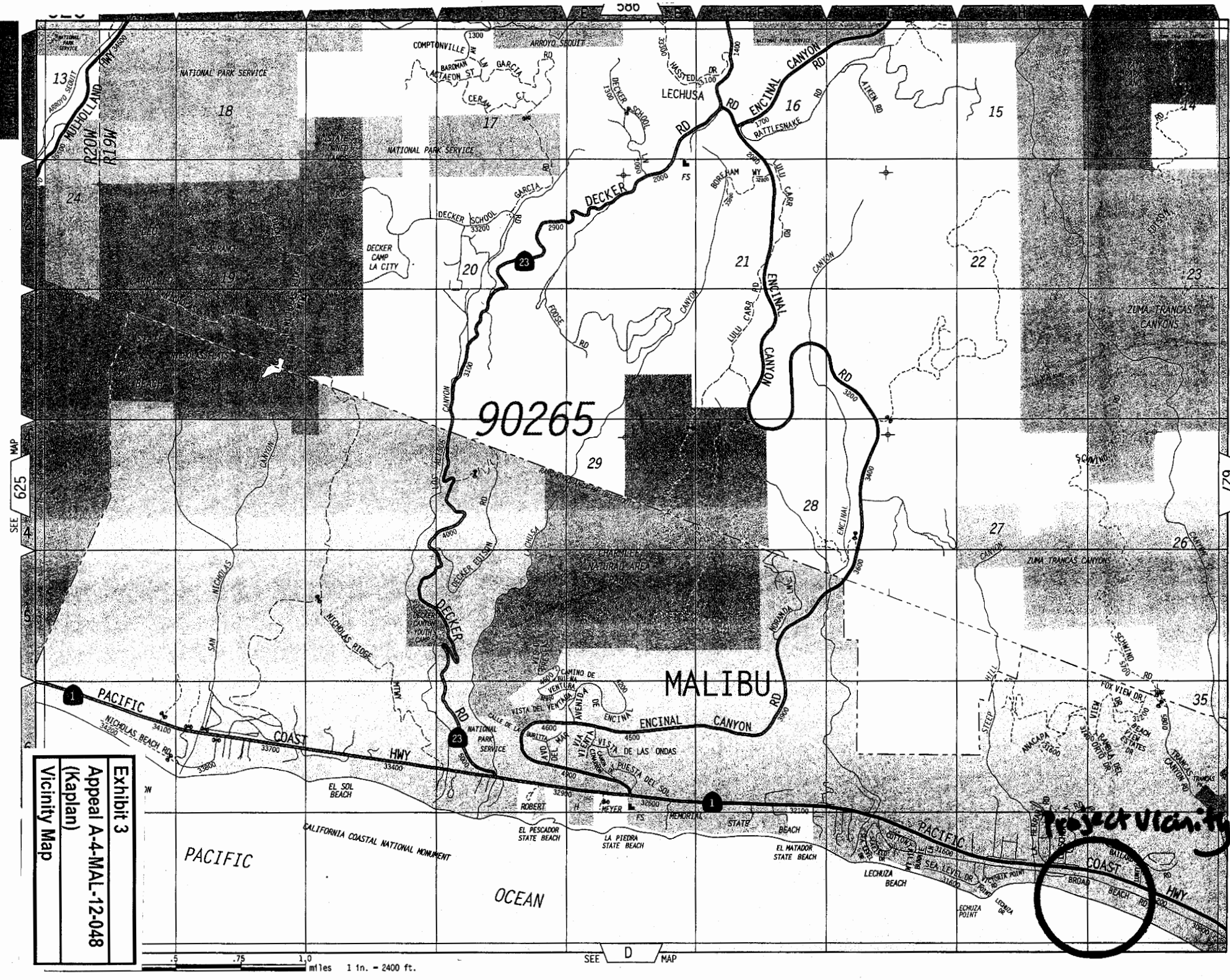
NOES:

ABSTAIN:

ABSENT: COMMISSIONERS: STACK AND JENNINGS



JESSICA BLAIR, Recording Secretary



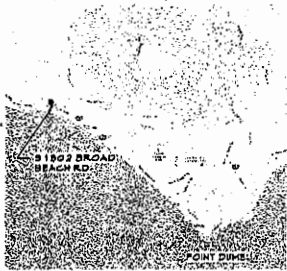
SEE 625 MAP

Exhibit 3
Appeal A-4-MAL-12-048
(Kaplan)
Vicinity Map

0 .5 .75 1.0 miles 1 in. = 2400 ft.

SEE D MAP

VICINITY MAP



AREA CALCULATIONS

LOT AREA	14504 SF
PROPOSED FLOOR AREAS	
FIRST FLOOR	3274 SF
SECOND FLOOR	2497 SF
THEATER	555 SF
GUEST HOUSE	605 SF
GYM	555 SF
TOTAL	7530 SF

(SEE SHEET T6 FOR TDSF CALCULATIONS.)

RETRACT REQUIREMENTS:	
FRONT SETBACK:	20 FT
SIDE SETBACK:	5 FT
REAR SETBACK:	STRINGLINE RULE

DEVELOPMENT COVERAGE:
SEE SHEET T6 FOR INFORMATION

PROJECT INFORMATION

PROJECT DESCRIPTION:

- NEW SINGLE FAMILY RESIDENCE
- NEW DETACHED GARAGE/GYM
- NEW GUEST HOUSE
- NEW ONSITE WASTEWATER TREATMENT SYSTEM
- NEW SPA
- NEW LANDSCAPING
- NEW DECK
- NEW 8' HIGH MASONRY PROPERTY LINE WALL
- DEMOLITION OF EXISTING SINGLE FAMILY RESIDENCE

PROPERTY ADDRESS:
1302 BROAD BEACH RD.
MALIBU, CA 90263

GENERAL INFORMATION:
APN: 4470-018-031

GENERAL PLAN LAND USE DESIGNATION:

SINGLE FAMILY RESIDENTIAL (PER LAND USE MAP EXHIBIT LU-1A)

OCCUPANCY CLASSIFICATION: R3 (U)
TYPE OF CONSTRUCTION: VB
FIRE HAZARD SEVERITY ZONE: VHFBSZ
APPLICABLE CODES: 2010 CBC / 2011 LACO

PROJECT DIRECTORY

OWNER:
KAPLAN LIVING TRUST
428 S. 10TH ST.
P.O. BOX 1009
SANTA MONICA, CA 90406

MECHANICAL ENGINEER /
ENERGY CONSULTANT
TBD

DESIGNER:
RAMIREZ DESIGN, INC.
428 ALTA AVE.
SANTA MONICA, CA 90403
PH: (310) 545-2142
FX: (310) 545-0504

ENVIRONMENTAL/SEPTIC DESIGNER:
ENSTU ENGINEERING
605 MAIN ST., STE. A
MORRO BAY, CA 93442
PH: (805) 712-0150
FX: (805) 712-0015
enstus@enstul.com

STRUCTURAL ENGINEER:
SHAWN KISSISS, P.E.
LICENSE # C 87045
RAMIREZ DESIGN, INC.
428 ALTA AVE.
SANTA MONICA, CA 90403
PH: (310) 545-2142
FX: (310) 545-0504

GEOTECHNICAL ENGINEER:
SECONCEPTS, INC.
ROBERT BOUZA
14425 HAMLIN ST., #300
VAN NUYS, CA 91401
PH: (818) 444-8855
FX: (818) 444-8844

DRAWING INDEX

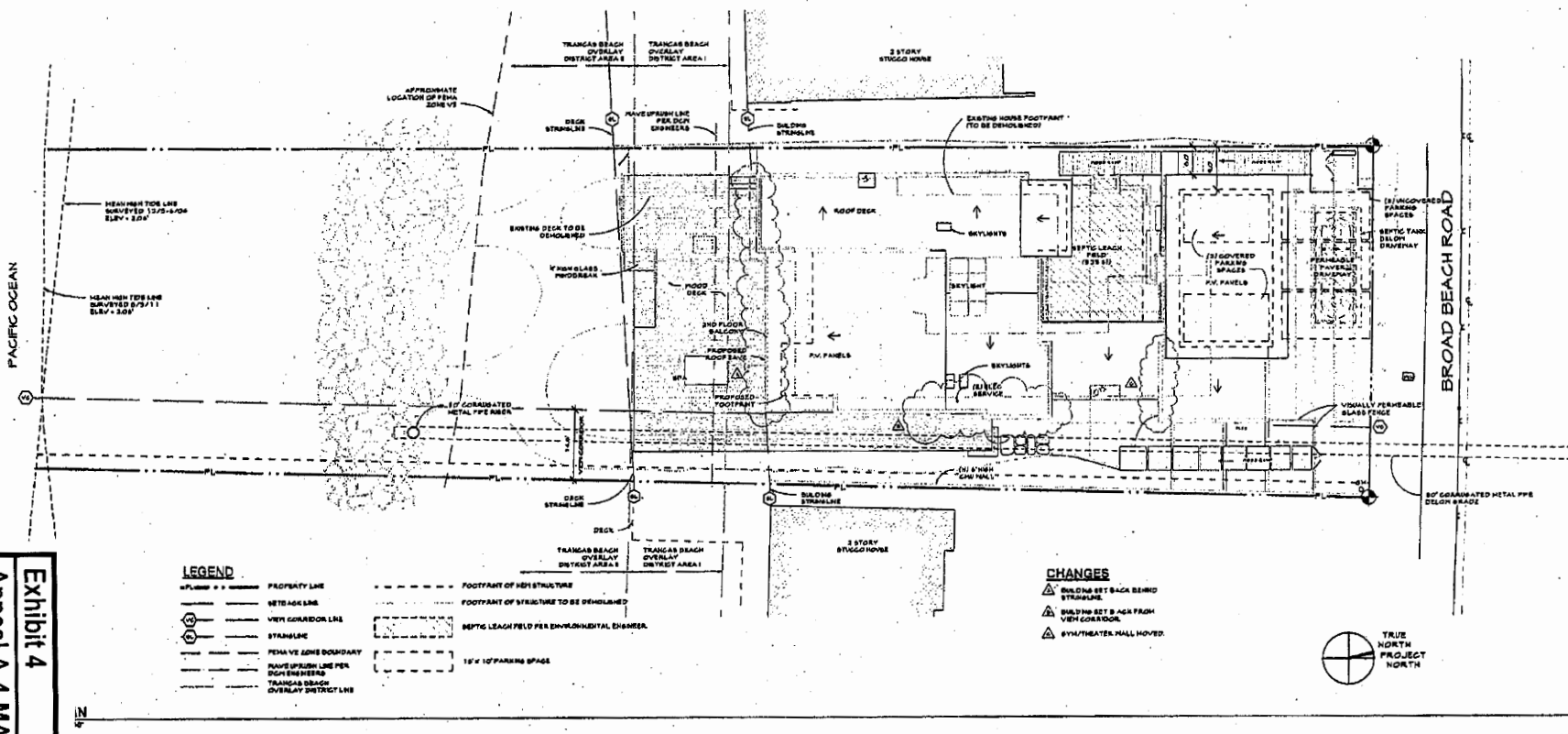
T1	COVER SHEET
T2	SITE PLAN
T3	SURVEY METERS
T4	REARVIEW
T5	PRELIMINARY SITE PLAN
T6	STRENGTH LAYOUT PLAN
L1	LANDSCAPE PLAN
A1	FIRST FLOOR PLAN
A2	SECOND FLOOR PLAN
A3	ROOF PLAN
A4	GARAGE VAULT AND TOWER ROOF PLANS
A5	HOUSE ELEVATIONS
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RAMIREZ
DESIGN, INC.
428 ALTA AVE.
SANTA MONICA, CA 90403
PH: (310) 545-2142
FX: (310) 545-0504
enstus@enstul.com

DATE: 03/13/12

REVISIONS:
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LEGEND

PROPERTY LINE	FOOTPRINT OF NEW STRUCTURE
SETBACK LINE	FOOTPRINT OF STRUCTURE TO BE DEMOLISHED
VIEW CORRIDOR LINE	SEPTIC LEACH FIELD PER ENVIRONMENTAL ENGINEER
STRINGLINE	15' x 10' PARKING SPACE
PERMITS ZONE BOUNDARY	
PAVE UPSPUR LINE PER CITY ENGINEER	
TRANSAS BEACH OVERLAY DISTRICT LINE	

CHANGES

- BUILDING SET BACKS BEING STUDIED
- BUILDING SET BACK FROM VIEW CORRIDOR
- GYM/THEATER HALL MOVED



BROAD BEACH RESIDENCE
31302 BROAD BEACH RD.
MALIBU, CA 90265

SITE PLAN

SHEET
T2

Exhibit 4
Appeal A-4-MAL-12-048
(Kaplan)
Project Plans

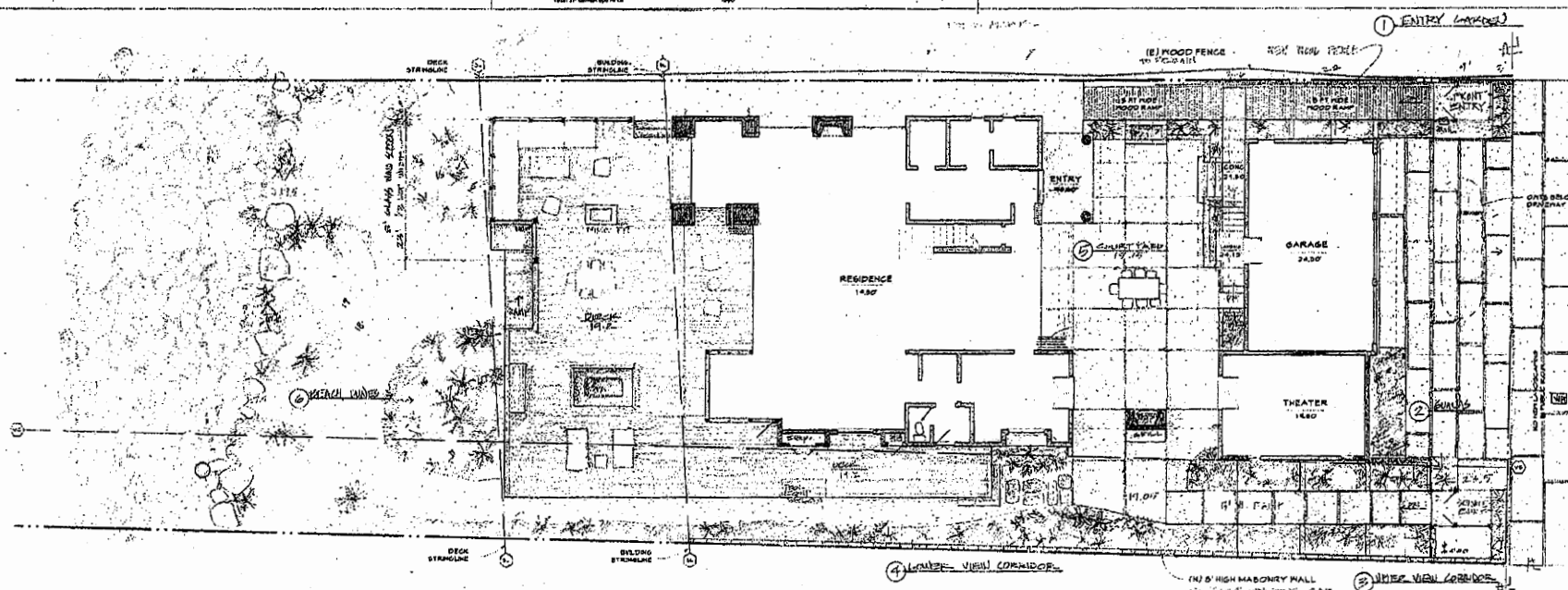
Landscape Data

[illegible]

Landscape Notes

1,800 SF Total Proposed Landscape Area

1. Invasive plant species, as determined by the City of Malibu, are prohibited.
2. Remove all existing *Eucalyptus* species and all other existing invasive plantings.
3. Protect selected existing *Meibomia* species.
4. Vegetation with a mature height of six feet or greater shall be situated on the property so as not to significantly obstruct the primary view from the neighboring principal residence at any given time (given consideration of its future growth).
5. The Landscape Plan shall prohibit the use of building materials treated with toxic compounds such as copper arsenite.

[illegible]

**RAMIREZ
DESIGN, INC.**
438 ALTA AVE
SANTA MONICA, CA 90402
T: (310) 395-2192
F: (310) 395-9784

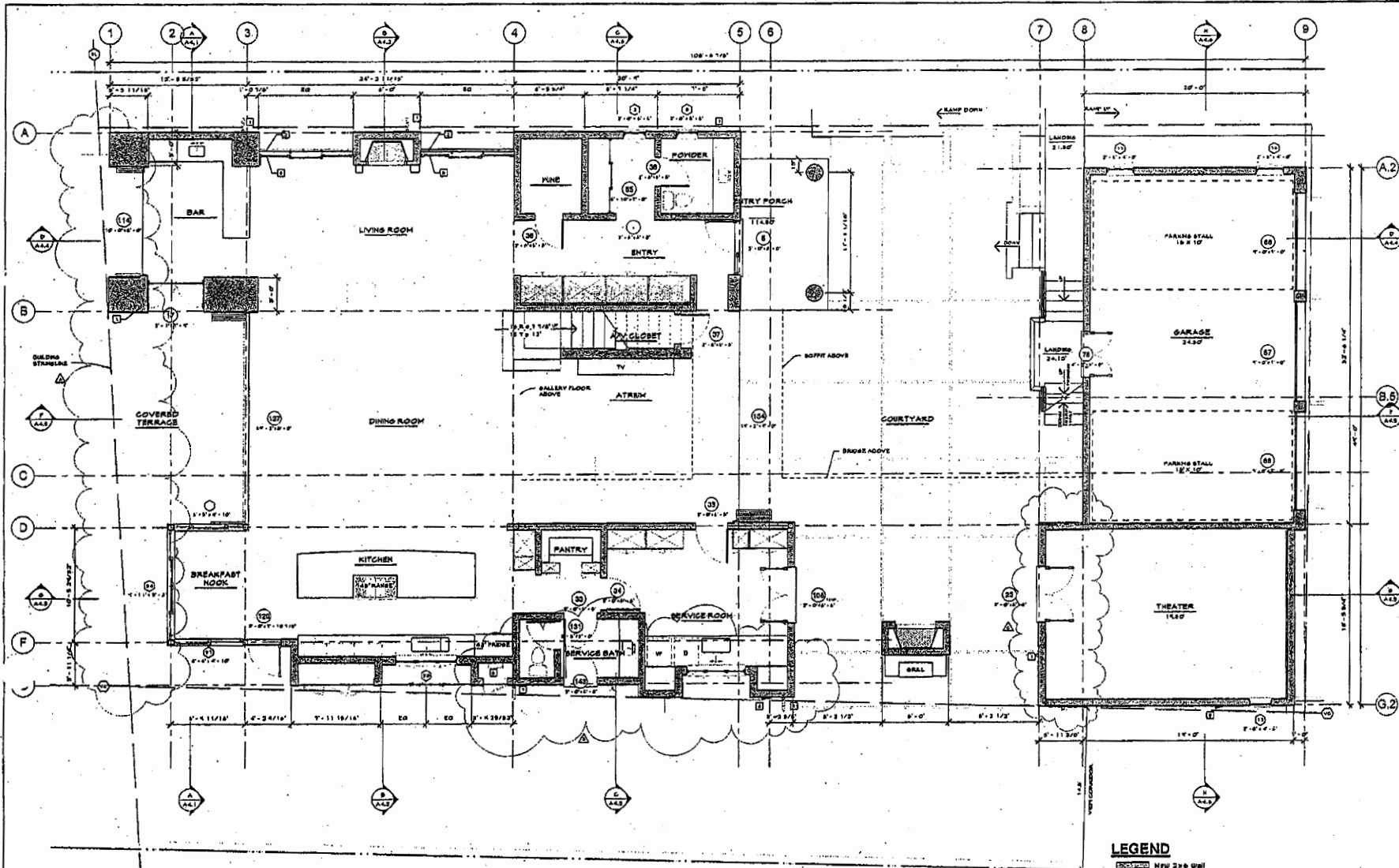
DATE: 01/05/12

REVISIONS:

BROAD BEACH RESIDENCE
31302 BROAD BEACH RD.
MALIBU, CA 90265

LANDSCAPE PLAN

SriEE



NOTES

1. Copper downspout. See civil drawings for more info.
2. Full Height Glass doors. Tempered.
3. Sliding wood shutters.
4. Electrical subpanel.
5. Electric meter service entrance, 400 amps.
6. Tankless water heater.

CHANGES

- △ BUILDING SET BACKS DRAWN TO MEET PERMITS.
- △ BUILDING SET BACKS FROM VIEW CORRIDOR.
- △ SYNCHRONIZED HALL HOVER.

LEGEND

- ENCLOSURE New 2nd Wall
- Smoke detector - Hard-wired and interconnected w/ battery backup and compliant with UL 217.
- ① Door tag - "TEMP" denotes tempered - see schedule for add'l info.
- ② Door tag - "TEMP" denotes tempered glass - see schedule for add'l info.



**RAMIREZ
DESIGN, INC.**
438 ALTA AVE.
SANTA MONICA, CA 90402
T: (310) 395-3952
F: (310) 395-3954
info@ramirezdesign.com

DATE: 01/05/12

REVISIONS:
1. 01/05/12
2. 01/05/12
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BROAD BEACH RESIDENCE
31302 BROAD BEACH RD.
MALIBU, CA 90265

FIRST FLOOR PLAN

SHEET
A2.1



RAMIREZ
DESIGN, INC.
12345 AVENUE
SANTA MONICA, CA 90402
TEL: (310) 305-2912
FAX: (310) 305-2914
info@ramirezdesign.com

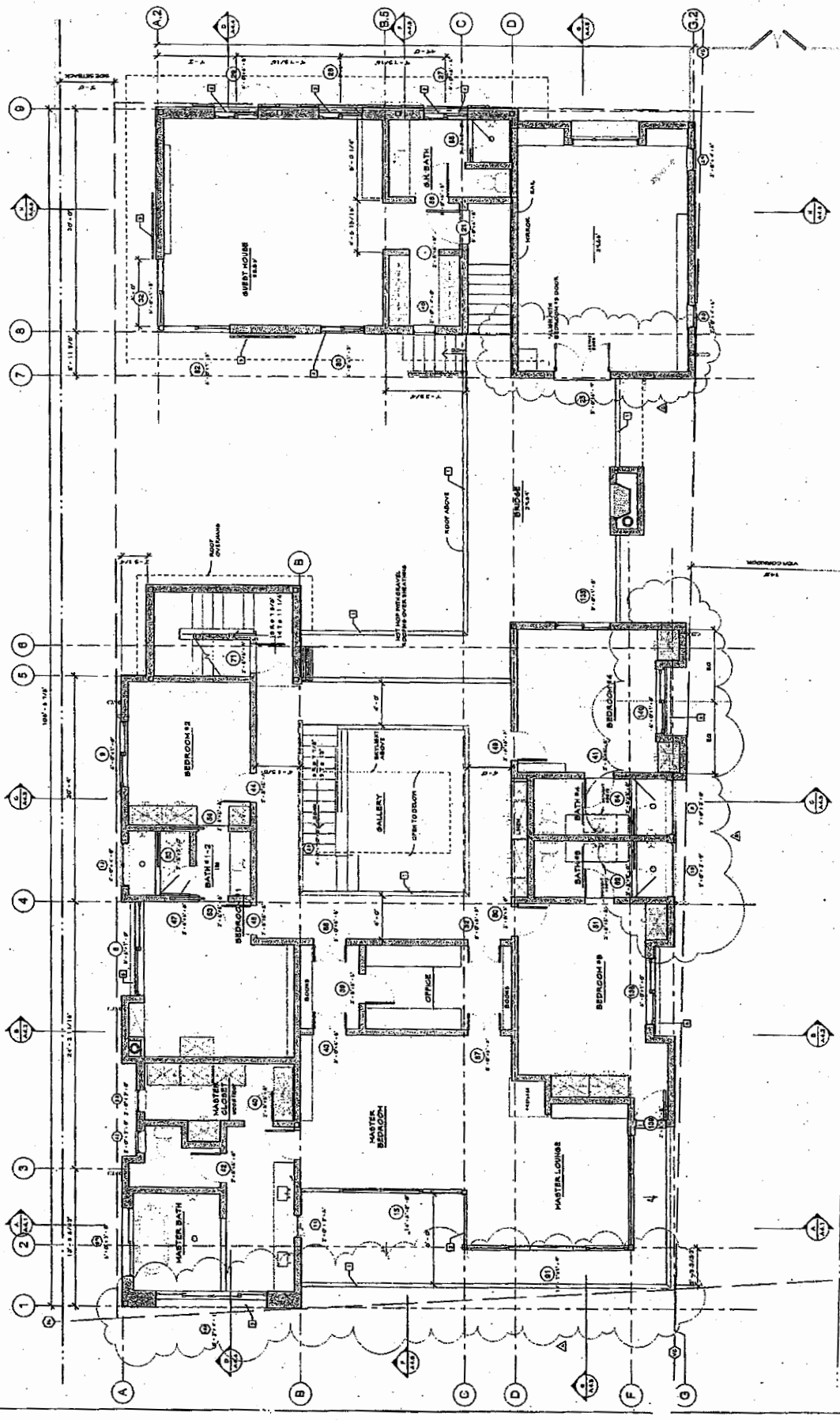
REVISIONS:
DATE: 01/05/12



BROAD BEACH RESIDENCE
31302 BROAD BEACH RD.
MALIBU, CA 90265

SECOND FLOOR PLAN

SHEET
A2.2



LEGEND

1. ROOMS, STAIRS, HALLWAYS AND CLOSETS ARE SHOWN WITH DIMENSIONS.

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CHANGES

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NOTES:

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10. ROOMS ARE SHOWN WITH DIMENSIONS.



RAMIREZ
DESIGN, INC.
428 ALTA AVE.
SANTA MONICA, CA 90402
TEL: (310) 395-2922
FAX: (310) 395-0964
info@ramirezdesign.com

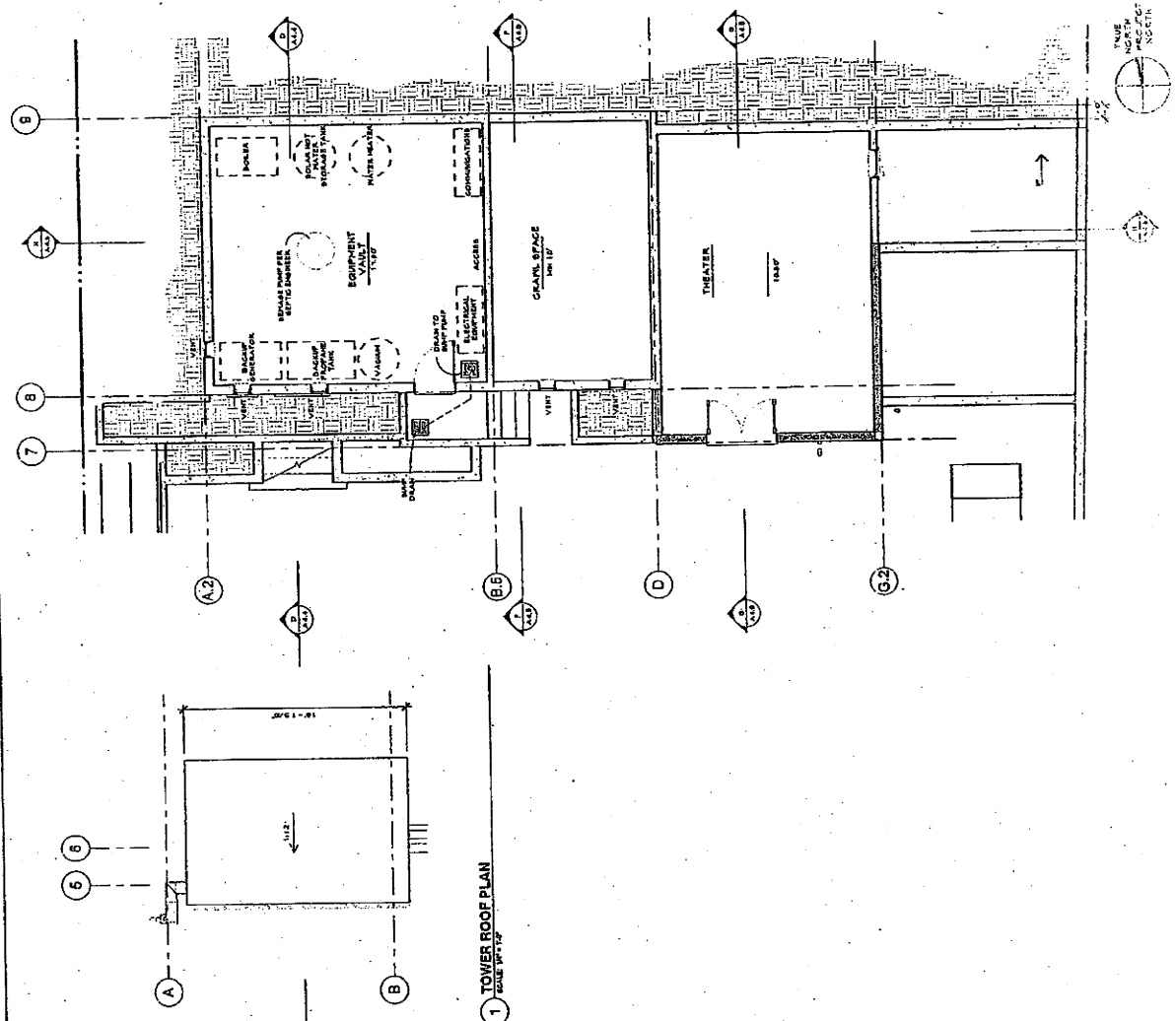
DATE: 01/05/12
REVISIONS:
1. REVISED PER COMMENTS



BROAD BEACH RESIDENCE
31302 BROAD BEACH RD.
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TOWER ROOF PLANS

SHEET
A2.4



5. EQUIPMENT VAULT PLAN
SCALE 1/8" = 1'-0"



RAMIREZ
DESIGN, INC.
128 ALTA AVE.
SANTA MONICA, CA 90402
TEL: (310) 395-2992
FAX: (310) 395-2994
info@ramirezdesign.com

DATE: 01/06/12

REVISIONS:
1. REVISED PER COMMENTS



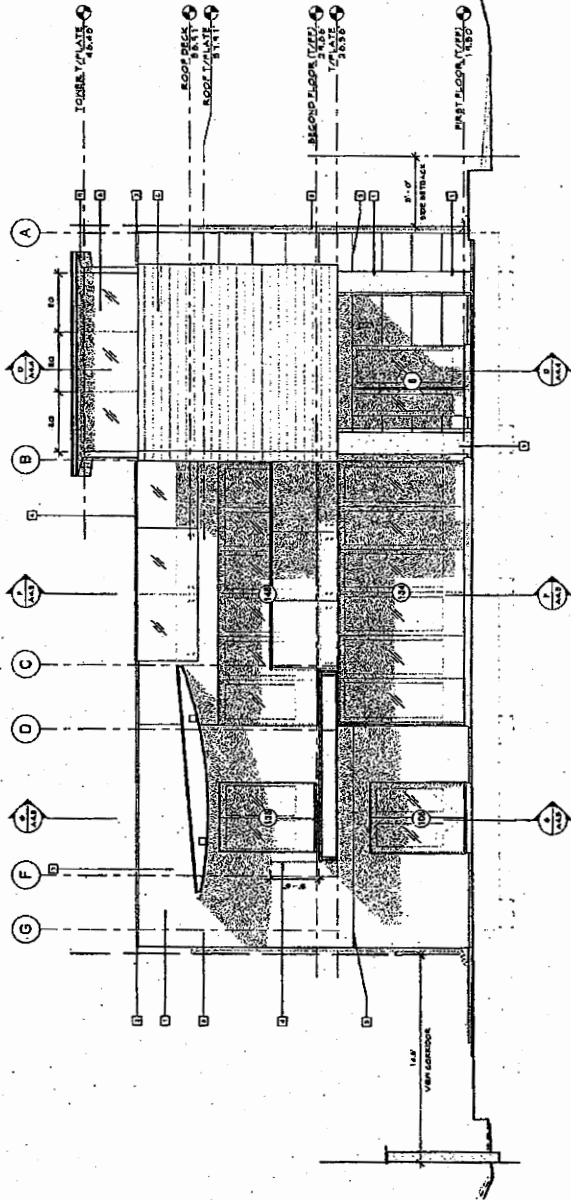
BROAD BEACH RESIDENCE
31302 BROAD BEACH RD.
MALIBU, CA 90265

HOUSE ELEVATIONS

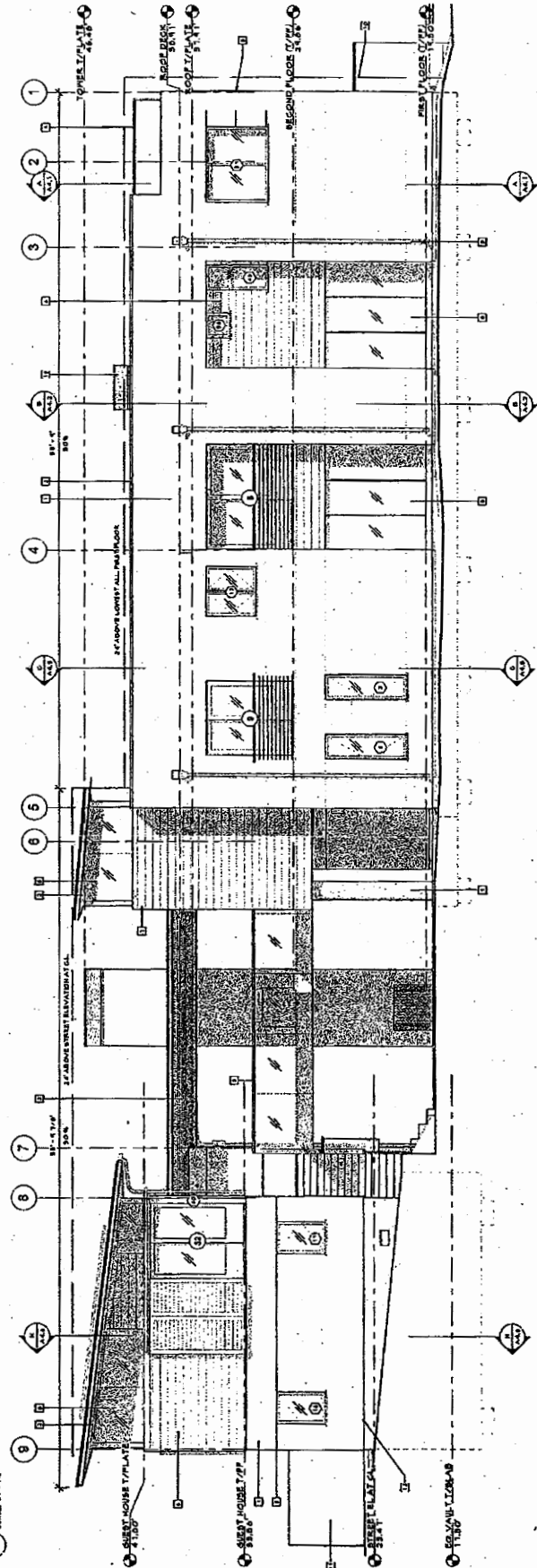
SHEET
A3.1

NOTES

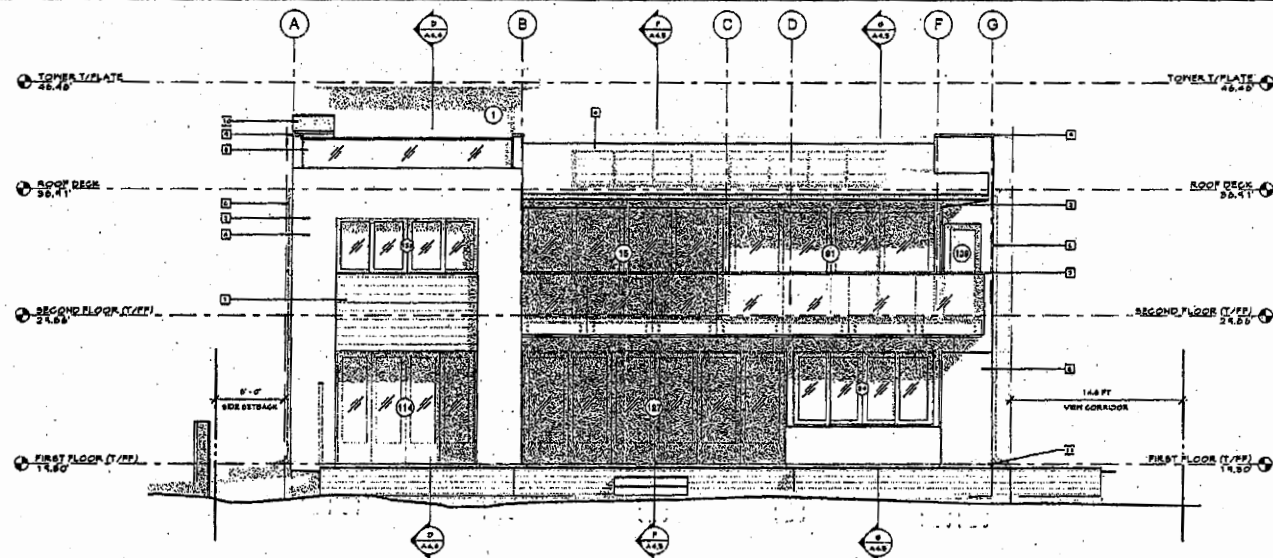
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1 FRONT/NORTH ELEVATION
SCALE: 1/4" = 1'-0"



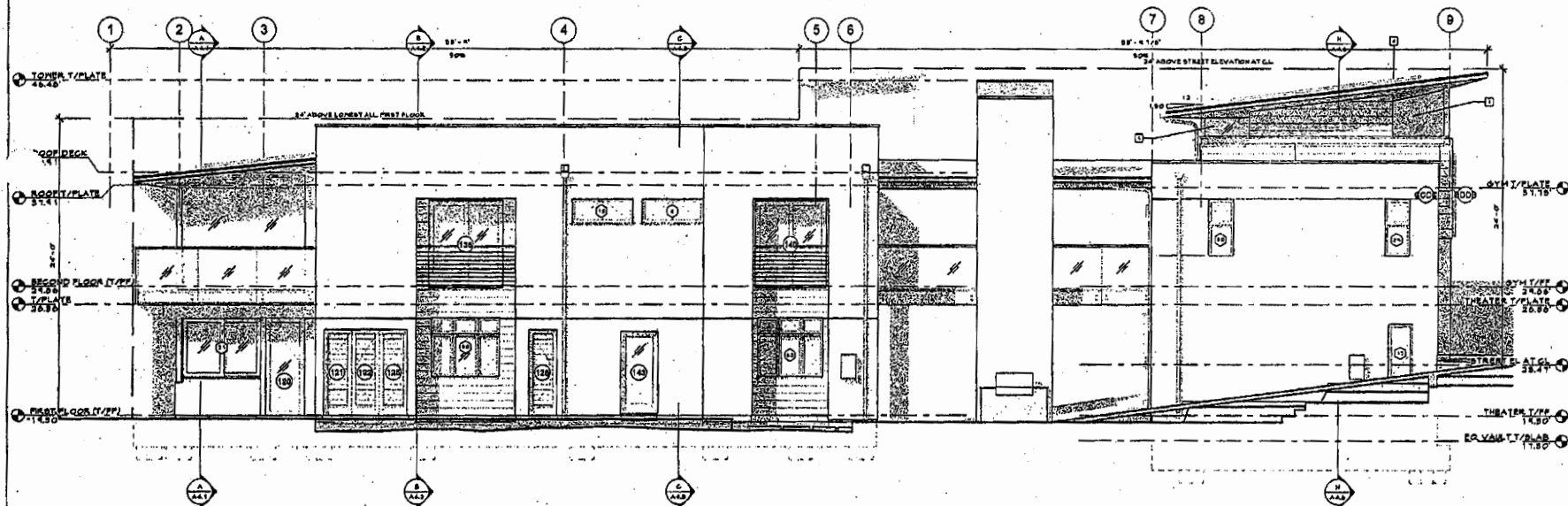
2 WEST ELEVATION
SCALE: 1/4" = 1'-0"



NOTES

1. Fixed clerestory glass.
2. Stained wood left.
3. 4" x 8" high glass panel.
4. Polycarbonate Solar Panels.
5. 1/2" thick glass panel.
6. 3" Copper downspout.
7. 4" x 8" stainless steel corner wood cladding.
8. 1/2" stainless steel.
9. 3" Limestone wall cap.
10. Copper ceiling screen.
11. Corrosion-resistant wet wall screen.

1 REAR/SOUTH ELEVATION
SCALE 1/8"=1'-0"



2 EAST ELEVATION
SCALE 1/8"=1'-0"



RAMIREZ
DESIGN, INC.
438 ALTA VISTA
SANTA MONICA, CA 90402
TEL: (310) 394-2922
FAX: (310) 394-4884
RAMIREZDESIGN.COM

DATE: 01/06/12

REVISIONS:
1. 01/06/12
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BROAD BEACH RESIDENCE
31302 BROAD BEACH RD.
MALIBU, CA 90265

HOUSE ELEVATIONS

SHEET
A3.2

RAMIREZ
DESIGN, INC.
428 ALTA AVE.
SANITA MONICA CA 90402
TEL (310) 395-2192
F (310) 395-6884
bo@ramdesign.com

DATE: 01/05/12

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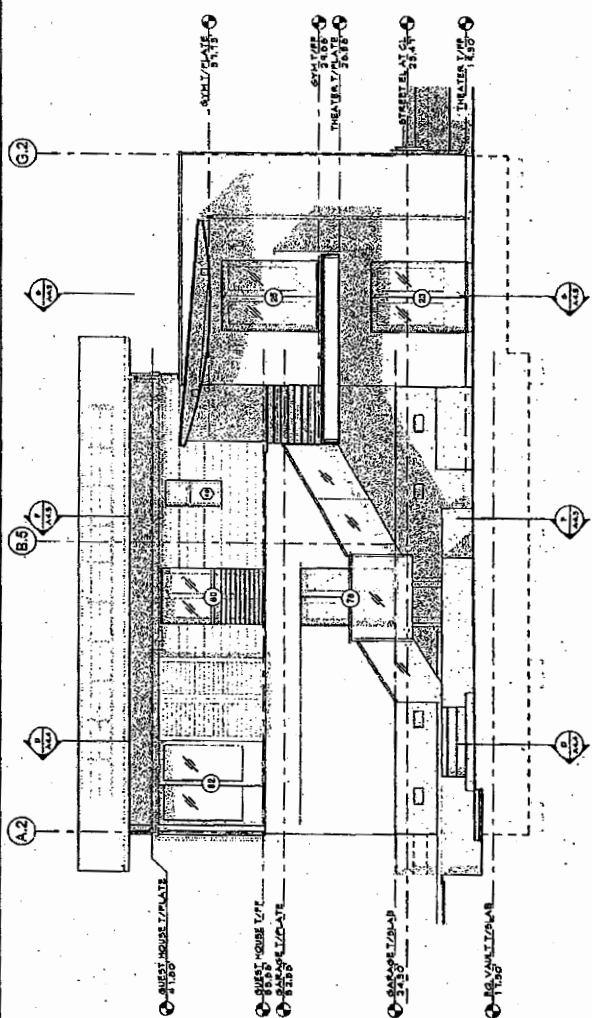
Rev.	Date	Revised by
1	10/01/11	car/aj/roberta



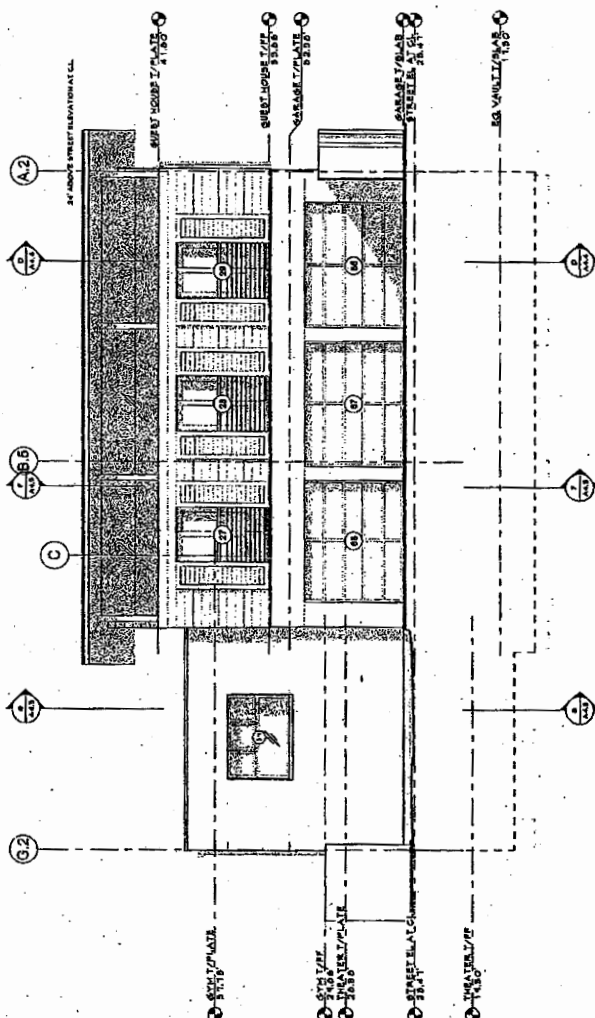
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GARAGE ELEVATIONS

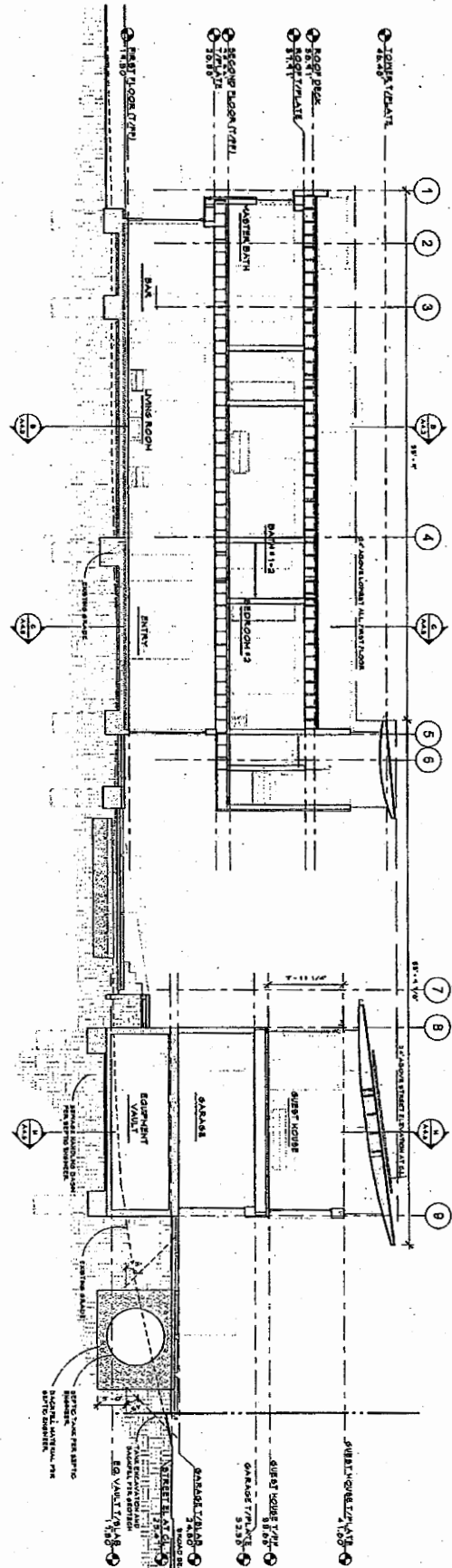
SHEET
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1 GARAGE SOUTH ELEVATION



3 GARAGE NORTH/FRONT ELEVATION



D Section D
Rear Elevation

**HOUSE & GARAGE
BUILDING SECTION**

A4.4
SHEET

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MALIBU, CA 90265

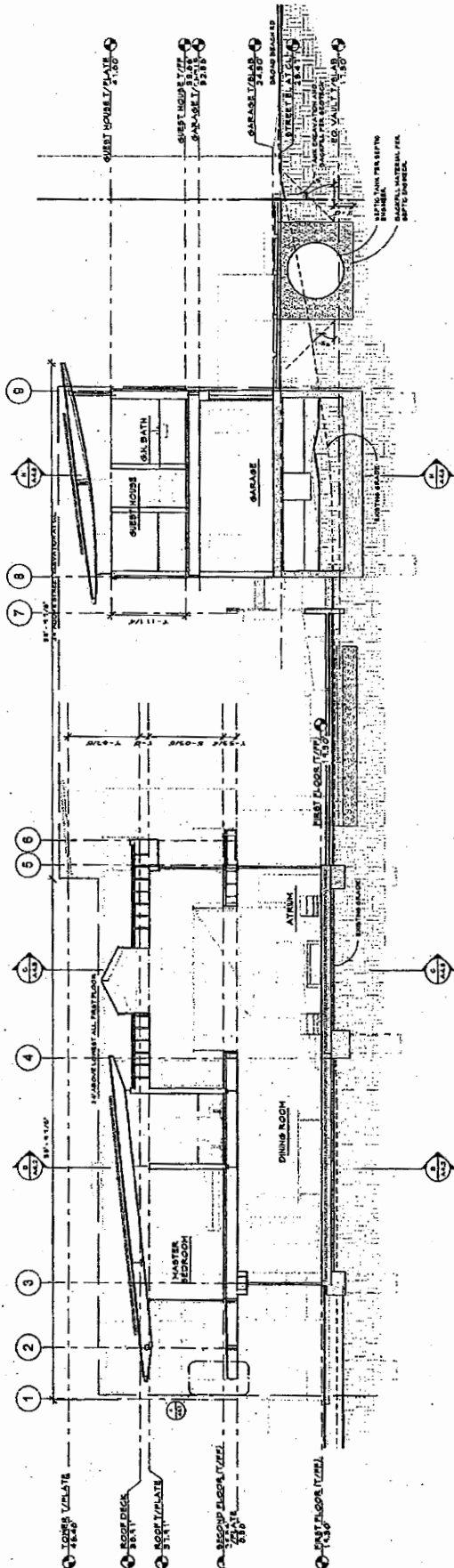


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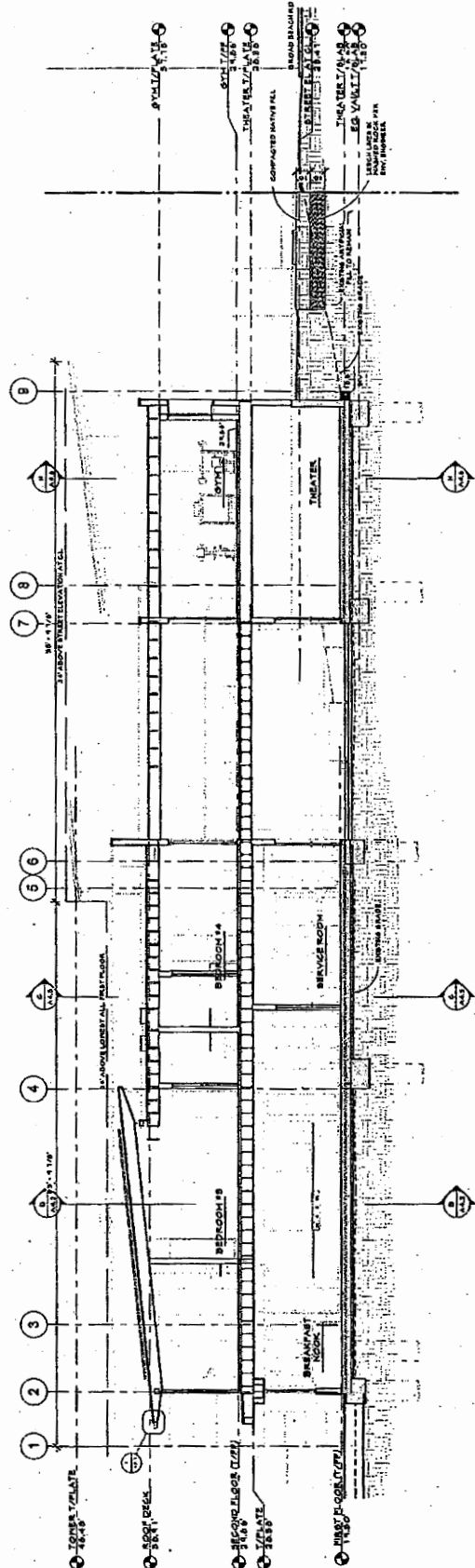
**RAMIREZ
DESIGN, INC.**
428 ALTA AVE.
SANTA MONICA, CA 90402
TEL: (310) 395-2192
FAX: (310) 395-8984
bob@ramirezdesign.com



NOTES



F Section F
SCALE 1/8" = 1'-0"



G Section G
SCALE 1/8" = 1'-0"



Exhibit 5
Appeal A-4-MAL-12-048
(Kaplan)
Aerial View (2010)



Figure 4-4. Temporary Broad Beach Revetment

Exhibit 6
Appeal A-4-MAL-12-048 (Kaplan)
Broad Beach Existing Temporary
Revetment (CDP 4-10-003-G)