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

Th19a

Click here to go to original staff report

ADDENDUM

DATE: November 12, 2013

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item Th19a, Appeal No. A-4-MAL-12-006 (25360 Malibu Road LLC), Thurs., November 14, 2013

The purpose of this addendum is to attach correspondence and ex-parte communications received since the staff report was released.

A. Correspondence

1. A letter, dated November 12, 2013 was received from the appellant's representative, Douglas P. Carstens, in opposition to the staff's recommendation.

This letter addresses the staff report's analysis of several of the factors the Commission has used to guide its decisions on whether appeals raise a substantial issue. Specifically, Mr. Carstens disagrees that there is sufficient factual and legal support for the local government's decision that the development is consistent with the certified LCP. Additionally, he states that the issues raised by the appeal have statewide significance. Further, he asserts that the City's decision would be a precedent for future interpretation of the LCP, both on nearby properties affected by the same landslide, as well as other landslide properties throughout the City. Finally, Mr. Carstens argues that Commission staff did not analyze all of the project alternatives that he identified in a letter submitted subsequent to the appeal. The rationale for each of these assertions is basically the same as the main contention of the appeal, namely, that the geologic reports and analysis the City relied upon in its action approving the development are incomplete, inaccurate, and have not adequately demonstrated that the approved development's location and manner of stabilizing an active landslide will not adversely impact off-site properties.

In response to this letter, staff would note that there is an extensive analysis in the staff report of the adequacy of the geologic and engineering studies and reports considered by the City. Additionally, while staff recommends that there is substantial factual evidence in the record in support for the City's findings that the approved development and stabilization system is consistent with the hazard provisions of the certified LCP, in order to fully consider the assertions made in the appeal, Commission staff did address

alternatives that could potentially serve to avoid the specific geologic risk asserted in the subject appeal, which is deflection of the landslide by the presence of the approved stabilization structures on the side scarp of the slide. The alternatives addressed in the staff report include a cantilevered structure, a structure with a foundation that would not resist landslide movement and would allow the earth materials to flow between and around foundation elements (such as widely spaced deep caissons), and a smaller residential structure that is stabilized in the relatively stable portion of the site. As discussed in the staff report, these alternatives would not be feasible.

2. A letter, dated October 29, 2013 was received from the applicant's representative, Sherman Stacey, in support of the staff's recommendation.

3. A letter, dated November 6, 2013 from the neighboring property owners to the east, Geoffrey and Kay Abadee, in support of the staff's recommendation.

B. Ex parte communications disclosure forms were submitted by Commissioners Brennan, Groom, Kinsey, and Zimmer.

CHATTEN-BROWN & CARSTENS LLP

TELEPHONE: (310) 798-2400
FACSIMILE: (310) 798-2402

2200 PACIFIC COAST HIGHWAY
SUITE 318
HERMOSA BEACH, CALIFORNIA 90254

E-mail: DPC@CBCEARTHLAW.COM

November 12, 2013

California Coastal Commission
c/o Deanna Christensen
Coastal Program Analyst
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Re: App# A-4-MAL-12-006; Appeal Regarding 25360 Malibu Road, Malibu CA: APN 4459-017-005; Thursday, November 14, 2013 agenda item Th 19a.

Honorable Commissioners:

On behalf of appellant Andrew Gombiner, we appreciate your consideration of our appeal of the approval of the City of Malibu's grant of a Coastal Development Permit (CDP) for 25360 Malibu Road. We, along with former Coastal Commissioner Sara Wan, have been in communication with you and your staff regarding this appeal and would like to summarize the following responses to the staff report for this matter. In short, contrary to the recommendation of the staff report, there are sufficient grounds for the Commission to find Substantial Issue and to review this Project as set forth in our June 28, 2012 supplemental letter and earlier correspondence.

A. Substantial Issue Exists Because of the Potential Significant Threat the Project Poses to Adjacent Existing Development.

A substantial issue exists because offsite properties may be impacted when only part of a major slide on one property is stabilized. Andrew Gombiner's geological consultant, Don Kowalewsky, reviewed the Project and concluded that there has been a failure to address the possibility that any development on this property may adversely affect adjacent properties by causing a change in the motion, geometry and velocity of an active landslide. A landslide destroyed the previous building on this property and a residence north of Malibu Road so the threat of further landslides is a foreseeable danger.

The Malibu building code and LCP Local Implementation Plan together specifically require that no building permit may be issued where the proposed project may adversely affect offsite properties. (Enclosure 2.) Malibu Building Code section 111 requires that a geotechnical engineering report for proposed development "shall contain a finding regarding . . . the effect that the proposed building or grading

construction will have on the geotechnical stability of property outside of the building site." (Geotechnical Review Sheet, October 14, 2004; Item 1 Page 2.) The Local Implementation Plan requires that "The geologic/soils/geotechnical report shall include a statement . . . that the development *will in no way contribute to instability on or off the subject site*." (Malibu LCP Local Implementation Plan, section 9.4, page 171, emphasis added; see Staff Report, p. 12.) The staff's conclusion that the LCP only requires a "Statement" regarding the effect on offsite properties, and not a factually based finding, is incorrect. Whether a statement or a finding is required is a distinction without a difference. It is a bedrock principle of administrative law that Code of Civil Procedure section 1094.5 imposes "a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.)

There has been no finding based on sufficient data and calculations to demonstrate that there will be no adverse effect on offsite properties. Coastal Commission staff geologist, Dr. Johnsson, states, "Given the slide's history, however, its reactivation in the future is certainly possible." (October 25, 2013 Geotechnical Review Memorandum of Mark Johnsson, Staff Geologist, to Deanna Christensen, p. 8.) Similarly, City Engineering Geology Reviewer, Chris Dean, stated:

> To be in compliance with Section 111 of the Building Code, the geotechnical report must include a **finding** regarding 'the effect that the proposed building or grading construction will have on the geotechnical stability of property outside of the building site'. Well documented historic landslide movements of the recent landslide (Qly) mapped the side scarp of the landslide as crossing the subject site. Adjoining properties experienced relatively less damage because the landslide side scarp did not cross their properties. Will the installation of soldier piles on the subject site force the landslide side scarp onto the adjoining property, potentially adversely affecting the offsite property?

(Geotechnical Review Sheet, October 14, 2004; Item 1 Page 2, emphasis added.)

The City of Malibu's Local Coastal Program (LCP) thus requires that there be no effect to offsite properties, yet no investigation or study was performed to determine the actual effect. The opinion of City Engineering reviewer Dean that based on his experience there would be no impact on adjoining properties is an opinion that is not supported by fact, and thus is not substantial evidence to support a finding there would be no offsite impacts. The project geotechnical consultant, Sassan Geosciences, never made an analysis of the effect on offsite property. They simply rendered the following opinion without analytical or factual support :

> The proposed improvements will create a resisting wedge that has never been

> there before. This resisting wedge is designed to stop all movement at subject property. This wedge is not designed and cannot be designed to solve the landslide problem that exist offsite. . . The proposed improvements will not have an adverse effect on the geologic stability of the properties outside of the building site.

(Sassan Geosciences, Inc., "Addendum No 6 to Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu" dated 1/18/05 page 2 of 8.) Although there are hydrogers to dewater the slide area, that does not constitute any guarantee against further landslide movement. The fact that the slide area has not moved in a long time may be more due to the absence of an El Niño winter recently rather than the efficacy of the hydrogers.

Since no investigation or study has been performed, there was no finding of the absence of impacts on offsite properties as required by current building codes and the policies of the LCP. Thus, the approval without supportive factual findings creates a Substantial Issue.

B. The City of Malibu's Interpretation, and the Commission's Decision, Have a Statewide Significance Because of the Issue of Partial Stabilization of Landslide Areas Affecting Offsite Properties.

In this CDP approval, the movement of an unstabilized area of a landslide which would be only partially stabilized was not analyzed. Thus, a Substantial Issue is created because anywhere in the state work could be performed to stabilize only a portion of a landslide, without consideration for the effects on unstabilized portions of landslide areas offsite. The three dimensional stability analyses performed by Sassan Geosciences, Inc. ("Sassan") for the applicant demonstrated that the property north of the site (upslope of the proposed soldier pile wall) will be stable (Staff Report, p. 15), but Sassan did not evaluate nor address the properties to the east and northeast, and did not address the potential effect of creating a new shear boundary on adjacent properties. (Enclosure 1, p. 1.) The Sassan report did not address the fact that the rest of the landslide will remain unstable and that any future movement must develop a side scarp. Since this side scarp will not be through the subject property, it must develop elsewhere on offsite properties, and consequently, the offsite properties will be affected in violation of the building code and LCP.

Mr. Gombiner's consulting geologist Donald Kowalewsky has noted that a three dimensional stability analyses performed at the request of the Coastal Commission's geologist, Mark Johnsson, for the property upslope of the proposed soldier pile wall was incomplete since it only looked at the property immediately north of the wall but did not look at the impacts west, east, or northeast where it might affect other properties. (Enclosure 1.) The safety factor of the existing landslide is equal to 1.0 or less because it

has a recurring history of movement. The proposed soldier piles will provide a safety factor of 1.5 for the subject property. Obviously there is a proposed change in conditions. A properly implemented three dimensional stability analyses of the entire landslide with and without the proposed soldier piles should show that future movement will have side scarps on the east and west sides, as it has had in the past, and that the implementation of soldier piles only on the extreme west end will force a new side scarp on the west side that will not be through the subject property (25360 Malibu Road). Therefore, it must be through offsite properties. This will be a change in landslide motion, geometry, and acceleration. Since shearing along side and head scarps of the landslide resulted in the loss of three structures in the past, the development of a new side scarp has the very real possibility of destroying, or at least adversely affecting, offsite structures.

C. Precedential Value of the Decision for Future Interpretation of the Malibu LCP.

A fundamental issue of this appeal is how Malibu interprets its LCP since the City did not require a study of the offsite impacts even though the LCP requires such a study, thus setting an adverse precedent which could apply to future coastal development permits. The staff report incorrectly states that "although the appeal does raise factual questions because the local action does not set an adverse precedent for future coastal development permits, the issues raised are not substantial." (Appeal Staff Report, p. 3.) The landslide area under the project site affects more than just this project. There are 28 properties in the Landslide Assessment District, 27 of which are affected by the slide.

Clearly, there must be a legal basis for the LCP requirement that a finding be made that there should be no impact on adjoining properties. Unless the City has a factual basis for making such a finding, no such finding can be made. The failure to make such a required finding of fact sets a precedent for any other CDPs in Malibu involving a landslide area underlying multiple properties. There are numerous landslides in Malibu, so this precedent could be set for a large number of properties.

D. Failure to Meaningfully Analyze Alternatives.

While geologic hazards of the site have been identified their impact on off-site properties and ways to avoid them have not been analyzed. Staff did not analyze alternatives as requested in the appeal. Our June 28, 2012 letter to Coastal Program Analyst Deanna Christensen identified three specific alternatives: (1) using a rigid foundation system on the western half of the property; (2) using a design that would allow earth to flow around individual caissons; and (3) placement of the development on the stable part of the site. The appeal was not based on a cantilever design being the only alternative. However, staff only analyzed the possibility of using a cantilever design and agreed with the applicant's engineer who found it infeasible because the forces (under seismic condition) that would be placed on the caissons by cantilevering result in

"unacceptable eccentricities." (Staff Report, p. 16.) Staff relies on the constraints with locating the onsite wastewater treatment system and stabilizing it as the reason a foundation system with a flow through design or a smaller residence would be infeasible. However, there is no explanation for why the wastewater treatment system could be not re-designed to be contained on or over the stable portion of the site. Staff relies on assertions of the project's applicants that there is not sufficient space for the entire system (Staff Report, p. 16) without disclosing or examining the factual basis for these assertions. A smaller structure with fewer bedrooms and less fixture units would require a smaller disposal field that would fit in the space available and meet Health Department standards.

Although staff did not address a smaller home in their report, there is no reason why a smaller home would be infeasible. There is no potential claim of a taking here, as the takings doctrine is not applicable in cases of natural hazards. The Malibu Building Code confirms "the Building Official may. . . deny a permit for any building, structure or grading subject to a hazard of a geotechnical nature which cannot be mitigated and may endanger the health or safety of the occupants, adjoining property or the public." (Malibu Building Code, section 110.2.3.9, emphasis added.) Additionally, in this case, the property was purchased for significantly less than the market value for buildable property. The purchase price was $550,000 when buildable lots nearby were selling for $1 million to $1.5 million. The building file at the City of Malibu had records of a previous property owner trying to build on the lot and the City of Malibu raising geotechnical issues that could not be overcome. There was further documentation in the City's file of the previous structure on the same site that had to be torn down. Thus, given all the history of the site being public record, the applicant was on notice of the significant challenges with respect to the property. The applicant was likely aware, and certainly should have been aware, of the problems associated with developing this lot and cannot claim that being required to build a smaller home fails to meet reasonable investment expectations.

While reducing the size of the proposed building may be necessary, such regulatory requirements in the interest of public health, safety, and welfare are allowable without running afoul of the constitutional prohibition on regulatory takings. Substantial diminutions in property values can occur without creating public agency liability for a taking. (*Hadacheck v. Sebastian* (1915) 239 U.S. 394 [92.5% diminution in value]; *William C. Haas Co. v. City of San Francisco* (9th Cir. 1979) 605 F.2d 1117 [95% diminution in value].) It is sufficient if there remains a "reasonable beneficial use." (*Williamson County Planning Comm'n v. Hamilton Bank* (1985) 473 U.S. 172, 194.) Moreover, not every land-use restriction, which designates areas on which no development is permitted, results in a compensable taking. The governing constitutional authority recognizes that the impact of a law or regulation as applied to a specific piece of property determines whether there has been a compensable taking. Compensation need not be paid unless the ordinance or regulation fails to serve an important governmental

purpose or "goes too far" as applied to the specific property that is the object of the litigation. (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415.) Restricting development to the stable portion of the site would not "go too far." On the contrary, it would be the minimum restriction necessary to protect adjacent properties.

Conclusion.

In summary, the Commission should find a Substantial Issue because the Project applicant has not demonstrated that the proposed Project is consistent with the LCP as it relates to off-site hazards and the Project will set an adverse precedent for the interpretation of the Malibu LCP with regards to necessary findings for hazards. It will also set a statewide precedent as it relates to the stabilization of only a part of a landslide area. The Project applicant must be required to meaningfully analyze the feasibility of alternative designs, including the reduction of the size of the Project so that it can be built on the stable part of the property and the construction of foundation caissons that would allow the flow of earth movement around them and thus prevent any impact off-site.

Thank you for your consideration.

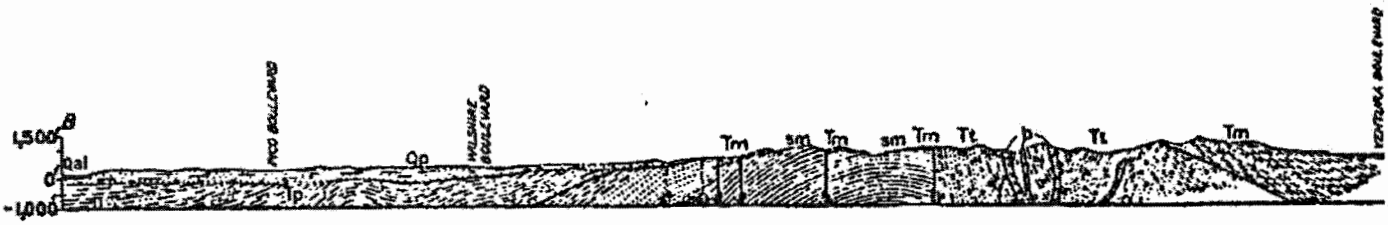
Sincerely,

Douglas P. Carstens

Enclosure:

1. October 28, 2013 Letter from Don Kowalewsky to Douglas Carstens
2. Malibu Requirements for Findings

ENCLOSURE 1



Donald B. Kowalewsky
ENVIRONMENTAL &.
ENGINEERING GEOLOGY

October 28, 2013
Job # 00628E7.002

Doug Carstens
CHATTEN-BROWN & CARSTENS
2200 Pacific Coast Highway, Ste. 318
Hermosa Beach, CA 90254

SUBJECT: Engineering Geologic comments on Coastal Commission Appeal Staff Report prepared for 25360 Malibu Road, California. Appeal No. A-4-MAL-12-006

Item 1. Page 3 paragraph 3, lines 2 through 6 of the staff report states (2) there is sufficient evidence in the City's record that the approved project will assure stability and structural integrity, both on- and off-site ..." However, Johnson states "Given the slide's history, however, its reactivation in the future is certainly possible. (P8) and "Although no one can guarantee that the landslide retention system will not affect offsite properties, in my judgement, the project geotechnical team has been held to a very high standard, and the proposed design meets or exceeds the standard of care commonly exercised in the profession." (P11).

The key is that no one can guarantee that there will be no effect no offsite properties. In fact no investigation nor study has been performed to determine what the actual effect may be. Therefore no "Finding" can be made.

Item 2. Page 3 paragraph 3, lines 2 through 16 of the staff report states "In addition, although the appeal does raise factual questions, because the development is relatively small in scope, will not have an adverse effect on significant coastal resources, and does not raise issues of regional or statewide significance, and because the local action does not set an adverse precedent for future coastal development permits, the issues raised are not substantial."

A substantial issue should be an item affecting safety and specific items addressed in building codes and the LCP. The negative effect of a project on offsite property must be

27101 Old Chimney Road
Malibu, California 90265

☎ (310) 457-2456
Email:maliburock@gmail.com

properly addressed. Failure to do, or allowing a project to ignore or inaccurately address the effect on offsite properties would be a Substantial Issue affecting the entire state.

The staff report states that the LCP requires a "Statement" regarding the effect on offsite properties. That is technically incorrect. The policy requires a "Finding".

Malibu Building Code Section 111: "The Engineering Geology or soils engineering report or both shall contain a **finding** regarding the safety of the site of the proposed work against hazard from landslide, settlement or slippage and a **finding** regarding the effect that the proposed work will have on the geotechnical stability of the area outside of the proposed work".

FINDING vs OPINION Webster's New World Dictionary:
FINDING: The conclusions reached after an examination or consideration of facts or data by a judge, coroner, scholar, etc.
OPINION: A belief not based on absolute certainty or positive knowledge but on what seems true, valid or probable to one's own mind.

The three dimensional stability analyses performed by Sassan demonstrated that the property north of the site (upslope of the proposed soldier pile wall) will be stable, but they did not evaluate nor address the properties to the east and northeast, and did not address the potential effect of creating a new shear boundary on adjacent properties. They did not address the fact that the rest of the landslide will remain unstable and that any future movement must develop a side scarp and since that side scarp will not be through the subject property, it must develop elsewhere, consequently, offsite property will be affected in a manner that has not previously occurred, a violation of the building code and LCP. This, to me, appears to be a Substantial Issue as it applies anywhere in the State where work will be performed to stabilize only a portion of a landslide

Donald B. Kowalewsky
Certified Engineering Geologist 1025

ENCLOSURE 2

The following includes the various sections of documents, including the Malibu Local Coastal Plan (LCP) Land Use Plan LUP, and the Local Implementation Plan (LIP). The LIP refers to the City of Malibu Guidelines for the Preparation of Engineering Geologic and Geotechnical Engineering Reports, February 2002. The Guidelines for the Preparation of Engineering Geologic and Geotechnical Engineering Reports refers to the Malibu Building Code.

Sections for each of those documents have been included on the following pages so that one can follow the chain of documents to see that a "Finding" is actually required by the LCP even though that document refers to a "statement". That "statement" must be based on Findings and Analyses.

Malibu LCP Land Use Plan
Chapter 4 Page 72

4.4 On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.

Chapter 4 Page 73

4.14 New development shall be prohibited on property or in areas where such development would present an extraordinary risk to life and property due to an existing or demonstrated potential public health and safety hazard.

Malibu LCP Local Implementation Plan
Chapter 9 Page 170

9.3. REQUIRED FINDINGS AND ANALYSIS
A. **Written findings of fact, analysis and conclusions** addressing geologic, flood, and fire hazards, structural integrity or other potential hazard **must be included** in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity. **Such findings shall address the specific project impacts relative to the applicable development standards identified in Section 9.4 of the Malibu LIP.** The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. Findings for approval or conditional approval shall conclude that the project as proposed, or as conditioned, conforms to the certified Local Coastal Program. A Coastal Development Permit for the proposed development shall only be granted if the City's decision making body is able to find that:

Chapter 9 page 171

9.4. DEVELOPMENT STANDARDS
All proposed new development located in or near an area subject to geologic hazards shall be required to submit a geologic/soils/geotechnical study report prepared by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) that adheres to the City of Malibu's "Guidelines for the preparation of engineering geologic and geotechnical engineering reports," dated February 2002, and identifies any geologic hazards affecting the proposed development site and any necessary mitigation measures. The geologic/soils/geotechnical report shall include a

statement by the consulting CEG or GE that the project site is suitable for the proposed development, that the development will be safe from geologic hazard, **and that the development will in no way contribute to instability on or off the subject site**. Such reports shall be subject to the review and approval of the City geotechnical staff.

City of Malibu "Guidelines for the preparation of engineering geologic and geotechnical engineering reports dated February 2002.

Section 5 Engineering Geologic Guidelines Page 19

5.7 Mandatory Building Code Statements
Geotechnical consultants shall provide a complete finding in accordance with Section 111 of the Malibu Building Code for all proposed developments, including private sewage disposal systems. Where on-site or off-site geologic or geotechnical hazards prohibit the geotechnical consultant from providing a complete 111 statement, the consultant shall:

- Provide recommendations to mitigate the hazard(s) to comply with the standards outlined in the City's Guidelines; or,
- Have the property owners sign, record at the County of Los Angeles recorder's office, and submit to City geotechnical staff an "Assumption of Risk and Release" (ARR) for the hazard. It should be noted that ARR's are generally not allowed for new habitable construction (new residences, guest houses, studios, commercial projects, multi-family projects, etc.). Requests for the option to sign an ARR for new construction may be made on a case-by-case basis to the Building Official. Copies of the ARR are available at the Building and Safety Department counter at City Hall.

Malibu Building Code Section 111.

Section 111 of the Malibu Building Code states that the geotechnical engineering report ***"shall contain a finding** regarding the safety of the building site for the proposed structure against hazard from landslide, settlement or slippage and a finding regarding **the effect that the proposed building or grading construction will have on the geotechnical stability of property outside of the building site".***

LAW OFFICES OF
GAINES & STACEY LLP
1111 BAYSIDE DRIVE, SUITE 280
CORONA DEL MAR, CALIFORNIA 92625

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCI S. STACEY
KIMBERLY RIBLE
ALICIA B. BARTLEY

TELEPHONE
(949)640-8999
FAX
(949)640-8330

October 29, 2013

Th 19a

Commissioners
California Coastal Commission
45 Fremont Street, #2000
San Francisco, California 94105

Re: Appeal No. 4-MAL-12-006 (25360 Malibu Road LLC)
25360 Malibu Road, Malibu

Dear Commissioners:

On November 14, 2013, I will appear before you on behalf of 25360 Malibu Road LLC the Applicant in connection with Appeal No. 4-MAL-12-006 (25360 Malibu Road LLC). The Appeal is from a decision of the City of Malibu to approve an oceanfront duplex structure on Malibu Road. The Appeal comes from Andrew Gombiner, the owner of the neighboring property to the west at 25362 Malibu Road. The Staff Recommendation is that you find that the Appeal raises **no substantial issue**. The Applicant agrees with that recommendation and urges that you support the Staff Recommendation and vote to reject the Appeal.

I have attached Exhibit 2 to the Staff Report (with Appellant's property noted in red). Malibu Road is developed with structures substantially the same as the City approved here. The approved structure meets all of the stringline, height, bulk and other requirements of the Malibu Local Implementation Plan (the "Malibu LIP"). The Appeal questions the City's geologic review and the geotechnical reports which supported the City's approval. These issues were carefully examined by the City and the City Geologist who approved the project. Public hearings at the City were held before the Planning Commission and the City Council at which these technical issues were argued by the Appellant and his geologist. The City found that the project geologist and engineers had met the requirements of the Malibu LIP to demonstrate site stability.

Chapter 9 of the Malibu LIP provides a detailed series of requirements that must be met for a coastal development permit to be granted. These detailed requirements carry into effect the policy of Public Resources Code §30253 to assure stability and structural integrity. Malibu LIP §9.4.D sets out nine specific findings which must be made on geologic stability. Malibu LIP §9.4.D incorporates the "Guidelines for the preparation of engineering geologic and geotechnical engineering reports" dated February 2002 (LIP §9.4.D.9) as well as the American Society of Civil Engineers, Los Angeles Section (ASCE/SCEC) "Recommended Practices for Implementation of DMS Special Publication 117, Conditions for Analyzing and Mitigating

Landslide Hazards in California." (LIP §9.4.D.3.) The City, after allowing the Appellant extensive public hearing opportunity, found that the Applicant had met the requirements of Malibu LIP §9.4.D and properly demonstrated site stability and the absence of an adverse effect on the geologic stability of properties outside the building site.

After this Appeal was filed on January 26, 2012, Mark Johnsson reviewed all of the reports that the City had received as well as additional letters and reports from both the project geologist and engineers and the Appellant's geologist, Donald Kowalewsky. Johnsson consulted with Commission engineer Leslie Ewing. Johnsson prepared an extensive memorandum. (See Staff Report, Exhibit 7.) Johnsson considered alternatives (1) that had been reviewed by the City, (2) that were suggested by the Appellant, and (3) that were suggested by Johnsson himself. Johnsson's conclusion at page 11 of his memorandum was that "**the proposed design meets or exceeds the standard of care commonly exercised in the profession**." [emphasis added] Johnsson also found that all of the analyzed alternatives were not feasible.

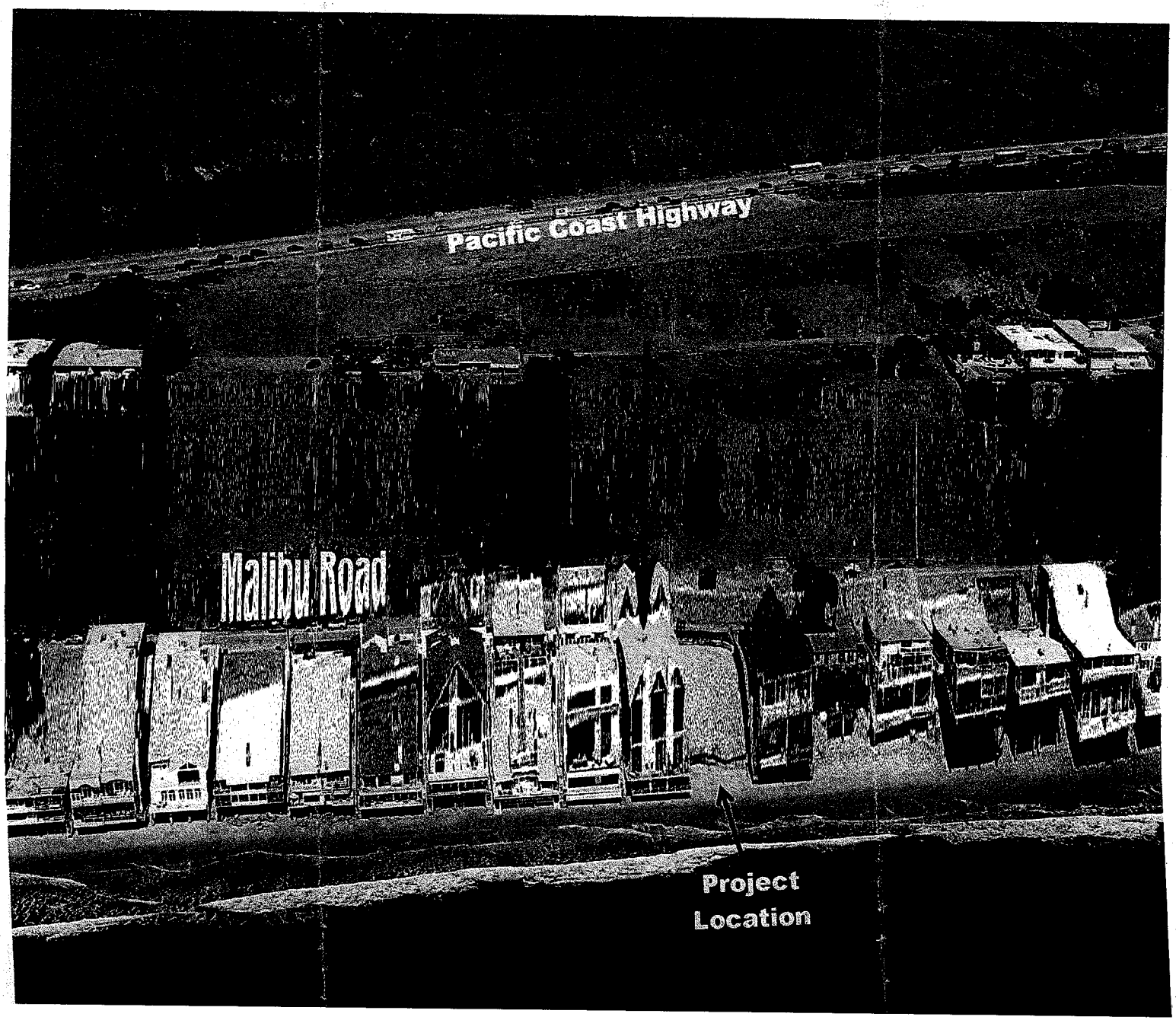
No purpose would be served by additional public hearings by the Commission. The City acted properly with substantial evidence presented in accordance with the Malibu LIP which was drafted and adopted by the Commission. This is affirmed by the Commission geologist and engineer. There are no public access issues. Dan Blocker County Beach is only 13 houses to the west and extends for more than a mile. Additional vertical access to the east is at 25120 Malibu Road. The Applicant has affirmed the public's right of lateral access across the beach in front of the new structure by recorded instrument in favor of the City.

The Applicant has cooperated in one of the most extensive examinations of geologic stability and responded to every request for additional information, calculations and analysis. It is time to bring a multi-year administrative process to a close. The Staff Recommendation is well founded. The Commission should find "no substantial issue".

Sincerely,

SHERMAN L. STACEY

SLS/sh
cc: All Commissioners and Alternates
Deanna Christensen, South Central Coast District
Sol Mussry
Marissa Couglan
Sassan Salehipour, GE
David Weiss, SE
David Poffenberger, PE, QSD


Pacific Coast Highway
Malibu Road
Project
Location

Geoffrey & Kay Abadee
23934 Craftsman Road
Calabasas, CA 91302

November 6, 2013

Commissioners
California Coastal Commission
89 S. California Avenue, 2nd Floor
Ventura, California 90301

Re: Appeal No. A-4-MAL-12-006 (25360 Malibu Road LLC)

Dear Commissioners:

I am the owner of the property located at 25350 Malibu Road which abuts the property at 25360 Malibu Road on the east side. I have been familiar with the plans of the Mussry family to construct a new building on the property. The landslide that previously affected the east half of the Mussry family property affected my property as well. The Geologic Hazard Abatement District has stabilized both properties. If the Mussry family new construction was to have any impact on another property, it would be my property. My own consultants have reviewed the plans for the residence approved by the City including the foundation engineering. I am satisfied that the project will be safe and will not negatively impact my property.

I have **no objection** to the Mussry project. I supported it at the City. I will be out of the country on November 14 or I would come to your hearing. I think that the Mussry family has been through a great deal of unneeded effort to get the permission to build. I ask that you **reject the appeal** from the neighbor on the other side of Mussry and let the project go forward.

Sincerely,

Geoffrey Abadee

Kay Abadee

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Appeal No. A-4-MAL-12-006

Date and time of receipt of communication: November 5, 2013 – 2:00 pm

Location of communication: 800 S. Victoria Ave., Ventura

Type of communication (letter, facsimile, etc.): Telephone conversation

Person(s) initiating communication: Sherman Stacey

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

See attached description of oral communication.

11/5/13
Date

Signature of Commissioner

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

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

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

DISCLOSURE OF EX PARTE COMMUNICATIONS

Date and time of receipt of communication:
November 8, 2013 at 1:00 pm

Location of communication:
Phone

Type of communication:
Teleconference

Person(s) in attendance at time of communication:
Sara Wan, Don Kowalewsky

Person(s) receiving communication:
Carole Groom

Name or description of project:
Item Th19a - Appeal No. A-4-MAL-12-006 (23560 Malibu Road, Malibu)

Detailed substantive description of the content of communication:
Representatives maintain that project lacks findings that indicate there is no effect on offsite property. They indicate that LCP requires a statement based on findings that there is no effect on offsite property and that no study was done to develop these findings. They maintain that findings are necessary because the stabilization of the proposed property will force future land movement to affect 27 offsite properties. This needs to be addressed by proposing alternatives that minimize impact on neighboring properties. They attest that staff consideration of a cantilever approach would be appropriate if the home size was reduced or that other options should be considered in order to address the impact on neighboring properties. Finally, representatives maintain that this proposal will set a precedent regarding the interpretation of the LCP and slide effects on other properties.

Date: 11-8-13

Signature of Commissioner: carole Groom

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Appeal No. A-4-MAL-12-006

Date and time of receipt of communication: October 29, 2013 – 2:30 pm

Location of communication: 3501 Civic Center Drive, San Rafael

Type of communication (letter, facsimile, etc.): Telephone conversation

Person(s) initiating communication: Sherman Stacey

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

See attached description of oral communication.

11/30
Date

Signature of Commissioner

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

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

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

Stacey stated that he represented 25360 Malibu Road, LLC, the Applicant in Appeal No. A-4-MAL-12-006 and that the appeal had been pending since January 2012. Stacey stated that the appeal was from a decision of the City of Malibu to approve a duplex on the property. Stacey stated that the staff recommendation was for no substantial issue and that the Applicant supported the Staff Recommendation. Stacey had emailed me a letter earlier in the afternoon which he said was sent to all Commissioners. The letter showed a copy of Staff Report Exhibit 2 that identified the Applicant's property. Stacey stated that the proposed project was reviewed and approved by the City Geologist and Engineer as well as by the City Planning Commission and City Council. Stacey stated that to determine whether or not to recommend that the Commission find substantial issue to the appeal, the District Staff, along with Commission Geologist Mark Johnsson and Commission Engineer Leslie Ewing, examined all of the numerous reports concerning the property, the landslide, the geologic hazard district reports, along with the Applicant's and the Appellant's geology reports. Stacey referred me to Mark Johnsson's 12 page memorandum at Exhibit 7 to the Staff Report which listed the 57 reports which he reviewed. Stacey stated that Johnsson also asked for specific reports on alternatives which the Applicant had performed by his geologist and structural engineer. Stacey stated that Johnsson concluded that the City had approved the project with the findings required by the Malibu LIP based upon reports that met or exceeded the standard of care commonly exercised in the geology and engineering professions. Stacey stated that the Staff carefully evaluated the standards for substantial issue used by the Commission and that the recommendation of no substantial issue was well supported.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS
FORM FOR DISCLOSURE OF
EX PARTE COMMUNICATIONS

Name or description of project: Th 19a 25360 Malibu Road Appeal A-4-MAL-12-006

Date and time of receipt of communication: 11/11/2013 9:00 a.m.
Location of communication: Santa Barbara

Type of communication (letter, facsimile, etc.): telecon 716 748 0224 1023862#

Person(s) initiating communication: Sara Wan Appellant Gombiner

Geologist Don Kowalewsky was the geologist for County L.A. when the original structure was destroyed, and was the City's geologist, subsequently a private consultant, total 30 years.

Wan represents Gombiner, neighbor to west. The issue is impact on neighboring property, concerns on how it affects adjoining.

This is Substantial Issue for four reasons:

1. No factual or legal support because no actual findings were made for the City's action; only a statement of opinion and no subsequent analysis of offsite impacts. Johnsson states that reactivation is possible/ remains a hazard. Key is LCP requires no offsite impacts. There was no finding made.

2. Statewide impact: the three dimensional analysis demonstrated that the property upslope will be stable, but did not evaluate east and northeast, did not look at effect of new shear boundary;

Kowalewsky: when landslide moved 1978-83, 3 structures were lost.

They did a 3 dimensional analysis upslope, but did not do it elsewhere. If you stabilize only part of the slope, what happens to the rest?. This is a substantial issue everywhere in the state. Setting a precedent statewide.

3. Precedential value of the decision: staff says action does not set a precedent. But this landslide affects more than this one property. There are 28 properties in the slide assessment district. 27 properties are affected by the slide. So this approach relates to all of those properties.

City geologist said there is no way to determine whether putting a stabilization device on one property will affect others. There are ways to do an analysis, they did it partially. They did a three dimensional analysis at Johnsson's request, but only upslope . They can do it, they just did not.

No basis for finding that there is no impact on adjacent. The Coastal Commission staff wrote this LCP and this requirement of findings now should not be ignored.

4. Failed to analyze alternatives. Johnsson says the analysis is adequate. They have never questioned whether the home would be stable. The issue is the effect on offsite properties. No study done to

show the offsite impacts. The wedge is not designed and cannot be designed to solve the landslide problems offsite. Staff did not fully analyze alternatives. They concluded that the size could be reduced, and caissons could be designed differently. Only analyzed a cantilevered design and agreed with applicant's engineer. Did not deal with the issue of the redesign.

Have there been any discussions to reach an agreement by the parties to address these concerns? Not except an offer of money. This has gone on for a long long time because the applicant only did a partial analysis, did not submit till this past August. There was almost a year between his submittals. Lots of attempts to resolve.

Was there a condition requiring the applicant to assume liability for any damage for offsite property? No

Back in 1978, the county would not approve this project, engineer said they would approve it with a hazard waiver. When the house was lost, the owner nevertheless sued and won. So an assumption of risk/liability would not help.

There are a host of reasons that SI is appropriate so that CCC can do alternatives analysis.

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

Th 19a

Important Hearing Procedure Note:
This is a substantial issue only hearing. Public testimony will be taken only on the question whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly.

Appeal Filed:	1/26/2012
49th Day:	Waived
Staff:	D. Christensen - V
Staff Report:	10/25/2013
Hearing Date:	11/14/2013

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

APPEAL NO.: **A-4-MAL-12-006**

APPLICANT: **25360 Malibu Road, LLC**

APPELLANT: Andrew Gombiner

LOCAL DECISION: Coastal Development Permit (#07-155) approved by the Malibu City Council on January 9, 2012

PROJECT LOCATION: 25360 Malibu Road, City of Malibu, Los Angeles County (APN 4459-017-005)

PROJECT DESCRIPTION: Construction of a new 28 ft. high, two-story, 6,015 sq. ft. duplex with attached garages on a deepened caisson pile foundation with a soldier pile wall along the north property line consisting of five 8-ft. diameter soldier piles, alternative on-site wastewater treatment system, new timber bulkhead with return walls to replace existing timber bulkhead, beach access stairs, 114 cu. yds. of grading, 5 ft. wide view corridors on either side of the structure, and an offer-to-dedicate a lateral public access easement along the shoreline from the mean high tide line to the dripline of the deck.

STAFF RECOMMENDATION: No Substantial Issue Exists

MOTION & RESOLUTION: Page 6

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified LCP or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Staff recommends that the Commission, after public hearing, determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. The motion and resolution for the "no substantial issue" finding are found on **page 6**.

The City of Malibu approved a Coastal Development Permit (CDP) for construction of a new two-story, 6,015 sq. ft. duplex on a deepened caisson pile foundation with a soldier pile wall along the north property line consisting of five 8-ft. diameter soldier piles, a new alternative on-site wastewater treatment system, a new timber bulkhead with return walls to replace existing timber bulkhead, 5 ft. wide view corridors on either side of the structure, and a lateral public access easement offer-to-dedicate along the shoreline from the mean high tide line to the dripline of the deck. The approved project is located on a vacant beachfront property at 25360 Malibu Road, at the western end of Puerco Beach between Malibu Road and the beach. The site is an infill parcel that is adjacent to existing multi-family beachfront residences on both sides. The project site, and adjacent sites, are zoned Multi-Family Beachfront (MFBF), which permits the development of multi-family residential structures.

The subject property is located within an area of known, mapped landslides. On the slopes between Pacific Coast Highway and the beach in this area, there is a larger, ancient landslide mass and a smaller, recent landslide mass that has been active in the past. The toe and western slide scarp of the recent landslide extends in a northwest to southeast direction across the eastern portion of the subject property. Intense rains during the 1977-1978 and 1979-1980 storm seasons triggered movement of portions of the ancient landslide at various locations along the western portion of Malibu Road, including on the subject property, where a previously existing apartment building on the site suffered significant damage and was eventually demolished in approximately 1983. Following activation of the landslide, the Malibu Road Landslide Assessment District was established for this area that is administered by the City. A de-watering system was installed along the north side of Malibu Road in this area, which has been very successful in lowering the water table and increasing the stability of the landslide. Although the dewatering system has performed well, the landslide remains a hazard that affects the subject site and re-activation of the landslide is possible.

The appellant contends that the geologic reports and analysis the City relied upon in its action approving a multi-family residence on the subject property are incomplete, inaccurate, and have not adequately demonstrated that the approved development's location and manner of stabilizing an active landslide will not adversely impact off-site properties. Particularly, since the subject property is located at the side scarp of an active landslide, the appellant asserts that stabilizing a portion of the landslide with the approved soldier pile wall will create a new side scarp and deflect the landslide mass onto adjacent properties, particularly the appellant's residence to the west. Further, the appellant asserts that the City did not adequately examine siting and design alternatives that would allow unobstructed movement of the landslide material in order to avoid potential deflection.

Given the history of the geologic hazards in this area, the City's administrative record for the subject permit reflects an extensive geologic/geotechnical review of the project by the City Geologist. The City's record contains many detailed geologic reports and subsequent supplemental and addenda reports, which were reviewed and approved by the City Geologist. After much analysis of the current and historical information, and exchange with the project's geotechnical consultant, the City Geologist determined the information to be adequate and concluded the project is consistent with the standards of the LCP regarding safety and stability, both on-site and off-site.

Given the complicated history of the landslide in this area and significant movement that has occurred in the past, Commission staff thoroughly explored the merit of the appeal contentions. It has taken Commission staff considerable time reviewing the City's extensive record, including the many geologic reports, and carefully analyzing the merits of the appeal. Commission Staff Geologist, Dr. Mark Johnsson, reviewed the geologic information in the record and communicated at length with the applicant's geologist, the City Geologist, and the appellant's geologist. The difficulty here is that due to the nature of the science, geologists can never assert with absolute certainty that stability will be guaranteed in the future. While Commission staff requested additional information from the applicant during analysis of the appeal (three-dimensional slope stability analysis and cantilever alternative analysis), that additional information was only requested in order to further explore the appellant's contentions and to confirm the findings in the City's record.

It is Dr. Johnsson's professional judgment that (1) the geologic hazards affecting the site have been accurately identified and analyzed in relation to the approved development; (2) there is sufficient evidence in the City's record that the approved project will assure stability and structural integrity, both on- and off-site, and that it has been sited and designed to minimize risks to life and property from geologic, flood, and fire hazard, consistent with the hazard policies of the LCP; and (3) the applicant's geotechnical consultants have been held to a very high standard by the City and their analysis and design in this case meets or exceeds the standard of care commonly exercised in the profession. The project approval will not be an adverse precedent for future residential developments affected by geologic hazards and the hazard issues raised by the appeal relate only to local issues. Further, the approved development is supported by substantial evidence in the record and will not have an adverse effect on significant coastal resources. In addition, although the appeal does raise factual questions, because the development is relatively small in scope, will not have a significant adverse effect on significant coastal resources, and does not raise issues of regional or statewide significance, and because the local action does not set an adverse precedent for future coastal development permits, the issues raised are not substantial. Therefore, staff recommends that the Commission find that the appellant's contentions regarding geologic hazards raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the certified LCP, or the public access policies in Chapter 3 of the Coastal Act.

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EXHIBITS

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), certain local government 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 may be appealed if the development authorized will 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 action on an application for development that constitutes a major public works project or a major energy facility may also be appealed to the Commission. (Coastal Act Section 30603[a][5]).

The project site at issue in this appeal is located on a beachfront property at 25360 Malibu Road in the City of Malibu (Exhibit 1). As there is a beach at this location, the appeal jurisdiction for this area extends 300 feet inland from the inland extent of the beach. As such, the entire project site is within this appeal area and the City's coastal development permit for the subject project is appealable to the Commission.

2. Grounds for Appeal

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

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issues, and that the Commission will therefore not review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Review

Should the Commission determine that a substantial issue does exist, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the entire proposed development is in conformity with the certified Local Coastal Program and, for projects between the sea and the first public road paralleling the sea, the public access and recreation policies of Chapter 3 of the Coastal Act. (Coastal Act Section 30604[b] & [c]) Thus, the Commission's review at the de novo stage of the hearing is *not* limited to the appealable development as defined in Section I.A.1.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was approved by the City of Malibu Planning Commission on September 6, 2011. The action by the Planning Commission was appealed to the Malibu City Council by Andrew Gombiner on September 16, 2011. The appeal was denied and the permit for the project was approved by the Malibu City Council on January 9, 2012. The Notice of Final Action for the project was received by Commission staff on January 17, 2012. Commission staff provided notice of the ten working day appeal period, which began on January 18, 2012, and ended on January 31, 2012. Andrew Gombiner filed the subject appeal on January 27, 2012, during the Commission's appeal period (Exhibit 6). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on February 7, 2012. Pursuant to section 30621(a) 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, but according to section 30625(a), the applicant can waive that time limit. On January 27, 2012, prior to the 49 day deadline for Commission action, the applicant waived their right to a hearing within 49 days in order to allow Commission staff adequate time to review the City's vast administrative record, including the technical reports associated with the project.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE QUESTION – MOTION AND RESOLUTION

MOTION:

I move that the Commission determine that Appeal No. A-4-MAL-12-006 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

*The Commission hereby finds that Appeal No. A-4-MAL-12-006 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.*

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE DETERMINATION

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND SETTING

The project approved by the City of Malibu is for construction of a new 28 ft. high, two-story, 6,015 sq. ft. duplex with attached garages on a deepened caisson pile foundation with a soldier pile wall along the north property line consisting of five 8-ft. diameter soldier piles, new alternative on-site wastewater treatment system, new timber bulkhead with return walls to replace existing timber bulkhead, beach access stairs, 114 cu. yds. of grading, 5 ft. wide view corridors on either side of the structure, and recordation of an offer-to-dedicate a lateral public access easement along the shoreline from the mean high tide line to the dripline of the deck (Exhibits 3 and 8).

The approved project is located on a 0.18-acre (7,889 sq. ft.) beachfront property at 25360 Malibu Road, at the western end of Puerco Beach between Malibu Road and the beach. The site is an infill parcel that is adjacent to existing multi-family beachfront residences on both sides (Exhibits 1-2). The project site, and adjacent sites, are zoned Multi-Family Beachfront (MFBF), which permits the development of multi-family residential structures.

The subject beachfront property is vacant and consists of relatively flat topography. However, there is a steep, 5-ft. high manufactured slope on the landward side of the site, adjacent to Malibu Road within the road right-of-way, which slope is retained by a railroad tie wall. There is also an existing timber pile bulkhead with chain-link fence extending across the property, located approximately 65 ft. seaward from the northern property line. The existing bulkhead is a remnant of a former residential structure that had existed on the property and was demolished, as discussed further in subsection B below. The existing bulkhead has not been removed from the site because the City has indicated that it is providing flank protection for the adjacent properties. The approved project includes replacing the existing bulkhead (in the same location) in order to adequately protect the proposed septic system from threat by wave action. The City's certified LCP prohibits shoreline protective structures to protect new development, except when necessary to protect a new septic system, and the protective structure has been sited as far landward as feasible. In its action on the subject permit, the City found that protection for the proposed septic system is required and the new system and required bulkhead are sited as far landward as feasible, consistent with the shoreline development provisions of the LCP.

B. PRIOR SITE DEVELOPMENT AND GEOLOGIC BACKGROUND

The subject property is located within an area of known, mapped landslides. The property is also located in the Malibu Road Landslide Assessment District, which is administered by the City and provides permanent funding to maintain and monitor dewatering facilities with the purpose of stabilizing the landslide to the extent feasible using dewatering methods.

Landslide activity has been an issue along Malibu Road for many years. A large ancient landslide complex has been known to underlie this part of Malibu since at least 1961, when it was mapped by the U.S. Geological Survey (Schoellhamer and Yerkes, 1961). In 1972, prior to the effective date of the Coastal Act, a three unit, two story apartment building was constructed on the property, authorized by Los Angeles County. As part of the County's permit process for the development, the property owner was required to sign and record a covenant and agreement (Slide Waiver) acknowledging the site is subject to physical hazards of a geologic nature and agreeing to relieve the County of liability for any damage or loss resulting from the issuance of a building or grading permit.

Intense rains during the 1977-1978 and 1979-1980 storm seasons triggered movement of portions of the ancient landslide at various locations along Malibu Road, including the subject property, where the apartment building suffered significant damage. Attempts were made to stabilize the site by installation of a series of concrete caissons along Malibu Road (without the benefit of required permits); however, after further landslide movement and additional site damage, the property owner had the building demolished in approximately 1983. All development was removed from the site except for the timber bulkhead, which was retained to provide flank protection for adjacent properties.

Following activation of the landslide in this western Malibu Road area in 1978-1979, several geologic investigations were undertaken to analyze the slide. The Malibu Road Landslide Assessment District was established for this area in 1981 by the County of Los Angeles (the County administered the assessment district until 1991 when the City incorporated). A de-watering system was installed along the north side of Malibu Road in this area which has lowered the water table and increased the stability of the landslide. The Assessment District currently maintains 23 hydraugers and 13 vertical wells that actively dewater the slide mass. Groundwater elevations are monitored with 14 functioning piezometers, and ground movement is monitored with 5 functioning inclinometers, three in the slide mass and two above it, in the older (ancient) slide mass (Exhibit 4).

Following heavy rains associated with the 1997-1998 El Niño, the landslide began rapid movement once more, along slide planes between 32 and 38 feet below Malibu Road. A graben developed across the subject property, and the bulkhead was deflected approximately 4 feet. Slide movement peaked at about 8 inches per month in March 1998. The rate then dropped remarkably with the onset of summer conditions and the installation of additional dewatering wells and horizontal drains. No further movement was detected in inclinometers installed in the slide until January through March of 2005, a particularly wet year, when inclinometers indicated up to 0.5 inch of movement. No movement has been detected since that time (through June 2011).

In recent years, several more geologic investigations have been conducted in relation to proposed development of the subject property. Underlying the beach sand and artificial fill deposits on the site are at least two generations of landslide deposits; an upper "younger" (i.e., recent) landslide and an older (i.e., ancient) landslide. Most of the landslide is situated off-site to the north, on the slopes between Pacific Coast Highway and the beach. However, the toe of the landslide has been depicted as lying just south of Malibu Road, clipping the northeast corner of the subject parcel (Leighton and Associates, 1979). This is the slide geometry used in all of the Malibu Road Landslide Assessment District monitoring reports.

However, geologists' interpretation of slide geometry has changed over time as additional information has become available. The applicant's geologist has depicted the slide plane as deeper and extending farther seaward on the subject property than the slide plane depicted by Leighton and Associates (Exhibit 5). The applicant's geologist has depicted the approximate western slide plane of the landslide as extending across the property in a northwest to southeast direction. Slide geometry, depth to the slide plane, and direction of bedding dip were the subject of a lengthy exchange between the City's geotechnical review staff and the applicant's geologist. Commission Staff Geologist, Dr. Mark Johnsson, has reviewed the numerous geotechnical engineering and engineering geology reports associated with the subject property and the City's action and prepared a memorandum (Exhibit 7). In Dr. Johnsson's professional judgment, the slide geometry at the site has been accurately depicted by the applicant's geologist (Exhibits 5) and analyzed in relation to the proposed development that was approved by the City of Malibu.

C. APPELLANT'S CONTENTIONS

The City's action was appealed by Andrew Gombiner, the owner of the adjacent property to the west at 25362 Malibu Road. The appeal was filed on January 27, 2012, attached as Exhibit 6. The appellant contends that the approved development is inconsistent with the hazard policies of the LCP (Coastal Act Section 30253 incorporated into the LCP as a policy, and LUP Policies 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6). The appellant contends that the geologic reports and analysis the City relied upon in its action are incomplete, inaccurate, and have not adequately demonstrated that the approved development's location and manner of stabilizing an active landslide will not adversely impact off-site properties. The contentions of the appeal are discussed and addressed in greater detail below.

Pursuant to Coastal Act Section 30603 (b)(1), as stated above, the grounds for appeal are limited to an allegation that the appealable development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies set forth in Coastal Act. In this case, the appeal cites several hazard-related policies of the LCP.

D. CORRESPONDENCE

On October 24, 2013, Commission staff received a letter from the appellant's attorney, Douglas Carstens, which provides a response to the August 12, 2013 alternative analysis provided by the applicant. Mr. Carstens letter, attached as Exhibit 10, indicates that the applicant's alternative analysis only addresses a cantilever design alternative, but that there are other design alternatives that were not addressed by the applicant, including a smaller structure that may be cantilevered over the unstable portion of the site. Commission staff would note that other alternatives are

addressed in Section E1 below. Mr. Carstens letter also reiterates a contention made in the subject appeal regarding slide geometry inaccuracies and the lack of sufficient basis for the project geotechnical consultant's conclusions regarding safety and stability. These issues are also addressed in Section E1 below.

E. 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 appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal cites several hazard policies of the 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:

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

In this case, for the reasons discussed below, the Commission determines that the appeal raises no substantial issue with regard to the grounds on which the appeal has been filed, as discussed below.

1. GEOLOGIC HAZARDS

LCP Policies Cited in the Appeal

The appellant references the following specific LCP policies related to hazards.

Coastal Act Section 30253, which is incorporated into the Malibu LCP as a policy, states (in applicable part):

> *New development shall:*

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

LUP Policy 4.1:

The City of Malibu and the Santa Monica Mountains coastal zone contains areas subject to hazards that present substantial risks to life and property. These areas require additional development controls to minimize risks, and include, but shall not be limited to, the following:

a. Low Slope Stability &Landslide/Rockfall Potential: hillside areas that have the potential to slide, fail, or collapse.
b. Fault Rupture: the Malibu Coast-Santa Monica Fault Zone.
c. Seismic Ground Shaking: shaking induced by seismic waves traveling through an area as a result of an earthquake on a regional geologic fault.
d. Floodprone areas most likely to flood during major storms.
e. Liquefaction: areas where water-saturated materials (including soil, sediment, and certain types of volcanic deposits) can potentially lose strength and fail during strong ground shaking.
f. Liquefaction/Floodprone areas where saturated sediments lie in flood plains.
g. Tsunami: shoreline areas subject to inundation by a sea wave generated by local or distant earthquake, submarine landslide, subsidence, or volcanic eruption.
h. Wave Action: shoreline areas subject to damage from wave activity during storms.
1. Fire Hazard: areas subject to major wildfires classified in Fire Zone 4 or in the Very High Fire Hazard Severity Zone.

LUP Policy 4.2:

All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

LUP Policy 4.3:

Information should be provided to the public concerning hazards and appropriate means of minimizing the harmful effects of natural disasters upon persons and property relative to siting, design and construction.

LUP Policy 4.4:

On ancient landslides, unstable slopes and other geologic hazard areas, new development shall only be permitted where an adequate factor of safety can be provided, consistent with the applicable provisions of Chapter 9 of the certified Local Implementation Plan.

Related to the referenced Policy 4.4 is LIP Section 9.4(D), which states (in applicable part):

New development proposed on landslides, steep slopes, unstable or weak soils or any other identified geologic hazard area, shall be permitted only where a factor of safety of 1.5 (static)

and a factor of safety of 1.1 (pseudo static) can be provided. Such analysis shall adhere to all provisions of the City of Malibu's "Guidelines for the preparation of engineering geologic and geotechnical engineering reports," dated February 2002.

LUP Policy 4.5:

Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.

LUP Policy 4.6:

The remediation or stabilization of landslides that affect existing structures or that threaten public health or safety may be permitted. Alternative remediation or stabilization techniques shall be analyzed to determine the least environmentally damaging alternative. Maximum feasible mitigation shall be incorporated into the project in order to minimize adverse impacts to resources.

LIP Section 9.4(A):

All proposed new development located in or near an area subject to geologic hazards shall be required to submit a geologic/soils/geotechnical study report prepared by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) that adheres to the City of Malibu's "Guidelines for the preparation of engineering geologic and geotechnical engineering reports," dated February 2002, and identifies any geologic hazards affecting the proposed development site and any necessary mitigation measures. The geologic/soils/geotechnical report shall include a statement by the consulting CEG or GE that the project site is suitable for the proposed development, that the development will be safe from geologic hazard, and that the development will in no way contribute to instability on or off the subject site. Such reports shall be subject to the review and approval of the City geotechnical staff.

Discussion

The subject property is located within an area of known, mapped landslides. Beach sand is exposed over most of the subject site, with artificial fill at the extreme northern portion, adjacent to Malibu Road. Underlying these deposits are at least two generations of landslide deposits; an upper "younger" (i.e., recent) landslide and an older (i.e., ancient) landslide. Most of these landslides are situated off-site to the north, on the slopes between Pacific Coast Highway and the beach. However, the toe and western slide scarp of the recent landslide extends across the property in a northwest to southeast direction.

A de-watering system that had been installed along the north side of Malibu Road in this area in response to past landslide activity has been very successful in increasing the stability of the landslide. The Malibu Road Landslide Assessment District currently maintains 23 hydraugers and 13 vertical wells that actively dewater the slide mass. Groundwater elevations are monitored with 14 functioning piezometers, and ground movement is monitored with 5 functioning

inclinometers, three in the slide mass and two above it, in the older (ancient) slide mass. Although the dewatering system has performed well, the landslide remains a hazard that affects the subject site and its re-activation is possible. The subject site also has a high liquefaction potential due to the presence of loose beach sand within the top 10-15 feet and high ground water.

The appellant contends that the geologic reports and analysis the City relied upon in its action approving a multi-family residence on the subject property are incomplete, inaccurate, and have not adequately demonstrated that the approved development's location and manner of stabilizing an active landslide will not adversely impact off-site properties. Particularly, since the subject property is located at the side scarp of an active landslide, the appellant asserts that stabilizing a portion of the landslide with the approved soldier pile wall will create a new side scarp and deflect the landslide mass onto adjacent properties. The appellants note that the buildings that had suffered the greatest damage during past episodes of slide movement were those at the side scarps of the landslide.

Identification of Geologic Hazards

Regarding the contention that the geologic information the City relied upon in its action is incomplete and inaccurate, the Commission notes that landslide geometry, depth to the slide plane, and direction of bedding dip were the subject of a lengthy exchange between the City's geotechnical review staff and the applicant's geologist. The City's administrative record associated with the approved project contains many detailed geologic reports and subsequent supplemental and addenda reports, which were reviewed and determined to be adequate by the City Geologist. These records were also reviewed by the Commission's Staff Geologist, Dr. Mark Johnsson. Dr. Johnsson has reviewed the information included in the City's record and provided by the appellant in the subject appeal, and prepared a technical memorandum that is attached as Exhibit 7. In Dr. Johnsson's professional judgment, the geologic hazards affecting the site have been accurately identified, and the slide geometry at the site has been accurately depicted by the applicant's geologist and analyzed in relation to the approved development. The Commission agrees with the conclusions in Dr. Johnsson's memorandum and incorporates it here, thus adopting it as its own findings.

As such, the Commission finds that the geologic hazards affecting the project site have been accurately identified in the City's action on the subject permit, consistent with Policies 4.1, 4.3, and 4.5 of the City's certified Land Use Plan, and Coastal Act Section 30253, which is incorporated into the City's Land Use Plan as a policy.

Stability and Effect on Offsite Properties

Per the recommendations of the applicant's consultant, the City approved the multi-family structure behind a soldier pile wall near the northern property line designed to isolate the site from landslide forces. That wall would consist of five 8-foot diameter piers spaced 10 feet on center imbedded 45 feet below the slide plane, to stabilize the site and provide the required factor-of-safety, which was also approved by the City in the subject permit. The structure itself would be supported on a deepened pile foundation system (24 inch piles, embedded 30 feet into

competent bedrock) to resist the forces of wave action, and to eliminate the potential settlement due to liquefaction. Dr. Johnsson has reviewed the geotechnical information in the record regarding the approved foundation and pile stabilization system and has confirmed that the system is designed to satisfy the consulting geologist's recommendations for resisting the landslide forces on the project site. The applicant's geotechnical consultant has demonstrated that the approved residence, with the implementation of the approved soldier pile stabilization system, will have minimum static and seismic factors of safety of 1.5 and 1.1, respectively, in accordance with Policy 4.4 of the Land Use Plan, Section 9.4(D) of the Implementation Plan, and the City's Geotechnical Guidelines.

The project consultants' reports conclude that the proposed development is suitable for the site and, if the consultants' recommendations are followed, the development will be safe from geologic hazard and will not adversely affect the geologic stability of adjacent properties, consistent with Policy 4.5 of the Land Use Plan and Section 9.4(A) of the Implementation Plan. The City's geotechnical staff also reviewed the approved the subject report(s) associated with the approved project. Further, the City's approved permit includes a condition that requires all recommendations of the consulting certified engineering geologist or geotechnical engineer, and/or the City Geologist, to be incorporated into all final design and construction plans, and that the final plans must be reviewed and approved by the City Geologist prior to issuance of the grading permit. Consistent with Section 111 of the City's Building Code, the project geologist has certified that:

> *Construction of the proposed improvements is safe and will not cause landslide(s), settlement and slippage. The proposed improvements will not have an adverse effect on the geologic stability of the properties outside the building site. In addition, we find that the proposed construction will be safe from a geotechnical engineering standpoint against hazards such as landslides, settlement, and slippage. Further, the proposed status of the building or grading, as known, will not adversely affect the stability of adjacent properties, provided that the recommendations presented in our reports and approved by the City are followed.*

The appellant and his consulting geologist assert that the above statement by the applicant's consultant is an unsubstantiated opinion, not based on fact, not supported by any analysis or scientific evaluation of the evidence, and that no one can assure that the approved stabilization system will not deflect the landslide mass onto other properties.

Given the complicated history of the landslide in this area and significant movement that has occurred in the past, Commission staff thoroughly explored the merit of this appeal contention. Dr. Johnsson reviewed the extensive geologic information in the record and communicated at length with the applicant's geologist, the City Geologist, and the appellant's geologist. The difficulty here is that due to the nature of the science, geologists can never assert with absolute certainty that stability will be guaranteed in the future. However, as detailed in Dr. Johnsson's memorandum, it is Dr. Johnsson's professional judgment that the applicant's geotechnical consultants have been held to a very high standard by the City and their analysis and design in this case meets or exceeds the standard of care commonly exercised in the profession. The Commission agrees with the conclusions in Dr. Johnsson's memorandum and incorporates it here, thus adopting it as its own findings.

Nevertheless, in order to further explore the appellant's contention, during Commission staff analysis of the subject appeal, Dr. Johnsson asked the applicant's consultant to perform a three-dimensional slope stability analysis of the relatively small portion of the landslide lying west of the proposed stabilized area to assess its stability as if it was essentially isolated from the main landslide mass by the stabilized wedge being retained by the proposed pile system. This analysis was provided and demonstrated that the subject wedge of material, taken in isolation, has a factor of safety against sliding of 2.06, far exceeding the industry standard of 1.5.

Although no one can guarantee that the approved landslide retention system will not affect offsite properties, the geotechnical analysis of the approved design that the City relied upon in its action on the subject permit meets or exceeds the standard of care commonly exercised in the profession.

As such, the Commission finds that there is sufficient factual and legal support for the City's conclusion that the approved project, as designed to resist the landslide forces and to support the proposed structure, will assure stability and structural integrity, both on- and off-site, and has been sited and designed to minimize risks to life and property from geologic, flood, and fire hazard, consistent with Policies 4.1-4.5 of the City's certified Land Use Plan, Section 9.4(D) of the Implementation Plan, and Coastal Act Section 30253, which is incorporated into the City's Land Use Plan as a policy. Therefore, the appeal raises no substantial issue in this regard.

Alternatives

The City's approved findings for the project indicate that the City's Environmental Review Board (ERB) had recommended that the project consultants should investigate the feasibility of utilizing a rigid foundation system on the relatively stable western half of the property with cantilevered grade beam over the unstable portion of the site that, in the event of landsliding, would allow the ground to move unobstructed underneath. The City's findings go on to state that the project structural engineer had agreed to provide such an analysis and that "a condition of approval is included in this resolution requiring the applicant to submit evidence this investigation was completed." However, notwithstanding this finding, no such condition was included in the resolution and no such analysis was provided to the City by the applicant's consultant.

The applicant's engineer, David Weiss, responded to the subject ERB recommendation, in a letter to City staff dated June 1, 2011, indicating that elimination of the soldier pile wall along the north property line under a cantilever foundation alternative would mean that the site could not assure the factors of safety that are required by the LCP. Mr. Weiss's letter also stated that the project's geotechnical consultant had determined that the soldier pile wall will not affect adjacent properties and the proposed project meets the requirements of the LCP. Since the City's approved findings indicate that the City Geologist is satisfied with the geologic and geotechnical analysis provided by the applicant's consultants, it is unclear why the City's findings suggest that the City was requiring the applicant to analyze the feasibility of a cantilever alternative as a condition of approval. It is also unclear why, despite that statement, no such condition of approval was included in the City's resolution.

The appellant asserts in the subject appeal that this alternative analysis should have been completed and analyzed by the City prior to City action on the permit, and that failure to do so is inconsistent with the LCP because alternatives have not been analyzed to determine the alternative that will be the least environmentally damaging and will not affect offsite properties. The cited LCP policy, LUP Policy 4.6, states that remediation or stabilization of landslides may be permitted, but that alternative remediation or stabilization techniques shall be analyzed to determine the least environmentally damaging alternative. Although the approved development is not to stabilize or remediate the entire landslide, which mostly lies outside of the subject property, it would function to stabilize the portion of the landslide on the subject site in order to accommodate the proposed residence and provide the required factors of safety. In addition, LUP Policy 4.2 requires that new development "minimize risks" from geologic hazards. Thus, it is necessary to assess whether this alternative is feasible and would reduce the geologic risks.

As discussed previously, there is substantial factual evidence in the record in support for the City's findings that the approved development and stabilization system is consistent with the hazard provisions of the certified LCP and will assure stability without adversely affecting off-site properties. Nonetheless, in order to fully consider the assertions made in the appeal, Commission staff found it appropriate to address alternatives that could potentially serve to avoid the specific geologic risk asserted in the subject appeal, which is deflection of the landslide by the presence of the approved stabilization structures on the side scarp of the slide. Commission staff requested that the applicant provide information relative to a cantilevered foundation design alternative where stabilization structures for the development avoid the eastern, landslide portion of the property and cantilever over it.

The applicant's consultants provided this analysis in August 2013, and it was reviewed by Dr. Johnsson, as well as Commission Staff Coastal Engineer, Lesley Ewing, relative to the structural engineering portion of the analysis. Since there are various geologists' interpretations of the location of the landslide side scarp in the subsurface of the site, the applicant's engineer and septic system consultant utilized the most liberal side scarp interpretation in their analysis that would have the best chance of demonstrating feasibility. Even with the more favorable location of the side scarp, wave uprush, required setbacks, and the narrow lot configuration are additional site constraints that must be taken into consideration. The applicant's engineer analyzed the cantilever alternative and found it infeasible because the forces (under seismic conditions) that would be placed on the caissons by cantilevering the structure over the eastern portion of the site result in unacceptable eccentricities between the building "center of mass" and the "center of resistance" of the pile group, in violation of the California Building Code (standard ASCE 7-05). Commission Staff Coastal Engineer, Lesley Ewing, has reviewed the structural engineering calculations and concurs with the structural engineering assessment provided. Further, there would be insufficient space on the stable portion of the site for the entire on-site wastewater treatment system, consisting of tanks and a leach field of an appropriate capacity to serve the residential development. The consultants indicate that the septic system leach field and required bulkhead to protect it could be sited on the stable portion of the site, but that there is not sufficient space for the primary tank, processor tank, and their associated pumps and piping as well. And placing the septic system tanks on the unstable, landslide portion of the site is infeasible because those portions could not be protected from wave uprush and the required

factor-of-safety could not be met. Exhibit 9 is a conceptual site plan for this alternative that shows the cantilever foundation design with septic system and bulkhead in relation to site constraints.

There are also other alternatives considered by Commission staff, although not specifically raised in the subject appeal. These consist of a foundation system design that would not resist landslide movement and would allow the earth materials to flow between and around foundation elements (such as widely spaced deep caissons), or a smaller residential structure that is stabilized in the relatively stable portion of the site and cantilevered over the eastern, landslide portion of the property. However, the constraints with locating the onsite wastewater treatment system and adequately stabilizing it and protecting it from wave action would be the same as the cantilevered foundation system discussed above.

Therefore, all identified alternatives that could potentially serve to avoid the specific geologic risk asserted in the subject appeal have been determined to be infeasible. As such, the Commission finds that the City appropriately found the approved design to minimize risks and to be the least environmentally damaging feasible alternative, as required by LUP Policies 4.2 and 4.6 and the other applicable policies and provisions of the Malibu LCP.

Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal cites several hazard policies of the 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 five factors that are addressed below.

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's record includes extensive factual evidence and legal support for the City's findings that the project is consistent with the hazard policies and provisions of the certified LCP. While there are conflicting expert opinions in this case regarding geologic hazards, the appellant has not provided any compelling evidence to demonstrate the approved project will affect off-site properties, that it has not minimized geologic risk, and that the development does not conform to the standards set forth in the certified LCP. Even in the absence of the information Commission staff obtained from the applicant in order to fully explore the assertions made in the appeal (3D slope stability and cantilever alternative analysis), there is substantial evidence in the City's record demonstrating that the approved project assures stability and structural integrity without adversely affecting off-site properties, and has been sited and designed to minimize risks to life and property from geologic, flood, and fire hazard, consistent with Policies 4.1-4.5 of the City's certified Land Use Plan, Sections 9.4(A) and (D) of the Implementation Plan, and Coastal Act Section 30253, which is incorporated into the City's Land Use Plan as a policy. Although no one

can absolutely guarantee that the approved landslide retention system will not affect offsite properties, the geotechnical analysis of the approved design that the City relied upon in its action on the subject permit meets or exceeds the standard of care commonly exercised in the profession.

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 project consists of residential development of a single, small, infill, beachfront property. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is an infill beachfront lot that was previously developed and is adjacent to existing multi-family residences. The approved project is consistent with the LCP's hazard policies that are asserted in the appeal, as well as the shoreline development and public access policies of the LCP. There are no significant coastal resources and no environmentally sensitive habitat area (ESHA) on the site that would be negatively affected by the project.

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 geotechnical analysis of the approved development that the City relied upon in its action on the subject permit meets or exceeds the standard of care commonly exercised in the profession, and as described above, the Commission finds that the City applied its LCP policies correctly in finding that the project is consistent with the policies of the LCP with respect to the grounds of the appeal. As such, the City's decision will have no adverse precedential value for future CDP decisions.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the approved project is consistent with the policies and provisions of the LCP, will not result in any adverse impacts to significant coastal resources, and does not have any regional or statewide significance.

In conclusion, the Commission finds that none of the factors listed above, used to evaluate whether a substantial issue exists, applies in this case. The project approval will not be an adverse precedent for future residential developments affected by geologic hazards and the hazard issues raised by the appeal relate only to local issues. Further, the approved development is supported by substantial evidence in the record and will not have an adverse effect on significant coastal resources.

Therefore, the Commission finds that the appellant's contentions regarding geologic hazards raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the certified LCP.

2. PUBLIC ACCESS POLICIES OF THE COASTAL ACT

When an appeal alleges that proposed development is inconsistent with the public access policies of the Coastal Act, the Commission must also determine whether those allegations raise a substantial issue. (Title 14, Cal. Code Regs., § 13115(b).) Here, the appeal does not allege that the proposed development is inconsistent with the Coastal Act's public access policies. It therefore does not raise a substantial issue in this regard.

The public access policies of the Coastal Act (Sections 30210-30214), which are incorporated into the Malibu LCP as policies, mandate that maximum public access and recreational opportunities be provided, consistent with public safety needs and the need to protect public rights, the rights of private property owners, and natural resource areas from overuse. Likewise, the Coastal Act requires that public access from the nearest public roadway to the sea be provided in new development projects except where it would be inconsistent with public safety, military security needs, protection of fragile coastal resources and agriculture, where adequate access exists nearby, or where agriculture would be adversely affected.

The approved project is located on a beachfront property, between Malibu Road and the ocean. Members of the public who access the beach via public accessways (Dan Blocker County Beach is located a short distance upcoast, and a public vertical accessway is located a short distance downcoast at 25120 Malibu Road) often walk along the shoreline, including the southern beachfront portion of the subject site, up and down the coast.

In the case of the approved residential development, the property owner proposed, as part of the project, to offer-to-dedicate lateral public access as part of the project to minimize any adverse effects to public access along the beach. In order to effectuate the applicant's offer, the City imposed a condition as part of the approved CDP requiring recordation of a lateral public access easement across the entirety of the subject property. As such, the project, as approved by the City of Malibu, conforms to the public access policies and standards of the Coastal Act and Malibu LCP.

F. CONCLUSION

For the reasons discussed above, the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the City's certified LCP or the public access policies in Chapter 3 of the Coastal Act. Applying the five factors identified above, the Commission finds the City's record adequately supports its position that the proposed project is consistent with the applicable LCP policies. In addition, the development is relatively small in scope, does not have a significant adverse effect on significant coastal resources, would not be an adverse precedent for future coastal development permits, and doesn't raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds on which it was filed.

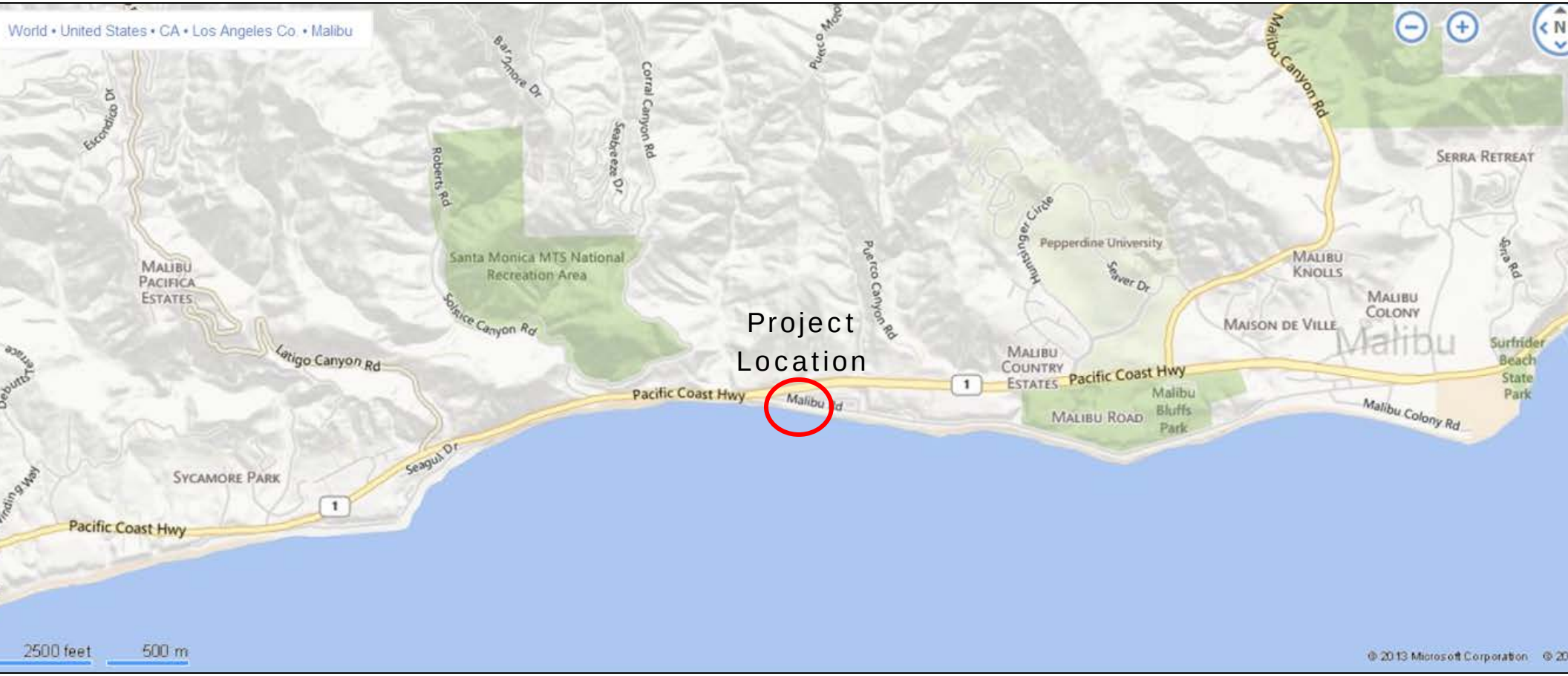
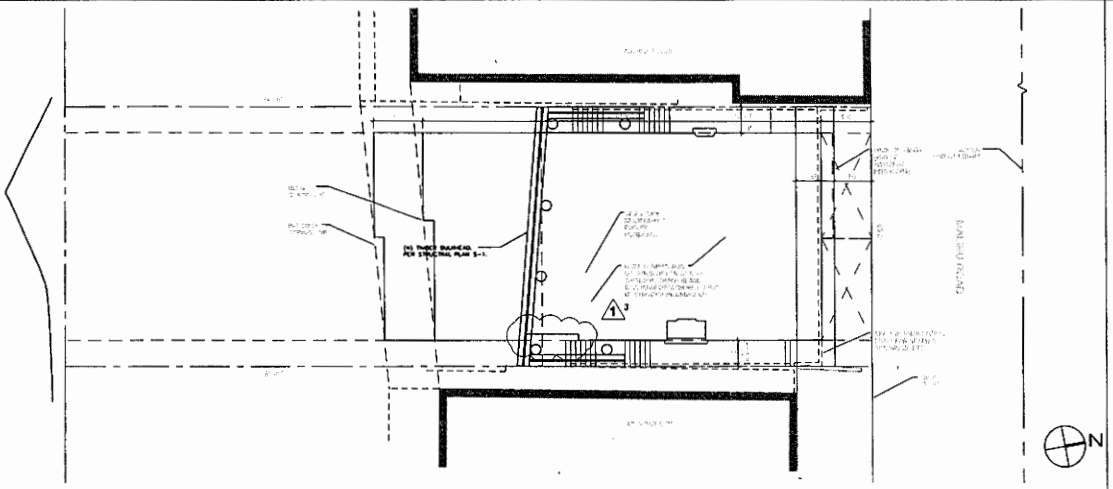


Exhibit 1
Appeal A-4-MAL-12-006
(25360 Malibu Road LLC)
Vicinity Map

Exhibit 2
Appeal A-4-MAL-12-006
(25360 Malibu Road LLC)
Aerial View

Plot Plan

SCALE 3/32" = 1'-0"



Project Contacts

25360 Malibu Road, LLC
Malibu, Ca. 90265
Contact: Mr. Nassim Mussry
(323) 456-0770

Dara Kimball, Architect
222 Idaho Ave #4
Santa Monica,Ca. 90403
Contact: Dara Kimball
ph.: (310) 458-4203 fax: (310) 458-4203

T.B.D.

Marissa M. Coughlan Consultants
23852 Pacific Coast Highway
Malibu, Ca. 90265
Contact: Marissa Coughlan
ph.: (310) 456-6262 fax: (310) 457-8427

Rosell Surveying and Mapping, Inc.
15180 Transistor Lane
Huntington Beach, Ca. 92649
Contact: David Rosell or Aaron Tillmanns
ph.: (714) 934-4500 fax: (714) 934-4544

Sassan Geosciences Inc.
1290 N. Lake Avenue Suite 204
Pasadena,Ca. 91104
Contact: Sassan Sufehipour
(626) 345-1819

EPD
411 N. Harbor Blvd. Suite 304
San Pedro,Ca. 90731
Contact: Kevin Poffenbarger, P.E.
ph.: (310) 241-6565 fax: (310) 241-6568

David Weiss Structural Engineer Inc.
24372 Vanowne St. Suite 104
West Hills,Ca. 91307
Contact: David Weiss, P.E. or Janelle Lau, P.E.
ph.: (818) 227-8040 fax: (818) 227-8041

GeoWorks
5158 Cochran Street
Simi Valley, Ca. 93063
Contact: Justin Holt, P.E.
ph.: (805) 304-2101 fax: (805) 582-1228

Contents

Site Data

JOB ADDRESS	25360 Malibu Road Malibu, Ca. 90265
LEGAL DESCRIPTION	Lot 41 Tract 12939 MB# 263/39-40 Accessor Parcel # 4459-017-005
ZONE	Multi Family
TYPE OF CONSTRUCTION	TYPE V - N
NUMBER OF STORIES	2
JOB DESCRIPTION	NEW TWO STORY DUPLEX MULTI FAMILY RESIDENCE WITH ATTACHED GARAGES

REVISIONS	BY
12.07.07 planning sub #1	
△1 revision #1 09.10.09	

Dara Kimball, Architect
222 Idaho Avenue #4
Santa Monica,CA 90403
(310) 458-4203
kimballarch@verizon.net

Planning Submittal #2

25360 Malibu Road LLC
25360 Malibu Road
Malibu, Ca. 90265
Lot 41 Tract 12939
MB# 263/39-40
Accessor Parcel # : 4459-017-005

SHEET TITLE: COVER SHEET

Date: 02.22.10

Scale:

Drawn: DK

Project Number: 0615

SHEET: **A-0.0**

25360 MALIBU ROAD LLC - DUPLEX

Area Tabulation

LOT SIZE 50' X 93.42'(AVG.) (4,671 s.f.)

PROPOSED NEW TWO STORY DUPLEX:

(N) FLOOR ONE:	2,110 S.F.
BALCONIES:	399 S.F.
GARAGE UNIT 1:	439 S.F.
GARAGE UNIT 2:	416 S.F.
(N) FLOOR TWO:	3,050 S.F.
BALCONIES:	399 S.F.

Abbreviations

ARCH.	Architectural	HGT.	Height
BTWN.	Between	INT.	Interior
BLDG.	Building	MAX.	Maximum
BLK.	Block	MIN.	Minimum
BM.	Beam	MECH.	Mechanical
CMT.	Casement	MFGR.	Manufacturer
CLR.	Clear	MICRO.	Microwave
CLG.	Ceiling	MTL.	Metal
C.J.	Ceiling Joist	NAT.	Natural
COL.	Column	(N)	New
CONC.	Concrete	NO.	Number
CONT.	Continuous	O.C.	On Center
DRY.	Dryer	PLYWD.	Plywood
DIA.	Diameter	RIS.	Risers
DIM.	Dimension(s)	R.O.	Rough Opening
D.W.	Dishwasher	R.R.	Roof Rafters
DWGS.	Drawings	REV.	Revision
ELEV.	Elevation	REFR.	Refrigerator
EQ.	Equal	REQD.	Required
(E)	Existing	SHT.	Sheet
EXT.	Exterior	SL.	Slider
F.A.U.	Forced Air Unit	SIM.	Similar
FIN.	Finish, Finished	STL.	Steel
		STRUCT.	Structural
		TEMP.	Tempered
		TR.	Treads
		T.&G.	Tongue & Groove
		T.O.	Top of
		TYP.	Typical
		U.N.O.	Unless Noted Otherwise
		V.I.F.	Verify in Field
		WASH.	Washer
		W.H.	Water Heater
		WD.	Wood

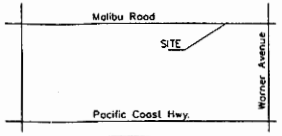
Site Plan Notes

1. GENERAL GRADING REQUIREMENTS' PER LOCAL GOVERNING JURISDICTIONS SHALL BE COMPLIED WITH STRICTLY.
2. ALL FOOTINGS TO BE FOUNDED INTO NATURAL UNDISTURBED SOIL OR FOUNDED INTO CERTIFIED RECOMPACTED FILL PER CITY OF MALIBU (ALL GOVERNING BODIES) SPECIFICATIONS. CITY INSPECTION APPROVALS AND CITY CERTIFICATION REQUIRED. LICENSED SOILS ENGINEER TO INSPECT AND CERTIFY RECOMPACTION.
3. ALL REQUIRED APPROVAL PROCEDURES APPLYING TO GRADING APPROVAL ARE TO BE PART OF THIS PLAN.
4. ALL CONCENTRATED DRAINAGE INCLUDING ROOF SHALL BE CONDUCTED TO STREET IN AN APPROVED MANNER AT 2% MIN.
5. NO TRENCHES OR EXCAVATIONS 5' OR MORE IN DEPTH INTO WHICH A PERSON IS REQUIRED TO DESCEND, OTHERWISE, OBTAIN NECESSARY PERMIT FROM LOCAL OR STATE AUTHORITIES.
6. CONTRACTOR TO INFORM DESIGNER OF ANY DISCREPANCIES BETWEEN ARCHITECTURAL AND ANY RELATED DRAWINGS.
7. ALL GRADES SHALL SLOPE 2% MINIMUM AWAY FROM BUILDING AND BE A MINIMUM OF 6" BELOW WOOD SILL PLATE AT PERIMETER OF BUILDING. SEE GRADING PLAN FOR ADDITIONAL INFORMATION.
8. FOR GRADES SPECIFIED TO BE LESS THAN 6" FROM WOOD SILL PLATES AND FOR AREAS WHERE CONCRETE PAVING IS ADJACENT TO BUILINGS, SILL PLATES SHALL BE PROTECTED WITH A CONTINUOUS STRIP OF W.R. GRACE 4000 BITUTHENE WATERPROOFING MEMBRANE COVERED WITH GALVANIZED SHEET METAL FLASHING, BOTH PROJECTING 6" BELOW WOOD SILL PLATE AND 6" ABOVE GRADE. WIDTH OF WATERPROOFING WILL VARY ACCORDING TO GRADE ELEVATION.
9. THE BUIDING PERMIT APPLICATION IS FOR THE DEFINED SCOPE OF WORK AS OUTLINED ON THIS SHEET ONLY. THIS PERMIT APPLICATION DOES NOT INCLUDE LANDSCAPE ELEMENTS, HARDSCAPE, POOL/SPA, FOUNTAINS.
10. THIS PERMIT APPLICATION INCLUDES MECHANICAL PLUMBING, OR ELECTRICAL PERMITS.
11. THE DESIGNER'S REPRESENTATIVE WILL PROCESS PLANS THROUGH PLAN CHECK REVIEW FOR THE BUILDING PERMIT ONLY. CONTRACTOR WILL BE RESPONSIBLE TO SIGN AND OBTAIN THE BUILDING PERMIT ON BEHALF OF THE OWNER.
12. CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL OTHER PERMITS. ANY APPLICATION FORMS OR DRAWINGS REQUIRED FOR SAID PERMITS WILL BE PREPARED BY THE SUBCONTRACTOR AND REMUNERATION SHALL BE INCLUDED IN BID.
13. SEPARATE PERMITS SHALL BE REQUIRED FOR SIGNS, FENCES, RETAINING WALLS, TRASH ENCLOSURES, FLAGPOLES, POLE MOUNTED YARD LIGHTING FOUNDATIONS, AND PLANTERS.

Note:

1. CONSTRUCTION SHALL COMPLY WITH CITY OF MALIBU PLANNING & ZONING STANDARDS.
2. APPLICABLE CODE: 2007 CALIFORNIA BUILDING CODE (CBC), TITLE 24, CALIFORNIA MECHANICAL CODE (CMC), CLAIFORNIA PLUMBING CODE (CPC), CALIFORNIA ELECTRICAL CODE (CEC), AND CALIFORNIA ENERGY CODE (CENC).
3. ALL WORK SHALL COMPLY WITH APPLICABLE FEDERAL LAWS, STATE STATUTES, LOCAL ORDINANCES, AND THE REGULATIONS OF AGENCIES HAVING JURISDICTION. THE CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR COMPLYING WITH THE CONSTRUCTION SAFETY ORDERS AND THE GENERAL INDUSTRAIL SAFETY ORDERS OF THE STATE DIVISION OF INDUSTRAIL SAFETY, THE REGULATIONS OF THE FEDERAL AND STATE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATIONS, AND SUCH OTHER AGENCIES GOVERNING THE CONTRACTORS' ACTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR AND HOLD HARMLESS THE ARCHITECT FOR ANY DAMAGES AND/OR PENALTIES RESULTING FROM HIS FAILURE TO COMPLY WITH SAID LAWS, STATUTES, ORDINANCES, AND REGUALTIONS.
4. THE DESIGN, ADEQUACY, AND SAFETY OF ERECTION BRACING, SHORING, TEMPORARY SUPPORTS, ETC. IS THE SOLE RESPONSIBILITY OF THE GENERAL CONTRACTOR, AND HAS NOT BEEN CONSIDERED BY THE ARCHITECT. THE GENERAL CONTRACTOR IS RESPONSIBLE FOR THE STABILITY OF THE STRUCTURE PRIOR TO THE APPLICATION OF ALL SHEAR WALLS, ROOF, AND FLOOR DIAPHRAGMS, AND FINISH MATERIALS. HE SHALL PROVIDE THE NECESSARY BRACING TO PROVIDE STABILITY PRIOR TO THE APPLICATION OF THE AFORMENTIONED MATERIALS. OBSERVATION VISITS TO THE SITE BY THE ARCHITECT SHALL NOT INCLUDE INSPECTION OF THE ABOVE ITEMS.
5. PROJECT COMPLIES WITH PARKING REQUIRMENTS, LIP SECTION 3.12.3 PER CITY STAFF.

Vicinity Map



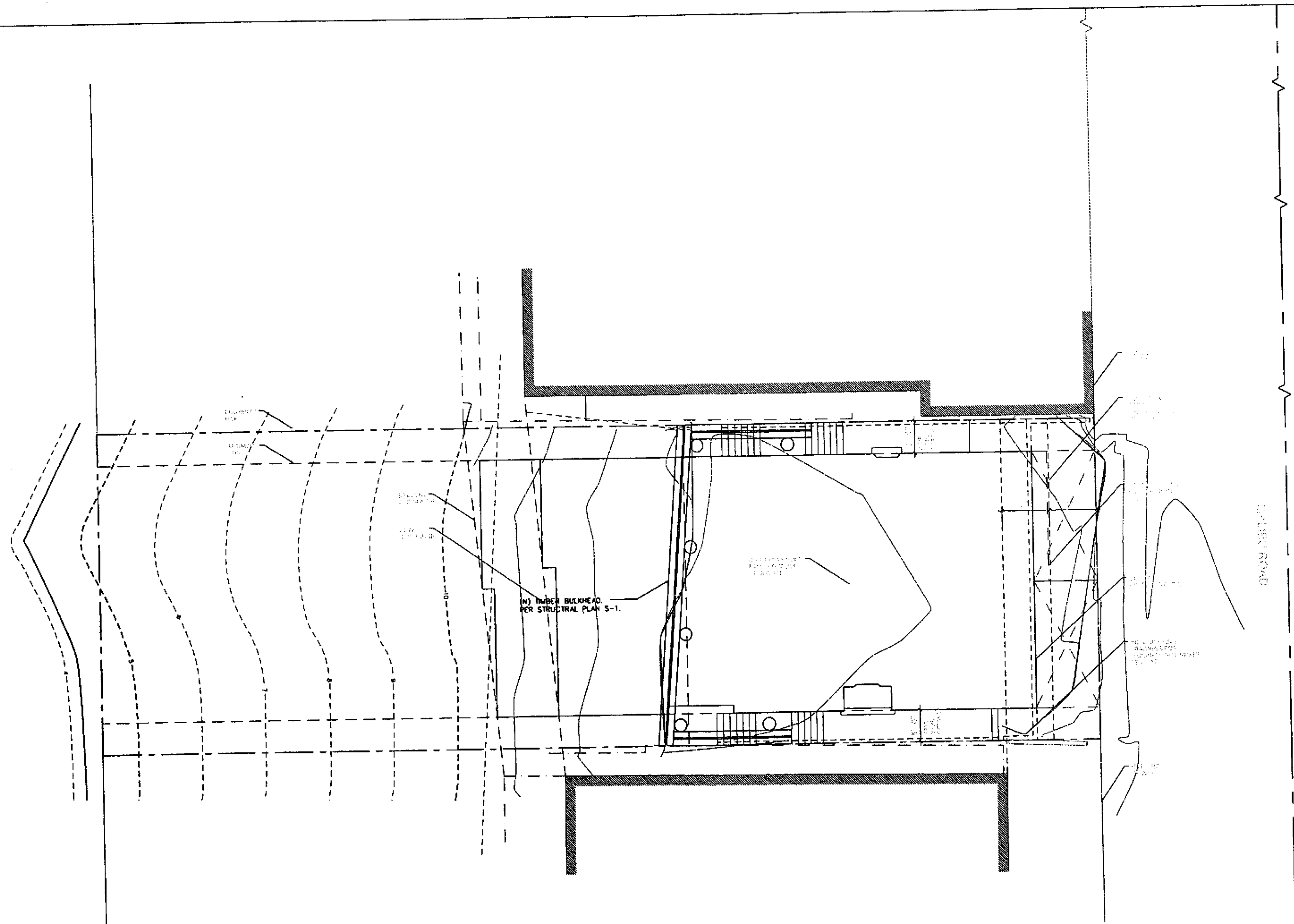
Legend

	Concrete
	Masonry Wall
	New Wall
	Furred Ceiling / Arch
1	Shearwall -- On Structural
1	Door
1	Window
Detail # / Sheet #	Detail
Room # / Sheet #	Interior Elevations
Sect. # / Sheet #	Section
X'-X"	Dimension to center line
X'-X"	Dimension to face of framing/masonry (unless noted otherwise)
X	
X'-X"	Elevation Heights

RECEIVED
FEB 22 2011
PLANNING DIV.

Received
FEB 07 2012
California Coastal Commission
South Central Coast District

Exhibit 3
Appeal A-4-MAL-12-006
(25360 Malibu Road LLC)
Project Plans



Site Plan

1/8" = 1'- 0"

1

LEGEND AND ABBREVIATIONS	
CONC = CONCRETE FD = FOUND	R/W = RIGHT OF WAY

SYMBOLS			
	GAS METER		FD MONUMENT
	POWER POLE		CHAIN LINK FENCE
	WATER METER	OH	OVERHEAD LINES
	WOOD FENCE		

REVISIONS

12.07.07 planning sub. #1
revision #1 09.10.09

Dara Kimball, Architect

222 Idaho Avenue #4
Santa Monica,CA 90403
(310) 458-4203
kimballarch@verizon.net

Planning Submittal #2

25360 Malibu Road LLC

25360 Malibu Road
Malibu, Ca. 90265

Lot 41 Tract 12939
MB# 263/39-40
Accessor Parcel # : 4459-017-005

SHEET TITLE
Site Plan

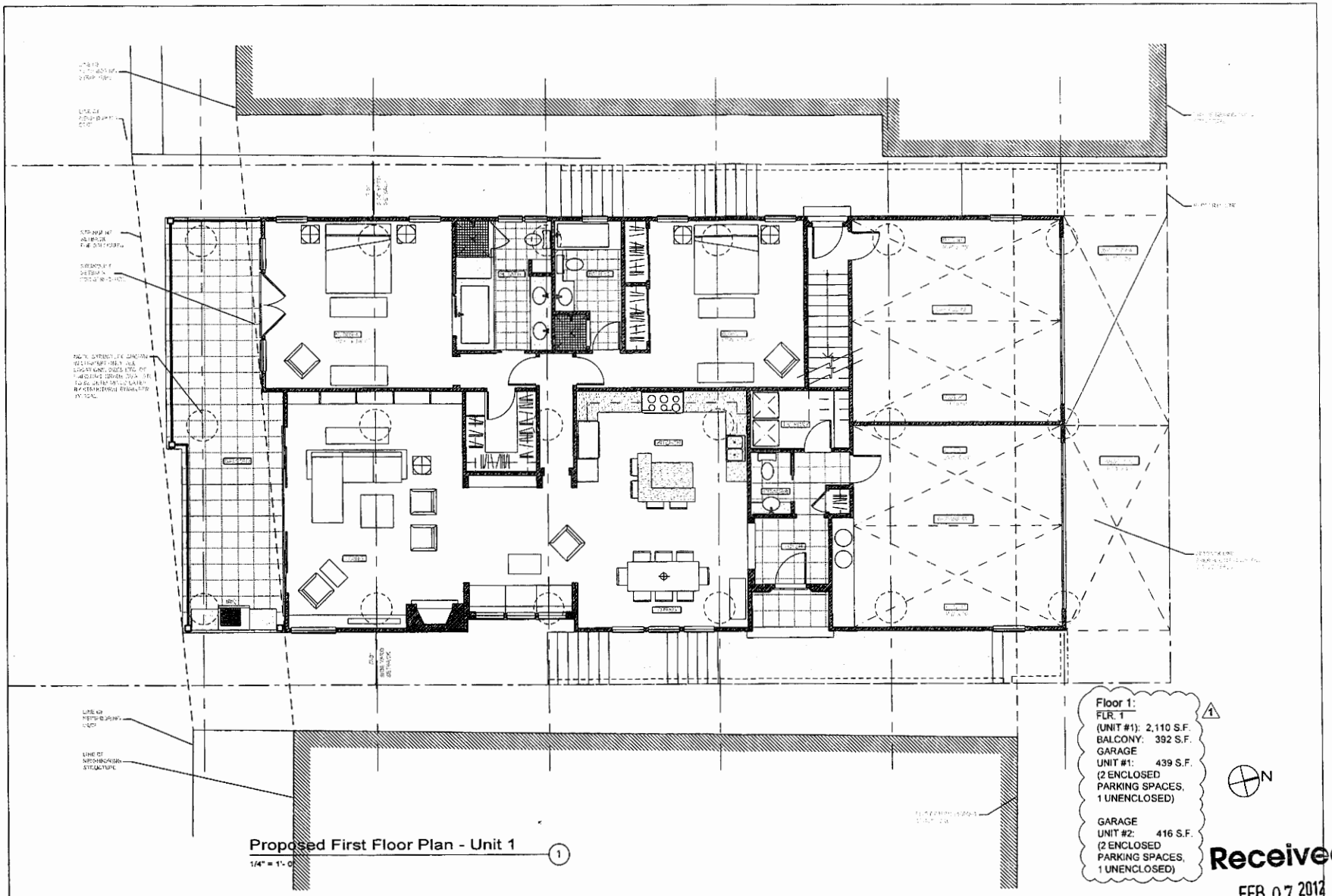
Date
02.22.10

Scale

Drawn
DK

Project Number
0615

SHEET
A-1.0



Proposed First Floor Plan - Unit 1

1/4" = 1'- 0"

Floor 1:
FLR. 1
(UNIT #1): 2,110 S.F.
BALCONY: 392 S.F.
GARAGE
UNIT #1: 439 S.F.
(2 ENCLOSED PARKING SPACES, 1 UNENCLOSED)

GARAGE
UNIT #2: 416 S.F.
(2 ENCLOSED PARKING SPACES, 1 UNENCLOSED)

N

Revisions	#
12.07.07 planning sub.#1	
⚠ revision #1 09.10.09	

Dara Kimball, Architect
222 Idaho Avenue #4
Santa Monica,CA 80403
(310) 458-4203
kimballarch@verizon.net

Planning Submittal #2

25360 Malibu Road LLC

25360 Malibu Road
Malibu, Ca. 90265

Lot 41 Tract 12939
MB# 263/39-40
Accessor Parcel # : 4459-017-005

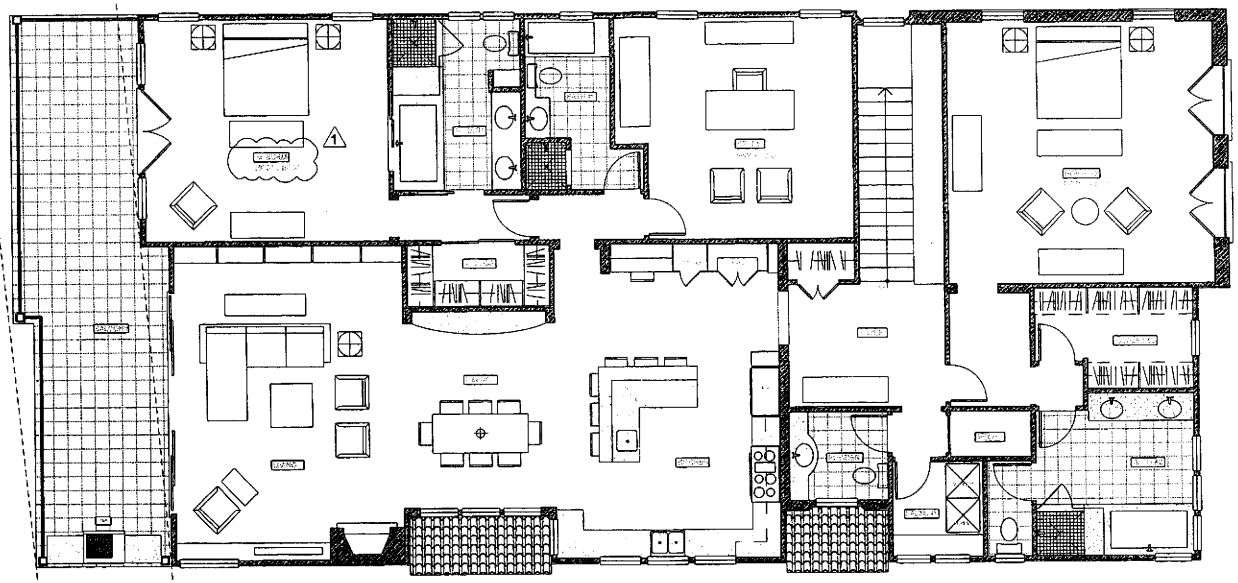
Sheet Title: Proposed First Floor Plan

Date: 02.22.10

Drawn: DK

Project Number: 0615

Sheet: A-1.1



Floor 2:
FLR. 2
(UNIT #2): 3,050 S.F.
BALCONY: 391 S.F.

Proposed Second Floor Plan - Unit 2
1/4" = 1'- 0"

N

REVISIONS	BY
12.07.07 planning sub. #1	
⚠1 revision #1 09.10.09	

Dara Kimball, Architect
222 Idaho Avenue #4
Santa Monica,CA 90403
(310) 458-4203
kimballarch@verizon.net

Planning Submittal #2

25360 Malibu Road LLC

25360 Malibu Road
Malibu, Ca. 90265

Lot 41 Tract 12939
MB# 263/39-40
Accessor Parcel # : 4459-017-005

SHEET TITLE: Proposed Second Floor Plan ⚠1

DATE: 02.22.10

SCALE:

DRAWN: DK

PROJECT NUMBER: 0615

SHEET: A-1.2

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FEB 07 2012
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South Central Coast District

REVISIONS	BY
12.07.07 planning sub #1	
⚠ revision #1 09.10.09	

Dara Kimball, Architect
222 Idaho Avenue #4
Santa Monica,CA 90403
(310) 458-4203
kimballarch@verizon.net

Planning Submittal #2

25360 Malibu Road LLC

25360 Malibu Road
Malibu, Ca. 90265

Lot 41 Tract 12939
MB# 263/39-40
Accessor Parcel # : 4459-017-005

SHEET TITLE: Proposed Exterior Elevations

Date: 02.22.10

Scale:

Drawn: DK

Project Number: 0615

SHEET: A-3.0

Received
FEB 07 2012
California Coastal Commission
South Central Coast District

REVISIONS	BY
12.07.07 planning sub. #1	
⚠ revision #1 09.10.09	

Dara Kimball, Architect
222 Idaho Avenue #4
Santa Monica,CA 90403
(310) 458-4203
kimballarch@verizon.net

Planning Submittal #2

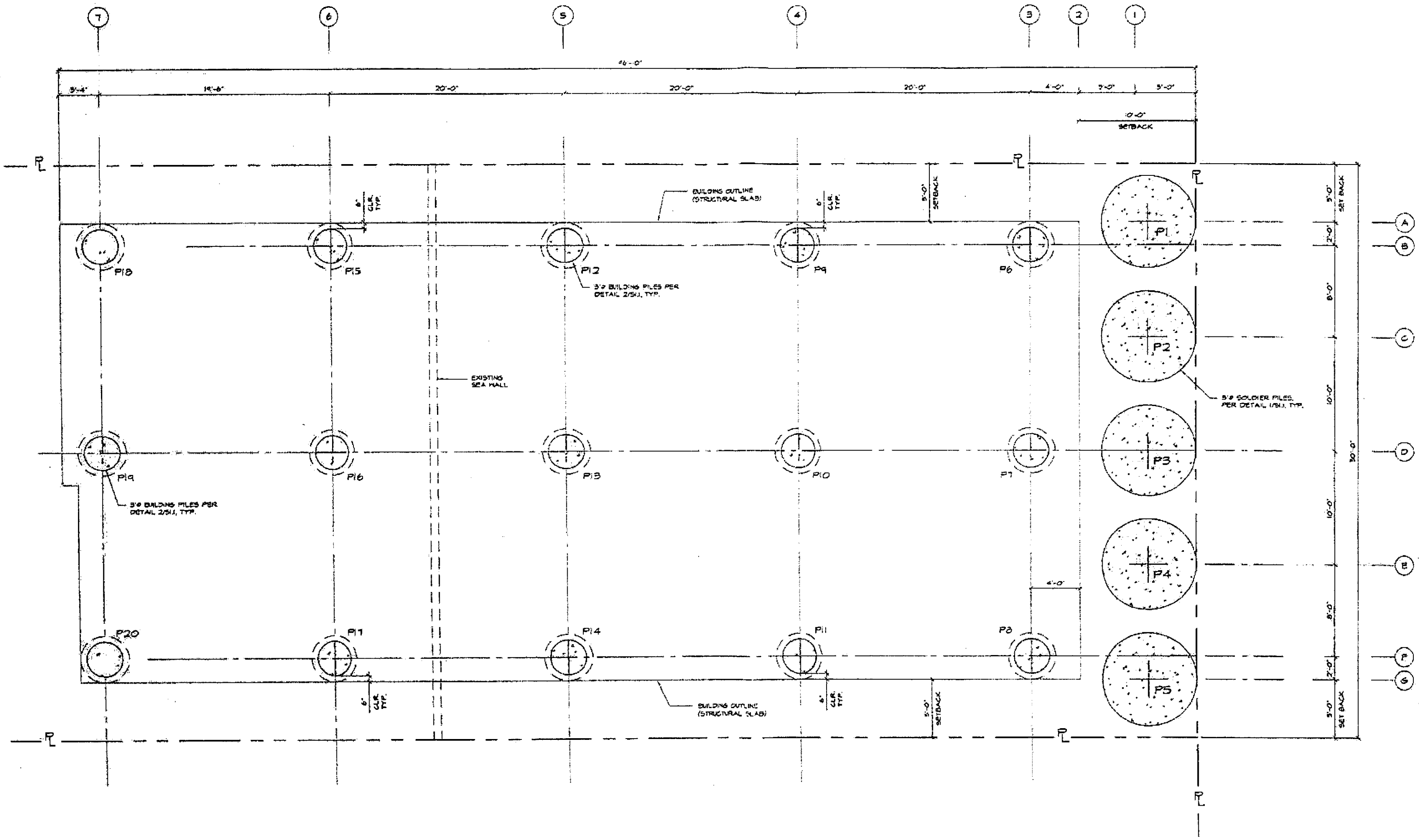
25360 Malibu Road LLC

25360 Malibu Road
Malibu, Ca. 90265

Lot 41 Tract 12939
MB# 263/39-40
Accessor Parcel # : 4459-017-005

Proposed Exterior Elevations

Date: 02.22.10
Scale:
Drawn: DK
Project Number: 0615
Sheet: **A-3.1**



PILE LAYOUT PLAN

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

REVISIONS

David C Weiss
Structural Engineer & Associates, Inc.
21172 VANOWEN STREET, SUITE 103
WEST HILLS, CA 91307
TEL (818) 227-8040 FAX (818) 227-9341

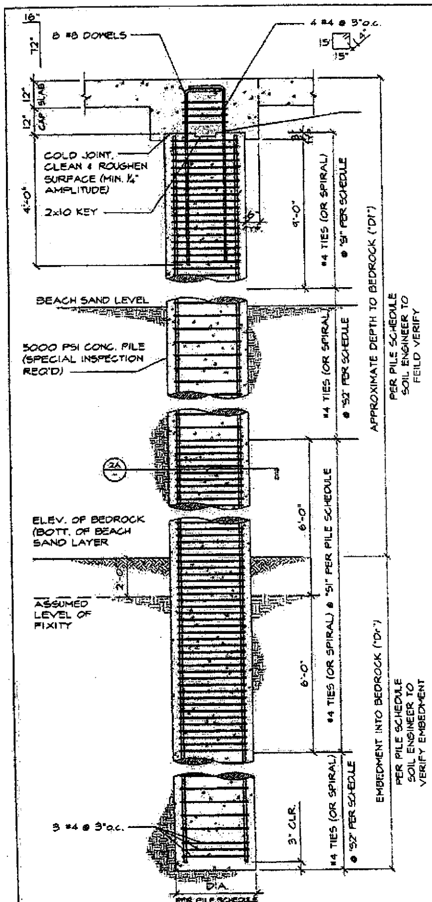
OWNER: MR. N.H. MUSSRY
341 NORTH ROBERTSON BLVD.
BEVERLY HILLS, CA 90211

PROJECT: MUSSRY RESIDENCE
25360 MALIBU RD.
MALIBU, CA 90265

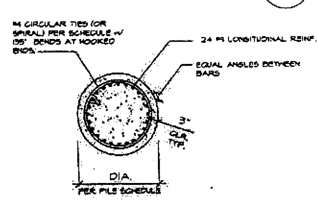
SHEET TITLE: PILE LAYOUT PLAN

REGISTERED PROFESSIONAL ENGINEER
David C. Weiss
No. 1567
Structural
EXP. 3.31.13
STATE OF CALIFORNIA

ASA	ERE
AS NOTED	
09/22/11	
MUSS1051	
MUSSRY	
S1.0	



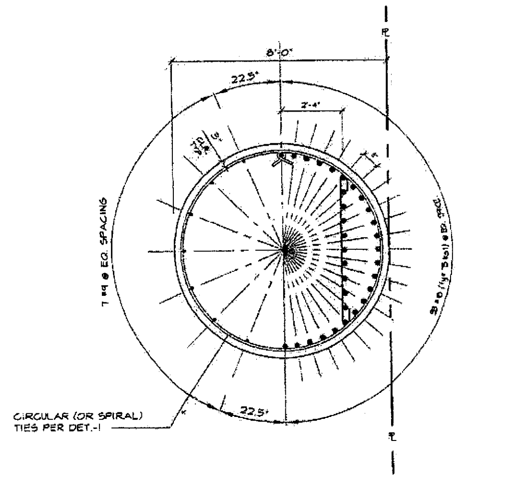
PILE DETAIL 2 SCALE: 1/2" = 1'-0" (2)



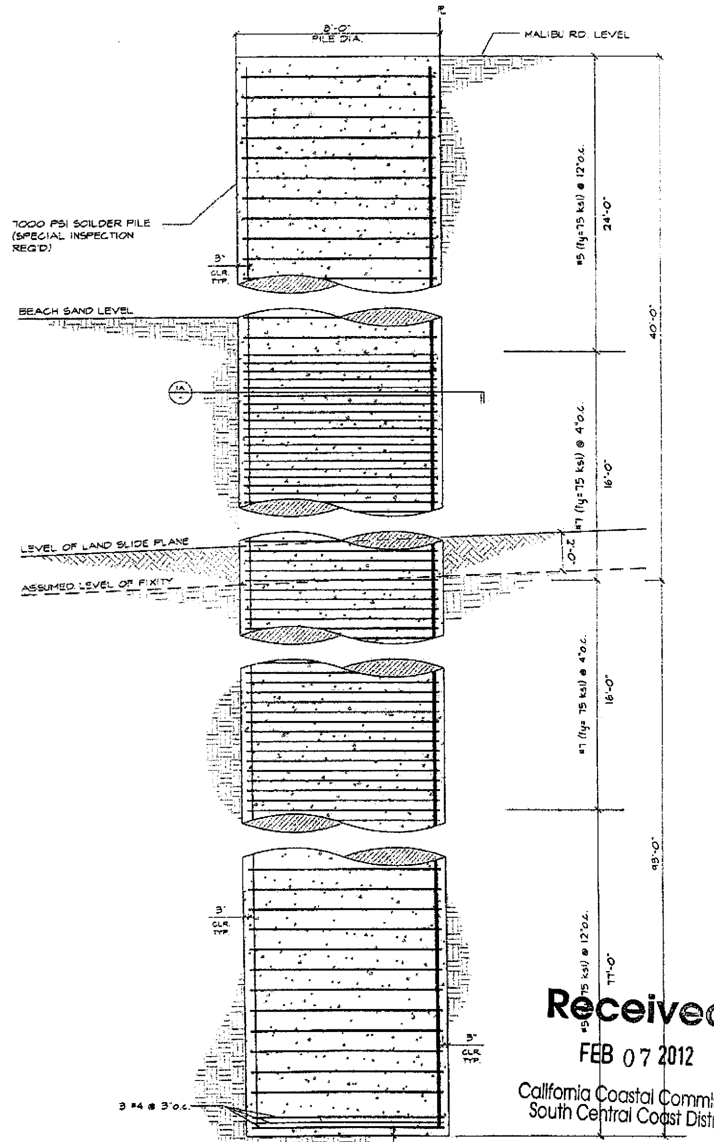
PILE DETAIL 2-A SCALE: 1/2" = 1'-0" (2-A)

BUILDING'S PILE SCHEDULE

PILE #	DIA.	APPROX. DEPTH TO BEDROCK "DT"	MIN. EMBED INTO BEDROCK "DI"	VERT. REINF.	CIRCULAR TIES/SPIRALS SPACING	
					S1	S2
P6	36"	18'	22'-0"	24 #9	6"	12"
P7	36"	18'	21'-0"	24 #9	6"	12"
P8	36"	18'	22'-0"	24 #9	6"	12"
P9	36"	21'-3"	17'-0"	24 #9	6"	12"
P10	36"	21'-3"	20'-0"	24 #9	6"	2"
P11	36"	21'-3"	17'-0"	24 #9	6"	12"
P12	36"	24'-6"	17'-0"	24 #9	6"	12"
P13	36"	24'-6"	20'-0"	24 #9	6"	12"
P14	36"	24'-6"	17'-0"	24 #9	6"	12"
P15	36"	27'-9"	17'-6"	24 #9	6"	12"
P16	36"	27'-9"	20'-0"	24 #9	6"	12"
P17	36"	27'-9"	17'-6"	24 #9	6"	12"
P18	36"	31'-0"	17'-6"	24 #9	6"	12"
P19	36"	31'-0"	17'-6"	24 #9	6"	12"
P20	36"	31'-0"	17'-6"	24 #9	6"	12"



PILE DETAIL 1-A SCALE: 1/2" = 1'-0" (1-A)



PILE DETAIL 1 SCALE: 1/2" = 1'-0" (1)

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FEB 07 2012
California Coastal Commission
South Central Coast District

REVISIONS

David C. Weiss
Structural Engineer & Associates, Inc.

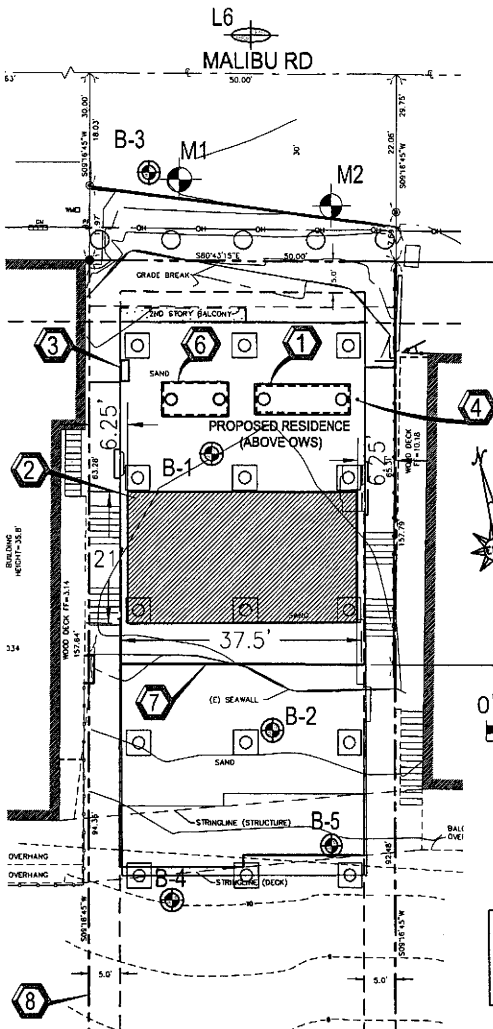
MR. N.H. MUSSRY
341 NORTH ROBERTSON BLVD.
BEVERLY HILLS, CA 90211

MUSSRY RESIDENCE
23360 MALIBU RD
MALIBU, CA 90265

PILE DETAILS

AS NOTED
MUSSRY

S1.1



1 ONSITE WASTEWATER SYSTEM SITE PLAN

Scale: 1"=20'-0"

0' 20' 40'

GRAPHIC SCALE

KEYNOTES:

1. 2000-GALLON JENSEN PRE-CAST 2-CHAMBERED PRIMARY TANK, WATERTIGHT.
2. 37.5'X21', 788 S.F. PRESSURE-DOSED LEACH FIELD, W/ 1' ROCK. LEACH FIELD ROCK SHALL BE INSTALLED IN BEACH SAND. GEOLOGIST TO PROVIDE FIELD OBSERVATION
3. SEPTITECH TELEMETRY CONTROL PANEL
4. CLEANOUT TO GRADE (COTG)
5. LEACH FIELD CLEANOUT (TYP)
6. M750UV-JENSEN H1 SEPTITECH PROCESSOR IN 1500-GAL 2-CHAMBERED, JENSEN PRE-CAST TANK, WATERTIGHT, H1 HIGH HEAD PUMP OPTION
7. SEAWALL
8. PROPERTY LINE

NOTES

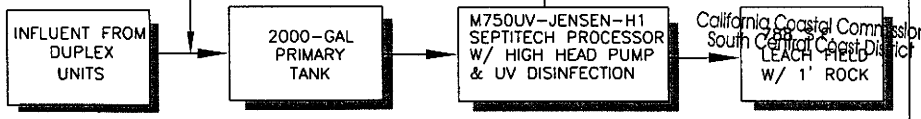
1. THESE PLANS ACCURATE FOR ONSITE WASTEWATER TREATMENT SYSTEM ONLY.
2. CONTRACTOR SHALL FOLLOW ALL REQUIREMENTS OF PROJECT FINAL FULL SIZE PLANS & SPECIFICATIONS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO OBTAIN THE FINAL FULL SIZE PLANS & SPECIFICATIONS FROM THE SYSTEM ENGINEER PRIOR TO PROCEEDING WITH WORK.

REFERENCE:

1. ROSELL SURVEYING: SURVEY REVISION-3 DATED 4/18/07.
2. SASSAN GEOSCIENCES, INC.: GEOLOGIC CROSS-SECTIONS DATED 3/12/02.
3. DAVID C. WEISS SE&A, INC.: COASTAL ENGINEERING REPORT DATED 2/14/06, 10/14/08, 11/20/08.
4. DARA KIMBALL, ARCHITECT: ARCHITECTURAL PLANS, SHEET A3.2, 3/29/07.
5. EPD CONSULTANTS, INC.: PRELIMINARY ENGINEERING REPORT, DATED 12/12/07; ADDENDUM I REPORT, DATED 06/24/08; ADDENDUM II REPORT, DATED 06/09/08

PEAK DESIGN DAILY FLOWRATE: 1050 GPD
AVERAGE DESIGN DAILY FLOWRATE: 500 GPD
WASTE STRENGTH OF SEPTIC TANK EFFLUENT: 200mg/L OR LESS

PEAK DESIGN DISPERSAL LOADING RATE: 1.33 GPD/SF
AVERAGE DESIGN DISPERSAL LOADING RATE: 0.63 GPD/SF



2 PROCESS FLOW SCHEMATIC

Scale: 1"= NTS

consultants
sustainable water systems & solutions
411 N. HARBOR BLVD., STE. 304
SAN PEDRO, CA 90731
Phone (310) 241-6565
Fax (310) 241-6566

REGISTERED PROFESSIONAL ENGINEER
KEVIN L. POFFENBARGER
Exp 06-30-10
No. 69089
CIVIL
STATE OF CALIFORNIA

NO.	REVISIONS:	DATE:	BY:
01.	CHANGE LOCATION OF SEAWALL	12/07	KP
02.	CHANGE DISPERSAL FIELD	06/08	KP
03.	REVISED DISPERSAL FIELD	12/08	AD

ADDRESS:

25360 MALIBU ROAD
MALIBU, CA 90265

SHEET TITLE: PROPOSED SEPTIC SITE PLAN

PROJECT: ONSITE WASTEWATER SYSTEM

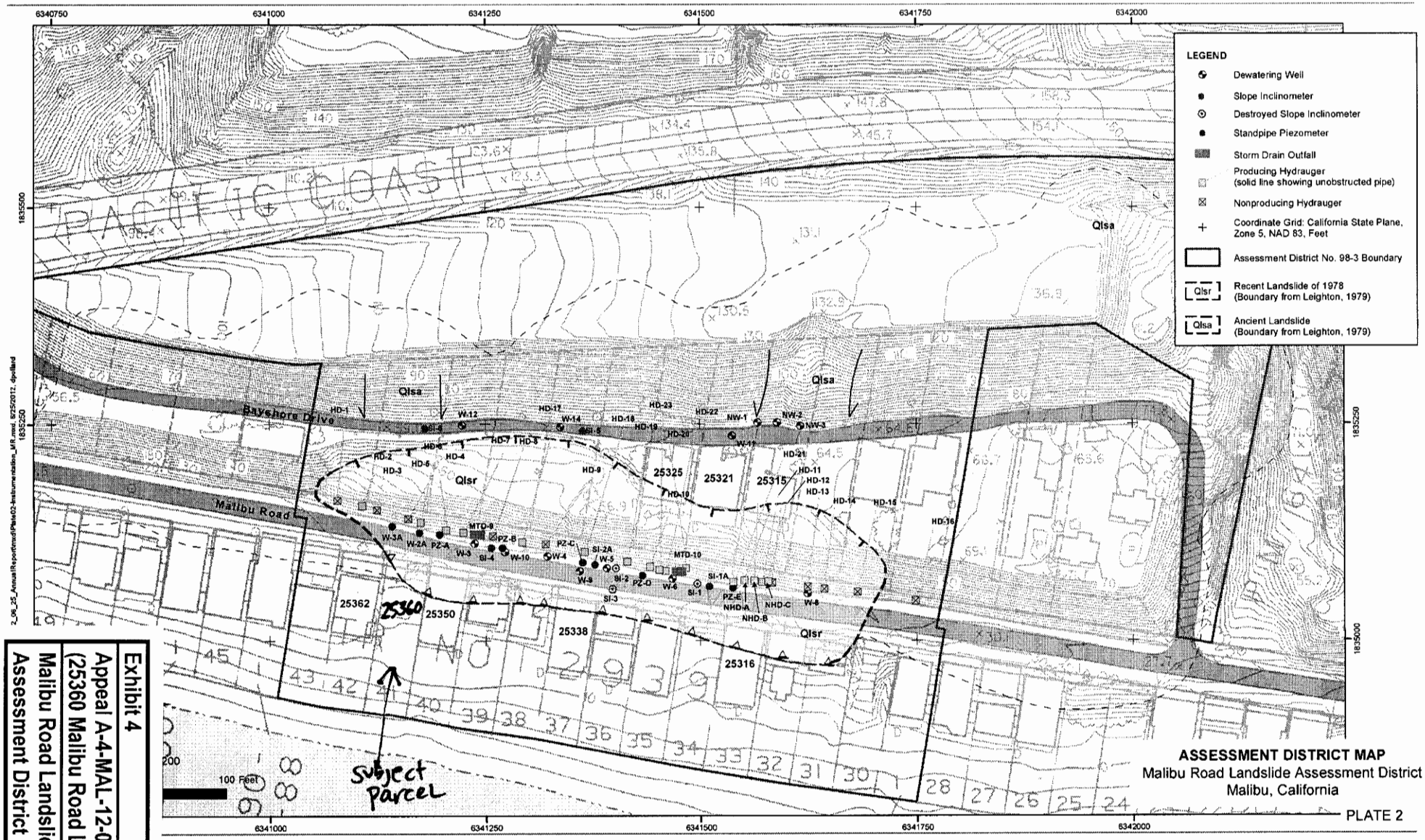
DATE	SCALE	DRAWN BY
08/20/07	AS SHOWN	AMD

PROJECT NO. G125

DRAWING NO. W0.01

SHEET 1 OF 1 SHEETS

City of Malibu
Project No. 04.B3399004

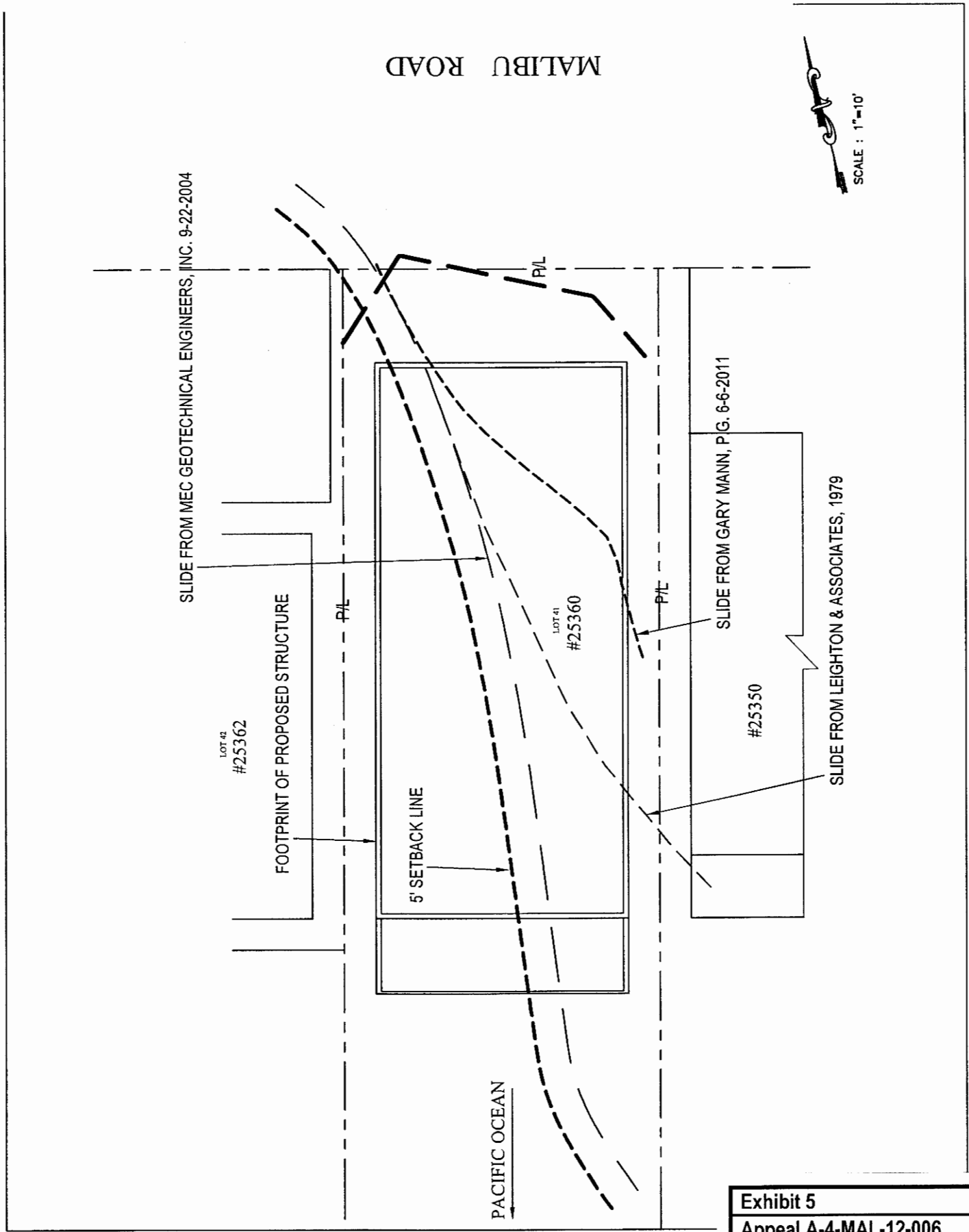


ASSESSMENT DISTRICT MAP
Malibu Road Landslide Assessment District
Malibu, California

PLATE 2

Exhibit 4
Appeal A-4-MAL-12-006 (25360 Malibu Road LLC)
Malibu Road Landslide Assessment District Map

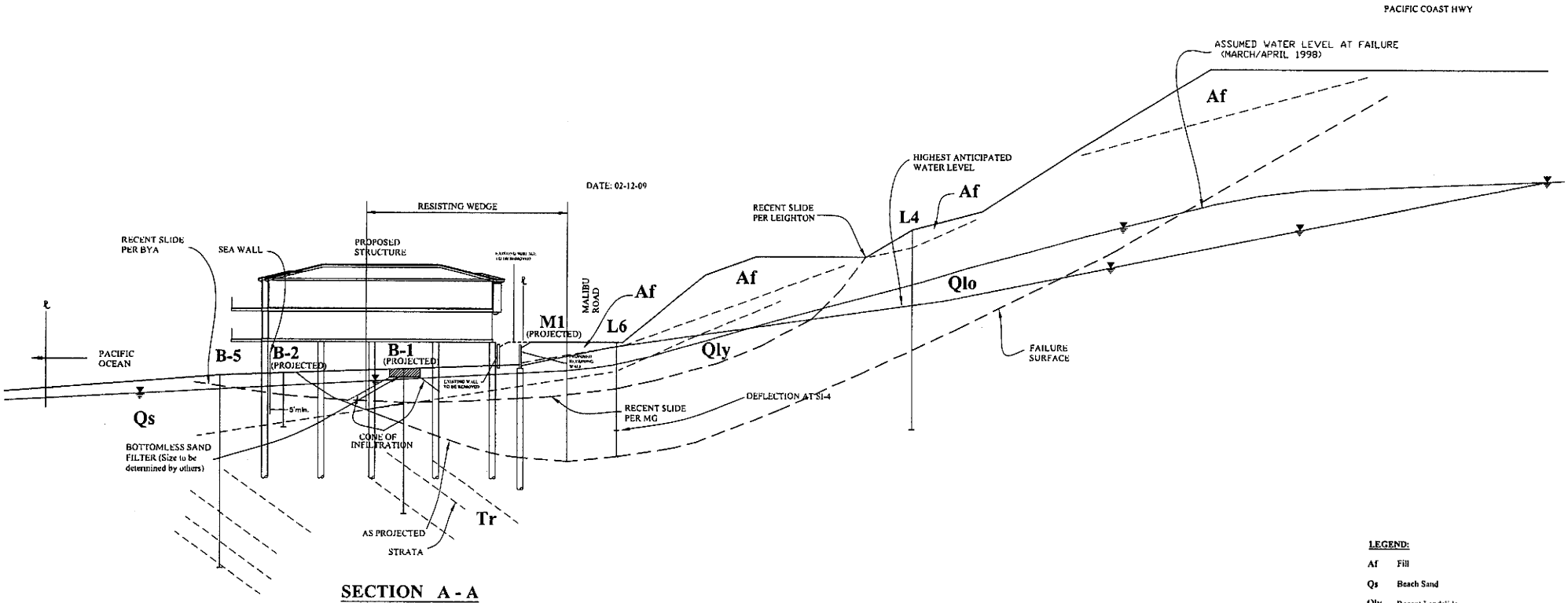
From Sassan Geosciences, Inc. "Western Edge of Slide Plane for 25360 Malibu Road", dated July 4, 2013



SAS	PLOT PLAN 25360 MALIBU ROAD, MALIBU

Exhibit 5
Appeal A-4-MAL-12-006 (25360 Malibu Road LLC)
Slide Geometry – Plan View and Section Views

From Sassan Geosciences, Inc. "Response to City Review Letter of May 5, 2008", dated February 12, 2009



SECTION A - A

SCALE: N.T.S.

EARTH WORK CALCULATION

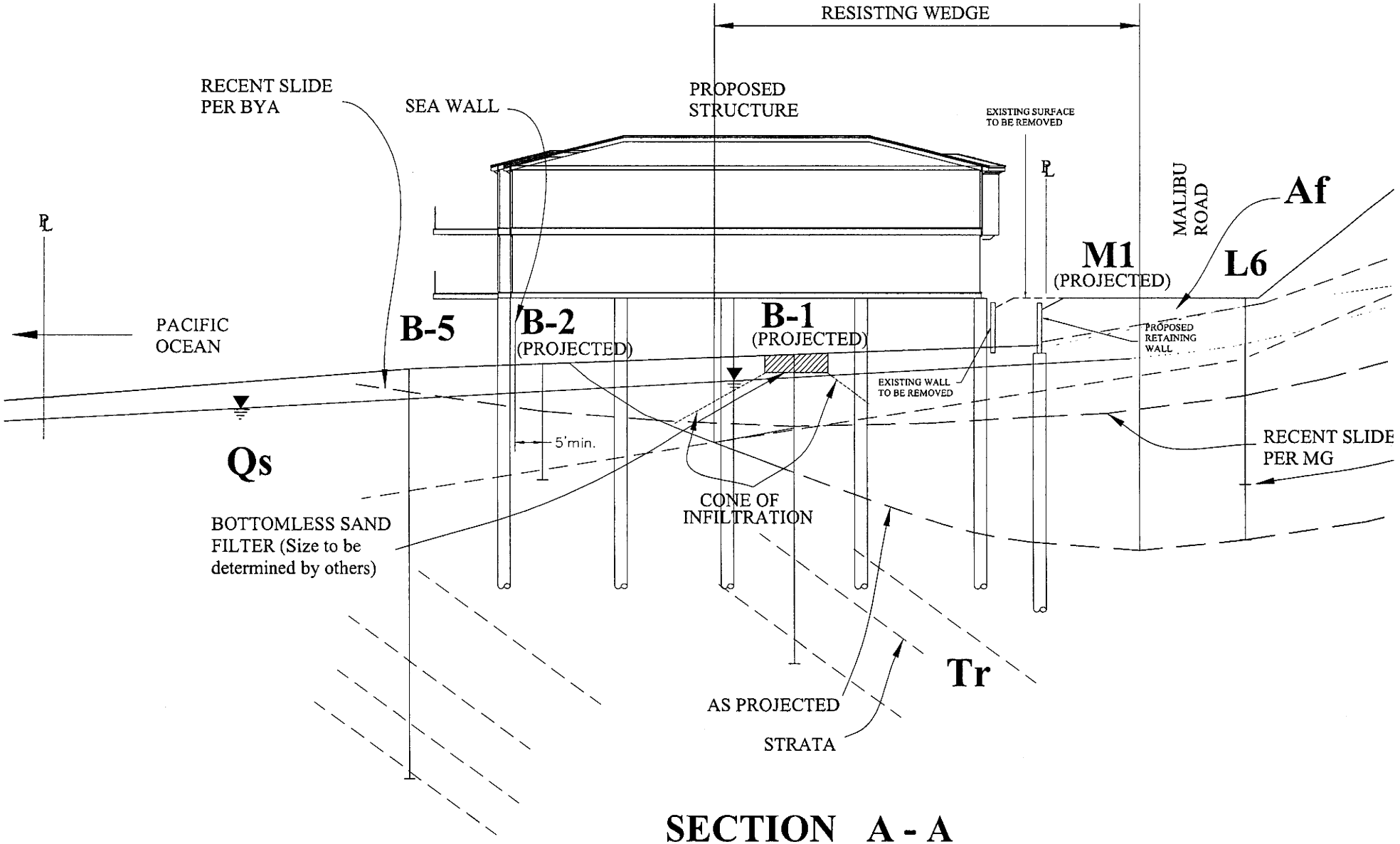
REMOVAL AND RECOMPACTION	- 689 cu.yd.
IMPORT	- 80 cu.yd.
EXPORT	- 80 cu.yd.

LEGEND:

Af	Fill
Qs	Beach Sand
Qly	Recent Landslide
Qlo	Older Landslide
Tr	Sandstone, Siltstone and Claystone
B-1	Borehole Location and Number (MEC)
M1	Borehole Location and Number (Mountain Geology)
L6	Borehole Location and Number (Leighton & Associates)
BYA	Bing Yen & Assoc.

From Sassan Geosciences, Inc. "Response to City Review Letter of May 5, 2008", dated February 12, 2009

DATE: 02-12-09



SECTION A - A

SCALE: N.T.S.

CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 591-5084

Received
JAN 27 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: Andrew Gombiner

Mailing Address: 8430 Santa Monica Blvd

City: West Hollywood, CA Zip Code: 90069 Phone: 323-656-2510

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

2 story, 2 unit, multi-family residence with 2 attached garages

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

25360 Malibu Road, Malibu CA 90265: APN 4459-017-005

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.

Exhibit 6
Appeal A-4-MAL-12-006
(25360 Malibu Road LLC)
Appeal by Andrew Gombiner

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: January 9, 2012

7. Local government's file number (if any): CDP 07-155

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:

Marissa Coughlan for 25360 Malibu Road, LLC
226312 PCH, Malibu CA 90265

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

(1) Andrew Gombiner
8430 Santa Monica Blvd., Suite 204
West Hollywood, CA 90069

(2) Richard N. Scott, Esq. - representing Andrew Gombiner
24955 Pacific Coast Highway, Suite C-202
Malibu, CA 90265

(3) Don Kowalewsky
27101 Old Chimney Road
Malibu, CA 90265

(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.

This appeal has been filed because the development proposed is inconsistent with the hazard policies of the Malibu LCP. Consistent with the Coastal Act policy 30253, LCP policies 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6 require that development in landslide areas be sited and designed to minimize risk to life and property from geologic hazards.

The site has a history of recent, major landslide activity including slides in 1972, 1978, 1980 and 1998. While the Notice of Final Action states only that a "flood" occurred on the property, this is incorrect. Landslides occured in 1972, 1978, 1980 and 1998 and there is evidence that the site still contains areas of active movement. The proposed development is inconsistent with the LCP policies pertaining to the geologic hazards as they relate to the stability of the site and the impact on adjoining properties. The LCP requires that there be "written findings of fact, analysis and conclusions addressing geologic, flood, and fire hazards, stuctural integrity or other potential hazards must be included in support of all approvals". Appellant contends that the manner of stabilizing the slide and the location of the development will create movement on offsite properties and that the record contains no facts to the contrary. The geological investigations performed are lacking in the following information, particularly as it relates to the impact of the soldier pile foundation on the adjoining properties.

The LCP requires very specific information regarding geology. However:

1- The geology reports provided by the Applicant failed to recognize that the original building on this property was destroyed by a landslide. The Applicant's geotechnical reports stated (and mapped) a landslide on only the northern portion of the property even though the seawall was offset by 4 feet and the map prepared by Bing Yen and Associates for the County shows the landslide through the entire property.

2- The project's geotechnical consultants never provided a list of references pertaining to any work performed prior to 1998 for this property or the surrounding area, indicating that they failed to consider them in their evaluation. A report was prepared by Leighton and Associates as part of a Los Angeles County contract to evaluate landslides along this portion of Malibu Road in response to the active landslide which destroyed the previous structure on this property. Previous site specific reports were prepared for this property prior to the original site development and during the period that the landslide destroyed the original structure.

A. The Applicant's original reports (MEC Geotechnical Engineers, Inc., 12/30/00 and Ray Eastman, 12/19/00) provided no list of references, as required by City guidelines and the standard of care.

B. A subsequent report dated 7/22/02 did not provide a list of references.

C. The first reference to the City Assessment District (formed to control the movement of the slide) geologic reports was in the 4/18/03 report by the Applicant's consultants, after the City specifically indicated that they had never looked at those reports. The reports submitted still did not reference previous geologic reports for the site or area.

D. Applicant's 7/31/03 report contained only references to the City Assessment District reports. Although the City review sheet which Applicant's report is responding to comments in the 1979 Leighton report, there is still no reference to the Leighton report. MEC simply stated that "Ready documentation with respect to the most recent slide movement is unavailable...". However, such documentation was available in the City files.

E. Applicant's 12/31/03 report contained only references to the City Assessment District reports.

F. Applicant's 9/22/04 report contained only references to the City Assessment District reports. The company changed names from MEC Geotechnical to Sassan Geosciences, Inc., but the consultants remain the same.

G. Applicant's 1/18/05, 3/21/05, 11/17/05, 10/12/07, 11/19/07, 3/24/08, 2/12/09 and 8/26/11 reports only contained references to the City Assessment District reports and their own reports and documents prepared for the currently proposed site development and failed to reference or evaluate any of the numerous other documents available.

Conditions on the permit are also inadequate and inconsistent with the LIP (4.2) requirement that "All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard." The conditions leave open several important questions without resolution. These questions were contained in two City Geologic Review Sheets which the Applicant's geotechnical consultants never addressed:

A. Malibu City Geologist Christopher Dean and reviewing geotechnical engineer Leland Kraft wrote in a review dated 8/26/02 that proposed mitigation measures cannot adversely affect offsite property.

B. Chris Dean and Loren Doyle on 10/14/04 specifically asked on behalf of the City: "To be in compliance with Section 111 of the Building Code, the geotechnical report must include a finding regarding 'the effect that the proposed building or grading construction will have on the geotechnical stability of property outside of the building site'. Well documented historic landslide movements of the recent landslide (Qly) mapped the side scarp of the landslide as crossing the subject site. Adjoining properties experienced relatively less damage because the landslide side scarp did not cross their properties. Will the installation of soldier piles on the subject site force the landslide side scarp onto the adjoining property, potentially adversely affecting the offsite property?"

In response, Sassan Geosciences (2005) simply replied that there would be no adverse effect on offsite property, but they provided no calculations or other method of analysis to support their opinion. Instead, they said: "The subject property has been subjected to lateral pressures and associated movements by the slide mass situated mainly on the north. The proposed improvements will create a resisting wedge that has never been there before. This resisting wedge is designed to stop all movement at subject property. This wedge is not designed and cannot be designed to solve the landslide problem that exist offsite". "The proposed improvements will not have an adverse effect on the geologic stability of the properties outside of the building site." These statements relied on unsubstantiated opinion and were not based on any scientific evaluation of the evidence.

Additionally, on page 7 of Resolution No. 12- the condition imposed on the request by the ERB that the project consultants "investigate the feasibility of utilizing a rigid foundation system of the western half of the subject property with cantilevered grade beam over the right half of the property to allow the

ground to move unobstructed underneath" is simply to state that the "project applicant has agreed to investigate the geometry of the westerly slide margin and feasibility of placing the building support system, AOWTS and appurtenant structures entirely on the stable portion of the lot". The project structural engineer asserts that "if this can be done, it will eliminate the necessity of a stabilization soldier wall along the north property line". "A condition of approval is included in this resolution requiring the applicant to submit evidence this investigation was completed". It is inconsistent with LCP requirements to fail to require that an analysis of the alternatives be done PRIOR TO approval and allow the Applicant to have full discretion over whether or not to utilize a different method of stabilization. Failure to require the alternatives' investigation violates the requirement to do an alternatives' analysis and to show that the design of the stabilization system will not impact adjoining properties and is the least environmentally damaging alternative.

The LIP requires that findings be made that there will be no impact on adjoining properties. 9.4A requires that the geologic/soils/geotechnical report shall include a statement that the "development will in no way contribute to the instability on or off the subject site". The report did include such a statement. However, there was no study or analysis done to back up this conclusion and there was no factual basis upon which to have made such a finding. The ERB requested that the consultant evaluate future changes to the western margin of the landslide to implement appropriate stabilization measures during the design/engineering phase of the project. However, the response to this recommendation was "an evaluation of future changes of the western margin of the landslide is beyond the purview of the project's structural engineer who has reiterated that the construction of the proposed soldier pile wall will not turn the slide onto the property to the east nor cause any more damage to the adjacent properties than if there were no wall constructed." Since no evaluation was done, this statement is conclusionary without any basis. In addition, the City geologist, Dean, stated that there is no way to determine "whether or not by putting a stabilization device on one property, you will prevent or cause movement on adjacent properties". He went on to state that he based his determination of no impact on adjoining properties on his experience that placement of stability devices on properties has never resulted in damage to adjoining properties. This was annecdotal and was not supported by fact. It is feasible to do a three-dimensional analysis of the landslide and evaluate the effect on adjacent properties by placing a barrier to landslide movement in one area. The landslide's three-dimensional shape can be modeled and deformed on a computer to simulate the way the landslide will move when a portion is restrained. Clearly, there is a LCP requirement that there be a legal basis for finding that there should be no impact on adjoining properties, and unless the City had a factual basis for making such a finding, no such finding could have been made.

The City has also made the finding A1 (in the Notice of Final Action) "that the project as desribed in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program". Such finding was simply a statement to the effect that "the project has been reviewed for conformance with the LCP and, as proposed and/or conditioned, conforms to the LCP". There is nothing stated in the record to explain why the project is consistent with the LCP.

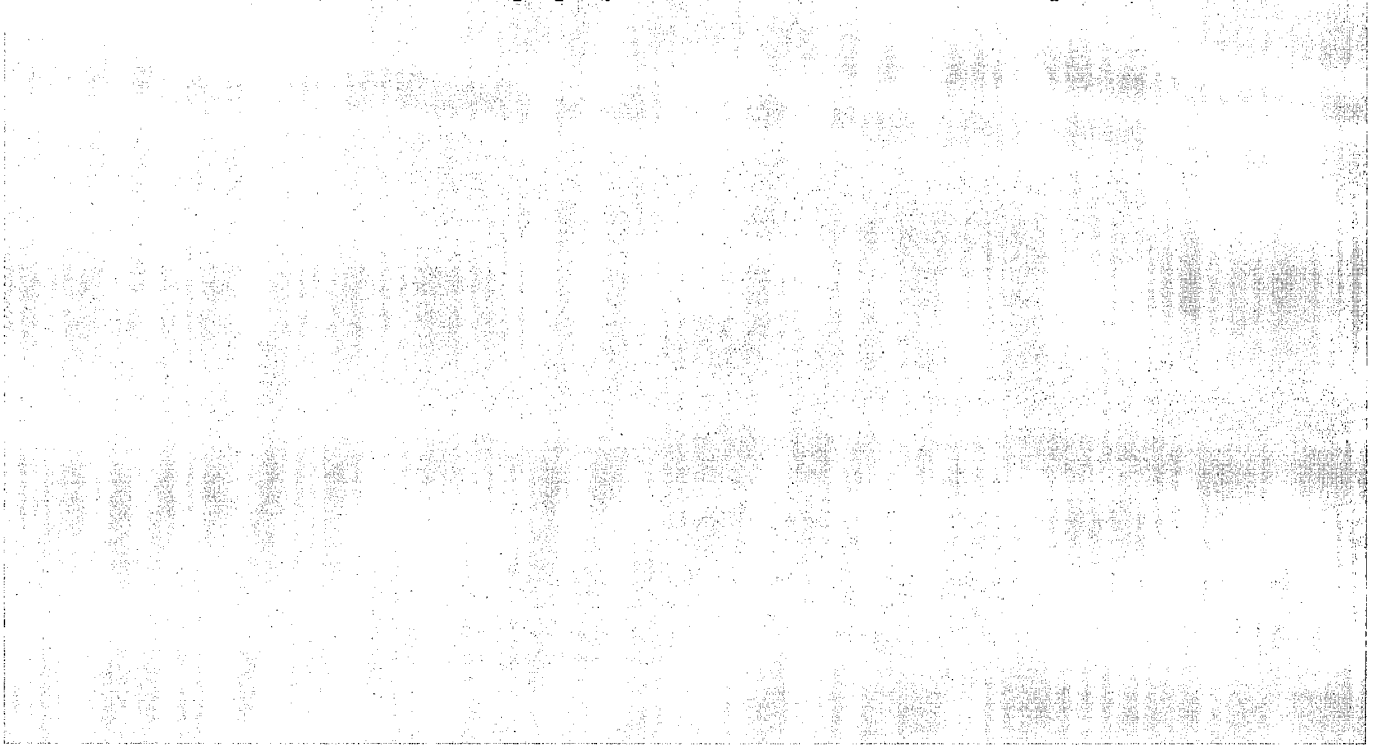
There other inaccuracies and misrepresentations in the Sassan Geosciences reports, including, but not limited to:

1-Their table of landslide movement showed a reading for Slope inclinometer SI 4 from July, 1997 to April, 1998 to be 0.4 inches. In fact, that inclinometer was first read on March 3, 1998, not in 1997. It was installed after the landslide re-activated in February of 1998 and it showed 0.42 inches of movement in its first 6 days. The City Assessment District 1998 report stated "The rate of landslide movement

appears to have peaked at approximately 8-inches per month during early March".

2- The geotechnical investigation contracted by Sassan Geosciences (prepared by Earth Imaging Geologic Services) in 2011 contains a map showing their interpretation of landslide limits that clearly do not match existing conditions. For example, compare the landslide boundary to the offset seawall evident in photos (such report having been provided to the City Geologist). The document is in the City files.

In conclusion, the geology reports are incomplete, contain numerous inaccuracies and misrepresentations and are insufficient to justify a conclusion that the project will not have either a direct and/or indirect impact on adjoing properties as required by the certified LCP. As such, the Commission should find Substantial Issue exists and review the property for conformance with the hazard policies of the 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: January 26, 2012

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

Section VI. Agent Authorization

I/We hereby authorize Leo A. Schwarz, Esq. (818) 597-1112
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: January 26, 2012

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

25 October 2013

GEOTECHNICAL REVIEW MEMORANDUM

To: Deanna Christensen, Coastal Program Analyst
From: Mark Johnsson, Staff Geologist
Re: 25360 Malibu Road LLC Appeal (A-4-MAL-12-006)

In connection with the above-referenced appeal, I have reviewed the following reports and documents:

1) Converse Foundation Engineering Company, 1962, "Supplementary geologic investigation, Lot 42, Tract 12939", 2 p. letter report dated 28 November 1962 and signed by R. A. Hoffman Jr. (CEG 402) and J. R. Davis.

2) Converse Foundation Engineering Company, 1964, "Geologic investigation, proposed apartment building, Lots 41 and Lot 42, Tract 12939, 25360 and 25362 Malibu Road, County of Los Angeles, California", 3 p. letter report dated 7 July 1964 and signed by R. A. Hoffman Jr. (CEG 402) and J. R. Davis.

3) Converse Foundation Engineering Company, 1966, "Lot 42, Tract 12939, 25362 Malibu Road, Los Angeles County, California", 1 p. letter report dated 16 March 1966 and signed by H. A. Spellman Jr. and J. R. Davis.

4) Converse Davis and Associates, 1972, "Geologic and Soil Engineering Review, Proposed apartment building, Lot 41, Tract 12939, 25360 Malibu Road, Malibu, California", 1 p. letter report dated 10 May 1972 and signed by C. R. MacFadyen.

5) Converse Davis and Associates, 1972, "Geologic and Soil Engineering Review, Proposed apartment building, Lot 41, Tract 12939, 25360 Malibu Road, Malibu, California", 4 p. report dated 29 March 1972 and signed by C. R. MacFadyen and R. A. Hoffman Jr. (CEG 402).

6) Eugene D. Michael Consulting Geologist, 1978, "Emergency remedial measures--West Malibu Beach Road landslide", 5 p. letter report dated 19 March 1978 and signed by E. D. Michael (CEG 157).

7) Kovacs-Byer and Associates, 1978, "Slide stabilization, existing apartment buildings, Lots 41 and 42, 23560 and 25362 Malibu Road, Malibu, Los Angeles County, California", 6 p. letter report dated 20 March 1978 and signed by H. S. Roberts (CEG 1001), J. W. Byer (CEG 883) and G. S. Kovacs (CE 13503).

8) Leighton and Associates, 1979, "Final Report, Geotechnical investigation of landslide conditions affecting Puerco West area, Malibu, California (C.I. 2607-M, Zone A)", 35 p. geotechnical report dated 4 September 1979 and signed by R. Lur 21948)

Exhibit 7
Appeal A-4-MAL-12-006 (25360 Malibu Road LLC)
Memorandum by Dr. Mark Johnsson

9) Mountain Geology, 1991, "Engineering geologic report, Proposed duplex, Lot 41, Tract 12939, 25360 Malibu Road, Malibu, California", 14 p. geotechnical report dated 25 July 1990 (revised 21 March 1991) and signed by J. W. Holt (CEG 1200).

10) Mountain Geology, 1991, "Addendum engineering geologic report, Proposed residence, Lot 41, Tract 12939, 25360 Malibu Road, Malibu, California", 4 p. geotechnical report dated 17 January 1991 (revised 21 March 1991) and signed by J. W. Holt (CEG 1200).

11) MEC/Geotechnical Engineers, 2000, "Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 13 p. geotechnical report dated 30 December 2000 and signed by S. A. Salehipour (GE 2579) [Incorporates a 5 page geologic report by The Geologic Outfit, dated 19 December 2000 and signed by Ray Eastman (CEG 423)].

12) Skelly Engineering, 2001, "Wave uprush study, 25360 Malibu Road, Malibu", 11 p. report dated November 2001 and signed by D. W. Skelly (RCE 47857).

13) Skelly Engineering, 2002, "Response to coastal engineering review, 25360 Malibu Road, Malibu", 4 p. letter report dated 13 May 2002 and signed by D. W. Skelly (RCE 47857).

14) MEC/Geotechnical Engineers, 2002, "Addendum No. 1 to preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 11 p. report dated 22 July 2002 and signed by S. A. Salehipour (GE 2579) and R. Eastman (CEG 423).

15) MEC/Geotechnical Engineers, 2003, "Addendum No. 2 to preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 10 p. report dated 4 June 2003 and signed by S. A. Salehipour (GE 2579) and R. Eastman (CEG 423).

16) MEC/Geotechnical Engineers, 2003, "Addendum No. 3 to preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 6 p. report dated 31 July 2003 and signed by S. A. Salehipour (GE 2579) and R. Eastman (CEG 423).

17) MEC/Geotechnical Engineers, 2003, "Addendum No. 4 to preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 5 p. report dated 31 December 2003 and signed by S. A. Salehipour (GE 2579) and R. Eastman (CEG 423).

18) SASSAN Geosciences, 2004, "Addendum No. 5 to Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 3 p. geotechnical report dated 22 September 2004 and signed by S. A. Salehipour (GE 2579) and R. Eastman (CEG 423).

19) SASSAN Geosciences, 2005, "Addendum No. 6 to Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 8 p. report dated 18 January 2005 and signed by S. A. Salehipour (GE 2579) and R. Eastman (CEG 423).

20) SASSAN Geosciences, 2005, "Addendum No. 7 to Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 3 p. report dated 31 March 2005 and signed by S. A. Salehipour (GE 2579).

21) SASSAN Geosciences, 2005, "Addendum No. 8 to Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 4 p. report dated 17 November 2005 and signed by S. A. Salehipour (GE 2579) and R. Eastman (CEG 423).

22) David C. Weiss Structural Engineer and Associates, 2006, "Coastal Engineering Report for 25360 Malibu Road, Malibu dated February 14, 2006", 14 p. report dated 14 February 2006 and signed by D. C. Weiss (SE 1867).

23) David C. Weiss Structural Engineer and Associates, 2007, "Addendum Number One to Coastal Engineering Report for 25360 Malibu Road, Malibu dated February 14, 2006", 2 p. letter report dated 6 November 2007 and signed by D. C. Weiss (SE 1867).

24) SASSAN Geosciences, 2007, "Addendum No. 9 to Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 4 p. report dated 12 October 2007 and signed by S. A. Salehipour (GE 2579) and T. G. Hill (CEG 1100).

25) SASSAN Geosciences, 2007, "Addendum No. 10 to Preliminary geotechnical engineering and engineering geology investigation for 25360 Malibu Road, Malibu", 3 p. report dated 19 November 2007 and signed by S. A. Salehipour (GE 2579) and T. G. Hill (CEG 1100).

26) SASSAN Geosciences, 2009, "Response to City Review Letter dated 5/8/2008, 25360 Malibu Road, Malibu", 4 p. response letter dated 12 February 2009 and signed by S. A. Salehipour (GE 2579) and T. G. Hill (CEG 1100).

27) SASSAN Geosciences, 2008, "Response to City Review Letter dated 1/30/2008, 25360 Malibu Road, Malibu", 5 p. response letter dated 24 March 2008 and signed by S. A. Salehipour (GE 2579) and T. G. Hill (CEG 1100).

28) E.D. Michael Consulting Geologist, 2006, "Analysis of geotechnical data concerning redevelopment of Lot 41, Tract 12939 (4459-017-041), 23560 Malibu Road, Malibu, California", 33 p. geotechnical report dated 3 May 2006 and signed by E. D. Michael (CEG 157).

29) E.D. Michael Consulting Geologist, 2008, "Supplemental analysis of geotechnical data concerning redevelopment of Lot 41, Tract 12939 (4459-017-041), 23560 Malibu Road, Malibu, California", p. geologic report dated 5 May 2008 and signed by E. D. Michael (CEG 157).

30) GeoDynamics, 2006, "Third party review, Landslide mitigation proposed adjacent to 25350 Malibu Road, California", 11 p. review dated 25 May 2006 and signed by C. J. Sexton (CEG) and A. Abdel-Haq (GE 2308).

31) SASSAN Geosciences, 2009, "Synopsis of foundation design recommendations for 25360 Malibu Road, Malibu", 14 p. geotechnical report dated 6 October 2009 and signed by S. A. Salehipour (GE 2579) and T. G. Hill (CEG 1100).

32) Earth Imaging Geologic Services, 2011, "250 MHz Ground Penetrating Radar geophysical survey findings for landslide imaging and mapping at 25360 Malibu Road, Malibu, California", 8 p. report dated and signed by G. M. Mann (RG 6589).

33) SASSAN Geosciences, 2011, "Study of slide movement for 25360 Malibu Road, Malibu", 7 p. report dated 26 August 2011 and signed by S. A. Salehipour (GE 2579).

34) David C. Weiss Structural Engineer and Associates, 2011, "Response to ERB recommendations, 25360 Malibu Road, APN: 44459-017-005", 2 p. letter dated 1 June 2011 and signed by D. C. Weiss (SE 1867).

35) Donald B. Kowalewsky, 2000, "Engineering Geologic review of Lot 41, Parcel Map 12929 located at 25360 Malibu Road, California", 3 p. letter report dated 12 October 2000 and signed by D. B. Kowalewsky (CEG 1025).

36) Donald B. Kowalewsky, 2002, "Engineering Geologic review of geotechnical reports prepared for 25360 Malibu Road, California", 8 p. letter report dated 15 April 2002 and signed by D. B. Kowalewsky (CEG 1025).

37) Donald B. Kowalewsky, 2002, "Engineering Geologic review of geotechnical reports prepared for 25360 Malibu Road, California", 3 p. letter report dated 26 November 2002 and signed by D. B. Kowalewsky (CEG 1025).

38) Donald B. Kowalewsky, 2003, "Engineering Geologic review of geotechnical reports prepared for 25360 Malibu Road, California", 4 p. letter report dated 21 August 2003 and signed by D. B. Kowalewsky (CEG 1025).

39) Donald B. Kowalewsky, 2004, "Engineering Geologic review of geologic reports prepared for 25360 Malibu Road, California", 3 p. letter report dated 31 December 2004 and signed by D. B. Kowalewsky (CEG 1025).

40) SASSAN Geosciences, 2012, "Three-Dimensional Stability Analyses 25360 Malibu Road, Malibu", 6 p. geotechnical report dated 14 November 2012 and signed by S. A. Salehipour (P.E. 44172) and T. G. Hill (CEG 1100).

41) Donald B. Kowalewsky, 2013, "Engineering Geologic review of November 14, 2012 geotechnical report prepared for 25360 Malibu Road, California", 3 p. letter report dated 20 February 2013 and signed by D. B. Kowalewsky (CEG 1025).

42) SASSAN Geosciences, 2013, "Western edge of slide plane for 25360 Malibu Road, Malibu", 2 p. geotechnical report dated 4 July 2013 and signed by S. A. Salehipour (GE 2579).

43) EPD Consultants, 2013, "Feasibility/Infeasibility report for a new onsite wastewater system at 25360 Malibu Road, Malibu, California 90265", 4 p. report dated 31 July 2013 and signed by K. Poffenbarger (RCE 69089).

44) David C. Weiss Structural Engineer and Associates, 2013, "Feasibility of cantilevering over the landslide scarp the structure proposed for 25360 Malibu Road, Malibu", 5 p. report dated 23 July 2013 and signed by D. C. Weiss (SE 1867).

45) Bing Yen and Associates, 1998, "Malibu Road landslide assessment monitoring and maintenance report: July to April 1998", p. monitoring report dated and signed by G. D. Tofani (RCE) and B. Y. Yen (GE).

46) Bing Yen and Associates, 1999, "Annual observation and maintenance report for the period April 1998 through March 1999, Malibu Road (Puerco Beach) Landslide Assessment District, Malibu, CA", 11 p. monitoring report dated May 1999 and signed by M. G. Rogers (CE 54546) and E. Y. Yin.

47) Bing Yen and Associates, 1999, "Annual report, April 1999 through June 2000, Malibu Road Landslide Assessment District, Malibu, CA", 10 p. monitoring report dated August 2000 and signed by C. C. Moors, Scott, L. Doyel and D. W. Sykora (GE).

48) Bing Yen and Associates, 2002, "Annual report, July 2001 through June 2002, Malibu Road Landslide Assessment District, Malibu, California", 7 p. monitoring report dated March 2003 and signed by L. Doyel (CE 61337) and C. C. Moors, Scott.

49) Bing Yen and Associates, 2002, "Annual report July 2000 through June 2001, Malibu Road Landslide Assessment District", 9 p. monitoring report dated January 2002 and signed by R. Moumneh, C. C. Moors, Scott and L. Doyel.

50) Bing Yen and Associates, 2003, "Annual report, July 2002 through June 2003, Malibu Road Landslide Assessment District, Malibu, California", 9 p. monitoring report dated October 2003 and signed by L. Doyel (CE 61337) and C. C. Moors, Scott.

51) Fugro West, 2004, "Annual report, July 2003 through June 2004, Malibu Road Landslide Assessment District, Malibu, California", 8 p. monitoring report dated November 2004 and signed by L. Doyel (CE 61337), C. C. Moors, Scott and A. Spencer.

52) Fugro West, 2005, "Annual report, July 2004 through June 2005, Malibu Road Landslide Assessment District, Malibu, California", 10 p. monitoring report dated October 2005 and signed by L. Doyel (CE 61337) and C. C. Moors, Scott.

53) Fugro West, 2006, "Annual report, July 2005 through June 2006, Malibu Road Landslide Assessment District, Malibu, California", 10 p. monitoring report dated August 2006 and signed by C. Dean (CEG 1751), A. Spencer and C. D. Prentice (CEG 1602).

54) Fugro West, 2007, "Annual report, July 2006 through June 2007, Malibu Road Landslide Assessment District, Malibu, California", 9 p. monitoring report dated October 2007 and signed by C. Dean (CEG 1751) and A. Spencer.

55) Fugro West, 2008, "Annual report, July 2007 through June 2008, Malibu Road Landslide Assessment District, Malibu, California", 8 p. monitoring report dated August 2008 and signed by C. Dean (CEG 1751) and A. Spencer.

56) Fugro West, 2009, "Annual report, July 2008 through June 2009, Malibu Road Landslide Assessment District, Malibu, California", 8 p. monitoring report dated October 2009 and signed by C. Dean (CEG 1751), A. Spencer and L. Doyel (CE 61337).

57) Fugro West, 2011, "Annual report, July 2010 through June 2011, Malibu Road Landslide Assessment District, Malibu, California", 8 p. monitoring report dated August 2011 and signed by C. Dean (CEG 1751), A. Spencer and L. Doyel (CE 61337).

In addition, I have reviewed numerous County and City Geotechnical Review Sheets (the ones pertinent to the current project are attached to references 14-19 and 21, 26, and 27). The geotechnical reviewers for the City of Malibu approved the project on 3 January 2006 and, upon confirmation that conditions had not changed since that approval, again on 31 March 2009. I also have reviewed architectural plans for the proposed duplex and for the on-site wastewater

treatment system. I have had numerous conversations (in person and via telephone) regarding the project with geotechnical consultants for the applicant, appellant, and the City, and visited the site on 22 August 2012. Finally, I have reviewed a video of a portion of the City Council hearing of 9 January 2012, at which the Council approved the project on appeal from the Planning Commission.

References 1 through 5 evaluated the site for the potential to build structures on the site and an adjacent lot. References 6 through 9 were for remediation measures following a landslide that destroyed an apartment building on the site. References 9 and 10 were in support of a proposed structure, which was never ultimately built, to replace the destroyed apartment building. References 11 through 27 were in support of the current proposed duplex, satisfying geotechnical review requirements of the City of Malibu. References 28 through 30 are third-party reviews of the proposed development. References 31 through 34 are in support of the proposed development, performed in response to the City's Environmental Review Board review. References 35 through 39 are reviews of site conditions and of the proposed duplex supplied by the appellant. References 40 through 44 are responses from both the applicant's and appellant's geologists to questions posed by me. References 45 through 57 are annual monitoring reports describing the results of monitoring reporting to the Malibu Road Landslide Assessment District. Please note that the copies of references 14, 18, and 29 that I reviewed were missing portions of the reports.

Geologic Conditions and History of the Site

The subject site is a beach-front parcel with beach sand exposed over most of the site and artificial fill at the extreme northern portion, adjacent to Malibu Road. Underlying these deposits are at least two generations of landslide deposits; an upper "younger" (i.e., recent) landslide and an older (i.e., ancient) landslide. Bedrock consists of the Monterey and/or Trancas Formations. The depth of the slide planes and the depth to bedrock has been the subject of much discussion in the above referenced documents and will be discussed further in the section "**Slide Geometry**." Several of the references cited above refer to both the adjacent lot and to the subject site. The following discussion refers to the subject site (25360 Malibu Road), but makes reference to offsite studies as well.

A large ancient landslide complex has been known to underlie this part of Malibu since at least 1961, when it was mapped by the U.S. Geological Survey (Schoellhamer and Yerkes, 1961). Nevertheless, no active landslide was identified in the initial geotechnical investigations of the site (References 1 through 3). However, a large landslide to the north of the subject sites was identified (presumably that mapped by Schoellhamer and Yerkes), and it was recommended that only ancillary structures (garages and storage structures) be built on the fill at the northern end of the lots. An apartment building was built on Lot 41 next door, but the County required a "landslide waiver" due to the proximity to the mapped ancient landslide upslope. County geologic reviews dated 14 April 1962, 27 July 1964, 2 October 1969 and 17 April 1972 for the subject lot all disapproved building plans, citing the need for further stability analyses. Nevertheless, a three unit, two story apartment building was built on the subject site in the early 1970's, apparently without sign off by the County's geotechnical reviewers. Due to the known presence of landslide in this area, as part of the County's permit process the property owner was

required to sign and record a covenant and agreement (Slide Waiver) acknowledging the site is subject to physical hazards of a geologic nature and agreeing to relieve the County of liability for any damage or loss resulting from the issuance of a building or grading permit.

In 1978, a portion of the ancient landslide began to move, resulting in damage to the structure. In an attempt to stave off its destruction, the owner began to install a series of concrete caissons in Malibu Road (reference 7), without benefit of permits from the County. A stop work order was issued, and the planned caisson system was never completed. The apartment building was repaired.

Following the activation of the landslide in 1978, the Malibu Road Landslide Assessment District was established in 1981 by the County of Los Angeles (the County administered the Assessment District until 1991 when the City incorporated and took over the District). The County retained Leighton and Associates to investigate the landslide (reference 8), who identified an active landslide underlying a portion of the subject site.

In 1983, the landslide was again reactivated, significantly damaging the apartment building on the site. The property owner had the building demolished, and all development was removed except for the timber bulkhead.

References 9 and 10 were prepared to support redevelopment of the site. They concluded that the active landslide debris extended to a depth of 17 to 18 feet, and that the ancient landslide plane was at a depth of 27 to 28 feet. The County reviewed these reports on 17 December 1990 and 5 February 1991 and did not approve them, indicating concerns that stabilizing the site could deflect landslide movement onto adjoining properties. The City's reviewing geologist also disapproved development of the site on 2 September 1990, prior to the City's incorporation.

Following heavy rains associated with the 1997-1998 El Niño, the landslide began rapid movement once more. As reported in reference 45, this movement was along slide planes between 32 and 38 feet below Malibu Road. A graben developed across the property, and the seawall was deflected approximately 4 feet. Movement peaked at about 8 inches per month in March 1998. The rate then dropped remarkably with the onset of summer conditions and the installation of additional dewatering wells and horizontal drains (References 45, 46). Detailed monitoring reports (references 45-57) are available from this time forward. No further movement was detected in inclinometers installed in the slide until January through March of 2005, when inclinometers indicated up to 0.5 inch of movement. This year was the wettest in southern California in over a century, with over 37 inches falling in Malibu—over twice the usual annual average (reference 52). No movement has been detected since that time (through June 2011, references 53-57).

The assessment district, which functions similarly to a GHAD but is a local, rather than a state, entity, currently maintains 23 hydraugers and 13 vertical wells that actively dewater the slide mass. Groundwater elevations are monitored with 14 functioning piezometers, and ground movement is monitored with 5 functioning inclinometers, three in the slide mass and two above it, in the older (ancient) slide mass. The dewatering system has performed extremely well over the past decade, and, as discussed above, only minor movement has been detected in one

extremely wet year. Given the slide's history, however, its reactivation in the future is certainly possible.

Slide Geometry

Any attempt to resist the forces of the landslide requires an accurate understanding of the geometry of the landslide. Geologists' interpretation of slide geometry has changed over time as additional information has become available. The County hired Leighton and Associates following activation of the slide in 1978 to characterize the slide and to make recommendations for remediation (reference 8). They identified several ancient coalescing landslides involving both marine terraces and underlying Monterey formation bedrock. Artificial fill has been placed on some of these materials. The recent landslide, reactivated in 1978, 1983 and 1998, appears to largely involve fill materials. In reference (8), the toe of the landslide was depicted as lying just south of Malibu Road, just clipping the northeast corner of the subject lot. This is the geometry used in all of the Assessment District monitoring reports (references 45-57). The applicant's geologist (reference 11) argued that the slide plane is deeper and extends further seaward than indicated by Leighton and Associates, however. The subject of the depth to the slide plane, slide geometry, and direction of bedding dip were the subject of a lengthy exchange between the City's geotechnical review staff and the applicant's geologist (References 14-19 and 21, 26, and 27). The appellant's geologist also has argued (references 35 through 39) that the slide was poorly characterized. However, the excavation of 3 additional borings (one down hole logged and two continuously cored) and a Ground Penetrating Radar study (reference 32) have further refined the slide geometry. After reviewing all of this material, it is my professional judgment that, the slide geometry used in the latest pile calculations (reference 26) accurately reflects site conditions. That is, the surface expression of the side scarp runs diagonally through the property, and the eastern portion of the property lies on the recent landslide, and the western portion of the property lies on the ancient landslide. Several interpretations of the exact location of the slide plane are depicted in reference 42. In my judgment, the most reasonable (and conservative) location is that depicted in reference 32.

Pile Design and Effect on Offsite Properties

The extensive City geotechnical review, and the collection of additional data and refinement of the slide geometry, resulted in changing recommendations concerning the forces that must be withheld by piles to bring the subject site to an acceptable factor of safety (1.5 static, 1.1 pseudostatic) (References 14-19 and 21, 26, and 27). The foundation, grading, and drainage recommendations are summarized in reference 31. According to that reference, the piles resisting the landslide mass, a minimum 24 inches in diameter, must by imbedded a minimum of 30 feet into "competent bedrock." I note that "competent bedrock" may, in fact, be the underlying ancient landslide. This ancient landslide has not shown any sign of historical movement, however. They are to be designed to resist active earth pressure increasing at a rate of 268 pcf per foot of depth. The pressure from the static equivalent fluid pressure (EFP) is applied in a form of a descending triangle. Earthquake forces are resisted by applying pseudo-static earth pressure increasing at a rate of 146 pcf per foot of depth. The pressure from the pseudo-static EFP is applied in a form of an ascending (reversed) triangle. I agree that designing to these

forces will assure a factor of safety of 1.5 (static) and 1.1 (pseudostatic) to the area seaward of the piles.

In fact, the Pile Plan I examined (prepared by David C. Weiss Structural Engineer and Associates and dated 22 March 2011) shows the lateral retention system as consisting of five 8-foot diameter piers spaced 10 feet on center imbedded 45 feet below the slide plane. As such, this system is designed to be well in excess of the consulting geologist's recommendations for resisting the landslide mass on the project site.

Throughout the history of planned and attempted stabilization of the site there has been much discussion of the possibility that stabilizing this small portion of the recent landslide will deflect the landslide mass onto other properties. It has been noted that the buildings suffering greatest damage during past episodes of slide movement were those at the side scarps of the landslide. Those structures on top of the landslide essentially "rode the slide" during movement and suffered less damage. By deflecting the landslide mass, it is feared that a new side scarp could form, placing other structures (such as that owned by the appellant) at risk.

The project geologist has certified (Reference 19) that:

> Construction of the proposed improvements is safe and will not cause landslide(s), settlement and slippage. The proposed improvements will not have an adverse effect on the geologic stability of the properties outside the building site. In addition, we find that the proposed construction will be safe from a geotechnical engineering standpoint against hazards such as landslides, settlement, and slippage. Further, the proposed status of the building or grading, as known, will not adversely affect the stability of adjacent properties, provided that the recommendations presented in our reports and approved by the City are followed.

This statement, required by the City of Malibu under Section 111 of their building code, is not accepted by the appellant's geologist. He has asserted that this statement is an unsubstantiated opinion, not supported by any analysis or scientific evaluation of the evidence, not based on fact, and that no one can *assure* that a new side scarp will not form, threatening offsite properties.

Because of the nature of the science, geologists can rarely assert with certainty that stability will be guaranteed in the future. However, in my opinion, the applicant's geotechnical team has been held to a very high standard, as is appropriate in this area, and the work performed by that team in this case meets or exceeds the standard of care commonly exercised in the profession. This was the opinion of the City geotechnical review team as well.

Further, I note that the dewatering operations have been very successful in stabilizing the landslide. No appreciable movement has been detected since 1999 except for one period of modest motion during an exceptionally wet year. It is my understanding that dewatering is to continue indefinitely, and that it is reasonable to expect that this success in abating landslide movement will continue.

Nevertheless, I asked the applicant to perform a three-dimensional slope stability analysis of the relatively small portion of the landslide lying west of the proposed stabilized area to assess its stability if it was essentially isolated from the main landslide mass by the stabilized wedge being retained by the proposed pile system. This analysis (reference 40) showed that that wedge of material, taken in isolation, has a factor of safety against sliding of 2.06, far exceeding the industry standard of 1.5. I have reviewed this analysis and concur with it.

Alternatives

Notwithstanding the fact that the project geotechnical team has exercised the standard of care expected by the profession, I asked them to explore the possibility of founding the proposed structure on caissons located in the relatively stable western portion of the parcel and cantilevering it over the slide plane and the unstable portion of the site. Reference 42 was prepared to illustrate various interpretations of the location of the landslide side scarp in the subsurface. The structural engineer chose the interpretation of the location of the side scarp from reference 32 since it was further east than the preferred location in reference 42 and had a better chance of being feasible; that is, it was more likely to yield an approvable solution. The results of his calculations are provided in reference 44. Even with the more favorable location of the side scarp, the forces (under seismic conditions) that would be placed on the caissons by cantilevering the structure over the eastern portion of the site result in unacceptable eccentricities, in violation of the California Building Code (standard ASCE 7-05). I have consulted with the Commission's Coastal Engineer, who reviewed these calculations, and understand that she concurs with this assessment.

Furthermore, as detailed in reference 43, the siting of the onsite wastewater treatment system is problematic in light of the City's requirement that it be located on a stable (static factor of safety of 1.5, pseudostatic factor of safety of 1.1, and not in danger of erosion for its economic life) portion of the site. There is insufficient space for the onsite wastewater treatment system (including its leach field) on the relatively stable portion of the site (beneath the proposed structure). Placing parts of the system (the primary tank and the processor tank, and their associated pumps and piping) on the unstable portion of the site would violate the City's health and environmental regulations.

I considered the possibility of asking the geotechnical team to design a foundation system that would not resist landslide movement, but would allow the earth materials to flow between and around foundation elements (such as widely spaced deep caissons). However, such a system would have the same problem with locating the onsite wastewater treatment system as the cantilevered foundation system, and so would not be feasible.

Conclusions

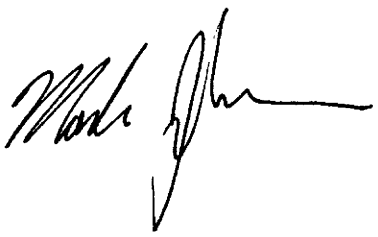
In conclusion, in my professional judgment the proposed pile system, both as designed to resist the landslide forces and to support the proposed structure, assures the stability of the proposed development. I note that a seawall will be necessary to protect the onsite wastewater treatment system. Further, although the structure will be supported on caissons, waves are likely to run up

beneath the structure during severe storms, and the frequency that such events occur will increase with future sea level rise.

Although no one can guarantee that the landslide retention system will not affect offsite properties, in my judgment, the project geotechnical team has been held to a very high standard, and the proposed design meets or exceeds the standard of care commonly exercised in the profession. Further, the alternatives suggested by me, and the appellant, do not appear to be feasible.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,



Mark Johnsson, Ph.D., CEG, CHG
Staff Geologist

Additional Reference Cited:

Schoellhamer, J. E., and R. F. Yerkes. "Preliminary geologic map of the coastal part of the Malibu Beach quadrangle, Los Angeles County, California: US Geol." *Survey Open-File Map, scale* 1.12,000 (1961).

4-MAL-12-004

NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

Date of Notice: January 10, 2012

Notice Sent to (US. Certified Priority Mail):
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001

Contact:
Stephanie Danner
Senior Planner
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
(310) 456-2489, ext. 276

Please note the following **Final City of Malibu Action** on a coastal development permit application (all local appeals have been exhausted for this matter):

Project Information

Coastal Development Permit No. 07-155 – An application for the construction of a new, 28-foot high, two-story, 6,015 square foot two-unit multi-family residence with attached garages, 798 square feet of balconies, grading, hardscape, two staircases down to the beach, view corridors, installation of an alternative onsite wastewater treatment system and an offer to dedicate (OTD) lateral public access along the shore in the MFBF Zoning District located at 25360 Malibu Road

Application Filing Date:	December 20, 2007
Applicant:	Marissa Coughlan 22631 Pacific Coast Highway #324, Malibu, CA 90265
Owner:	25360 Malibu Road, LLC
Location:	25360 Malibu Road / APN 4459-017-005

Final Action Information

Final Local Action: ☐ Approved ☑ Approved with Conditions ☐ Denied
Final Action Body: Approved on January 9, 2012 by the City Council

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: January 9, 2012 Item 4.C. City Council Agenda Report September 6, 2011 Item 6.G. Planning Commission Agenda Report		December 22, 2011 August 25, 2011
Adopted Findings and Conditions: City Council Resolution No. 12-02	X	
Site Plans and Elevations		December 22, 2011

California Coastal Commission Appeal Information

This Final Action is:

☐ **NOT appealable** to the California Coastal Commission (CCC). The Final City of Malibu Action is now effective.

☑ **Appealable** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this final action. The final action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission South Central Coast District Office in Ventura, California; there is no fee for such an appeal. Should you have any questions regarding the California Coastal Commission appeal period or process, please contact the CCC South Central Coast District Office at 89 South California Street, Suite 200, Ventura, California, 93001 or by calling (805) 585-1800.

Copies of this notice have also been sent via first-class mail to:
- Property Owner/Applicant

Prepared by: Ryan Sc

Exhibit 8
Appeal A-4-MAL-12-006 (25360 Malibu Road LLC)
Final Local Action Notice

RESOLUTION NO. 12-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 11-003, APPROVING COASTAL DEVELOPMENT PERMIT NO. 07-155 FOR THE CONSTRUCTION OF A NEW, 28-FOOT HIGH, TWO-STORY, 6,015 SQUARE FOOT TWO-UNIT MULTI-FAMILY RESIDENCE WITH ATTACHED GARAGES, 798 SQUARE FEET OF BALCONIES, GRADING, HARDSCAPE, TWO STAIRCASES DOWN TO THE BEACH, VIEW CORRIDORS, INSTALLATION OF AN ALTERNATIVE ONSITE WASTEWATER TREATMENT SYSTEM AND AN OFFER TO DEDICATE (OTD) LATERAL PUBLIC ACCESS ALONG THE SHORE IN THE MFBF ZONING DISTRICT LOCATED AT 25360 MALIBU ROAD (25360 MALIBU RD, LLC)

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

Section 1. Recitals.

A. On May 24, 1972, a landslide waiver was recorded on the subject property.

B. On September 18, 1972, Los Angeles (LA) County's Department of the County Engineer supervised the placement of a total of 55 concrete pilings to support an apartment building and garage at the subject property.

C. On February 9, 1978, a flood occurred in the vicinity of the subject property which directly impacted the structure onsite. On March 21, 1978, LA County's Department of the County Engineer issued an emergency report related to the flood and determined that the apartment building was unsafe for habitation and the structure was 95 percent damaged . The report documented that the foundation was undermined and there was a slope failure and earth slide onsite which would cost approximately $300,000 to repair. The property owner decided to repair the damage to the building.

D. On April 28, 1979, a permit exemption was issued by the California Coastal Zone Conservation Commission (precursor to the California Coastal Commission) to allow the placement of siding and walls to add structural strength to the existing two-story, three-unit apartment building onsite.

E. On March 2, 1983, another flood occurred in the vicinity of the subject property which directly impacted the structure onsite. On March 3, 1983, LA County's Department of the County Engineer issued an emergency report related to the flood and determined that the apartment building was unsafe for habitation and the structure was 100 percent damaged. The report documented that the foundation was undermined, the structure was inundated, walls were damaged from mudslides and there was a slope failure and earth slide onsite which would cost approximately $500,000 to repair. The property owner decided to demolish the building.

F. On March 17, 1983, an LA County building permit (Permit No. 0448) was finaled for the demolition and removal of the complete building, except for the concrete carport deck. Additionally, the timber pile bulkhead was not removed as it protected the flanking properties.

G. On April 12, 1989, an LA County building permit (Permit No. 6146) was finaled for the removal of the remaining concrete which constituted the carport deck.

H. On March 25, 1991, an LA County grading permit (no permit number available) was issued to grade the site to be used as a yard following the removal of the previously existing structure.

I. On June 19, 2001, Plot Plan Review (PPR) No. 01-107 was approved for the replacement of an existing fence that had been damaged by a landslide approximately 2 years prior.

J. On October 19, 2001, Pre-Application (PA) No. 01-057 included a determination that no portion of any proposed primary structure could exceed the building stringline.

K. On November 27, 2001, PPR No. 01-235 was submitted to the Planning Department for processing. The project proposed the construction of two, two-story condos on the vacant parcel.

L. In December 2004, the PPR was closed as the applicant was advised that he needed to submit an application for a CDP to process the proposed scope of work.

M. On May 3, 2005, Coastal Development Permit (CDP) No. 05-085 was submitted for the construction of a two-story condominium on the vacant parcel. This application was withdrawn by the applicant on December 20, 2007. Before the project was withdrawn, it was given conditional approval by the City Geologist, City Biologist and City Public Works Department.

N. On February 14, 2007, PA No. 07-002 included a determination regarding the compliance of preliminary plans with beachfront development standards.

O. On December 20, 2007, an application for the proposed project was submitted for processing. The application was routed for review to the City Biologist, City Coastal Engineer, City Geologist, City Environmental Health Administrator, City Public Works Department, and the Los Angeles County Fire Department (LACFD).

P. On February 5, 2008, a Notice of Application for a pending CDP was posted at the subject property.

Q. On February 13, 2008, a Courtesy Notice of CDP Application was mailed out to all property owners and occupants within a 500 foot radius of the subject property.

R. Between 2008 and 2010, the applicant worked with the various City agencies to obtain approvals.

S. On April 19, 2010, a City of Malibu grading permit (Permit No. 10-701) was issued to allow excavation to inspect the existing timber pile bulkhead on the subject property.

T. In October 2010, story poles were placed on the subject property to demonstrate the height and bulk of the proposed structure.

U. On October 13, 2010, a registered professional engineer certified that the story poles were placed according to the approved plan. Staff also visited the project site on this date to photographically document the placement of the story poles.

V. On March 23, 2011, the Environmental Review Board (ERB) reviewed the subject project and received a report from Planning Department staff.

W. On August 4, 2011, the application was deemed complete for processing.

X. On August 25, 2011, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

Y. On September 6, 2011, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report (incorporated herein by this reference), public testimony and all related information. At the conclusion of the hearing, the Planning Commission adopted Resolution No. 11-83 approving CDP No. 07-155.

Z. On September 16, 2011, Appeal No. 11-003 was filed by Richard Scott, on behalf of Andrew Gombiner (property owner immediately to the west at 25362 Malibu Road).

AA. On September 28, 2011, the appeal was deemed complete by staff.

BB. On December 29, 2011, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

CC. On January 9, 2012, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff 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 City Council has analyzed the proposal as described above. The City Council has found that this project is listed among the classes of projects that have been determined to have less than significant adverse effect on the environment and therefore, exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION has been prepared and issued pursuant to CEQA Guidelines Section 15303(b) – New Construction. The City Council has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA

Guidelines Section 15300.2).

Section 3. Appeal of Action.

The appellant appealed Planning Commission Resolution No. 11-83, contending that "the Findings and Conditions of Approval are not supported by geology reports which address the history of landslide damage to the neighboring properties and ignores a substantial body of opinion from four geologists, including a former City geologist and the current appointed geologist on the Environmental Review Board, that the project, as proposed, may cause material damage to the neighboring properties...The approval of the project was contrary to the City's Building Code provisions relating to Geotechnical Hazards and Engineering Geology and Soils Engineering Reports." Planning Department staff prepared an agenda report responding to each of the appellant's contentions. The appellant submitted no new evidence in support of the assertions set forth in the appeal document.

The City Council concurs with the findings and conclusions of staff as set forth in the report and adopts staff's analysis, findings, and conclusions as though fully set forth herein.

Section 3. Coastal Development Permit Approval and Findings.

The proposed project was reviewed and approved by the City Geologist, City Biologist, City Environmental Health Administrator, City Department of Public Works, City Coastal Engineer and LACFD. Although the agency approvals are dated in 2008 and 2009, there have been no significant changes to the Local Coastal Program (LCP) which would affect the reviews or the associated conditions each department placed on the project. Nonetheless, the project plans will be reviewed again by all agencies during the building plan check process. The project is consistent with all applicable LCP codes, standards, goals and policies. The City Council hereby makes the following findings of fact as required by the LCP.

A. General Coastal Development Permit (LIP Chapter 13)

Pursuant to LCP Local Implementation Plan (LIP) Section 13.9, the following four findings need to be made for all coastal development permits.

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

The project has been reviewed for conformance with the LCP and, as proposed and/or conditioned, conforms to the LCP.

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 LCP Public Access Map indicates that a lateral accessway has not been recorded on the subject property. As part of the proposed project, the property owner has offered to dedicate lateral public access along the shore from the mean high tide line to the dripline of the deck. The proposed development will not encroach seaward of the deck stringline drawn from the nearest corners of the two flanking residences and is not anticipated to impact existing public access. The LCP Public Access Map also indicates that vertical access exists approximately 550 feet to the west of the project site at Dan Blocker Beach, located at the western end of Malibu Road. The location of the proposed project and related construction activities is not anticipated to interfere with the public's right to access the coast. The project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).

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

Pursuant to CEQA, this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment and is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the size and height requirements for beachfront development set forth in the LCP. The project will not result in potentially significant impacts on the physical environment.

The project, as proposed, has been found to be Categorically Exempt under CEQA Section 15303(b) – new construction of a duplex. Therefore, the project as proposed has been determined to be consistent with CEQA. The following alternatives were considered.

1. No Project – The no project alternative would leave the project site in its current condition. The project site is zoned Multi-Family Beachfront (MFBF) and permits the development of multi-family structures. The no project alternative would not accomplish the project objectives and, therefore, is not a feasible alternative.

2. Smaller Project – A smaller project could be proposed on the project site. However, the proposed project is entirely within the footprint of the previously existing multi-family structure and landward of the existing bulkhead. The project conforms to all beachfront development criteria and it is not anticipated that a smaller project would offer significant environmental advantages.

3. Previously Proposed Project – The prior application (CDP No. 05-085) proposed substantially the same duplex project; however, it included a seawall located +/- 81 feet from the Malibu Road right-of-way and did not provide the required number of parking spaces. This would not be an environmentally superior alternative to the proposed project.

4. Proposed Project - The selected location meets the City's beachfront development standards and is sited on a previously disturbed building pad. There was previously a two-story multi-family residence on the subject property and there are many other such residences in the immediate vicinity. The project has been designed per the recommendations of the project geotechnical and coastal engineering consultants. The project also includes an alternative onsite wastewater treatment system (AOWTS), which will provide secondary and tertiary treatment for the site. The existing timber seawall will be removed as part of this project and the new bulkhead will be located +/- 68 feet from the Malibu Road right-of-way. The location of the new bulkhead was determined to be as landward as feasible while still providing protection to the proposed AOWTS.

In any case, alternative configurations to the project would not significantly reduce the project's impacts. The proposed project has been determined to be 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.

The subject parcel is not located in or adjacent to an Environmentally Sensitive Habitat Area (ESHA), ESHA buffer zone or any streams as designated in the LCP. However, the project was reviewed by the Environmental Review Board as a result of a referral by the City Geologist and Planning Director.

The project went before the ERB as a result of the City Geologist and Planning Director's referral. The referral to ERB was a result of the subject property and adjacent properties being located in the immediate vicinity of an ancient landslide which was reactivated in 1962. ERB reviewed the project at its March 23, 2011 meeting and made the recommendations (incorporated herein by this reference) as discussed below.

a. No large trees should be planted onsite.

There will be no large trees planted on the site. Any landscaping or planting will be in planters or planter boxes supported on the structural slab supporting the residence. Recommendation (a) has been incorporated as a condition of approval in this resolution.

b. The project consulting geologist, geotechnical engineer and structural engineer should consider how wide of a buffer is needed between the subject property and the residence immediately to the east.

Pursuant to the June 1, 2011 Response to ERB Comments Letter from the project's structural engineer, David C. Weiss, S.E., presently the foundation plan for the proposed duplex "shows the site

stabilized by a series of soldier piles constructed along the north property line...The purpose of the piles is to provide the 1.5 static and 1.1 pseudo-static factors of safety for the stability of the site as required by the City of Malibu. Because these factors are required for the entire site, the soldier pile wall must extend from property line to property line across the subject site. The only buffer that can be provided between the subject property and the residence to the east is the distance between the common property line and the westerly line of piles under the existing building on the property to the east."

c. The project consultants should investigate the feasibility of utilizing a rigid foundation system of the western half of the subject property with cantilevered grade beam over the right half of the property to allow the ground to move unobstructed underneath.

In the Response to ERB Recommendations prepared by the project structural engineer on June 1, 2011, the project applicant has agreed to investigate the geometry of the westerly slide margin and the feasibility of placing the building support system, AOWTS and appurtenant structures entirely on the "stable" portion of the lot. The project structural engineer asserts that "if this can be done, it will eliminate the necessity of a stabilization soldier wall along the north property line." A condition of approval is included in this resolution requiring the applicant submit evidence this investigation was completed.

d. The project consultants should evaluate future changes to the western margin of the landslide to implement appropriate stabilization measures during the design/engineering phase of the project.

The Response to ERB Recommendations also states that an evaluation of the future changes of the western margin of the landslide is beyond the purview of the project's structural engineer who has reiterated that "the construction of the proposed soldier pile wall will not turn the slide onto the property to the east nor cause any more damage to the adjacent properties than if there were no wall constructed." Pursuant to LIP Section 9.4, the geologic reports prepared for the proposed project included a statement that the project site is suitable for the proposed development, that the development will be safe from geologic hazard, and that the development will in no way contribute to instability on or off the subject site. The City Geologist has reviewed and approved the subject application and associated reports on March 31, 2009.

As discussed, each of the ERB's recommendations have been addressed and/or incorporated, with the exception of the recommendation to evaluate future changes to the western margin of the landslide, which was determined to be outside of the purview of the structural engineer's work related to the project site, and therefore, infeasible.

B. Environmentally Sensitive Habitat Area (LIP Chapter 4)

As discussed above, the subject parcel is not located in or adjacent to ESHA as depicted on the LCP ESHA Overlay Map and, as a result, the project will result in less than significant impacts to

sensitive resources, significant loss of vegetation or wildlife, and will not encroach 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)

The proposed project does not require the removal of any native trees. 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 those coastal development permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. This project is visible from a scenic area (the shore); therefore, the Scenic, Visual and Hillside Resource Protection Chapter applies and the five findings set forth in LIP Section 6.4 are made as follows.

LIP Section 6.5(E) states "new development on parcels located on the ocean side of public roads, including but not limited to, Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, Cliffside Drive shall protect public ocean views." In addition, LIP Section 6.5(E)(2)(b) requires that lots with a lineal frontage of 50 feet or less shall provide 20 percent of the lot width as view corridor; however, the view corridor may be split to provide a contiguous view corridor of not less than 10 percent of the lot width on each side. As the subject property is located along Malibu Road, the applicant has met this requirement and provided 10 percent of the lineal frontage on either side of the residence as ocean view corridors, each of which measures five feet in width.

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.

Due to the lot dimensions and topography, no alternative building site location exists where onsite development would not be visible from the shore. However, the project has been designed to avoid any adverse or scenic impacts by emulating the mass, bulk and scale of adjoining properties. In addition, the use of non-metallic, non-glare siding and the incorporation of natural colors on the exterior of the residence, as required by the LCP, will help minimize visual impacts of the subject site.

In October 2010, story poles were placed on the subject property to demonstrate the height and bulk of the proposed project and to analyze visual impacts. Staff visited the site on October 13, 2010 to ensure that the story poles were placed according to plan and to evaluate potential impacts. The analysis of the project's visual impact from public viewing areas along the beach included site reconnaissance, view of the property from the beach and review of the architectural plans. From a review of the visual record, it was determined that the proposed residence would result in a less than significant visual impact to public areas of the beach.

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

The project has been designed to avoid any adverse or scenic impacts. The proposed residence has been conditioned to utilize colors and materials that will be compatible with the surrounding natural and residential character and will be compatible with the architectural character of the surrounding neighborhood.

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

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

Finding 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 Finding A3, the proposed location of the structure will result in less than significant impacts on scenic and visual resources.

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 Finding A3, the project will have less than significant scenic and visual impacts.

E. Transfer Development Credits (LIP Chapter 7)

Pursuant to LIP Section 7.2(A)(2), the regulations requiring the transfer of development credit (TDC) apply to any action to authorize a coastal development permit for multi-family residential development in the Multi-Family (MF) or MFBF zones.

Any coastal development permit authorizing multi-family development shall be conditioned on submitting evidence that TDCs consistent with LIP Sections 7.7 and 7.8 (Procedures) have been obtained prior to issuance of the coastal development permit. The burden for satisfying the procedures herein is on the applicant for the applicable coastal development permit. The applicant is responsible for retiring sufficient donor lots to provide one TDC for each newly subdivided lot authorized. In this case, the applicant is responsible for obtaining one TDC as calculated in LIP Section 7.8.2.

The Planning Director shall grant the right to a TDC by verifying that the TDC conditions of development on a CDP have been met prior to the issuance grading and/or building permits. A condition of approval is included in this resolution which requires that the applicant obtain one TDC

which meets all the requirements set forth in the LIP. To authorize a coastal development permit for multi-family development pursuant to requirements in Chapter 7, the City Council must make the following findings of fact:

Finding E1. The requirements for Transfer of Development Credits is necessary to avoid cumulative impacts and find the project consistent with the policies of the certified Malibu LCP.

The requirement to retire lots in the Santa Monica Mountains area under the TDC program will offset the impacts of creating an additional housing unit within the city of Malibu. The project has been reviewed for conformance with the LCP and, as proposed and/ or conditioned, conforms to the LCP.

Finding E2. The new residential building sites and/or units made possible by the purchase of TDC can be developed consistent with the policies of the certified Malibu LCP without the need for a variance or other modifications to LCP standards.

The new unit can be developed consistent with the policies of the LCP and will not require a variance or other modifications to the residential development standards set forth in the LIP.

Finding E3. Open Space easements executed will assure that lot(s) to be retired will remain in permanent open space and that no development will occur on these sites.

A condition of approval has been included in this resolution which requires that the applicant submit evidence that an open space easement has been recorded on the parcel designated for TDC.

F. Hazards (LIP Chapter 9)

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

The applicant submitted a series of geologic reports with subsequent supplemental and addendum reports, all of which have been reviewed by the City Geologist. The geologic information obtained on the subject property has been reviewed in its entirety by the City Geologist whose professional opinions are based on the sum of this data. The data evaluated by the Planning Commission for its hearing in September 2011 and subsequently by the City Council includes the following:

- Coastline Geotechnical Consultants, Inc., Reply to Geotechnical Engineering Review Sheet Dated December 30, 1990, January 21, 1991
- Converse, Davis and Associates
    - Subsurface Conditions Determination, July 7, 1964

- Geologic and Soils Engineering Review, March 29, 1972
- Project Plans Review Letter, May 10, 1972

- Donald B. Kowalewsky, Engineering Geologic Review of Geotechnical Reports Prepared for 25360 Malibu Road
  - October 12, 2000
  - November 26, 2002
  - August 21, 2003
  - December 31, 2004
- Donald B. Kowalewsky, Letter Prepared for 25360 Malibu Road, September 5, 2011
- E.D. Michael, Consulting Geologist
  - Analysis of Geotechnical Data Concerning Redevelopment of Lot 41, May 3, 2006
  - Supplemental Analysis of Geotechnical Data Concerning Redevelopment of Lot 41, May 5, 2008
- MEC / Geotechnical Engineers, Inc., Preliminary Geotechnical Engineering and Engineering Geologic Investigation, December 30, 2000
- Mountain Geology, Inc.
  - Engineering Geologic Report and Review of Lot 41, July 25, 1990
- SASSAN Geosciences, Inc.
  - Addendum 1, July 22, 2002
  - Addendum 2, April 18, 2003
  - Addendum 3, July 31, 2003
  - Addendum 4, December 31, 2003
  - Addendum 5, September 22, 2004
  - Addendum 6, January 18, 2005
  - Addendum 7, March 31, 2005
  - Addendum 8, November 17, 2005
  - Addendum 9, October 12, 2007
  - Addendum 10, November 19, 2007
  - Response to City Review Letter Dated 1/30/2008, March 24, 2008
  - Response to City Review Letter Dated 5/8/2008, February 12, 2009
  - Study of Slide Movement for 25360 Malibu Road, August 26, 2011
- EPD Consultants, Inc.
  - Preliminary Engineering Report for Onsite Wastewater Treatment System, December 12, 2007
  - Addendum I Report, June 24, 2008
  - Addendum II Report, December 12, 2008
  - AOWTS and Disposal Plans, August 20, 2007, revised December 2008

Pursuant to the requirements in LIP Section 9.4, the referenced geologic reports were prepared by highly qualified individuals based on extensive research and site-specific investigation. The project consultants' reports conclude that the proposed development is suitable for the site and, if the consultants' recommendations are followed, the development will be safe from geologic hazard.

On March 31, 2009, the City Geologist conditionally approved the project and determined that it is consistent with City goals and policies.

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 and associated information, it has been determined that the project site is located within a liquefaction hazard zone, a landslide hazard zone and is in the vicinity of extreme fire hazard areas.

Liquefaction Hazard

The Preliminary Geotechnical Engineering and Engineering Geology Investigation, completed by MEC/Geotechnical Engineers, Inc. in December 2000, identified that "due to the presence of the loose and moderately loose beach sand within the top ten to 15 feet, and due to the presence of water at approximately ten feet below ground surface, the subject site has a high liquefaction potential. Placement of the proposed condominium on deep footings would eliminate the potential future settlements due to this phenomenon."

The project has been designed with this hazard in mind and all appropriate recommendations of the project consulting geotechnical engineer, structural engineer and coastal engineer are incorporated. Furthermore, as a condition of approval, the project applicant will be required to record an assumption of risk and release for beachfront development hazards.

Landslide Hazard

The Preliminary Geotechnical Engineering and Engineering Geology Investigation, completed by MEC/Geotechnical Engineers, Inc. in December 2000, identified the following:

> "The northern portion of the subject site is underlain by an active landslide. It must be emphasized that approximately 99 percent of said slide is situated offsite, under Malibu Road and the south-facing slope on the north of Malibu Road. It forms part of a broad series of landslides along the coastline that tend to be associated with ancient wave erosion and the nearby Puerco Canyon Fault...This landslide has moved in the recent past and is considered as active.
>
> The affect of said slide on the subject property, if not enhanced via soldier/friction piles, would be the uplift of the grounds near the northern property line and the southerly shift of the northeast corner of the property. In general, lowering the water table within the slide mass would enhance the factor of safety. This property, however, does not have an access to the main mass of said slide, neither would the geometry of this slide lend itself to a major de-

watering scheme.

However, since the reactivation of the offsite landslide, circa 1978, a de-watering system has been installed along the northern side of Malibu Road in the vicinity of the subject property which has enhanced the stability of the offsite slope. In addition, soldier piles were installed by the previous owner along the northern property line of this property and were observed by Kovacs-Byer and Associates. Installation of these soldier piles along Malibu Road has also increased the stability of the site."

The MCE/Geotechnical Engineers, Inc. report concludes that "The subject site is adversely impacted by an offsite landslide from the north and by the wave action from the south. However, if the recommendations presented in this report are implemented, the subject site will not be affected by landsliding, slippage, settlement, or wave action. Furthermore, the proposed improvements will not adversely affect the geologic stability of adjoining offsite properties."

Tsunami Hazard

The City of Malibu General Plan discusses the phenomena of tsunamis that may be caused by displacement of faults immediately offshore of Malibu. The DCW Structural Engineer & Associates, Inc. February 2006 Coastal Engineering Report addresses possible tsunami hazards along the shore. The report identifies that:

"The probability of a damaging tsunami in the vicinity of the subject address is very low...the wave heights used in the report adequately represent the wave sizes and wave force system(s) for which the project has been designed.

Tsunami or hurricane generated waves were not analyzed in this report because of the extreme low probability of these events happening to this part of the California coast. However, the possibility of those major events producing damage to the subject property does exist, and hence no warranties are provided in the event that those events occur. Additionally, the owner should take precautions to avoid minor damage (window breakage, water on deck, etc.) when there exists the extreme conditions of high tides (tides above +5.0' MLLW datum) and storm generated waves."

Flood / Fire Hazard

The City Public Works Department identified that the project site is located within the Special Flood Hazard Area (SFHA) and is subject to National Flood Insurance Program regulations. The project has been designed pursuant to requirements for development in a SFHA. In addition, the entire city limits of Malibu are located within the fire hazard zone so no other alternatives were considered.

As such, the proposed project as conditioned will not be subject to nor increase the instability of the

site or structural integrity involving wildfire hazards. However, a condition of approval has been included in this resolution which requires that the property owner indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

The City Geotechnical Engineer, City Geologist, City Public Works Department and LACFD have reviewed the project and found that there were no substantial risks to life and property related to any of the above hazards provided that their recommendations and those contained in the associated geotechnical reports are incorporated into the project design. As such, the proposed project will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, fire or any other hazards as identified in LIP Section 9.2(A)(1-7).

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 stated in Finding F1, the proposed project as conditioned, and approved by City departments and the LACFD, 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 previously, the proposed project as designed, conditioned, and approved by City departments and the LACFD, will not result in potentially significant environmental impacts because site and construction design measures have been incorporated which substantially lessen any potential for adverse effects of the development on the environment. The project, as proposed or conditioned, is the least environmental damaging alternative.

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

As stated in Finding F1, the proposed project as designed, conditioned, and approved by City departments and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity. Therefore, review of alternatives is not required.

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 stated in Finding F1, the proposed project as designed, conditioned and approved by City departments and the LACFD, 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)

The project includes development of a parcel located along the shoreline as defined by the LCP. The subject project was reviewed for conformance with applicable sections of the LCP and granted conditional approval by the City Coastal Engineer on August 28, 2009. On July 21, 2007, the California State Lands Commission determined it "asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters or that it falls within the LCP's ten foot setback requirement."

The applicant submitted a Coastal Engineering Report with a subsequent addendum report and a Wave Uprush Study, which have been reviewed by the City Coastal Engineer. The coastal engineering information obtained on the subject property has been reviewed in its entirety by the City Coastal Engineer whose professional opinions are based on the sum of this data. The data evaluated include the following:

- DCW Structural Engineer & Associates, Inc., Coastal Engineering Report, February 14, 2006
  - Addendum 1 to Coastal Engineering Report, June 11, 2007
  - Review of Plans for AOWTS and Disposal System, November 6, 2007
  - Update Letter, March 14, 2011
- Skelly Engineering
  - Response to Coastal Engineering Review, May 13, 2002
  - Wave Uprush Study for 25360 Malibu Road, November 21, 2001

The February 2006 Coastal Engineering Report recommends a lowest recommended finished floor elevation of 22.32 feet above sea level NAVD (+22.82 MLLW, +20.02' NGVD '29) as adequate to prevent overtopping by ocean waves.

In accordance with LIP Section 10.2, the requirements of LIP Chapter 10 are applicable to the project and the required findings 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.

According to the 2006 Wave Uprush Study prepared for the subject property, the maximum wave uprush at the subject site will occur approximately 135 feet landward of the Malibu Road right-of-way line. Since the proposed AOWTS is located within the wave uprush zone, the project consulting coastal engineer recommended that a timber bulkhead with return walls be installed and that the associated leachfield be covered by a one foot thick scour blanket of loose rock. The location of the bulkhead will be +/ - 68 feet seaward of the Malibu Road right-of-way line.

The existing timber seawall will be removed as part of this project and a new timber bulkhead with return walls will be constructed onsite. The City Coastal Engineer has reviewed the placement of the bulkhead and determined that it is located as landward as feasible. Furthermore, the bulkhead will be constructed to protect the AOWTS only. The proposed duplex has been designed to ensure geological and structural stability without the need for a seawall.

The project site currently provides no public access. However, lateral public access exists along the State of California's "wet sand right-of-way" which allows public use of lands seaward of the mean high tide and provides public access along and parallel to the sea or shoreline. The new construction will be located landward of the building and deck stringlines and the piles will not impact shoreline sand supply.

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 stated in Finding G1, as designed, conditioned, and approved by the City Geologist and City Coastal Engineer, the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources.

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

As discussed previously, the project will not result in potentially significant impacts because: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any potentially significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any potentially significant adverse impacts of the development on the environment. The project is the least environmentally damaging alternative.

Finding G4. There are not alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As stated in Finding G1, as designed, conditioned, and approved by the City Geologist and City Coastal Engineer, the project will not have any significant adverse impacts on public access or 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 extent feasible extent adverse impacts on local shoreline sand supply and public access, there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and is the least environmentally damaging alternative.
As stated in Finding G1, as designed, conditioned, and approved by the City Geologist and City

Geotechnical Engineer, the project will not have any significant adverse impacts on public access or shoreline sand supply or other resources. Furthermore, as stated in Finding A3, the bulkhead has been located as far landward as feasible and is sited in such a way that provides adequate area for the AOWTS leach field.

A condition of approval has been included in this resolution which requires that the property owner execute and record a deed restriction that states "no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235."

H. Public Access (LIP Chapter 12)

The subject site is located seaward of the first public road (Malibu Road), between Amarillo Beach and Malibu Lagoon State Park. No onsite vertical or lateral access is currently provided on the subject parcel. Bluff-top, trail and recreational access are not applicable. No issue of public prescriptive rights has been raised.

Lateral Access- A lateral public access easement provides public access and use along or parallel to the sea or shoreline. The LCP Public Access Map indicates that a lateral accessway has not been recorded on the subject property. The property owner has agreed to offer lateral public access along the shore of the subject property. This offer has been included as a condition of approval in Section 5 of this resolution.

Vertical Access- As indicated previously, the project is located along the shoreline; however, adequate public access is available approximately 550 feet to the west of the project site at Dan Blocker Beach, located at the western end of Malibu Road. Consistent with LIP Section 12.5, due to the ability of the public, through other reasonable means to reach nearby coastal resources, an exception for public vertical access has been determined to be appropriate for the project and no condition for vertical access has been required.

I. Land Division (LIP Chapter 15)

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

J. Onsite Wastewater Treatment System (LIP Chapter 18)

LIP Chapter 18 addresses onsite wastewater treatment systems. LIP Section 18.7 includes specific siting, design, and performance requirements. The project includes an AOWTS, which has been reviewed by the City Environmental Health Specialist and found to meet the minimum requirements of the Malibu Plumbing Code, City of Malibu Ordinance No. 242 and the LCP.

The proposed project includes the installation of a new AOWTS landward of the bulkhead. The system will incorporate a 2,000 gallon Jensen pre-cast two-chambered primary tank, a 1,500 gallon concrete tank with a M550UV SeptiTech Processor and ultraviolet disinfection. A 788 square foot leachfield with a rock scour blanket is proposed landward of the proposed bulkhead. The unit will provide the multi-family residence with secondary and tertiary treatment.

The subject system will meet all applicable requirements, and operating permits will be required. An operation and maintenance contract and recorded covenant covering such shall be in compliance with the City of Malibu Environmental Health requirements. In addition, conditions of approval have been included which require continued operation, maintenance and monitoring of onsite facilities.

Section 4. City Council Action.

Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, the City Council hereby denies Appeal No. 11-003 and approves Coastal Development Permit No. 07-155 for the construction of a two-unit multi-family residence at 25360 Malibu Road, subject to the conditions set forth herein.

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 construction of a multi-family residence comprised of two, two-bedroom units, one on each floor, with two attached two-car garages located off of Malibu Road on the first floor of the structure. The project is broken down as follows:
    a. Unit One (first floor): 2,110 square feet with a 439 square foot garage, a 392 square foot balcony and a staircase down to the beach;
    b. Unit Two (second floor): 3,050 square feet with a 416 square foot garage, a 391 square foot balcony and a staircase down to the beach;
    c. A soldier pile foundation will be utilized to stabilize the property;
    d. Timber bulkhead to protect the new AOWTS;
    e. Approximately 114 total cubic yards of non-exempt grading to fill in the area of manufactured slope adjacent to Malibu Road; soil which will be imported onto the

property;

f. A five foot view corridor located on each side of the structure, adjacent to the eastern and western property lines; and
g. An offer to dedicate lateral public access along the shoreline of the subject property from the mean high tide line to the dripline of the deck.

3. This permit shall be valid for two years from the effective date of this approval, **expiring on January 9, 2014**, and shall automatically expire unless extended in accordance with the LCP. An extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the two-year period and shall set forth the reasons for the request.

4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until all permittees or authorized agent(s) signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 working days of this decision.

5. This resolution (including signed and notarized Acceptance of Conditions Affidavit and Department Review Sheets) shall be copied in its entirety and placed directly onto a separate plan sheet(s) behind the cover sheet of the development plans submitted to the City of Malibu Building Safety Division for plan check and the City of Malibu Public Works Department for an encroachment permit (as applicable).

6. The applicant shall submit three copies of the pages described in Condition No. 5, to the Planning Department prior to entering building plan check.

7. The CDP shall be null and void if the project has not commenced within two 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. Questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.

9. Minor changes to the approved plans (dated February 22, 2010) 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 LCP. An application with all required materials and fees may be required.

10. All structures shall conform to the City of Malibu Building Safety Division, City Geologist, City Public Works Department requirements. Notwithstanding this review, all required permits shall be secured.

11. The applicant must submit payment for all outstanding fees payable to the City prior to issuance of any building permit, including grading or demolition.

Cultural Resources

12. If potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources; a Phase II Evaluation of cultural resources shall be required pursuant to LIP Section 11.3(F).

13. 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 48 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

14. The project shall comply with all conditions of approval stipulated in the departmental review sheets. In the event the project plans conflict with any conflict with any condition of approval, the condition shall take precedent.

Geology

15. The project shall comply with all conditions of approval as stipulated in the geology referral sheet dated March 31, 2009.

16. Grading permits shall not be issued between November 1st and March 31st each year. Projects approved for grading permits may not receive grading permits unless the project can be rough graded prior to November 1st.

17. All recommendations of the consulting certified engineering geologist (CEG) or geotechnical engineer (GE) 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.

18. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, earthmoving, sewage disposal and drainage. Any substantial changes may require an amendment of the CDP.

19. The Total Grading Yardage Verification Certificate (date stamped March 20, 2008) shall be copied onto the coversheet of the Grading Plans. No alternative formats or substitute may be accepted.

Coastal Engineering

20. The project shall comply with all conditions of approval as stipulated in the Coastal Engineering referral sheet dated August 28, 2009.

21. The Project Coastal Engineer and plans shall clarify the location of the proposed bulkhead. The wave uprush report dated November 6, 2007 states that the proposed bulkhead is eight-one (81) feet from the Malibu Road right-of-way. However, the site plan indicates that the proposed bulkhead is 61 feet from the right-of-way line and the grading plan shows it as 65 feet from the right-of-way line. The proposed bulkhead shall be located as far landward as feasible.

22. Show the entire AOWTS on the site plan.

23. Show the most landward mean high tide line on the plans.

24. Show the elevation datum used on the plans and sections; these elevations must be consistent with the Project Coastal Engineer's recommendations.

Public Works

25. The project shall comply with all conditions of approval as stipulated in the Public Works Department referral sheet dated January 16, 2008.

26. The applicant shall obtain encroachment permits from the City Public Works Department prior to the commencement of any work within the Public right-of-way.

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

28. A Drainage Plan shall be approved, and submitted to the Public Works Department, containing the following information prior to the issuance of grading permits for the project:
    a. Public Works Department general notes. Provide flood zone and FIRM Map

information for the proposed development within the notes;

b. The existing and proposed square footage of impervious coverage on the property shall be shown on the Drainage Plan (including separate areas for buildings, driveways, walkways and parking);
c. The limits of land to be disturbed during project development shall be delineated and a total area shall be shown on the plan. Areas disturbed by equipment beyond the limits of construction, areas disturbed for the installation of the OWTS and areas disturbed for the installation of the detention system shall be included in the area delineated; and
d. Private storm drain systems. Systems greater than 12-inch diameter shall also have a plan and profile for the system included with the Drainage Plan.

29. A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the Public Works Department, for this project because 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.

30. A Storm Water Pollution Prevention Plan shall be submitted for review and approval by the Public Works Department. This plan shall include:
    a. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
    b. Designated areas for the construction portable toilets that separates them from storm water runoff and limits the potential for upset; and
    c. 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.

31. The proposed improvements are located within the Special Flood Hazard Area (SFHA) and the project is subject to National Flood Insurance Program regulations. An Elevation Certificate based on construction drawings is required for any building located within the SFHA. A survey map shall be attached to this certificate showing the location of the proposed building(s) in relation to the property lines and to the street center line. The survey map shall delineate the boundary of the SFHA zone(s) based on the FIRM flood maps in effect and provide the information for the benchmark utilized, the vertical datum, and any datum conversion. A post construction Elevation Certificate will be required to certify building elevations, when the construction is complete, and shall be provided to the Public Works Department prior to final approval of the construction.

32. Geology and Geotechnical reports shall be submitted with all applications for plan review to the Public Works Department. Approval by Geology and Geotechnical Engineering shall be provided prior to the issuance of any permit for this project. The applicant's consulting engineer shall sign the final plans prior to the issuance of permits.

33. 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 be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.

34. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City Public Works Department with a Final Waste Reduction and Recycling Report (WRRP). This report shall designate all materials that were land filled and recycled, broken down into material types. The final report shall be approved by the City Public Works Department.

Environmental Health

35. A final AOWTS plot plan shall be submitted showing an AOWTS design meeting the minimum requirements of the MPC and the LCP/LIP, 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 plans scale 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).

36. A final design and system specifications shall be submitted as to OWTS design basis and 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).

37. The final design report shall contain the following information (in addition to the items listed above).
    a. Required treatment capacity for wastewater treatment and disinfection systems. The treatment capacity shall be specified in terms of flow rate, gallons per day, and shall be supported by calculations relating the treatment capacity to the number of bedroom equivalents, plumbing fixture equivalents, and/or the subsurface effluent dispersal system acceptance rate. The fixture unit count must be clearly identified in association with the design treatment capacity, even if the design is based on the number of bedrooms. Average and peak rates of hydraulic loading to the treatment

system shall be specified in the final design;

b. Description of proposed wastewater treatment and/or disinfection system equipment. State the proposed type of treatment system(s) (e.g., aerobic treatment, textile filter ultraviolet disinfection, etc.); major components, manufacturers, and model numbers for "package" systems; and conceptual design for custom engineered systems;

c. Specifications, supporting geology information, and percolation test results for the subsurface effluent dispersal portion of the onsite wastewater disposal system. This must include the proposed type of effluent dispersal system (drainfield, trench, seepage pit subsurface drip, etc.) as well as the system s geometric dimensions and basic construction features. Supporting calculations shall be presented that relate the results of soils analysis or percolation/infiltration tests to the projected subsurface effluent acceptance rate, including any unit conversions or safety factors. Average and peak rates of hydraulic loading to the effluent dispersal system shall be specified in the final design. The projected subsurface effluent acceptance rate shall be reported in units of total gallons per day and gallons per square foot per day. Specifications for the subsurface effluent dispersal system shall be shown to accommodate the design hydraulic loading rate (i.e., average and peak OWTS effluent flow, reported in units of gallons per day). The subsurface effluent dispersal system design must take into account the number of bedrooms, fixture units and building occupancy characteristics; and

d. All final design drawings shall be submitted with the wet signature and typed name of the OWTS designer. If the plan scale is such that more space than is available on the 11-inch by 17-inch plot plan 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 also required for review by Building & Safety and/or Planning.

38. Proof of ownership of subject property shall be submitted to the City Environmental Health Administrator.

39. An operations and maintenance manual specified by the AOWTS designer shall be submitted to the City Environmental Health Administrator. This shall be the same operations and maintenance manual proposed for later submission to the owner and/or operator of the proposed alternative onsite wastewater disposal system.

40. A maintenance contract executed between the owner of subject property and an entity qualified in the opinion of the City of Malibu to maintain the proposed AOWTS after construction shall be submitted. Please note only original wet signature documents are acceptable and shall be submitted to the City Environmental Health Administrator.

41. 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 onsite wastewater treatment system serving subject property is an alternative method of onsite wastewater disposal pursuant to the City of Malibu Uniform Plumbing Code, Appendix K, Section 1(i). Said covenant shall be provided by the City of Malibu Environmental Health Administrator. A certified copy issued by the Los Angeles County Recorder shall be submitted to the City Environmental Health Administrator prior to final approval.

42. Any proposed reduction in setbacks from the OWTS to structures (i.e. setbacks less than those shown in MPC Table K-1) must be supported by a letter from a Structural Engineer and a letter from a Soils Engineer (i.e. a Geotechnical Engineer or Civil Engineer practicing the in area of soils engineering). Both engineers must certify unequivocally that the proposed reduction in setbacks from the treatment tank and effluent disposal area will not adversely affect the structural integrity of the OWTS, and will not adversely affect the structural integrity of the buildings or structures for which the MPC Table K-1 setback is reduced. Construction drawings submitted for plan check must show OWTS components in relation to those structures from which the setback is reduced.

43. The design for the seawall to provide structural protection for the AOWTS shall be approved by the City Coastal Engineering Reviewer.

44. The City Geologist and Geotechnical Engineer's final approval shall be submitted to the City Environmental Health Administrator.

45. City of Public Works Department final approval shall be submitted. City of Malibu Public Works reviewer shall review the AOWTS design to determine conformance with flood hazard area requirements.

46. A final fee shall be paid to the City of Malibu Environmental Health Administrator for review of the AOWTS design and system specifications.

47. In accordance with Section 103.5.2.1 of the Malibu Plumbing Code, an application shall be made to the Environmental and Building Safety division for an OWTS operating permit. An operating permit fee shall be submitted with the application.

48. 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 any ESHA.

Water Service

49. Prior to the issuance of a building permit, the applicant shall submit a Will Serve letter from the Los Angeles County Waterworks District No. 29 indicating the ability of the proposed project or receive adequate water service.

Fire Protection

50. The project shall comply with all conditions of approval as stipulated in the LACFD referral sheet dated February 6, 2008.

51. The project shall provide a 20-foot wide access delivery driveway and safety vehicle turn-around.

52. The project requires interior fire sprinklers or to be determined.

53. The project requires 1,500 gallons per minute fire flow at 20 pounds per square inch for a 2-hour duration.

54. LACFD approval of a Final Fuel Modification Plan is I required prior to City building permit issuance.

Construction

55. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.

56. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires rinsed prior to leaving the property.

57. When the framing is completed, 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. The Planning Department shall sign off stating that said document has been received and verified.

58. The applicant shall request a final planning inspection prior to final inspection by the Building Division. A final sign-off from the Building Division shall not be issued until the Planning Department has determined that the project complies with this coastal development permit.

Colors and Materials

59. The project is visible from a public viewing area, 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.

60. 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

61. 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.

62. 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 properties shall not produce an illumination level greater than one foot-candle.

63. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting of natural habitat areas.

64. High intensity lighting of the shore is prohibited.

Shoreline Protection

65. All construction debris shall be removed from the beach daily and at the completion of development

66. No stockpiling of dirt or construction materials shall occur on the beach.

67. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work.

68. The applicant shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion.

69. 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.

70. Construction equipment shall not be cleaned on the beach.

71. 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.

Biology / Landscaping

72. No new landscaping is proposed with this project; therefore, none is approved. Should the applicant intend to plant any new vegetation with a potential to exceed six feet in height or an area of 5,000 square feet or more, a detailed landscaping plan shall be submitted for review and approval prior to any planting.

73. No large trees are permitted to be planted onsite.

74. Construction fencing shall be placed within five feet of the southern (seaward) limits of grading. The exclusionary fencing shall be installed prior to the beginning of any grading / construction and shall be maintained throughout the construction period to protect the site's sensitive habitat areas.

75. Earthmoving shall be scheduled only during the dry season from April 1st through October 31st. If it becomes necessary to conduct earthmoving activities from November 1 through March 31st, a comprehensive erosion control plan shall be submitted to the City Biologist for approval prior to the issuance of a grading permit and implemented prior to initiation of vegetation removal and/or earthmoving activities.

Site Specific Conditions

76. 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. View corridors, a minimum of five feet wide, adjacent to both the western and eastern property lines 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.

77. No permanent structures shall be placed on the balconies seaward of the building stringline.

78. Balcony railings located seaward of the building stringline shall not exceed 42-inches in height and shall be visually permeable.

Transfer of Development Credit

79. The applicant is responsible for obtaining one Transfer Development Credit as calculated in LIP Section 7.8.2. The applicant shall submit evidence that one Transfer Development Credit, consistent with LIP Sections 7.7 and 7.8 (Procedures) has been obtained prior to the issuance of grading and/or building permits. The burden for satisfying the procedures herein is on the applicant for the applicable coastal development permit.

Deed Restrictions

80. 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, 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.

81. The property owner is required to submit a signed document 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.

82. The property owner is required to acknowledge, by the recordation of a deed restriction, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protection structure which extends the seaward footprint of the subject structure shall be undertaken and that he/she expressly waives any right to such activities that may exist under Coastal Act Section 30235. Said deed restriction shall be submitted to the Planning Department for approval prior to recordation. The deed restriction shall also acknowledge that the intended purpose of the shoreline protection structure is solely to protect existing structures located on the site, in their present condition and location, including the septic disposal system and that any future development on the subject site landward of the subject shoreline protection structure including changes to the foundation, major remodels, relocation or upgrade of the septic disposal system, or demolition and construction of a new structure shall be subject to a requirement that a new coastal development permit be obtained for the shoreline protection structure unless the City determines that such activities are minor in nature or otherwise do not affect the need for a shoreline protection structure.

83. 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. 61 - 64. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final planning approval.

Offer to Dedicate

84. In order to effectuate the property owner's offer to dedicate public lateral access, prior to the issuance of any building, grading or other development permits, the property owner shall execute and record a document in a form and content acceptable to the City of Malibu and the California Coastal Commission, an irrevocable offer to dedicate (or grant an easement) free of prior liens and any other encumbrances that may affect the interest being conveyed, an easement to a public agency or private agency association approved by the City of Malibu and the California Coastal Commission, granting the public the permanent right of lateral public access and passive recreation. The easement shall extend along the entire width of the property from the mean high tide line to the dripline of the deck. The recorded document shall include legal descriptions and a map drawn to scale of both the subject parcel and the easement area. The offer to dedicate or grant of easement shall run with the land in favor of the People of the State of California, binding all successors and assignees, and the offer shall be irrevocable for a period of 21 years, from the date of recordation. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning approval.

Fixed Conditions

85. 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.

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

87. This coastal development permit runs with the land and binds all future owners of the property.

Section 6. Certification.

The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 9th day of January 2012.

LAURA ROSENTHAL, Mayor

ATTEST:

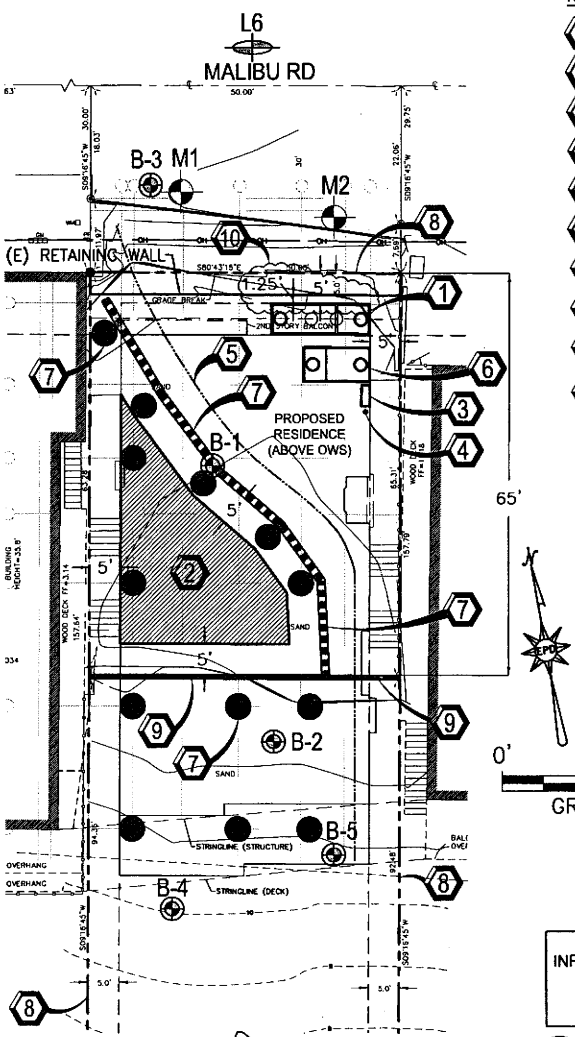
LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

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

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the M.M.C. and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.



1 ONSITE WASTEWATER SYSTEM SITE PLAN

Scale: 1"=20'-0"

KEYNOTES:

1. 2000-GALLON JENSEN PRE-CAST 2-CHAMBERED PRIMARY TANK, WATERTIGHT.
2. 603 S.F. PRESSURE-DOSED LEACH FIELD, W/ 1' ROCK. LEACH FIELD ROCK SHALL BE INSTALLED IN BEACH SAND. GEOLOGIST TO PROVIDE FIELD OBSERVATION
3. SEPTITECH TELEMETRY CONTROL PANEL
4. CLEANOUT TO GRADE (COTG)
5. LANDSLIDE PER REFERENCE 3
6. M750UV-JENSEN H1 SEPTITECH PROCESSOR IN 1500-GAL 2-CHAMBERED, JENSEN PRE-CAST TANK, WATERTIGHT, H1 HIGH HEAD PUMP OPTION
7. PROPOSED SEAWALL RETURN AND PILES PER REFERENCE 3
8. PROPERTY LINE
9. EXISTING SEAWALL PER REFERENCE 3
10. REDUCTION IN SETBACK FROM PRIMARY TANK TO RETAINING WALL

NOTES:

1. THESE PLANS ACCURATE FOR ONSITE WASTEWATER TREATMENT SYSTEM ONLY.
2. CONTRACTOR SHALL FOLLOW ALL REQUIREMENTS OF PROJECT FINAL FULL SIZE PLANS & SPECIFICATIONS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO OBTAIN THE FINAL FULL SIZE PLANS & SPECIFICATIONS FROM THE SYSTEM ENGINEER PRIOR TO PROCEEDING WITH WORK.

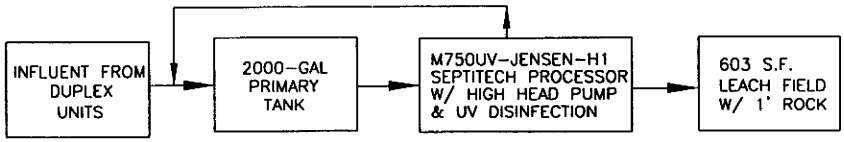
REFERENCES:

1. ROSELL SURVEYING: SURVEY REVISION-3, DATED 4/18/07.
2. SASSAN GEOSCIENCES, INC.: REPORTS, DATED 1/18/05; 10/12/07 AND 7/4/13.
3. DAVID C. WEISS SE&A, INC.: COASTAL ENGINEERING REPORT, DATED 2/14/06; 10/14/08; 11/20/08 AND 6/23/13.
4. DARA KIMBALL, ARCHITECT: ARCHITECTURAL PLANS, DATED 3/29/07.
5. EPD CONSULTANTS, INC.: PRELIMINARY ENGINEERING REPORT, DATED 12/12/07; 6/24/08; 12/12/08 AND 7/8/13.
6. MEC/GEOTECHNICAL ENGINEERS: REPORTS, DATED 7/22/02; 2/6/03 AND 7/31/03.
7. CITY OF MALIBU ENVIRONMENTAL HEALTH: NOTICE OF REQUIRED CORRECTIONS, DATED 5/20/08 AND 10/30/08.

PEAK DESIGN DAILY FLOWRATE: 1050 GPD
AVERAGE DESIGN DAILY FLOWRATE: 550 GPD
WASTE STRENGTH OF SEPTIC TANK EFFLUENT: 200mg/L OR LESS

PEAK DESIGN DISPERSAL LOADING RATE: 1.74 GPD/SF
AVERAGE DESIGN DISPERSAL LOADING RATE: 0.91 GPD/SF

PRELIMINARY - NOT FOR CONSTRUCTION



2 PROCESS FLOW SCHEMATIC

Scale: 1"= NTS

consultants
sustainable water systems & solutions
20722 MAIN STREET
CARSON, CA 90745
Phone (310) 241-6565
Fax (310) 241-6566

REGISTERED PROFESSIONAL ENGINEER
KEVAN L. POFF
Exp 06-30-14
No. 69089
CIVIL
STATE OF CALIFORNIA

▽ NO.	REVISIONS:	DATE:	BY:
3	REVISED DISPERSAL FIELD	12/08	AD
4	MODIFY SEPTIC SYSTEM	03/11	CB
5	MOVE TANKS AND LEACH FIELD	07/11	CB
5	NEW SEAWALL AND PILES	07/13	CB

SHEET TITLE: ONSITE WASTEWATER SYSTEM SITE PLAN

PROJECT: 25360 MALIBU ROAD MALIBU, CA 90265

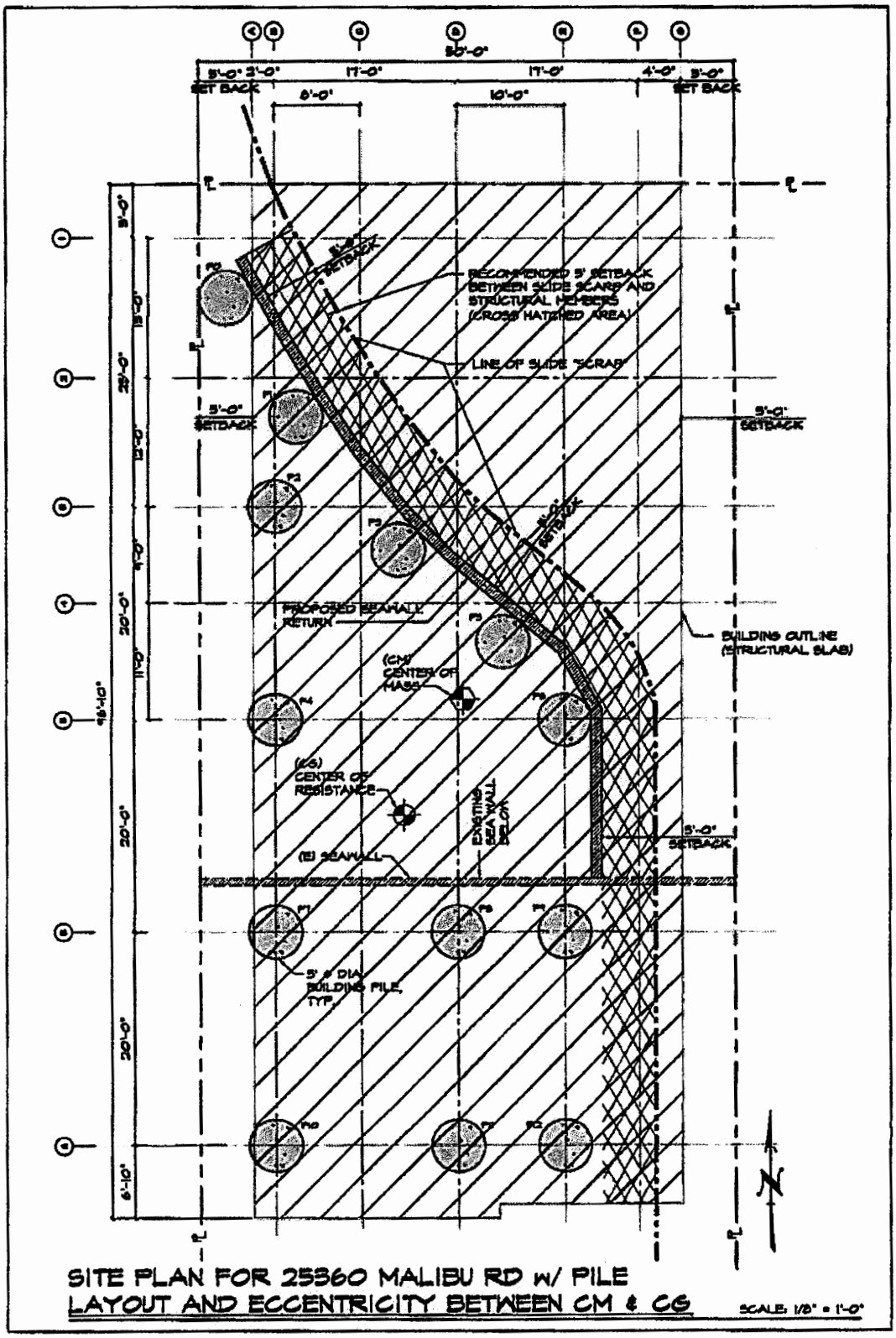
DATE	SCALE	DRAWN BY
08/20/07	AS_SHOWN	AMD

PROJECT NO. G125

DRAWING NO. W0.01

SHEET 1 OF 1 SHEETS

Exhibit 9
Appeal A-4-MAL-12-006 (25360 Malibu Road LLC)
Cantilever Alternative Conceptual Site Plan


50'-0"
5'-0" SET BACK
2'-0"
17'-0"
17'-0"
4'-0"
5'-0" SET BACK
8'-0"
10'-0"
RECOMMENDED 5' SETBACK BETWEEN SLIDE SCARP AND STRUCTURAL MEMBERS (CROSS HATCHED AREA)
LINE OF SLIDE "SCARP"
5'-0" SETBACK
PROPOSED SEAWALL RETURN
BUILDING OUTLINE (STRUCTURAL SLAB)
(CM) CENTER OF MASS
(CR) CENTER OF RESISTANCE
(E) SEAWALL
EXISTING SEAWALL TO BE DEMO
5'-0" SETBACK
5'-0" DIA BUILDING PILE, TYP
P1
P2
P3
P4
P5
P6
P7
P8
P9
P10
P11
P12
5'-0"
20'-0"
20'-0"
20'-0"
5'-0"
N
SITE PLAN FOR 25360 MALIBU RD w/ PILE LAYOUT AND ECCENTRICITY BETWEEN CM & CG
SCALE: 1/8" = 1'-0"

CHATTEN-BROWN & CARSTENS
2200 PACIFIC COAST HIGHWAY
SUITE 318
HERMOSA BEACH, CALIFORNIA 90254

TELEPHONE: (310) 798-2400
FACSIMILE: (310) 798-2402

E-mail: DPC@CBCEARTHLAW.COM

October 24, 2013

Deanna Christensen
Coastal Program Analyst
California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Re: App# A-4-MAL-12-006; Appeal Regarding 25360 Malibu Road, Malibu CA: APN 4459-017-005

Dear Ms. Christensen:

Thank you for recently forwarding me the reports relative to our appeal of 25360 Malibu Road, Malibu attached to the August 12, 2013 letter of Sherman Stacey. This letter and these reports do not disprove that there are sufficient grounds for the Commission to find Substantial Issue and to review this project as set forth in our June 28, 2012 supplemental letter and earlier correspondence.

The Stacey letter only addressed the alleged infeasibility of the cantilevered design. The appeal was *not* based on a cantilever design being the only alternative. Rather, as our June 28, 2012 letter pointed out, there are several other alternatives including using a rigid foundation system on the western half of the property, using a design that would allow earth to flow around individual caissons, and placing development on the stable part of the site. These alternatives have not been addressed, so far as we can tell.

The applicant's proposal exceeds the standard of care relative to hazards. Review by Andrew Gombiner's geological consultant, Don Kowalewsky, reveals that none of the documents with the Stacey letter address the primary concern that any development on this property may adversely affect the adjacent properties by causing a change in the motion, geometry and velocity of an active landslide that resulted in the destruction of the previous building on this property and a residence north of Malibu Road. The building code specifically requires that no building permit may be issued where the proposed project may adversely affect offsite properties. The geotechnical consultant must provide a finding based on sufficient data and calculations to demonstrate that there will be no adverse effect on offsite properties. This has not been performed. The geotechnical consultant only provided an opinion with no facts nor calculations to support it. Additionally, the western edge of the active landslide as shown on the Sa[illegible]

Exhibit 10
Oxnard LCP Amendment 1-12
Correspondence from appellant's attorney dated October 24, 2013

Geosciences map is close to the observed conditions as shown on the photograph of the property taken shortly after the last phase of significant movement. However, the more easterly edges are obviously erroneous and they do not fit the facts visible on the ground surface.

If a cantilevered design for the proposed structure is out of the question and the available area for wastewater disposal is inadequate for the proposed structure as asserted by the Stacey letter, why has no alternative structure been proposed? A building with less mass and area coverage and a building with fewer bedrooms and fixture units may in fact result in a structure that can be cantilevered and have adequate wastewater disposal area.

While reducing the size of the proposed building may be required, such regulatory requirements in the interest of public health, safety, and welfare are allowable without running afoul of the constitutional prohibition on regulatory takings. Substantial diminutions in property values can occur without creating public agency liability for a taking. (*Hadacheck v. Sebastian* (1915) 239 U.S. 394 [92.5% diminution in value]; *William C. Haas Co. v. City of San Francisco* (9th Cir. 1979) 605 F2d 1117 [95% diminution in value].) It is sufficient if there remains a "reasonable beneficial use." (*Williamson County Planning Comm'n v. Hamilton Bank* (1985) 473 U.S. 172, 194.) Moreover, not every land-use restriction, which designates areas on which no development is permitted results in a compensable taking. The governing constitutional authority recognizes that the impact of a law or regulation as applied to a specific piece of property determines whether there has been a compensable taking. Compensation need not be paid unless the ordinance or regulation fails to serve an important governmental purpose or "goes too far" as applied to the specific property that is the object of the litigation. (*Pennsylvania Coal Co. v. Mahon*, (1922) 260 U.S. 393, 415.) Restricting development to the stable portion of the site would not "go too far." On the contrary, it would be the minimum restriction necessary to protect adjacent properties.

We would like to discuss these concerns and alternatives with you. Please advise us if there is a time that we may do this before the November Commission hearing, hopefully prior to the release of the staff report.

Thank you for your consideration. We look forward to hearing from you.

Sincerely,

Douglas P. Carstens