

## CALIFORNIA COASTAL COMMISSION

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



# Th16a

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original staff report

## ADDENDUM

**DATE:** December 9, 2014  
**TO:** Commissioners and Interested Parties  
**FROM:** South Central Coast District Staff  
**SUBJECT:** Agenda Item 16a, Thursday, December 11, 2014, Coastal Development Permit Appeal No. A-4-MAL-13-0257 (Malibu)

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The purpose of this addendum is to 1) add findings to the report regarding a reduced front yard setback and 2) respond to a December 4, 2014 letter, submitted to Commission staff on behalf of the appellants and to attach said letter to this addendum. Regarding the following revisions to the findings of the staff report dated November 20, 2014, language to be inserted is shown underlined and language to be deleted is shown in ~~line out~~.

1) **Insert** the following findings into the last paragraph on page 38 of the staff report:

The subject 3.3-acre parcel is designated as Rural Residential 2 (RR 2). The RR 2 designation allows sensitively designed, large lot single family residential development, with agricultural uses and animal keeping as accessory uses to approved residential development. The City's certified Implementation Plan/Coastal Zoning Ordinance allow as a permitted use one single family dwelling unit per 2 acre legal lot. This zone limits the maximum height to 18 feet and limits total development square footage to 9,693 square feet in this case. The proposed residence will have a height of 18 feet and a total development square footage of 7,416 square feet. As proposed, the project encroaches 22.2 feet into the required 62.2- foot front yard setback. The City's LCP allows variances to zone setbacks where warranted, including "modifications to required yards/setbacks standards shall be permitted where necessary to avoid or minimize impacts to sensitive resources." (LIP Section 3.6.F.5) Additionally, 13.26.5(A) allows a variance from front yard setback requirements where "there are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification." In this case, the encroachment into the front yard setback, pursuant to LIP Sections 3.6.F.5 and 13.26.5(A), is necessary to 1) maintain 100-ft buffer from stream ESHA, 2) minimize substantial landform alteration associated with development on steeper slopes to the south/west and 3) avoid adverse impacts to coastal resources. Therefore, the proposed development conforms to the City's certified Implementation Plan, including Coastal Zoning Code sections for Rural Residential 2 (RR 2) zoning.

## **2) Letter in Opposition**

One letter in opposition to the November 20, 2014 staff recommendation report was received on December 5, 2014 and is attached to this addendum. The letter contains six main contentions involving issues discussed in the staff report. In response, staff notes that the issues in the letter have been fully discussed in the findings of the November 20, 2014 staff report. However, to provide greater clarity each point will be briefly addressed below, with reference made to the applicable discussion in the staff report where applicable.

First, the appellants state that the home will be located 50 feet closer to a blueline stream, as a result of a project description revision for purposes of De Novo review. In consultation with Commission staff, the applicant has revised the original project description approved by the City to relocate the residence 52 feet further to the west in order to provide the minimum 100 foot buffer from the stream/drainage located immediately off the residence, as required by the adopted Malibu LCP. The blueline stream referenced in the letter is on an adjacent property to the west. While the residence would be 52 feet closer to the off-site stream, it will still be approximately 130 feet away and therefore consistent with the minimum 100 foot buffer. Therefore, the residence would be constructed outside the minimum required 100 foot buffers of both streams.

Second, the appellants contend that the City-approved house, to be relocated as a result of the staff De Novo recommendation, will block public and private views to the ocean inconsistent with the certified Malibu Land Use Plan. As discussed beginning on Page 34 of the staff recommendation report, the Malibu certified Local Coastal Plan requires protection of scenic areas and coastal views from public viewpoints. There is no equivalent LCP-based protection afforded to private properties. As discussed in the report, the proposed residence is consistent with the zoning district's height requirements and maximum lot development ratio. Moreover, the revised project location will not result in any significant adverse impacts to public views from either Harvester Road, Busch Drive or along the future trail location along Busch Drive.

Third, the appellants raise issues associated with past unpermitted work at the subject property, allegedly conducted by a prior property owner. The report includes a discussion of the unpermitted development activities associated with the subject property on pages 18 and 19. The report also contains an analysis regarding past unpermitted work as it relates to the subject appeal on pages 43 and 44. In summary, the last remaining unfulfilled requirement of a prior CDP (4-97-255) involves a Restoration and Monitoring Plan for the on-site stream ESHA. As recommended by staff, the applicant's proposed Restoration and Monitoring Plan is encapsulated in Special Condition 7, and will be consistent with the requirements of a previous court order, a Commission Restoration Order 4-92-206RO (Tahmasebi), CDP No. 4-97-0255 (Tahmasebi), and the existing Notice of Violation (previously recorded against the property's title).

Fourth, the appellants contend the residence will be out of character with the surrounding community. The report includes discussions pertaining to this issue on pages 27 and 35-36. The home will not represent a departure from the styles in this area, due in large part to the existing diversity of house styles. The 10-15 residences in the immediate vicinity include a mix of

several different sizes ranging from approximately 3,500 sq. ft. to 8,000 sq. ft. The proposed 7,416 sq. ft. house will be among the larger homes in the area, but is approximately the same size as many other residences within the area. Moreover, the subject parcel is also one of the largest parcels in the area and, as stated above, the development area is well below the maximum potential development area as allowed under the RR2 zoning district.

Fifth, the appellants suggest the report is ambivalent as to the on-site stream's status as an environmentally sensitive habitat area. The report includes discussions pertaining to the on-site stream ESHA on pages 22-25 and 29-34. There is no question that the subject on-site stream is, by definition, ESHA pursuant to the certified Malibu LCP. As discussed in detail in the report, as revised pursuant to Special Condition 2 (Final Revised Plans), the residence would be relocated 52 ft. further from this stream in order to provide the required 100 ft. setback from ESHA and riparian habitat areas.

Finally, the appellants question the role of and intentions associated with the applicant's proposed offer to dedicate a trail segment. The proposed trail segment is identified as a proposed or future trail segment site on the LCP's Parkland and Trails System Map (See Staff Report **Exhibit 2**, Page 3). As discussed in more detail in the staff report, the applicant's proposal to provide the trail segment easement on his property will serve to enhance nearby public access opportunities consistent with the LCP, including the Parkland and Trails System Map.

In conclusion, the November 20, 2014 staff report adequately addressed the concerns raised in the appellants' attached December 5, 2014 letter.

DECEMBER 4 2014

TO

CALIFORNIA COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT OFFICE

RE: APPEAL NUMBER A-4-MAL-13-0257

FROM

APPELLANT BRIAN PIETRO AND OTHERS

WOULD YOU PLEASE MAKE THESE FIVE (5) COPIES OF OUR LETTER AVAILABLE TO THE  
COMMISSIONERS PRIOR TO THE HEARING IN MONTEREY SLATED FOR DECEMBER 11<sup>TH</sup>?

THANK YOU,

BRIAN PIETRO  
5763 BUSCH DRIVE  
MALIBU CA 90265

310-924-1776

DEC 05 2014 1312

California Coastal Commission  
South Central Coast District

TO: CALIFORNIA COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT OFFICE  
VENTURA CA

DEC 05 2014 BR

RE: APPEAL NUMBER A-4-MAL-13-0257  
29600 HARVESTER ROAD  
MALIBU CA

**HEARING DATE: 12/11/14**

FROM: BRIAN PIETRO, APPELLANT, 5763 BUSCH DRIVE, MALIBU CA 90265  
WITH JENNIFER PIETRO, MICHAEL PLEN, CAROL BRETONNE

Dear Commission:

**OBJECTION:**

We wish to express our deep and long standing objections to this construction project as proposed and in particular with regard to how there is now apparently an attempt by the Applicants (Iraj and Mahvash Safapour) to appeal the Coastal Commission's decision requiring that the house construction site be moved approximately 50 feet westward in order for it to comply with State law concerning proximity to an ESHA.

At every opportunity this property owner has pushed the envelope. When we had to challenge him regarding his original proposed home measuring just under 10,000 square feet with a top height of 28 feet, it took a lot of work on our part to push him back. We had to speak for ourselves, for the City became a neutral bystander in the issue. We pressed on and even though the City planners approved of this plan, even defended it, he finally withdrew when he realized there was simply too much opposition from neighbors. He re-emerged with this present plan. Basically the same home only about 30% smaller. It is still inappropriate and in defiance of local and State ordinances.

This property and its owners have a dubious past starting with the illegal importation years ago (by the former owner of record, a relative of the current owner we speculate) of massive amounts of fill dirt only some of which has been since removed. By some type of questionable agreement, the property owner(s) were not required to remove all the fill dirt, just some, in exchange for restoring the ESHA – which meant, removing fill dirt from the watercourse area and simply allowing the natural vegetation to grow there and not taking a weed trimmer to it. The enormous amounts of fill dirt that was tracted smooth over near the top of the property was simply not discussed or recognized, and that whole topic went by the wayside. It should be noted that when we

protested in a private meeting with City officials, in relation his past building proposal, the City geologist pulled out an “official” geologic report showing that there was no fill dirt present anywhere near the top of the property, where the proposed home is to be built. We were told reluctantly, that the geologist who did the report was hired by the property owner, and was not a local geologist, but someone from out of the area. (No reputation to protect). When we objected to this and wanted to, at our own expense, hire a local geologist to examine the property, we were denied by the City, being told that (and I paraphrase) “this is an official report - a geologist would never falsify a report – they have a State license that could be revoked”. Seriously.

More recently, the current Applicants were able to somehow persuade the City of Malibu staff that the ESHA was not a natural watercourse area but some type of man-made water drainage course. By some bizarre type of reasoning or “persuasion”, the City staff rewrote the Commission’s designation, defining the ESHA as a water run off of some sort, thus permitting the house to be constructed less than 50 feet from it.

When we went before the City we were unsuccessful in turning the City decision around even though there is geologic and photographic evidence to support the idea that this natural watercourse predates all surrounding homes and streets, and perhaps predates modern homo sapiens. The project was approved. Because the City majority shot down our pleas we filed a complaint last June with the Commission, as our last hope to reason. The Commission (thank you) weighed in and reversed this approval, and apparently reminded the City of Malibu that it cannot re-define what is, and is not, an ESHA without input and agreement with the CCC. Malibu had yet again, strayed off the reservation. But *you’re* the bad guys, right?

Although relieved to see the property owner’s (and the City’s) wings clipped a bit, our objections have not been completely assuaged. All that has really happened is that this preposterous home will be built pretty much as originally planned, fifty feet westward.

It would be less than truthful if we were to claim that we are happy that a home is being erected right in front of us, obstructing some of our wonderful view of the land and ocean. Of course we’re not, but we are realistic and know that everybody has a right to build a home on their property, provided they *follow the rules*. We have long realized that at some point in the future someone is going to build a home there, which we recognize and accept as their right. This entire project can be mitigated to something vastly less prominent in other words. What we argued at the City was that while a person’s personal private property rights are indeed precious, what about the right’s of the surrounding neighbors and the immediate community who will be impacted? Have we no rights? Does the Malibu LUP not address this very thing in very certain and clear

terms? Does the property owner's hell-bent desire to build what he wants to build, trump our rights to our rural residential character, our pastoral views? Apparently (with the exception of Skylar Peak) the City felt that 'yes' his rights trump our rights and that the City can arbitrarily choose to recognize or ignore its own LUP from case to case. At what point does a higher governing body step in and control this arbitrary development-friendly process? Why does the City behave, and is allowed to behave, in such an obstructionist fashion?

It is no secret that by and large the City is pro-development – So of course is the Chamber of Commerce, most real estate agencies and the (essentially) only newspaper in town. Just recollect the very recent vigorous and public objections ALL of the City Planning Commission members and ALL the City Council members (EXCEPT for Mayor Skylar Peak) put forth regarding Measure R this last November? Without question, this measure was the single most important legislation to ever come down the pike since the City was incorporated. It won with a record voter turnout, and by a margin of 20%. The only other measure that comes even close to this in significance was years ago, Measure M, that proposed allowing major development on the former "Chili Cook-off" (now "Legacy Park") land then owned by Jerry Perenchio's Malibu Bay Company. This measure was defeated by a similar margin of the voters and yet was supported by most of the City Council and Planning Commission, some of the *very same* people who are in office today and opposed Measure R. Most of the City leaders, present and past, when it comes to development and protecting our environment, talk like a duck but they don't walk like one.

Why is any of this relevant to this lone residential construction project? Because it serves as an example of how the City in fact functions, on a case by case basis, with regards to observing their LUP, protecting the rights of property owners who wish to build (both residential and commercial) over the rights and desires of the general population. Sure, if their feet are put to the fire, they will quibble long into the night about the height of a tree or fence, or an easement or other some secondary issue, but the general default setting is to approve-approve-approve. The treatment this property owner has received at the hands of City officials is entirely consistent with so many other cases prior. It would be refreshing if the CCC could weigh in and begin to redirect this seemingly directionless City government, and force it to live up to its own LUP, with this property as a prime example of excess.

Bear in mind that the whole of the five member City of Malibu Planning Commission and four of the five City Council members (with the exception of the Mayor, Skylar Peak, who stood on our side of the issue) have all approved the construction, have ignored all the language in the Malibu Land Use Plan concerning obstruction of public and private

views, and have ignored the language concerning the need for a home's architectural style to integrate and be appropriate with the surrounding neighborhood. Even though there are other options possible on this property for a home to be built that is much less obtrusive, much less invasive, does not encroach on either the ESHA to the east or the blueline to the west, the majority of City members chose to rubber stamp this project, going so far as mentioned, to usurp the Commission's authority and redefine the ESHA as simply a water drainage course.

Simply put, the Applicants have worked steadily and tirelessly, both publicly and behind closed doors, to push their inappropriate, overly large, and ESHA violating construction project forward and have attempted at every turn to take advantage of the confusion and (at times) tension and resentment that exists between the City and the Commission. The City has made it quite apparent time after time that it does not like being told what to do by the CCC, anymore than this property owner does.

Now at this juncture, with this hearing in Monterey, this property owner is going to try to persuade the Commission that his rights have somehow been violated, that he is a victim, that he is misunderstood, that he just wants to build his family a dream home (for us a nightmare, for him a dream) and golly gee, what's the problem? ESHA you say? Doesn't look like any kind of an ESHA to me, he may say. In fact, he might even have an expert or two on hand to explain to you why you are incorrect.

As it stands, he is now being told to build on an area of land that is closer to the street (Harvester Road) with less set back to the road, making the house even more obtrusive and view-blocking to some than before, and is positioned near a much steeper downslope grade than before. Not only that, on the westward side of the home, with the proposed home perched over it, is a blueline riparian stream, now fifty feet closer to the home than before. At what point does common sense and reasonableness take over?

Just picture it: We have a property owner who insists on building a particular style of home that requires it be basically an enormous square shape, as if it were on some nondescript flat or bulldozed terraced culdesac as part of a seven house development of high end tract homes. No provision or regard seems to be being made to recognize that it is sitting on this particular piece of land, as opposed to something flat. With the exception of the Mayor himself, the City members seem to be oblivious or uncaring to this as well.

Why is it that this land owner is being given the right to dismiss language in the LUP, and is being permitted to ignore the contour of the land that he voluntarily chose to

purchase, and unless thwarted, is being allowed by the City (and hopefully not the Commission) to ignore the presence of a natural watercourse to the east and a riparian blueline to the west? There are other building options but the behavior of officials in charge is that this is the only conceivable option possible; this large imposing square Mediterranean fortress he proposes.

It is as if the world has gone insane and the only possible conceivable size, scale, design of home that could ever be imagined on this property is the one the property owner wants and whenever he confronts resistance, instead of complying or adapting, he just pushes harder and harder, with the help of his paid consultants. Only when confronted with absolute and total rejection, does he then alter course. Why so defiant? Why so belligerent? Is there something else afoot, such as an intention to sell this house. Is this really to be *his* family home, or *someone else's* family home? Is this just a big spec home? If so, it would explain this stubborn campaign and refusal to cooperate.

Here's a story for you: Many months ago, prior to any local hearings, when I happened to be outside near my fence line doing some gardening, he was there at his property. He noticed me and walked across the street, and was quite friendly and neighborly. With an impassioned tone, he expressed his desire to build his dream home on this property, for his family, and be a good neighbor. He went so far as to offer me to make suggestions as to ways he could alter his house design and to meet with him and his architect to go over the plans. He wished no ill will toward anyone he said, he felt he was being victimized (perhaps due to his nationality?) and that presently, they (his family) were throwing everything they had into this project and sacrificing terribly. He said his family was so very anxious to move out of their cramped apartment in town and that they were living very modestly, for everything was going into the house project. He gestured toward his car during this talk, which was parked right in front of me on Harvester Road; a very worn out looking small older Toyota-type sedan that was oxidized, had faded paint, and was very modest indeed. I have to admit I was moved and I softened my attitude about him. I was still not happy about the style and scope of his project, still thinking it to be too obtrusive and out of character with the surrounding neighborhood, but I felt empathy for him as well. I expressed this feeling to my skeptical cohorts and they caved a little too. About two weeks later, unbeknownst to him, I observed him parking - this time not across from my yard in plain view as before on Harvester, but much further away, on the opposite side of Busch. He got out of his car and made his way across the street to his property for another visit. But guess what? This time he was not looking around for me or approaching my fence line. Why would that be? Well, one reason could be that it was not a worn out looking old sedan that he pulled up in, but a very new looking Mercedes Benz S-class sedan, which has a sticker price starting at just under \$100,000. Let's see. Park the old shabby sad looking

car right in front of me and park the new shiny expensive car away from me? Now, why would a person do that? Probably just coincidence. And oh yes, his offer to have me give some design input on his plans would have been terrific if he had not already submitted his full blueprints to the City before making this offer to me. When I mentioned this last detail at a public hearing sometime later, he protested and denied having said it, stating "I couldn't have done that – it would cost me thousands". Which way does he want it? Oh yeah, that's right, *both* ways.

He has in past public forums made a big point of how he withdrew his plans for a larger and taller house, and by that reasoning, should be given carte blanche on this project. And mind you, not just the style and scope of the house, but *where* the house is situated on this very large lot. What he fails to mention is that he fought tooth and nail for over two years to have the larger project approved and when he finally lost, he had no alternative other than to withdraw the application for a building permit. This was not altruistic of him – he was compelled to do it. What hung him up is the sole aesthetic clause that the City seems to pay attention to when forced – their "18 foot rule" - regarding the height of a new home. The way they operate is that if you as a builder propose to go over that, you have problems if neighbors object (we did). You stay under that and (as many City Council members and Planning Commission members stated) you are "guaranteed" the right to build. "Guaranteed". Not kidding.

If the Applicant were to modify his design to something more appropriate to the neighborhood (that is comprised chiefly of one story ranch style, mountain style homes and the occasional two story Cape Cod or conventional) it would also afford him the opportunity to build something that would conform with the natural downward slope of the land, using some type of tri-split level floor plan, that would be quite interesting. With that type of approach, for example, he could probably get even *more* square footage, be less visible, be less obtrusive, retain his view of the ocean, and stay away from both the ESHA and the riparian stream. He could have it all and by way of that, we could too. But no, he wants what he wants, and by God he is going to get it.

We realize that aesthetics and appropriateness are not of primary concern to the Commission or usually under your purview but certainly when a coastal City fails to enforce its very own charter as it concerns the environment and protection of public views, that it would be. Of primary concern would be a homebuilder complying with State law as it concerns proximity to an ESHA on the one side and a riparian blueline on the other.

We cannot fathom why the Commission would approve the home even now, even with the requirement to move it about 50 feet westward in order to provide adequate

distance from the ESHA zone, for now, it is planned to be built fifty feet *closer* to a riparian stream. While the property size itself may be somewhat large, the actual buildable portion of it is much smaller. It is one of just a few remaining vacant lots in the general neighborhood – most usually, lots that are the most difficult to build on, that present the most problems and expense, are the last to sell. It is on a corner of two streets, with set backs on both streets – it is sandwiched in between an ESHA on one side and a riparian stream on the other. It has to comply with the 18 foot height rule and various other building codes. It is entirely a gentle or steep downslope topography even with the aid of fill dirt. There is no flat land anywhere – the only *almost* flat land is due to the fill dirt put there years ago – which the City has the temerity to claim is not fill dirt, even though there are neighbors who were witnesses to these multiple truck loads of dirt being brought in and raked over by a tractor. This large Mediterranean style home will be perched atop the highest part of the lot, precariously close to a steep downslope and a riparian blueline stream. Simply amazing.

The property owner's premise seems to be that *he* is the one being put upon, as if he was required to buy this land and required to build this style of home on it, in a particular place on the property. It is as if in his world there are no other possible options, and that his "rights" should over power any other rights that others may have, and if confronted by State law, rather than comply, maneuver around it whenever possible. The word 'audacious' comes to mind.

Flip open any coffee table sized book on residential architecture designs and you will see a huge menu available of homes that could be built on this lot without infringing on anything or anyone, other than a few gophers. But no, the property owner cannot bring himself to do that – instead he chooses to fight and fight for years so he can have his huge box-shaped Mediterranean home that he allegedly plans to live in. Instead of complying with rules governing an ESHA for example, he works with his consultants to persuade the City staffers to redefine the ESHA so he can move forward unimpeded.

We do not wish to deny him the right to build a home on his residential property, but we do wish him to be compelled to build something appropriate, and legal, and within coastal use guidelines. What he has in mind now is appropriate for a 1/3 acre lot or larger that is FLAT and without issues.

Also, his offer to create an easement for a trail is laughable. Again, this is a downslope piece of property, whereupon at the bottom-most portion of it the ESHA watercourse and the riparian blueline meet, which in turn lead into other properties further below and is not navigable by foot or horse, and has no outlet or connecting easements. His

offer is meant to demonstrate how fair and reasonable he is but it is a hollow offer. More smoke, more mirrors.

**REQUEST:**

We wish the Commission to not only DENY his appeal of the requirement to reposition his house "foot print" away from the ESHA but in the absence of competent stewardship from the City, to go *further* and require that the home be built away from the blueline as well, and to conform to basic Commission guidelines, the contour of the land and be built in proportion to the surrounding homes which range from 2000 sf to 5000 sf.

We realize that municipalities are supposed to govern many of these issues while the Commission's primary mission is to simply protect the environment from harmful encroachment of development when a municipality has not acted. We get that. But at what point can and will the Commission step in when a City has simply turned it's collective back on its very own LUP and awarded building rights to a home that is the "poster child" of non-conforming construction and snubs its nose at local and State laws and guidelines? At what point does this happen? Now is the time, is what we hope.

Respectfully,

Brian Pietro for Jennifer Pietro, Michael Plen, Carol Bretonne

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT OFFICE  
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# Th16a

Filed: 12/19/2013  
 49th day: Waived  
 Staff: N.Dreher-V  
 Staff Report: 11/20/2014  
 Hearing Date: 12/11/2014

## STAFF REPORT: SUBSTANTIAL ISSUE & DE NOVO REVIEW

**Appeal Number:** A-4-MAL-13-0257

**Applicant:** Iraj and Mahvash Safapour

**Appellants:** Michael Plen, Carol Bretonne, Brian Pietro, and Raymond F. Hall

**Local decision:** Approval with Conditions by the Malibu City Council on December 9, 2013 (Coastal Development Permit No. 05-186; Resolution No. 13-41).

**Project Location:** 29600 Harvester Road, Malibu (Assessor Parcel No. 4469-012-017).

**Project Description:** Construction of a new 7,416 sq. ft. one-story, residence with attached garage, swimming pool, associated hardscape, 645 cu. yds. grading, swimming pool, onsite wastewater treatment system, landscaping, habitat restoration and erosion control and an offer to dedicate a trail easement.

**Staff Recommendation:** Substantial Issue; Approval with Conditions

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the appellants' assertions that the project is not consistent with the environmentally sensitive habitat area (ESHA) and riparian habitat policies of the certified Local Coastal Program (LCP) and that the Commission take jurisdiction over the coastal development permit (CDP) application for the project as a de novo CDP application. Further, staff recommends that the Commission approve the de novo CDP application, pursuant to revisions to the project by the applicant and subject to 15 special conditions.

Staff notes that **unpermitted development has occurred on the subject site**, which was resolved via a previous Commission action. However, the approval designed to remedy prior violations included

restoration of the site and blueline stream on the property. The City's approval was, in part, conditioned to remedy the outstanding Commission requirement for restoration and revegetation monitoring and maintenance program, pursuant to CDP No. 4-97-255(Malik/Tahmasebi). Approval of the de novo application pursuant to the staff recommendation and completion of the approved project will similarly resolve the violation(s), as explained in this staff report.

The City of Malibu approved a CDP for Construction of a new 7,416 sq. ft. one-story, residence with attached garage, swimming pool, associated hardscape, 645 cu. yds. grading, swimming pool, onsite wastewater treatment system, landscaping, habitat restoration and erosion control and an offer to dedicate a trail easement. The project is located at 29600 Harvester Road, Malibu (Assessor Parcel No. 4469-012-017).

The applicant waived the 49-day appeal hearing requirement in order to resolve appeal issues. With respect to the de novo CDP, the applicant has worked with Commission staff to revise the proposed project in a manner that addresses the appellants' contentions and other issues raised by the development as originally approved by the City.

The appellants contend that the project, as originally approved by the City, fails to provide an adequate buffer for new development from environmentally sensitive riparian habitat and adversely impacts public views and community character. As detailed in the staff report, substantial issue was not raised with regard to the project's consistency with the scenic and visual policies of the LCP. However, a substantial issue was raised with regard to consistency with the ESHA protection provisions of the LCP.

In terms of the substantial issue question, the City's approval permitted the residential development to have an inadequate buffer from a stream at the southern portion of the parcel and sensitive riparian habitat inconsistent with LCP setback requirements. Specifically, the approved residence would be located only 48 ft. from the creek, an environmentally sensitive habitat area, in non-compliance with the 100 ft. setback requirement. Moreover, Fire Department fuel modification requirements for the new residence will result in impacts to the stream corridor to the south and buffers of both the on-site stream to the south of the residence and the off-site stream to the north of the residence.

There are alternatives to the approved project that would serve to avoid significant adverse impacts to stream ESHA on site. However, in its staff report, the City did not approve the alternative most protective of the stream ESHA. One feasible alternative is to locate new development roughly 52 feet to the northwest where it will maintain a minimum 100 ft. buffer from ESHA.

Thus, the appeals raise substantial conformance issues regarding environmentally sensitive habitat area (ESHA) policies of the certified Local Coastal Program (LCP).

With respect to the Commission's review of the de novo CDP, the applicant worked with staff to address the appellants' contentions and other issues raised by the development as approved by the City. Accordingly, the Applicant is now proposing revisions to the originally approved project to relocate it roughly 52 feet northwest of the City-approved site. This alternative will maintain the riparian ESHA buffer raised in the appeal, as the development envelope will now be sited over 100 feet from the stream bed.

The project will still have some unavoidable fuel modification-related impacts to the stream's riparian corridor. However, the revised proposal greatly reduces impacts to stream ESHA to the extent feasible while still allowing for residential use of the property.

Additionally, the revised project has the potential for impacts to water quality, hazard potential and the effects of cumulative impacts. However, these remaining issues can be mitigated and/or avoided via conditions of approval. Therefore staff recommends the Commission find that the proposed development, as revised and conditioned, is consistent with the City of Malibu certified Local Coastal Program.

The motions and resolutions to act on this recommendation follow below on page 5.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 - Vicinity Map

Exhibit 2 - Post-LCP Certification Maps (3 pages)

Exhibit 3 - Parcel Map

Exhibit 4 – City-Approved Project Plans (17 pages)

Exhibit 5 - Final Local Action Notice

Exhibit 6 - Local Appeals

- Exhibit 7 - Aerial Photographs
- Exhibit 8 – Revised Plans (8 pages)
- Exhibit 9 – Court Judgment (August 31, 1992)
- Exhibit 10 – Restoration Order 4-92-206RO excerpt

## **I. STAFF RECOMMENDATIONS FOR SUBSTANTIAL ISSUE AND DE NOVO PERMIT**

### **A. Motion and Resolution for Substantial Issue Determination**

**MOTION:**                    *I move that the Commission determine that Appeal No. A-4-MAL-13-0257 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION:**

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

#### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. A-4-MAL-13-0257 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **B. Motion and Resolution for De Novo Coastal Development Permit**

**MOTION:**                    *I move that the Commission approve Coastal Development Permit No. A-4-MAL-13-0257 pursuant to the staff recommendation.*

#### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in

conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any 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 significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

### 1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in all of the geologic, engineering, and grading reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

## **2. Final Revised Plans**

- A. Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final revised full size project plans. All plans must be drawn to scale with dimensions shown. The final revised project plans, including, but not limited to, site plans, floor plans, and grading plans, shall be consistent with the applicant's revised project description and the draft plans prepared by Jay Falamaki Design Studio, dated August 2014 (**Exhibit 8**).
- B. The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

## **3. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

## **4. Permanent Drainage and Polluted Runoff Control Plan**

- A. Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the post-construction project site, prepared by a qualified licensed professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plans shall incorporate long-term post-construction Best Management Practices (BMPs) that protect water quality and minimize increases in runoff volume and rate in the project design of developments in the following order of priority:
  - a. Site Design BMPs: Project design features that reduce the creation or severity of potential pollutant sources, or reduce the alteration of the project site's natural stormwater flow regime. Examples are minimizing impervious surfaces, preserving native vegetation, and minimizing grading.
  - b. Source Control BMPs: Methods that reduce potential pollutants at their sources and/or avoid entrainment of pollutants in runoff, including schedules of activities, prohibitions of practices, maintenance procedures, managerial practices, or operational practices.

Examples are covering outdoor storage areas, use of efficient irrigation, and minimizing the use of landscaping chemicals.

- c. Treatment Control BMPs: Systems designed to remove pollutants from stormwater, by gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical, biological, or chemical process. Examples are vegetated swales, detention basins, and storm drain inlet filters. Where post-construction treatment of stormwater runoff is required, treatment control BMPs (or suites of BMPs) shall, at a minimum, be sized and designed to treat, infiltrate, or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.

The qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- (1) Projects shall incorporate Low Impact Development (LID) techniques in order to minimize stormwater quality and quantity impacts from development, to the maximum extent feasible. LID strategies use small-scale integrated and distributed management practices, including minimizing impervious surfaces, infiltrating stormwater close to its source, and preservation of permeable soils and native vegetation.
- (2) Post-development runoff rates from the site shall be maintained at levels similar to pre-development conditions.
- (3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.
- (4) Landscape plants shall have low water and chemical treatment demands and be consistent with Special Condition 5, Landscaping and Fuel Modification Plans. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design shall be utilized for any landscaping requiring water application.
- (5) All slopes shall be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit and, if applicable, in accordance with engineered plans prepared by a qualified licensed professional.
- (6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed where needed to prevent erosion. Plan details and cross sections for any rock rip-rap and/or other energy dissipating devices or structures associated with the drainage system shall be prepared by a qualified licensed professional. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The qualified, licensed professional shall ensure that all energy dissipaters use the minimum amount of rock and/or other hardscape necessary to protect the site from erosion.

- (7) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
  - (9) For projects located on a hillside, slope, or which may otherwise be prone to geologic instability, site drainage and BMP selection shall be developed concurrent with the preliminary development design and grading plan, and final drainage plans shall be approved by a licensed geotechnical engineer or engineering geologist.
  - (10) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the affected area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
- B. The final Drainage and Runoff Control Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## **5. Interim Erosion Control Plans and Construction Responsibilities**

- A. Prior to the issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan are in conformance with the following requirements:
  - 1. Erosion Control Plan
    - (a) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.
    - (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
    - (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
    - (d) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the

situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.

- (e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
  - (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
  - (g) All temporary, construction related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics) and must be removed when permanent erosion control measures are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.
2. Construction Best Management Practices
- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
  - (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
  - (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
  - (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
  - (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
  - (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
  - (g) Debris shall be disposed of at a permitted disposal site or recycled at a permitted recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal

can take place unless the Executive Director determines that no amendment or new permit is legally required.

- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
  - (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
  - (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
  - (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
  - (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
  - (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- B. The final Interim Erosion Control and Construction Best Management Practices Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## **6. Landscaping and Fuel Modification Plans**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit two sets of landscaping and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist. The consulting landscape architect or qualified landscape professional shall certify in writing that the final Landscape and Fuel Modification plans are in conformance with the following requirements:

### **A) Landscaping Plan**

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within thirty (30) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may

be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property.

- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the area using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- (4) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

B) Fuel Modification Plans

Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Los Angeles County Fire Department and City of Malibu. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the area.

C) Conformance with Commission Approved Site/Development Plans

The Permittee shall undertake development in accordance with the final Landscape and Fuel Modification Plans. The final Landscape and Fuel Modification Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

D) Monitoring

Three years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit to the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the requirements specified in this condition, the applicant, or successors in interest, shall submit, within 30 days of the date of the monitoring report, a revised or supplemental landscape plan, certified by a licensed Landscape Architect or a qualified Resource Specialist, that specifies additional or supplemental landscaping measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. This remedial landscaping plan shall be implemented within 30 days of the date of the final supplemental landscaping plan and remedial measures shall be repeated as necessary to meet the requirements of this condition.

## **7. Habitat Restoration and Monitoring Program**

The applicant shall implement the Restoration and Monitoring Plan, prepared by Forde Biological Consultants, dated April 11, 2013, as submitted on January 23, 2014, which pertains to restoration of native species as required under CDP No. 4-97-255. Within 60 days of completion of the project approved pursuant to this permit, the applicant shall commence implementation of the approved Restoration and Monitoring Plan. The Executive Director may grant additional time for good cause. The plans shall identify the species, extent, and location of all plant materials to be removed or planted and shall incorporate the following components:

### **A. Restoration Plan**

The Restoration Plan shall provide for the following:

- 1) The mitigation shall be implemented in a suitable location on-site, subject to the review and approval of the Executive Director. All invasive and non-native plant species shall be removed from the mitigation area.
- 2) The plan shall include detailed documentation of conditions prior to the approved construction activity (including photographs taken from pre-designated sites annotated to a copy of the site plans) and specify restoration goals and specific performance standards to judge the success of the restoration effort.
- 3) The plan shall also provide information on removal methods for exotic species, salvage of existing vegetation, revegetation methods and vegetation maintenance. The plan shall further include details regarding the types, sizes, and location of plants to be placed within the mitigation and revegetation areas. Only native plant species shall be used, as listed by the California Native Plant Society. All plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 90% coverage by the end of the five (5) year monitoring period and is able to survive without

additional outside inputs, such as supplemental irrigation. The plan shall also include a detailed description of the process, materials, and methods to be used to meet the approved goals and performance standards and specify the preferable time of year to carry out restoration activities and describe the interim supplemental watering requirements that will be necessary.

## B. Monitoring Program

A monitoring program shall be implemented to monitor the project for compliance with the specified guidelines and performance standards and shall provide the following:

1. **Initial Monitoring Report:** The permittee shall submit, upon completion of the initial restoration/revegetation, a written report prepared by a qualified resource specialist, for the review and approval of the Executive Director, documenting the completion of the initial restoration/revegetation work. This report shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) documenting the completion of the initial planting/revegetation work.
2. **Interim Monitoring Reports:** After initial revegetation is completed, the applicant shall submit, for the review and approval of the Executive Director, on an annual basis for a period of 5 years, a written monitoring report prepared by a monitoring resource specialist indicating the progress and relative success or failure of the restoration on the site. This report shall also include further recommendations and requirements for additional enhancement/restoration activities in order for the project to meet the criteria and performance standards. This report shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. Each report shall be cumulative and shall summarize all previous results. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the enhancement/restoration project in relation to the interim performance standards and final success criteria.
3. **Final Report:** A final detailed report on the restoration shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has, in part, or in whole, been unsuccessful, based on the performance standards specified in the restoration plan, the applicant(s) shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved success criteria. The revised or supplemental program shall be processed as an amendment to this permit.

- C. The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

## **8. Lighting Restriction**

- A. The only outdoor night lighting allowed on the subject parcel is limited to the following:
  - (1) The minimum necessary to safely light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
  - (2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
  - (3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
- B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

## **9. Future Development Restriction**

This permit is only for the development described in this Coastal Development Permit. Pursuant to Title 14 California Code of Regulations section 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) and (b) shall not apply to the development governed by this Coastal Development Permit. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by this permit, including but not limited to, any grading, clearing or other disturbance of vegetation other than as provided for in the approved landscape plan prepared pursuant to Special Condition 6, Landscaping and Fuel Modification Plans, shall require an amendment to this Coastal Development Permit from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

## **10. Deed Restriction**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an

extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

### **11. Site Inspection**

By acceptance of this permit, the applicant irrevocably authorizes, on behalf of the applicant and all successors-in-interest with respect to the subject property, Coastal Commission staff and its designated agents to enter onto the property to undertake site inspections for the purpose of monitoring compliance with the permit, including the special conditions set forth herein, and to document their findings (including, but not limited to, by taking notes, photographs, or video), subject to Commission staff providing 24 hours advanced notice to the contact person indicated pursuant to paragraph B prior to entering the property, unless there is an imminent threat to coastal resources, in which case such notice is not required. If two attempts to reach the contact person by telephone are unsuccessful, the requirement to provide 24 hour notice can be satisfied by voicemail, email, or facsimile sent 24 hours in advance or by a letter mailed three business days prior to the inspection. Consistent with this authorization, the applicant and his successors: (1) shall not interfere with such inspection/monitoring activities and (2) shall provide any documents requested by the Commission staff or its designated agents that are relevant to the determination of compliance with the terms of this permit.

Prior to issuance of the Coastal Development Permit, the applicant shall submit to Commission staff the email address and fax number, if available, and the address and phone number of a contact person authorized to receive the Commission's notice of the site inspections allowed by this special condition. The applicant is responsible for updating this contact information, and the Commission is entitled to rely on the last contact information provided to it by the applicant.

### **12. Condition Compliance**

WITHIN 180 DAYS OF COMMISSION ACTION ON THIS COASTAL DEVELOPMENT PERMIT APPLICATION, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

### **13. Removal of Natural/Native Vegetation**

Removal of natural vegetation for the purpose of fuel modification within the 30 foot zone surrounding the proposed structure(s) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 20-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit.

#### 14. Offer to Dedicate Public Hiking Trail Easement

In order to implement the applicant's proposal of an offer to dedicate a 10-foot wide public access hiking and equestrian trail easement for passive recreational use as part of this project, the applicant as landowner agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director a 10-foot wide public access hiking trail easement in the general location and configuration depicted in **Exhibit 7**, page 2. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use that may exist on the property. The document shall also provide that there shall be no gate(s) at the entrance to or exit from the easement.

The offer shall provide the public the right to pass and re-pass over the dedicated route. The document shall be recorded free of prior encumbrances except for tax liens, which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable. The recording document shall include legal descriptions of both the applicant's entire parcel and the trail easement area and a graphic representation prepared by a licensed surveyor showing the area identified in the legal description of the easement area.

### IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

#### A. PROJECT SITE, DESCRIPTION AND BACKGROUND

##### Project Site

The 3.3 acre property is located on southwest descending slopes east of Trancas Canyon. The subject site extends 610 feet along Busch Drive and 280 feet along Harvester Road (**Exhibits 1, 2 and 3**). Elevations within the site range from approximately 288 feet to 205 feet above mean sea level and the maximum slope gradients on the site are 2:1.

Prior to the placement of the unpermitted development (further described in the background section below), the site gradually sloped southwest into a ravine. At the corner of Harvester Road and Busch Drive began a natural drainage course that bisected the property and emptied into a blue line stream located in the ravine. The drainage course was leveled with the placement of unpermitted fill, altering the topography of the site from gradual slope to steep drop off toward the ravine. At present, the water from the culvert has created a stream channel that flows in a curving manner from the south east to the west. This stream is a tributary of the larger off-site stream immediately to the northwest of the subject parcel.

Based on the 2006 Biological Assessment, prepared by Forde Biological Consultants, the majority of the property is disturbed and dominated by ruderal species, including but not limited to: castor bean (*Ricinus communis*), common mallow (*Malva parviflora*), common sow thistle (*Sonchus oleraceus*), field mustard (*Brassica rapa*), foxtail barley (*Hordeum leporinum*), slender wild oat (*Avena barbata*), star thistle (*Centuarea melitensis*), sweet fennel (*Foeniculum vulgare*), and sweet white clover (*Melilotus albus*). There is an approximately .3-acre patch of native vegetation on the property. The

dominant native species observed in this area is coyote brush (*Baccharis pilularis*). Other native species include California sagebrush (*Artemisia californica*), ceanothus (*Ceanothus Sp.*), laurel sumac (*Malosma laurina*), wild cucumber (*Marah macrocarpa*), and wild morning glory (*Calystegia macrostegia*). There were no sensitive species or species of concern identified on site.

### **Background**

Unpermitted development previously occurred on the subject site<sup>1</sup> including: 1) installation of a culvert and energy dissipater and 2) import of 3,800 cubic yards of fill on site. This unpermitted development was performed at the direction of previous owner Amir Tahmasebi and took place in April of 1990. Commission staff stopped the project prior to compaction of all imported fill. In response to the violation notice by the Commission, the previous owner (Mr. Tahmasebi) submitted CDP application No. 5-90-533 for the importation of 9,000 cubic yards of dirt to fill the entire subject drainage course and install a culvert and energy dissipater. The purpose of this fill was to create an additional flat building pad for a single-family residence on the fill. A residence was proposed at that time. The Commission denied CDP No. 5-90-533 based on excessive grading and landform alteration. Subsequently, Mr. Tahmasebi submitted CDP application No. 5-90-1113, which reduced the amount of fill grading to 5,000 cubic yards. Mr. Tahmasebi proposed to shorten and steepen the fill slope leading to the blue line stream, rather than to fill the stream. The Commission denied this proposal in June of 1991. On November 25, 1991, after the second denial by the Commission, the Commission sued Mr. Tahmasebi in Los Angeles Superior Court for violations of the Coastal Act (*California Coastal Commission v. Amir Tahmasebi*; Case No. SC013548). On August 31, 1992, pursuant to the settlement agreement, the Superior Court entered judgment requiring the Mr. Tehmasebi to seek an emergency permit for the removal of any sediment in blue line stream, for the restoration of the blue line stream as needed, and for the temporary stabilization and compaction of the fill stockpiled near the drainage area. This emergency permit, G4-92-206 (Tahmasebi), was granted on November 23, 1992. The compaction of fill was completed in January of 1993. The judgment also required that the applicant submit an application to the Commission for the work approved in the emergency permit and for a single family residence. The judgment issued specifically provides that the Commission is not bound to approve the proposed development and may require changes to the proposal including an alternative site for the residence and/or any necessary restoration to bring the site into conformance with the Coastal Act. **(Exhibit 9)**.

Pursuant to terms of the judgment, the applicant submitted coastal development permit application 4-92-206(Tahmasebi) for the construction of a single family residence, the installation of the culvert and a total of 6,300 cubic yards of grading. In November 1994, the Commission approved that portion of the development allowing for the residence with 2,500 cubic yards of re-compaction with special conditions regarding the submittal of landscaping and fuel modification plans, drainage and erosion control plans, revised plans moving the residence and the septic system off the fill and to a more suitable location, the recordation of a future improvements deed restriction, a wild fire waiver of liability, and plans conforming to the geologist recommendations. The Commission also, in the same permit, denied that portion of development which requested the placement of the culvert, energy dissipater, and 3,800 cubic yards of fill in a drainage area that leads directly to a blue line stream.

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<sup>1</sup> In previous actions, the property was identified as 5807 Busch Drive, but has same APN as current 29600 Harvester Road.

The applicant never satisfied the special conditions for that portion of the permit that was approved and as a result, the permit has expired. The Commission followed the denial portion of the permit at the same November 1994 hearing, with a restoration order (4-92-206RO (Tahmasebi)) requiring submittal within 60 days of the issuance order of a coastal development permit application for the removal of the culvert, energy dissipater, all fill and restoration of the impacted area. (**Exhibit 10**). Thus, the Commission determined that the culvert, dissipater and fill were not in conformance with the Coastal Act and should therefore be removed and the site restored to its pre-violation status.

Instead of complying with the Commission's issued restoration order, Mr. Tahmasebi applied for improvements at the base of the fill and culvert (CDP No. 4-95-067 Tahmasebi). On October 12, 1995, the Commission denied the proposal.

On June 9, 1998, the Commission approved CDP No. 4-97-255 (Malki/Tahmasebi) and issued the CDP on February 18, 1999. The Commission maintains an open violation of the site because of non-compliance with Special Condition 2 (restoration, revegetation, monitoring, and maintenance of the site) and Special Condition 3 (erosion control and post-construction monitoring). While Malki/Tahmasebi removed the culvert and completed the restorative grading, the disturbed drainage area was not successfully revegetated as required.

In early 2006, Commission staff learned of current owner, Mr. Iraj Safapour's application with the City of Malibu for a CDP to build the subject residence. Enforcement staff sent a letter to City planner Joshua Hart, explaining the long history at this site and the remaining violation. The current applicant provided staff with the Landscape, Water Pollution and Prevention, and Permanent Erosion Control Plans dated February 2003 created by Jay Falamaki Design Studio, Max Falamaki Structural Engineers and Jessica Dowell Landscape Architecture, which according to the staff letter, appeared to be in substantial compliance with the requirements of CDP No. 5-97-255. In its CDP approval, the City incorporated these plans and language mirroring that which was required in CDP No. 5-97-255.

### **Project Description**

On December 9, 2013, the Malibu City Council undertook final discretionary action to approve a coastal development permit for the construction of a new single-family home and related residential improvements. The project includes the construction of a new 7,416 sq. ft. one-story, residence with attached garage, swimming pool, associated hardscape, 470 cubic yards cut and 177 cubic yards fill grading (301 cubic yards to be exported), swimming pool, onsite wastewater treatment system, landscaping, habitat restoration and erosion control and an offer to dedicate a trail easement. (**Exhibits 4 and 7**).

As approved, the main residence would be located approximately 48 feet from the top of bank of a stream that carries flows from the eastern part of the property (intersection of Harvester and Busch) along Busch Drive to the southwest/western part of the property. (**Exhibit 4**).

## **B. CITY OF MALIBU CDP APPROVAL**

On December 9, 2013, the Malibu City Council approved a coastal development permit (No. 05-186) for the project subject to 102 conditions of approval. The project as approved consists of the construction of a new 7,416 sq. ft. one-story, residence with attached garage, swimming pool, associated hardscape, 645

cu. yds. grading, swimming pool, onsite wastewater treatment system, landscaping, habitat restoration and erosion control and an offer to dedicate a trail easement.

The City ran a local appeal period for ten calendar days following the date of the Malibu City Council's decision. Four local appeals were filed.

Commission staff received the Malibu City Council's approval (Coastal Development Permit No. 05-186; Resolution No. 13-41) on December 18, 2013. (**Exhibit 5**). A 10 working day appeal period was set, extending to January 3, 2014. Appeals were received from Michael Plen, Carol Bretonne, Brian Pietro, and Raymond F. Hall between December 19, 2013 and January 3, 2014.

### **C. APPEAL PROCEDURES**

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

#### **1. Appeal Areas**

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

In this case, the subject parcel (including areas specifically impacted as a result of the proposed project) is within 100 feet of a stream and, therefore, within the geographic appeals area of the City's jurisdiction as shown on the Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map (Page 2) (See **Exhibit 2**, page 1) certified for the City of Malibu. Therefore, the project is appealable to the Commission.

#### **2. Grounds for Appeal**

The grounds for appeal of development approved by the local government and subject to appeal to the Commission 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 the Coastal Act (Section 30603[b][1] of the Coastal Act).

#### **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 a substantial issue exists with respect to the grounds of the appeal, a substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised by the appeal.

#### **4. De Novo Permit Review**

If a substantial issue is found to exist, the Commission will evaluate the project under a de novo permit review. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

In this case, if the Commission finds substantial issue, the Commission may proceed to the de novo hearing on the merits of the project. The staff recommendation on de novo review of this project is on Page 5 of this report.

### **D. SUMMARY OF APPEAL CONTENTIONS**

The appeals filed by Michael Plen, Carol Bretonne, Brian Pietro, and Raymond F. Hall are attached as **Exhibit 6**. The appeals contend that the approved project is not consistent with the provisions of the certified LCP that protect stream-based environmentally sensitive habitat areas, riparian habitat and public views. Staff has reviewed the appellants' stated concerns in the context of specific LCP provisions in an effort to fully characterize the nature of the appellants' contentions, even in those instances where specific citations to LCP policies were not included in the appeal. The relevant LCP provisions are therefore interpreted and analyzed as the basis of the appellants' contentions, as detailed in the sections below. The appeals assert, in essence, the following:

1. The project is inconsistent with Policy 3.1, Policy 3.4, Policy 3.23, and Policy 3.26 which require adequate buffers from sensitive riparian habitat. In this case, the City approved a residential development site located 48 feet from a stream at the southern end of the property. Therefore the proposed project does not meet the LCP's requirement that new development provide a 100-foot buffer from ESHA.
2. The project is inconsistent with Policy 6.1, Policy 6.2, Policy 6.5, Policy 6.7, and Policy 6.12 which protect public views and community character. The appellants' contend that the city-approved development will block views to the ocean from harvester Road and Busch Drive.

See **Exhibit 6** for the full text of the appeals.

## **E. SUBSTANTIAL ISSUE DETERMINATION**

### **Substantial Issue Background**

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified City of Malibu Local Coastal Program (LCP) or the public access policies of the Coastal Act. The appellants contend that the project, as approved by the City, is inconsistent with the City of Malibu's LCP policies regarding stream-based environmentally sensitive habitat areas and visual resources.

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations:

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 and 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 the 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.

Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the City presents a substantial issue.

### **Environmentally Sensitive Habitat Areas**

The appellants contend that the project, as approved by the City, does not conform to the policies of the LCP with regard to minimum buffers from stream-based environmentally sensitive habitat areas (ESHA). The appeals assert that the project does not comply with the LCP policies (outlined below) because the City failed to require an adequate buffer from sensitive riparian habitat.

The appellants raise issues with respect to consistency with the following provisions of the City of Malibu LCP:

Policy 3.1 states:

*Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA. (Emphasis added)*

Policy 3.4 states:

*Any area not designated on the LUP ESHA Map that meets the ESHA criteria is ESHA and shall be accorded all the protection provided for ESHA in the LCP. The following areas shall be considered ESHA, unless there is compelling site-specific evidence to the contrary:*

- 1) Any habitat area that is rare or especially valuable from a local, regional, or statewide basis.*
- 2) Areas that contribute to the viability of plant or animal species designated as rare, threatened, or endangered under State or Federal law.*
- 3) Areas that contribute to the viability of species designated as Fully Protected or Species of Special Concern under State law or regulations.*
- 4) Areas that contribute to the viability of plant species for which there is compelling evidence of rarity, for example, those designated 1b (Rare or endangered in California and elsewhere) or 2 (rare, threatened or endangered in California but more common elsewhere) by the California Native Plant Society.*

Policy 3.8 states:

*Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

Policy 3.23 states:

*Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27. [Emphasis added]*

Policy 3.26 states:

*Required buffer areas shall extend from the following points:*

*The outer edge of the canopy of riparian vegetation for riparian ESHA.*  
*The outer edge of the tree canopy for oak or other native woodland ESHA.*  
*The top of bluff for coastal bluff ESHA. [Emphasis added]*

Failure to provide adequate buffer for new development from stream ESHA, inconsistent with LCP setback requirements.

The appellants assert that the development is inconsistent with the above cited policies because the City failed to require an adequate 100 ft. buffer from sensitive riparian habitat and stream even though alternative locations exist on site where such development may be accommodated while providing the required buffer.

Certified Land Use Policy 3.1 defines Environmentally Sensitive Habitat Areas to include, among other resources, streams and riparian areas. The Malibu LUP ESHA Map contains most known watercourses and ESHA locations throughout the Malibu Coastal Zone. (**Exhibit 2**, page 1). Policy 3.4 states that even resources not depicted on the Malibu ESHA Map are to be considered ESHA if the resources meet certain criteria, including any habitat area that is rare or especially valuable from a local, regional, or statewide basis. Policy 3.23 requires a minimum 100 foot buffer from ESHA, to ensure development is at a distance sufficient to avoid impacts to the ESHA. Policy 3.26 clarifies the starting point of the buffer within the ESHA to begin at the outer edge of the canopy of riparian vegetation for riparian ESHA.

In this case, the City approved a residential development site near the middle of the property, located 48 feet from a stream at the southern end of the property. This stream empties from a culvert (running under Harvester Road) and flows east to southwest toward the ocean, but is not identified on the Malibu ESHA Map. The Malibu ESHA Map identifies a blue-line stream just east of the subject parcel. Still, the stream channel on the parcel, identified as a “drainage” throughout the City’s findings, is still an intermittent stream feature. This stream is consistent with other similarly situated channels throughout the state identified as stream ESHA. The Applicant’s biologist identified this drainage/erosion feature as ESHA under the policy language, in a letter dated June 14, 2006. These variable flow drainage-type streams are especially valuable from a local perspective due to the potential wildlife and plant habitat. This is valuable from a regional and state perspective because it is a feature-type consistently considered to be important stream ESHA. Policy 3.23 requires a 100 foot buffer from the stream. Low lying grasses and iceplant cover the ground in the area surrounding and abutting the stream. Accordingly, the outer edge of the riparian vegetation canopy is roughly the edge of the stream itself.

The City-approved development is 48 feet from the identified stream ESHA and is therefore within the minimum 100 foot buffer, inconsistent with policies 3.1 and 3.23. In the City Council’s findings rejected alternative locations that would site the house outside of the 100 foot minimum buffer. The City Council took an off-site stream ESHA into consideration. Ultimately the City determined that since all locations of the house would result in fuel modification impacts to on-site and off-site stream ESHA, and because the proposed location was the flattest site on the property, impacts to the stream (via fuel modification vegetation thinning extending out from residential development up to 200 feet) would impact the ESHA regardless of the house location. However, these findings fail to consider the importance of the underlying policy requirement, that the 100 foot buffer be maintained. Siting

development within a minimum buffer poses impacts beyond potential fuel modification impacts. Such impacts include ground disturbance due to grading activities and light projections closer to the stream, for instance. Since fuel modification impacts to the stream vegetation were certain to occur, siting the development outside of the buffer would actually have at least some benefit in that it would avoid encroachment closer to the stream.

The appellants identify an alternative location to the northwest of the approved site, which would locate the house outside of the buffer. While the appellants' alternative site may require some additional grading, this alternative could be revised to locate the house closer to the street and therefore closer to the flatter areas of the parcel.

Given the location of an alternative site outside of minimum ESHA buffers, the Commission finds that the City's approval is inconsistent with Malibu's certified Local Coastal Plan's requirements.

### **Scenic and Visual Resources**

The Appellants contend that the City-approved residence does not conform to the certified Land Use Plans concerning public views and community character.

Scenic and Visual Policy 6.1 states:

*The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.*

Scenic and Visual Policy 6.2 states:

*Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.*

Scenic and Visual Policy 6.5 states:

*New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.*

Scenic and Visual Policy 6.7 states:

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

Scenic and Visual Policy 6.12 states:

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

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

The City-approved residence is located downslope and to the west of Harvester Road in a densely developed rural residential neighborhood. The approved residence maintains a maximum height of 18 feet, which results in elevations above Harvester Road and Busch Drive as high as 5 to 10 feet above the roadbed. The appellants contend that this is a scenic area and that the house will block views from public roads and trails near the site.

The Malibu certified Local Coastal Plan requires protection of scenic areas and coastal views from public viewpoints. Policy 6.2 defines “public viewing areas,” in part, as public roads and trails and states that existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Policy 6.5 requires new development be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. Policy 6.7 limits the height of structures to minimize impacts to visual resources. Policy 6.12 requires structures are visually compatible with the character of surrounding areas.

In this case, Harvester Road and Busch Drive are residential streets that allow limited views to the ocean. However, there is a particularly open view from Harvester Road immediately uphill to the east of the building site. Accordingly, pursuant to Policy 6.2, the fact that there are coastal views from this road elevates it to a scenic road. The subject parcel also contains a City-identified proposed trail segment. This trail segment is located along the exact same southern portion of the parcel that the City approved the applicant’s offer-to-dedicate a trail (along Busch Drive). Consistent with the definition in Policy 6.2, this trail site will be a public viewing area. The approved residence will be visible from the trail when looking northwest. However, as one moves from the east to west along the trail (downhill) the view to the northwest improves. The proposed residence will be 18 feet tall, which is consistent with Policy 6.7 and the Rural Residential land use designation and zoning district. While the approved residence will block some views from Harvester Road and the trail segment, the residence is sited on the flattest part of the site to avoid extensive grading and landform alteration. Additionally, while the large residence could be smaller, it is approximately 2,000 square feet below the maximum site coverage requirement. In addition, the reduction in the size of the residence would not appreciably change the project’s visibility from public viewing areas. Therefore, this site and any site around the flatter portion of the property make use of the best site from a landform standpoint. This structure will impact private

views mostly, with minimized impacts to public viewpoints. Therefore, the subject residence is consistent with the certified scenic and visual policies.

The subject parcel is located within a densely developed upscale residential area containing residential structures with varied styles, sizes and finishes. The appellants suggest that the City-approved home represents a style unlike others in the community and therefore visually incompatible. However, numerous homes are similar in bulk, height, color and style. The city-approved home does not represent a departure from the styles in this area. For instance, it will incorporate neutral earth tone colors. The 10-15 residences in the immediate vicinity range from approximately 3,500 sq. ft. to 8,000 sq. ft. Accordingly, the proposed 7,416 sq. ft. house will be among the larger homes in the area. However, the subject parcel is also one of the largest parcels in the area and, as stated above, the development area is well below the maximum potential development area as allowed under the RR2 zoning district. Additionally, while many of the other homes in the area are two-story, the proposed single-story residence will be shorter and extend west with the slope of the property. This will have the effect of minimizing the visible bulk of the structure along Harvester Road. For all these reasons, the Commission finds the City-approved residence is consistent with the Policy 6.12 visual compatibility requirement.

#### **Five Factor Test**

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 has not provided an adequate policy basis for reducing the required 100 foot riparian buffer to 48 feet for the residence. Further, the City has not provided any analysis of alternatives that could provide for the appropriate buffer from the sensitive riparian/stream habitat. Therefore, the City has not provided a high degree of factual and legal support for the decision that the proposed development is consistent with the certified LCP policies related to biological resource protection, as explained in detail above.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the subject project involves single-family residential and accessory structure development on an approximately 3.3 acre rural residential lot. Given that this lot is not particularly large and the development type is consistent with the surrounding area, the extent and scope of the subject development on this particular lot is relatively small.

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 site is located in a developed rural residential community. However, the size of the development makes scarce the important wildlife corridors and biotic exchange across communities and watersheds. These coastal resources are important to preserve. Therefore, the development will encroach into the environmentally sensitive habitat area buffer and pose potentially significant impacts to the stream ESHA.

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 precedential value of the City's decision for future interpretation of its LCP is potentially important because many other undeveloped lots may be developed in this community that could have similar

resource issues. Under the certified LCP, riparian habitats are specifically identified as unique, rare, and fragile habitats and specific policies are included in the LCP to provide protection of these resources. The certified LCP includes policies that require development adjacent to ESHA to be designed and located in a manner that will avoid adverse impacts to habitat resources, including measures such as setbacks, buffers, grading and water quality controls. If residential development is not approved consistent with LCP policies, cumulative impacts of residential development in this area could result the continued degradation of coastal resources over time.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. The appeal not only raises local issues, but also has implications for resources of regional or statewide significance. The subject development raises issues associated with residential development on land containing ESHA. This is a common issue throughout the Coastal Zone and therefore this appeal does have regional and statewide significance.

Factors one, four and five favor a finding of substantial issue. On balance, these factors outweigh the others under the facts of this particular case. Therefore, for all of these reasons, the Commission finds that a substantial issue is raised with respect to the appellants' contention that the project does not meet provisions of the certified Local Coastal Program regarding ESHA protection.

The purpose of the substantial issue determination is to review the administrative record and establish whether a substantial question is raised with respect to the appellants' assertions that the project does not conform to the certified LCP and public access policies of the Coastal Act. As described above, the Commission finds that the appellants' contentions do raise substantial issues with regard to the consistency of the approved project with environmentally sensitive habitat standards of the certified Local Coastal Program.

### **Substantial Issue Determination Conclusion**

In conclusion, the City-approved project raises substantial issues with respect to its conformance with applicable LCP provisions related to minimum ESHA buffer requirements. Therefore, the Commission finds that a substantial issue exists with respect to the approved project's conformance with the certified City of Malibu LCP, and takes jurisdiction over the CDP application for the proposed project.

## **F. DE NOVO COASTAL DEVELOPMENT PERMIT ANALYSIS**

The standards of review for this CDP application are the City of Malibu certified LCP and the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings and previously cited policies above are incorporated herein by reference.

### **1. Revised Project Description**

In consultation with Commission staff, the Applicant has revised the project to address the overriding issue on appeal and staff's concerns. The primary alternative identified by Commission staff in Section E (Substantial Issue Determination) of this Report includes re-locating the house approximately 52 feet to the northwest of the original residence location. In consultation with Commission staff, the Applicant has revised the originally approved project consistent with this alternative location (**Exhibits 7 and 8**). As now proposed, the residence will be relocated and will be at least 100 feet from the southern

drainage, in order to provide an adequate buffer from all riparian areas. Other than the new location, the proposed project is identical to what was approved originally by the Malibu City Council.

Special Condition Two (2) requires the applicant to submit final revised plans adequate to ensure the applicant's proposed revisions to the originally approved project are adequately implemented. The final plans must be in substantial conformance with the preliminary plans prepared by Jay Falamaki Design Studio, dated August 2014.

## **2. Environmentally Sensitive Habitat Area**

Land Use Policy 3.43 states:

*New septic systems shall be sited and designed to ensure that impacts to ESHA are minimized, including those impacts from grading and site disturbance as well as the introduction of increased amounts of water. Adequate setbacks and/or buffers shall be required to protect ESHA and to prevent lateral seepage from the leachfield(s) or seepage pit(s) into stream waters or the ocean.*

Land Use Policy 3.46 states:

*Grading or earthmoving exceeding 50 cubic yards shall require a grading permit. Grading plans shall meet the requirements of the local implementation plan with respect to maximum quantities, maximum cuts and fills, remedial grading, grading for safety purposes, and maximum heights of cut or fill. Grading proposed in or adjacent to an ESHA shall be minimized to the maximum extent feasible.*

Land Use Policy 3.47 states:

*Earthmoving during the rainy season (extending from November 1 to March 1) shall be prohibited for development that is 1) located within or adjacent to ESHA, or 2) that includes grading on slopes greater than 4:1. In such cases, approved grading shall not be undertaken unless there is sufficient time to complete grading operations before the rainy season. If grading operations are not completed before the rainy season begins, grading shall be halted and temporary erosion control measures shall be put into place to minimize erosion until grading resumes after March 1, unless the City determines that completion of grading would be more protective of resources.*

Land Use Policy 3.48 states:

*Where grading is permitted during the rainy season (extending from November 1 to March 1), erosion control measures such as sediment basins, silt fencing, sandbagging, installation of geofabrics, shall be implemented prior to and concurrent with grading operations. Such measures shall be maintained through final grading and until landscaping and permanent drainage is installed.*

Land Use Policy 3.49 states:

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

Land Use Policy 3.50 states:

*Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:*

- 1) Plantings shall be native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.*
- 2) Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.*
- 3) Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.*
- 4) Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.*
- 5) Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Midcourse corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.*

Land Use Policy 3.59 states:

*All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety, as required by Policies 4.45 through 4.54. Development shall utilize fire resistant materials and incorporate alternative fuel modification measures, such as firewalls (except where this would have impacts on visual resources), and landscaping techniques, where feasible, to minimize the total area modified. All development shall be subject to applicable federal, state and county fire protection requirements.*

Land Use Policy 3.60 states:

*As required by Policy 4.49, applications for new development shall include a fuel modification plan for the project site, approved by the County Fire Department. Additionally, applications shall include a site plan depicting the brush clearance, if any, that would be required on adjacent properties to provide fire safety for the proposed structures.*

Land Use Policy 3.61 states:

*Applications for new development shall include a quantification of the acreage of natural vegetation that would be removed or made subject to thinning, irrigation, or other modification by the proposed project, including building pad and road/driveway areas, as well as required fuel modification on the project site and brush clearance on adjacent properties.*

Local Implementation Plan Section 4.8.1 states, in part:

*All new development shall include mitigation for unavoidable impacts to ESHA from the removal, conversion, or modification of natural habitat for new development, including required fuel modification and brush clearance, except as provided in Section 4.8.2 of the Malibu LIP for impacts to wetlands. The acreage of habitat impacted shall be determined based on the size of the approved development area, road/driveway area, required fuel modification on the project site, and required brush clearance, if any, on adjacent properties.*

*One of the following three Habitat Impact Mitigation methods shall be required: 1) habitat restoration; 2) habitat conservation; or 3) in-lieu fee for habitat conservation. The permit shall include conditions setting forth the requirements for habitat mitigation.*

As described above, the subject property is dominated by ruderal non-native vegetation and a patch of native vegetation. The parcel contains a previously altered drainage stream that flows from east to west along the southern end of the parcel (along to Busch Drive and then downhill to the west). As revised, the proposed project will be sited at least 100 feet from the on-site stream to the south and over 130 feet from the off-site stream to the northwest. The house will be closer to native scrub vegetation, which exists between the revised home site and the off-site stream to the northwest.

### **ESHA Designation**

As discussed in the Substantial Issue findings above, LUP Policy 3.1 defines Environmentally Sensitive Habitat Areas to include, among other resources, streams and riparian areas. The Malibu LUP ESHA Map contains most known watercourses and ESHA locations throughout the Malibu Coastal Zone. (**Exhibit 2**, page 2). Policy 3.4 states that even resources not depicted on the Malibu ESHA Map are to be considered ESHA if the resources meet certain criteria, including any habitat area that is rare or especially valuable from a local, regional, or statewide basis. Policy 3.23 requires a minimum 100 foot buffer from ESHA, to ensure development is at a distance sufficient to avoid impacts to the ESHA. Policy 3.26 clarifies the starting point of the buffer within the ESHA to begin at the outer edge of the canopy of riparian vegetation for riparian ESHA.

In this case, the majority of the proposed development area on site primarily consists of non-native grassland and a community of native scrubland community, neither of which contain sensitive species or habitat that constitute ESHA. However, the subject property contains the above referenced stream. Pursuant to LUP Policy 3.1, the on-site stream is included as ESHA. Additionally, even though it is not identified on the City's ESHA Map (**Exhibit 2**, page 2), the stream is part of a watershed system that provides potential habitat for important wildlife and plant communities. Additionally, the subject stream has previously been degraded during past grading and fill activities. While there may not be sensitive species associated with the stream at present, the stream channel can reestablish its riparian corridor through the proposed site restoration and vegetation management plan.

Accordingly, the stream is ESHA and the LCP requires a minimum 100 foot buffer.

### **Conformity with LCP Policies**

In addition to ESHA buffer, Policy 3.59 requires that all new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible in order to minimize habitat disturbance or destruction, removal or modification of natural vegetation, and irrigation of natural areas, while providing for fire safety. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. As originally approved by the City, the project would have resulted in significant adverse impacts to the stream and riparian habitat on site due to the failure to provide the required 100 ft. buffer from these areas.

In consultation with Commission staff, the Applicant has revised the project to address the Appellants' contentions and staff's concerns. One of the alternatives identified by Commission staff in Section E (Substantial Issue Determination) of this Report includes relocation of the house to the northwest and outside of the 100 foot stream buffer. In consultation with Commission staff, the Applicant has revised the originally approved project consistent with this alternative location (**Exhibit 8**). As now proposed, the primary residence will be relocated approximately 52 feet to the northwest of the stream in order to ensure that the development site is outside of the minimum stream ESHA buffer. In addition, staff has worked with the applicant to evaluate other potential areas on site for the development to be located and staff concurs with the applicant's determination that the proposed revised location for the residence is the most appropriate location on site that would minimize adverse impacts to ESHA and coastal resources to the extent feasible. Given the size and configuration of the property, there are no alternative locations on-site that would provide a greater setback from the ESHA or avoid fuel modification requirements within the on-site ESHA.

The proposed residence must be sited where revised/proposed to maintain the 100 foot buffer and for the following reasons: 1) if moved north even by 5-10 feet, the residence will be sited within native scrub vegetation (non-ESHA), inconsistent with LCP ESHA policies and Scenic and Visual Policies directing development outside of native vegetation and ESHA; if moved west, substantial landform alteration would be required in order to safely site the residence, inconsistent with hazards policies, visual resources policies and water quality policies; and, finally, if moved east, the residence will violate front yard setbacks under the RR2 zoning district and pose additional public view impacts from Harvester Road. Accordingly, the revised project has located development within the best development site with regard to avoiding development within ESHA or ESHA buffer even though fuel modification activities, including complete clearance up to 20 feet from the house and thinning between 20 and 200 feet (which will include the entire stream ESHA buffer to the south) will occur within the ESHA buffer. In this case, there are no other feasible siting alternatives. Further, the Los Angeles Fire Department does not

typically require fire clearance within a stream/drainage, aside from the removal of dead wood. Accordingly, the fuel modification activities will not directly impact the stream.

All proposed structures are located within this development area. Any reduction in the size of the development area would not result in any significant reduction in fuel modification requirements within ESHA. As such, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible.

In addition, the Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the area. This sort of impact was not addressed in the prior section. Therefore, in order to minimize adverse effects to the indigenous plant communities of the area that are not directly and immediately affected by the proposed development, Special Condition Six (6) requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. There are several non-native invasive tree species (eucalyptus and pepper trees) scattered throughout the site. This is required to be shown on the landscaping plan.

In addition, the Commission has found that night lighting of ESHA may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, Special Condition Eight (8) limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is commonly found in this rural and relatively undisturbed area and that traverses the area at night.

Additionally, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, Special Condition Thirteen (13) provides that non-ESHA native vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. This limitation avoids loss of native vegetation coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans. Additionally, fuel modification activities must be outside protected root zone area of surrounding trees and thinning/limbing activities proposed must not take place within the stream ESHA.

The Commission also finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act and certified Local Coastal Plan are significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that may otherwise apply under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and to ensure

that any future structures, additions, change in landscaping or intensity of use at the project site that may otherwise be exempt from coastal permit requirements are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, Special Condition Nine (9) is required.

In addition, in order to ensure that the other special conditions of this permit (and those associated with 4-97-255) are adequately implemented, Special Condition Eleven (11) provides that the applicant irrevocably authorizes, on behalf of the applicant and all successors-in-interest with respect to the subject property, Coastal Commission staff and its designated agents to enter onto the property to undertake site inspections for the purpose of monitoring compliance with the permit. Further, Special Condition Nine (9) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the habitat protection policies of the certified Local Coastal Plan and expressly incorporated Chapter 3 policies of the Coastal Act.

### **3. Visual Resources**

The City of Malibu's certified Local Coastal Plan contains several policies designed to ensure scenic and visual resources are protected.

Scenic and Visual Policy 6.9 states:

- All new development shall be sited and designed to minimize alteration of natural landforms by:*
- 1) Conforming to the natural topography.*
  - 2) Preventing substantial grading or reconfiguration of the project site.*
  - 3) Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.*
  - 4) Requiring that man-made contours mimic the natural contours.*
  - 5) Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.*
  - 6) Minimizing grading permitted outside of the building footprint.*
  - 7) Clustering structures to minimize site disturbance and to minimize development area.*
  - 8) Minimizing height and length of cut and fill slopes.*
  - 9) Minimizing the height and length of retaining walls.*
  - 10) Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.*

Scenic and Visual Policy 6.10 states:

*New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.*

Scenic and Visual Policy 6.23 states:

*Exterior lighting (except traffic lights, navigational lights, and other similar safety lighting) shall be minimized, restricted to low intensity fixtures, shielded, and concealed to the maximum feasible extent so that no light source is directly visible from public viewing areas. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited.*

Scenic and Visual Policy 6.27 states:

*New development shall minimize removal of natural vegetation. Existing native trees and plants shall be preserved on the site, consistent with Policy 3.60.*

Scenic and Visual Policy 6.28 states:

*All new development shall be sited and designed to minimize required fuel modification and brushing to the maximum extent feasible. Development shall incorporate alternative fuel modification measures, where feasible, in order to minimize the visual resource impacts of site disturbance, removal, and thinning of natural vegetation.*

The proposed project area is located at the intersection of Harvester Road and Busch Drive. Harvester is upslope of the property which slopes downhill to the west and south. The ocean is visible from Harvester Road and Busch Drive. Additionally, as discussed in subsection 8 below, the applicant is offering to dedicate a public trail that will run along Busch Drive, with some views to the ocean. The Malibu certified Local Coastal Plan requires protection of scenic areas and coastal views from public viewpoints. Policy 6.2 defines “public viewing areas,” in part, as public roads and trails and states that existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Policy 6.5 requires new development to be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. Policy 6.7 limits the height of structures to minimize impacts to visual resources. Policy 6.12 requires structures to be visually compatible with the character of surrounding areas. Development must be sited and designed to protect views to and along the ocean/scenic coastal areas, to minimize alteration of natural land forms, to be visually compatible with the character of the surrounding area. Additionally, the visual policies limit light pollution and the removal of natural vegetation.

In this case, the revised project location will site the residence on a mostly flat portion of the property, but as the residence expands to the west, the building site slopes down. The residence will make use of split-level development to conform to the slope contour. The residence will be 18 feet tall, which will cause the structure to extend above the Harvester and Busch roadways by about 5-10 feet. Harvester Road and Busch Drive are residential streets that provide access from the west to uphill residential areas. Near the subject parcel, these roads are not considered thoroughfares of public vista stops or public recreation areas. However, under the language of Policy 6.2, these two roads are public roads and therefore public viewing areas. Additionally, the future trail site along Busch Drive will be a public viewing site. Accordingly, some public views will be lost due to the new residence. However, the residence cannot be located elsewhere on site, due to ESHA buffers and much steeper slopes to the west.

Therefore, it is more appropriate in this case to locate the residence closer to Harvester and toward the flat portion of the site, rather than intrude into buffers or significantly alter the landscape. View corridors along Harvester and Busch Drive will remain. However, certain elements of the residence, including lighting have the potential to raise the visibility of the project. Therefore, the Commission imposes Special Condition Eight (8) to ensure that lighting be restricted so as not to cast into stream ESHA or far outside the building footprint.

The LCP also requires new development to be consistent with the community character of surrounding development. The subject neighborhood contains residences of various styles, sizes and materials. The proposed residence, while large, is below the maximum lot development square footage requirement by approximately 2,000 square feet. Therefore, the Commission finds that the proposed development will be visually compatible with the character of the surrounding area.

For the reasons set forth above, the Commission finds that the proposed project, as revised and conditioned, is consistent with the scenic and visual resource protection policies of the certified Local Coastal Plan and expressly incorporated Chapter 3 policies of the Coastal Act.

#### **4. Water Quality**

Land Use Policy 3.95 states:

*New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:*

- 1) Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.*
- 2) Limiting increases of impervious surfaces.*
- 3) Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.*
- 4) Limiting disturbance of natural drainage features and vegetation.*

Land Use Policy 3.96 states:

*New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.*

Land Use Policy 3.97 states:

*Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern<sup>1</sup> that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.*

Land Use Policy 3.102 states:

*Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs and/or the 85th percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.*

Land Use Policy 3.110 states:

New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.

Land Use Policy 3.111 states:

*New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.*

The Commission recognizes that new development has the potential to adversely impact coastal water quality and aquatic resources because changes such as the removal of native vegetation, the increase in impervious surfaces, and the introduction of new residential uses cause increases in runoff, erosion, and sedimentation, reductions in groundwater recharge and the introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants, as well as effluent from septic systems.

The proposed development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters, including streams, wetlands, and estuaries. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health.

In past permit actions, the Commission has required development be located a minimum distance of 100 feet from streams, in addition to requiring the employment of best management practices to minimize runoff of pollutants, in order to protect water quality. The 100-foot setback is measured from the outer edge of the riparian canopy, or the top of bank where there is no riparian vegetation. This setback provides sufficient area for infiltration of runoff, prevention of erosion and sedimentation, minimization of the spread of invasive exotic plant and animal species, and to allow for an adequate and functional natural vegetation buffer consistent with the certified LCP Policy 3.23 and incorporated Coastal Act Section 30231. In this case, in consultation with Commission staff, the applicant has revised the project to relocate all proposed development more than 100 ft. from the stream on site consistent with the

provisions of the LCP and the Coastal Act, as incorporated in the LCP. Given the configuration and constraints of the subject property, there are no alternative locations for siting the residential development that would serve to increase the setback from the on-site stream, without significant landform alteration and intrusion into a native plant community.

In order to minimize the potential for such adverse impacts to water quality and aquatic resources resulting from runoff both during construction and in the post-development stage, Special Conditions Four (4) and Five (5) require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site, including: 1) site design, source control and/or treatment control measures; 2) implementing erosion sediment control measures during construction and post construction; and 3) revegetating all graded and disturbed areas with primarily native landscaping.

The Commission finds that the minimization of site erosion will minimize the project's potential individual and cumulative contribution to adversely water quality, including to the stream located downslope from the project area. Erosion can best be minimized by requiring the applicant to landscape all disturbed areas of the site with native plants, compatible with the surrounding environment. Therefore, in order to minimize erosion and resultant sedimentation of downslope stream areas, Special Condition Five (5) also requires that all disturbed and graded areas shall be stabilized and vegetated with appropriate native plant species.

Additionally, the applicant's consultants have concluded that the site is suitable for the proposed alternative onsite wastewater treatment system (AOWTS) proposed to serve the onsite wastewater treatment needs of the subject property. The City of Malibu Environmental and Building Safety Division has given in-concept approval of the system, finding that it meets the minimum requirements of Title 28 of the City of Malibu Plumbing Code. The detailed system approval indicates that the system will be consistent with the onsite wastewater system requirements of the LCP as well. The Commission has consistently found that the conformance of systems with plumbing and health codes is protective of water quality.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the certified Local Coastal Program, including Section 30231 of the Coastal Act as expressly incorporated in the LCP.

## **5. New Development Location**

The subject 3.3-acre parcel is designated as Rural Residential 2 (RR 2). The RR 2 designation allows sensitively designed, large lot single family residential development, with agricultural uses and animal keeping as accessory uses to approved residential development. The City's certified Implementation Plan/Coastal Zoning Ordinance allow as a permitted use one single family dwelling unit per 2 acre legal lot. This zone This zone limits the maximum height to 18 feet and limits total development square footage to 9,693 square feet in this case. The proposed residence will have a height of 18 feet and a total development square footage of 7,416 square feet. Therefore, the proposed development conforms to the City's certified Coastal Zoning Code sections for Rural Residential 2 (RR 2) zoning.

However, future improvements to the proposed unit such as additional square footage could raise issues with regard to individual or cumulative impacts to coastal resources. Such improvements and their potential impacts must be addressed by the Commission to ensure conformance with the certified Local Coastal Program and its incorporation in their entirety the Chapter 3 policies of the Coastal Act.

To ensure that any additions or improvements that could further intensify the use of the approved development will be reviewed by the Commission, Special Condition Nine (9) requires that any additions or improvements related to the residence, that may otherwise be exempt from coastal permit requirements, shall be reviewed for consistency with the resource protection policies of the certified LCP.

Additionally, Special Condition Ten (10) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission finds that, as conditioned, the proposed development is consistent with the certified Local Coastal Program policies and Sections 30250 and 30252 of the Coastal Act as incorporated therein.

## 6. Hazards

Hazards Policy 4.1 states:

*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:*

- 1) *Low Slope Stability & Landslide/Rockfall Potential: hillside areas that have the potential to slide, fail, or collapse.*
- 2) *Fault Rupture: the Malibu Coast-Santa Monica Fault Zone.*
- 3) *Seismic Ground Shaking: shaking induced by seismic waves traveling through an area as a result of an earthquake on a regional geologic fault.*
- 4) *Floodprone areas most likely to flood during major storms.*
- 5) *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.*
- 6) *Liquefaction/Floodprone areas where saturated sediments lie in flood plains.*
- 7) *Tsunami: shoreline areas subject to inundation by a sea wave generated by local or distant earthquake, submarine landslide, subsidence, or volcanic eruption.*
- 8) *Wave Action: shoreline areas subject to damage from wave activity during storms.*
- 9) *Fire Hazard: areas subject to major wildfires classified in Fire Zone 4 or in the Very High Fire Hazard Severity Zone.*

Hazards Policy 4.2 states:

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

Hazards Policy 4.3 states:

*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.*

Hazards Policy 4.4 states:

*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.*

Hazards Policy 4.5 states:

*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.*

Hazards Policy 4.10 states:

*New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.*

Hazards Policy 4.14 states:

*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.*

The proposed development is located in an area which is generally considered to be subject to slope stability hazards due to steep nature of the slopes. The subject property is best described as a southwest/northeast-trending ridge which is bound to the west by a north/south-trending canyon. The proposed residence will be located on a relatively level portion of the site and will require approximately 645 cu. yds .of grading. A soils and foundation exploration reports prepared by Mountain Geology, Inc. (2003-2005) found that the proposed project is feasible. The applicant's foundation exploration for the proposed building site included a series of foundation and grading recommendations, which the applicant has incorporated into the project, to ensure the location is both feasible and structurally sound. Special Condition One (1) requires that the applicant comply with the

recommendations contained in the foundation/grading report referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, sewage disposal, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

In addition, the Commission finds that the minimization of site erosion will minimize the project's potential individual and cumulative contribution to impairing the site's water quality, including to the stream located downslope to the south from the project area and ensure geologic site stability. Erosion can best be minimized by requiring the applicant to landscape all disturbed areas of the site with native plants, compatible with the surrounding environment. Therefore, in order to minimize erosion and resultant sedimentation of downslope stream areas, Special Condition Five (5) also requires that all disturbed and graded areas shall be stabilized and vegetated with appropriate native plant species.

Further, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by Special Condition Four (4) to submit drainage plans certified by the consulting geotechnical engineer as conforming to their recommendations. Special Condition Four (4) also requires that the applicant implement Best Management Practices designed to control the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site during construction in order to minimize erosion and ensure geologic stability on site.

Lastly, to ensure the applicant is aware of the risks associated with constructing residential dwellings on the site, the Commission imposes Special Condition Three (3). This condition requires the applicant to acknowledge and agree that the site may be subject to hazards, to assume the risks associated with the subject development, to waive any claim of damage or liability against the Commission and to indemnify and hold harmless the Commission for any for injury from such hazards.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with geologic and engineering provisions of the certified Local Coastal Program and with Section 30253 of the Coastal Act, as expressly incorporated into the LCP.

## **7. Public Access**

Public Access Policy 2.2 states:

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

Public Access Policy 2.4 states:

*Public accessways and trails shall be an allowed use in Environmentally Sensitive Habitat Areas. Where determined to be desirable (by consideration of supporting evidence), limited or controlled methods of access and/or mitigation designed to eliminate or minimize impacts to ESHA may be utilized. Accessways to and along the shoreline shall be sited, designed, and managed to avoid*

*and/or protect marine mammal hauling grounds, seabird nesting and roosting sites, sensitive rocky points and intertidal areas, and coastal dunes.*

Public Access Policy 2.5 states:

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

Public Access Policy 2.11 states:

*Public land, including rights of way, easements, dedications, shall be utilized for public recreation or access purposes, where appropriate and consistent with public safety and the protection of environmentally sensitive habitat areas.*

Public Access Policy 2.49 states:

*A trail offer of dedication shall be required in new development where the property contains a LCP mapped trail alignment or where there is substantial evidence that prescriptive rights exist. An existing trail which has historically been used by the public may be relocated as long as the new trail alignment offers equivalent public use. Both new development and the trail alignment shall be sited and designed to provide maximum privacy for residents and maximum safety for trail users.*

Public Access Local Implementation Plan Section 12.5 states, in part:

*As a condition of approval and prior to issuance of a permit or other authorization for any new development identified in A through D of this section, except as provided in Section 12.6 of the Malibu LIP, an offer to dedicate an easement or a grant of easement (or other legal mechanism pursuant to Section 12.8.1(b) of the Malibu LIP) for one or more of the types of access identified in Section 12.3 (a-e) of the Malibu LIP shall be required and shall be supported by findings required by Sections 12.8.3-12.10 of the Malibu LIP; provided that no such condition of approval shall be imposed if the analysis required by Sections 12.8.3 (a) through (d) of the Malibu LIP establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified.*

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

Malibu's certified Public Access policies require new development to minimize impacts to public access along inland trails. Policy 2.4 allows public trails within ESHA as an allowable use. Policy 2.49 requires a trail offer of dedication in new development proposals where the property contains a LCP mapped trail alignment. This provision is implemented via certified implementation program Section 12.5. The City of Malibu identified a strip at the southern portion of the subject property along Busch Drive as a potential future site of a public trail. As part of the original and revised project description, the applicant proposes an offer-to-dedicate to the public for public use this strip of the applicant's property south of the on-site stream ESHA. The trail will not be sited within the stream ESHA, but will be within the minimum 100 foot stream ESHA buffer. However, this location is permissible under Policy 2.4. Moreover, the actual siting and construction of the trail would be subject to coastal development permit review to ensure all appropriate and feasible measures are taken to protect the stream ESHA.

In order to implement the applicant's proposed offer-to-dedicate, the Commission imposes Special Condition Fourteen (14). As conditioned, the Commission finds that the proposed project is consistent with the certified Local Coastal Program with regard to public access policies and provisions.

## **8. Past Violations/Unpermitted Development**

As described at length in the background section above, unpermitted development took place in 1990, which was eventually resolved by Commission permit authorization pursuant to CDP No. 4-97-255. However, the previous owner of this property failed to satisfy all conditions of that permit, including revegetation and restoration of the onsite stream as part of a management plan. The applicants are proposing a Restoration and Monitoring Plan, along with a site monitoring program, consistent with the requirements of CDP No. 4-97-255.

The applicant is proposing a Restoration and Monitoring Plan as another component of the project that is subject to this CDP for the purpose of resolving past violations and that will, in turn, serve to satisfy a special condition associated with CDP No. 4-97-255. This proposed plan must be implemented in order to satisfy all conditions of CDP No. 4-97-255 and to justify removal of a Notice of Violation that is currently attached to the property's title. To ensure adequate implementation of the proposed restoration and monitoring plan consistent with the LCP requirements to protect ESHA, the Commission finds that Special Condition Seven (7) is necessary to ensure that previous adverse impacts to the site are adequately mitigated and that proposed restoration plan is successful. Specifically, Special Condition Seven (7) requires the applicant to implement the applicant's proposed Restoration and Monitoring Plan, as prepared by Forde Biological Consultants, dated April 11, 2013. In addition, Special Condition Seven (7) also requires the applicant implement an annual monitoring program for a period of five years to ensure the success of the replanting. If the monitoring report indicates the vegetation and restoration is not in conformance with or has failed to meet the performance standards specified in the restoration plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director and shall implement the approved version of the plan. The revised restoration plan must be prepared by a qualified biologist or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

In order to ensure that the outstanding conditions of CDP No. 4-97-255, as a component of this application, are resolved in a timely manner, Special Condition Twelve (12) requires that the applicant

satisfy all conditions of this permit related to unpermitted development which are prerequisite to the issuance of this permit within 180 days of Commission action. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

### **9. California Environmental Quality Act (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The City prepared a categorical exemption pursuant to CEQA section 15303(a) – New Construction, and found that the project is listed among classes of projects that have been determined not to have a significant adverse effect on the environment.

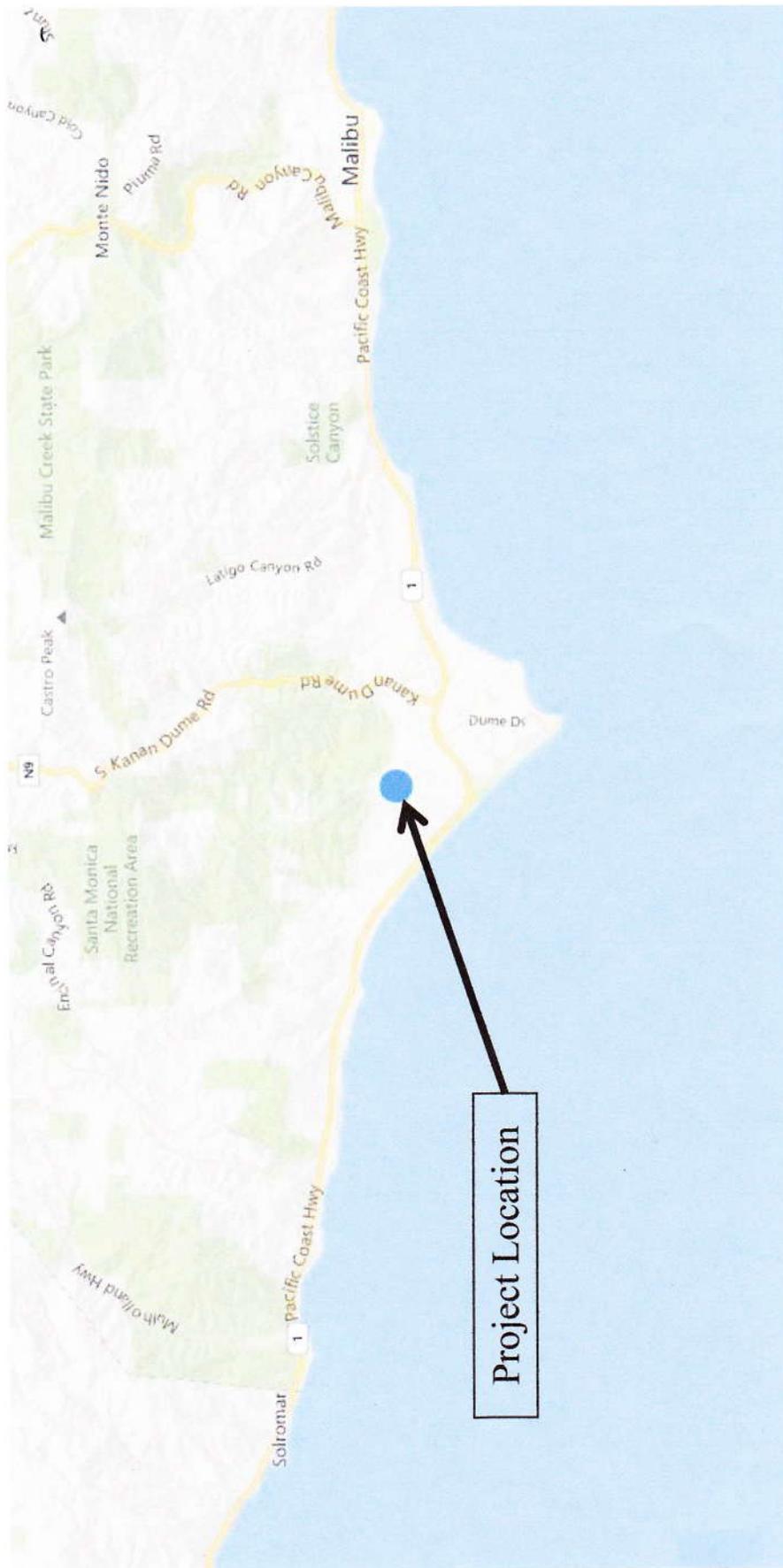
The Commission incorporates its findings on consistency with the City's certified LCP at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the policies of the certified LCP. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. The following special conditions are required to assure the project's consistency with Section 13096 of the California Code of Regulations:

#### Special Conditions 1 through 15

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the certified LCP to conform to CEQA.

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. City of Malibu Local Coastal Program.
2. *Biological Assessment*, prepared by Forde Biological Consultants, dated May 22, 2006.
3. *Letter*, prepared by Forde Biological Consultants, dated June 14, 2006.
4. *Update Engineering Geologic Report, Proposed Residential Development: 5807 Busch Drive, City of Malibu, California*, prepared by Mountain Geology, Inc., dated December 22, 2003.
5. *Update Geotechnical Engineering Report, Proposed Residential Development: 5807 Busch Drive, City of Malibu, California* (Project Number 4018), prepared by West Coast Geotechnical, prepared January 7, 2004.
6. *Addendum Engineering Geologic Report #2, Proposed Residential Development*, prepared by Mountain Geology, Inc., dated October 23, 2006.
7. *Restoration and Monitoring Plan*, prepared by Forde Biological Consultants, dated April 11, 2013.

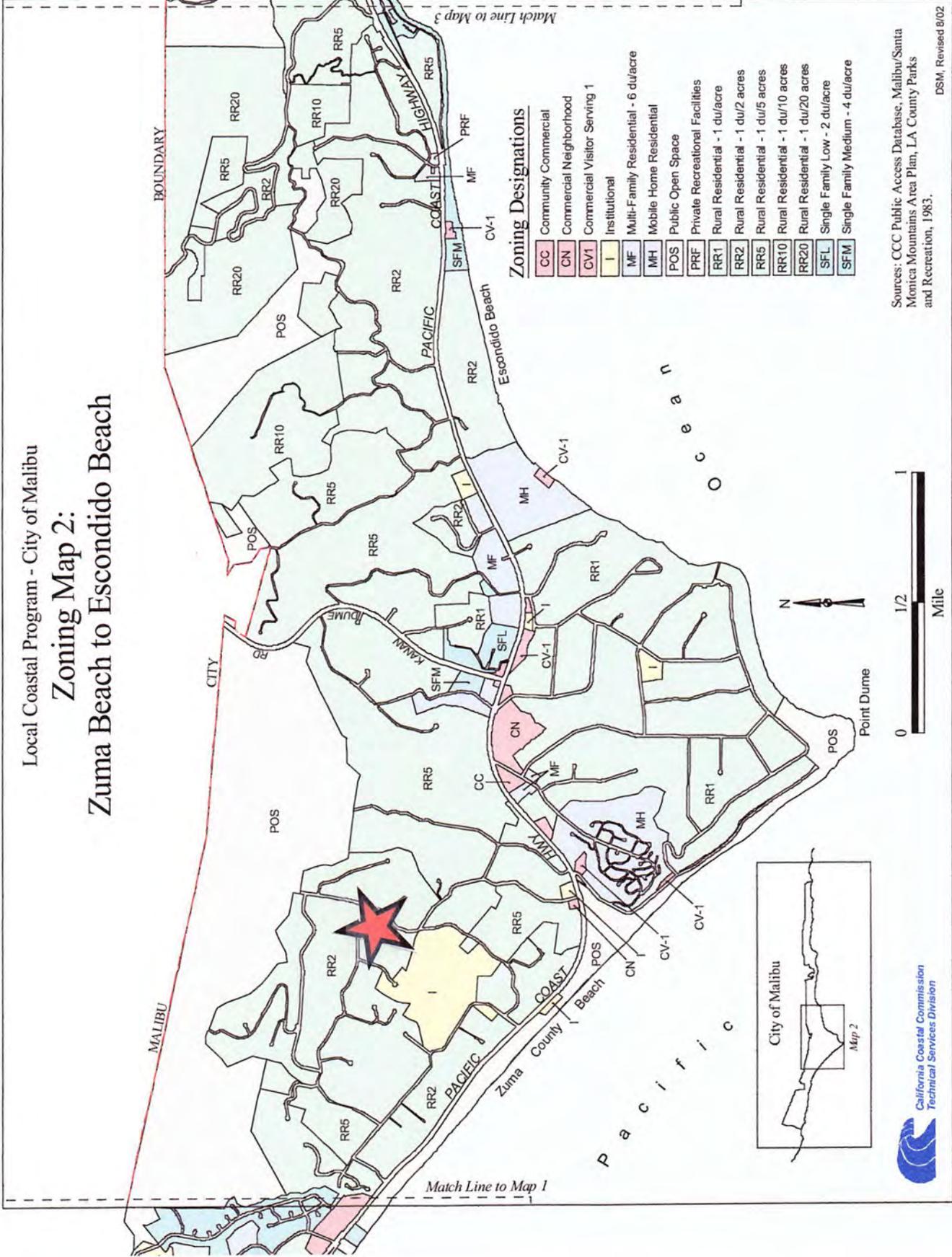


Project Location

**Exhibit 1**  
**Vicinity Map**  
**Appeal No. A-4-MAL-13-0257**



# Local Coastal Program - City of Malibu Zoning Map 2: Zuma Beach to Escondido Beach

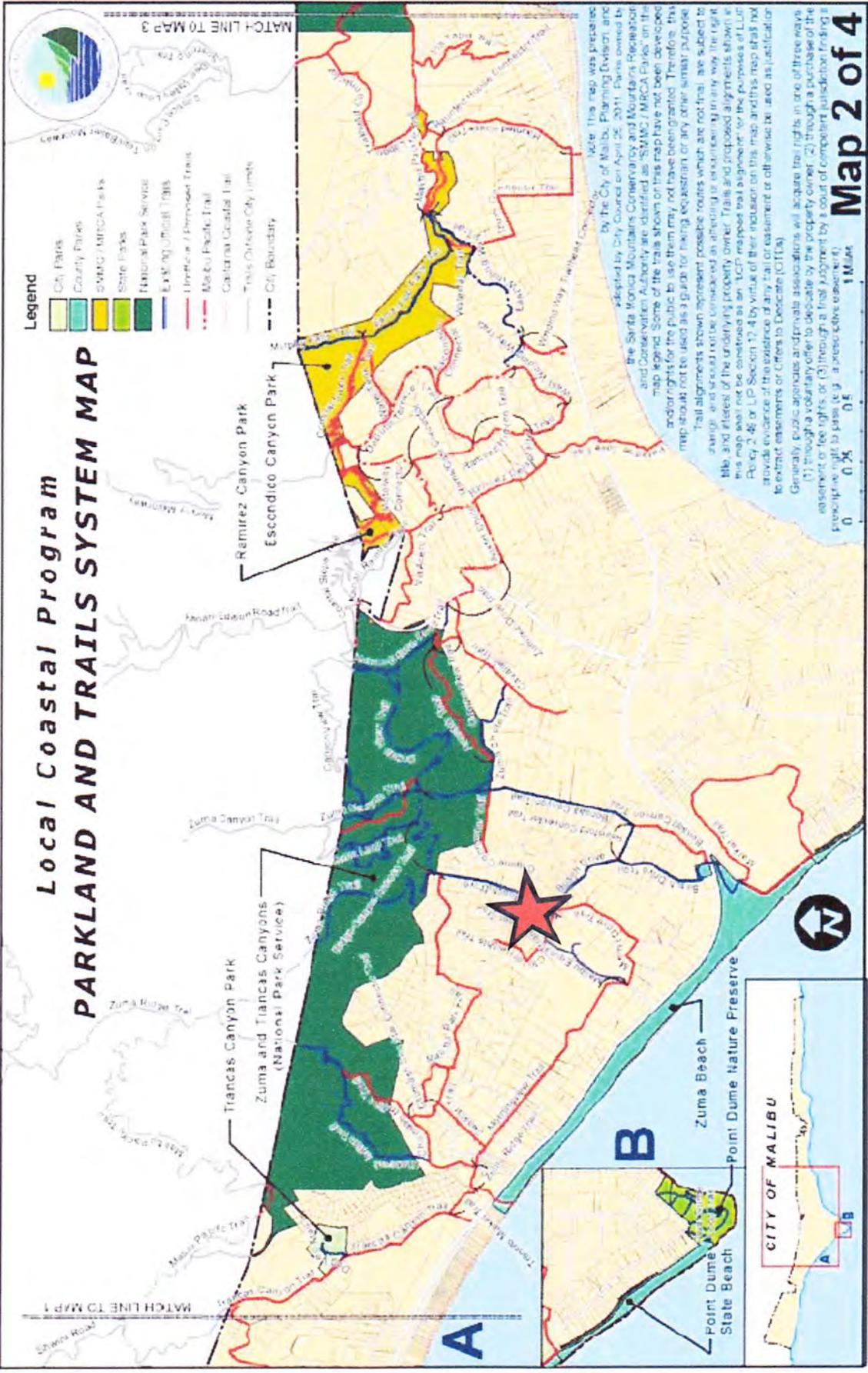


Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.

DSM, Revised 8/02



# Local Coastal Program PARKLAND AND TRAILS SYSTEM MAP



- Legend**
- City Parks
  - County Parks
  - State Parks
  - National Park Service
  - Existing Official Trails
  - Unimproved / Proposed Trails
  - Malibu Pacific Trail
  - California Coastal Trail
  - Trails Outside City Limits
  - City Boundary

Note: This map was prepared by the City of Malibu, Planning Division, and adopted by City Council on April 26, 2011. Parks owned by the Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority are identified as "SMMC / MRCA Parks" on this map legend. Some of the trails shown on this map have not been developed and/or rights for the public to use them may not have been granted. Therefore, this map should not be used as a guide for making acquisition or any other similar purpose.

Trail alignments shown represent possible routes which are not final, are subject to change, and should not be considered as affecting or encroaching on any way, the right title, and interests of the underlying property owner. Trails and proposed alignments shown in this map shall not be construed as an "LCP" request and agreement for the purposes of LUP Policy 2.46 or LUP Section 12.4 by virtue of their inclusion on this map and this map shall not provide evidence of the existence of any trail or easement or otherwise be used as justification to extract easements or offers to dedicate (OTDs).

Generally, public agencies and private associations will acquire trail rights in one of three ways: (1) through a voluntary offer to dedicate by the property owner, (2) through a purchase of the easement or fee rights, or (3) through a final judgment by a court of competent jurisdiction finding a prescriptive right to pass (e.g., a prescriptive easement).

**Map 2 of 4**



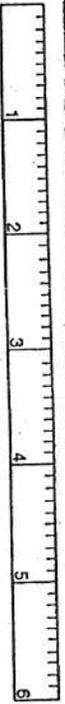
MATCH LINE TO MAP 1

MATCH LINE TO MAP 3

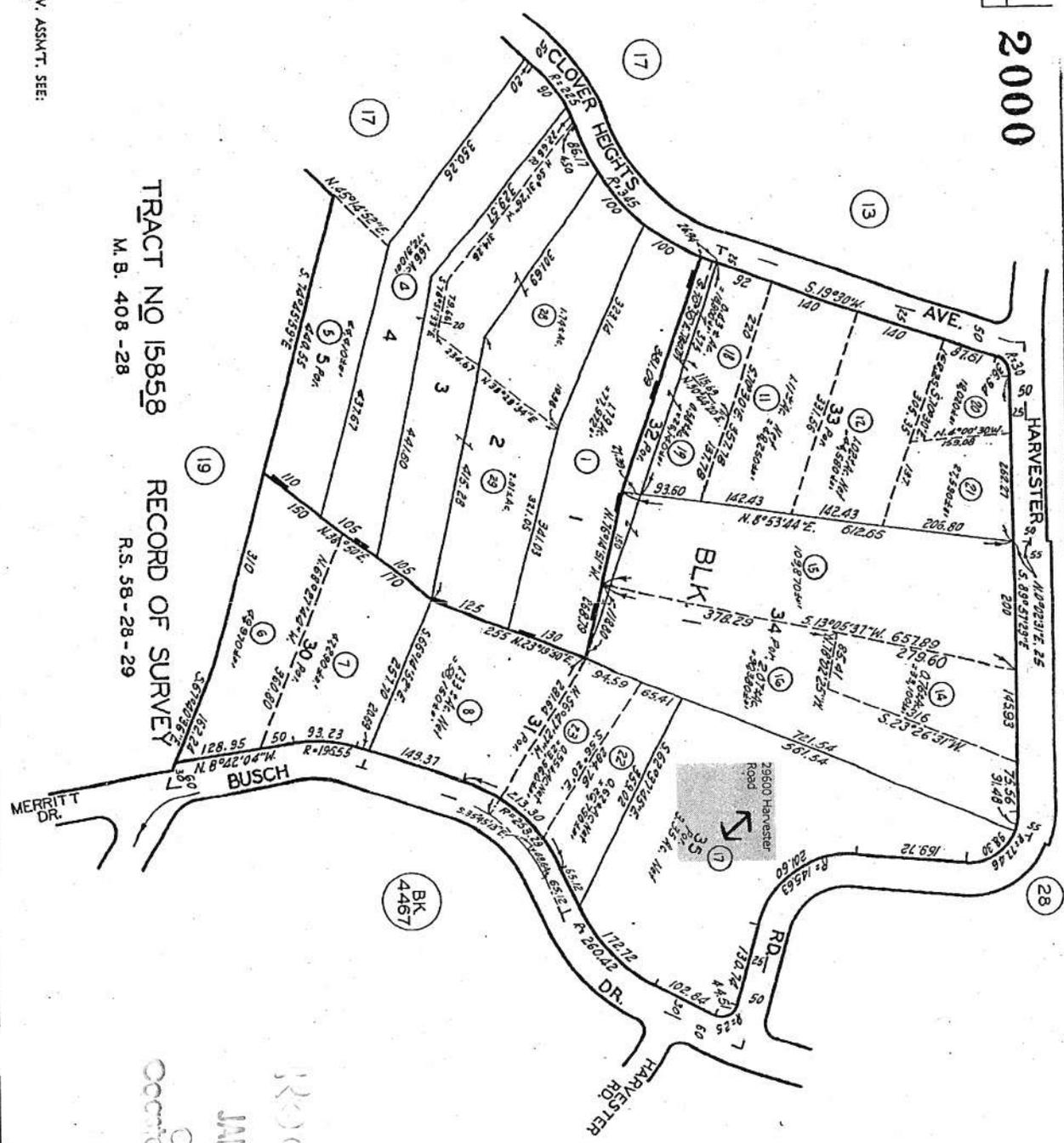
4469 | 12  
 SCALE 1" = 150'

2000

1-800-345-7334



SCALE IN 1/10 OF AN INCH



TRACT NO 15858  
 M. B. 408 -28  
 RECORD OF SURVEY  
 R.S. 58-28-29

FOR PREV. ASSM'T. SEE:  
 4469-12

RECORDED  
 JAN 23 2014  
 Official  
 Official Commission

ASSESSOR'S MAP  
 COUNTY OF LOS ANGELES, CALIF.

2-1-65  
 57011  
 590211  
 72011  
 76103  
 51066  
 159999-44003-002-07  
 159999-44003-002-07  
 159999-44003-002-07

Exhibit 3  
 Parcel Map  
 Appeal No. A-4-MAL-13-0257





PROJECT: NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MALDEN, CA

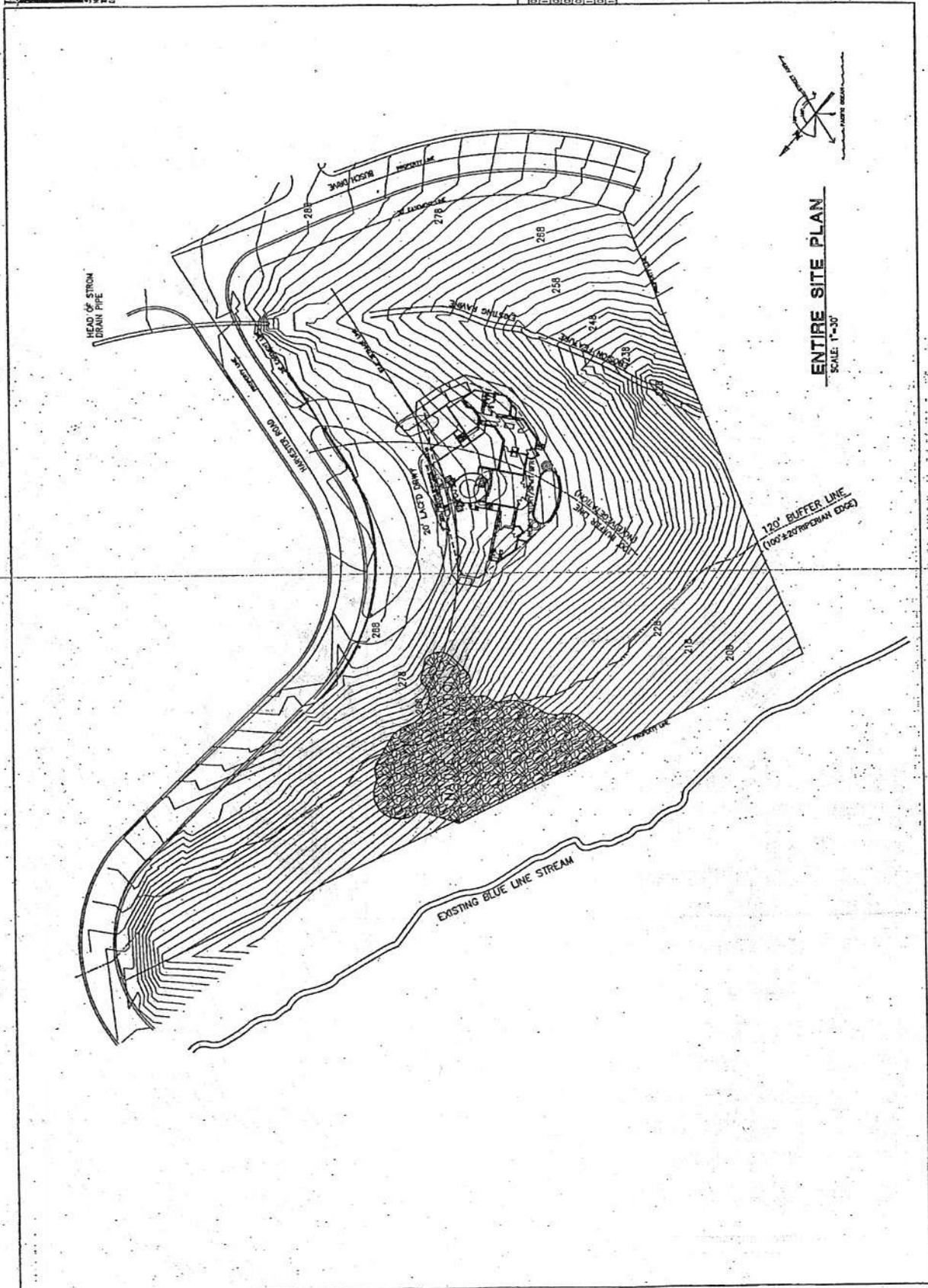
DATE	REVISION
09/23/11	1ST SUB
10/28/11	2ND SUB
08/27/11	3RD SUB
08/27/11	4TH SUB
09/08/11	PLANNING
12/09/11	REVISION
06/23/12	REVISION
10/12/12	REVISION

DRAWN BY: MF  
 CHECKED BY: F  
 DATE: NOV. 2008  
 SCALE: A.S.

DRAWING TITLE: ENTIRE SITE PLAN & STREAMS SITE PLAN  
 JOB NO.: 28101

L-0

OF 1 SHEETS





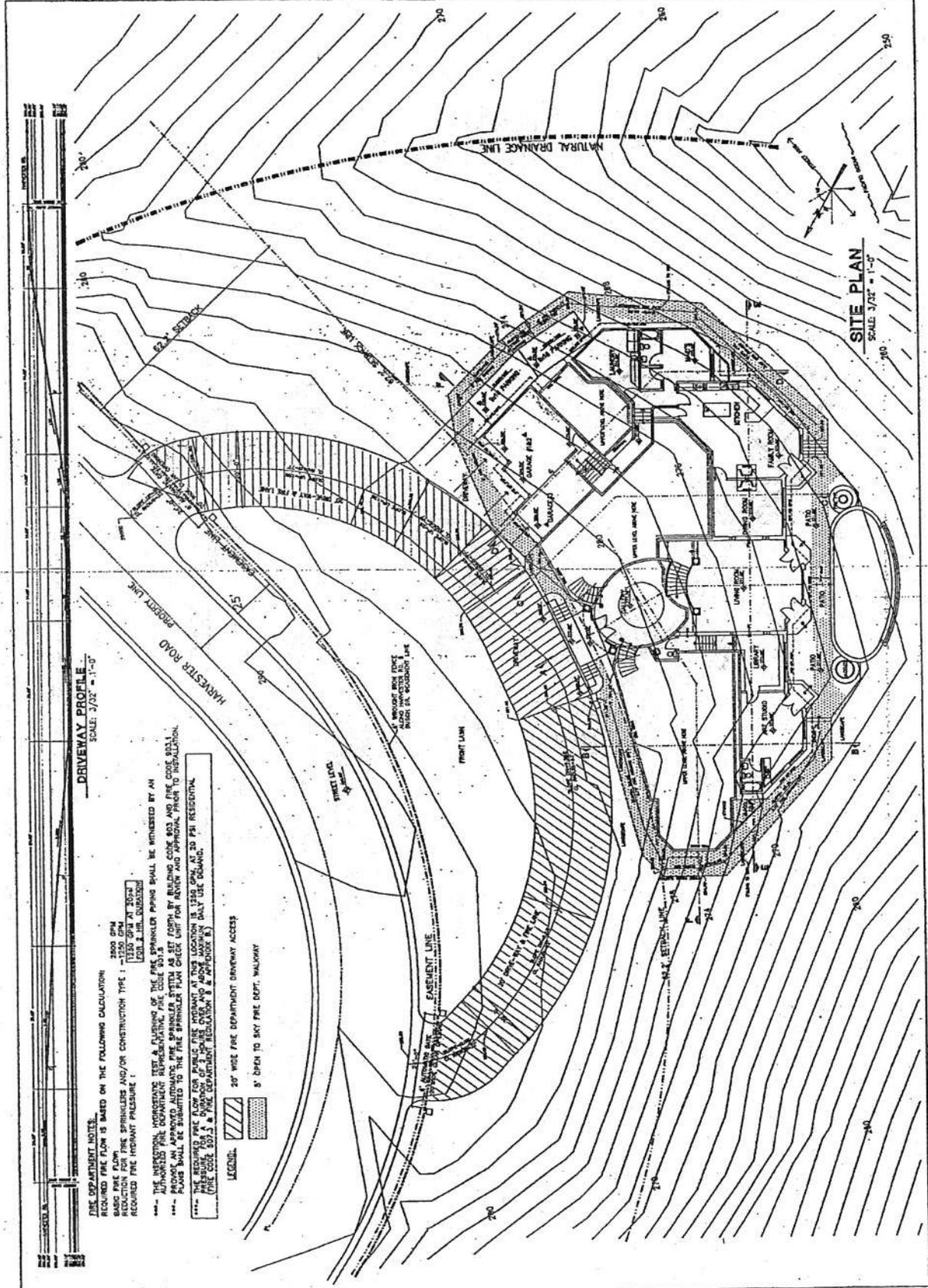


PROJECT: SAFAPUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MAUBU, CA

DATE	REVISION
08/23	1ST SET
07/29	PLANNING
07/29	SHA
08/07	2ND REV.
08/28	PLANNING
07/29	RESUBMIT
08/13	RESUBMIT
07/13	RESUBMIT

DRAWN: JF  
 CHECKED: JF  
 DATE: NOV, 2009  
 SCALE: A1:1

FORMING TITLE: SITE PLAN  
 JOB NO.: 290101  
 SHEET NO.: A-2  
 OF SHEETS



**DRIVEWAY PROFILE**  
 SCALE: 1/2" = 1'-0"

THE DEPARTMENT NOTE:  
 RECORDED FIRE FLOW IS BASED ON THE FOLLOWING CALCULATION:  
 BASIC FIRE FLOW: 2500 GPM  
 REDUCTION FOR FIRE SPRINKLERS AND/OR CONSTRUCTION TYPE: 1750 GPM AT 200' ELEVATION  
 RECORDED FIRE FLOW: 750 GPM  
 THE INSPECTION, HOISTING TEST & FLUSHING OF THE FIRE SPRINKLER PIPING SHALL BE WITNESSED BY AN AUTHORIZED FIRE DEPARTMENT REPRESENTATIVE, FIRE CODE 801.5.  
 PRIOR TO AN APPROVED AUTOMATIC FIRE SPRINKLER PUMP CHECK UNIT FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.  
 THE REVISIONS TO THE FIRE SPRINKLER PIPING SHALL BE SUBMITTED TO THE BOARD.  
 (FIRE CODE 801.5 & FIRE DEPARTMENT REGULATION 8 & APPENDIX B.)

- LEGEND:**
- 20' WIDE FIRE DEPARTMENT DRIVEWAY ACCESS
  - 8' OPEN TO SKY FIRE DEPT. WALKWAY

**SITE PLAN**  
 SCALE: 3/32" = 1'-0"





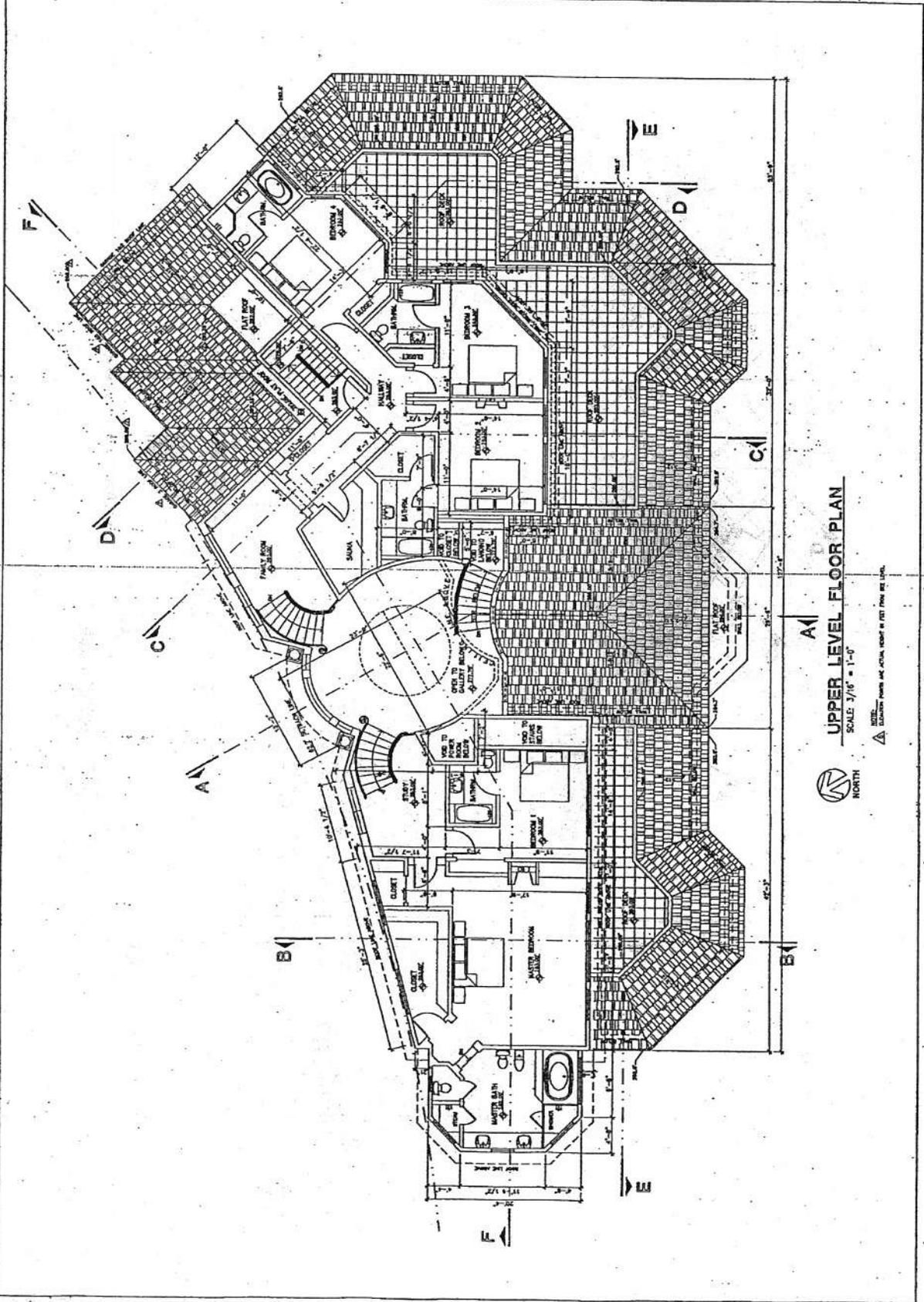
PROJECT: SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MARIETTA, GA

DATE	REVISION
12/12	RESUBMIT
12/09	RESUBMIT
12/08	PLANNING
12/07	REV.
12/06	ESKIA
12/05	PLANNING
12/04	REV.

DRAWN: MF  
 CHECKED: JF  
 DATE: NOV, 2009  
 SCALE: A1

DRAWING TITLE:  
 UPPER LEVEL FLOOR PLAN

NO. 296001  
 A-4  
 SHEETS



**A1**  
 UPPER LEVEL FLOOR PLAN  
 SCALE: 3/16" = 1'-0"



NOTE: DIMENSIONS SHOWN ARE ACTUAL HEIGHTS IN FEET FROM FINISH LEVEL.



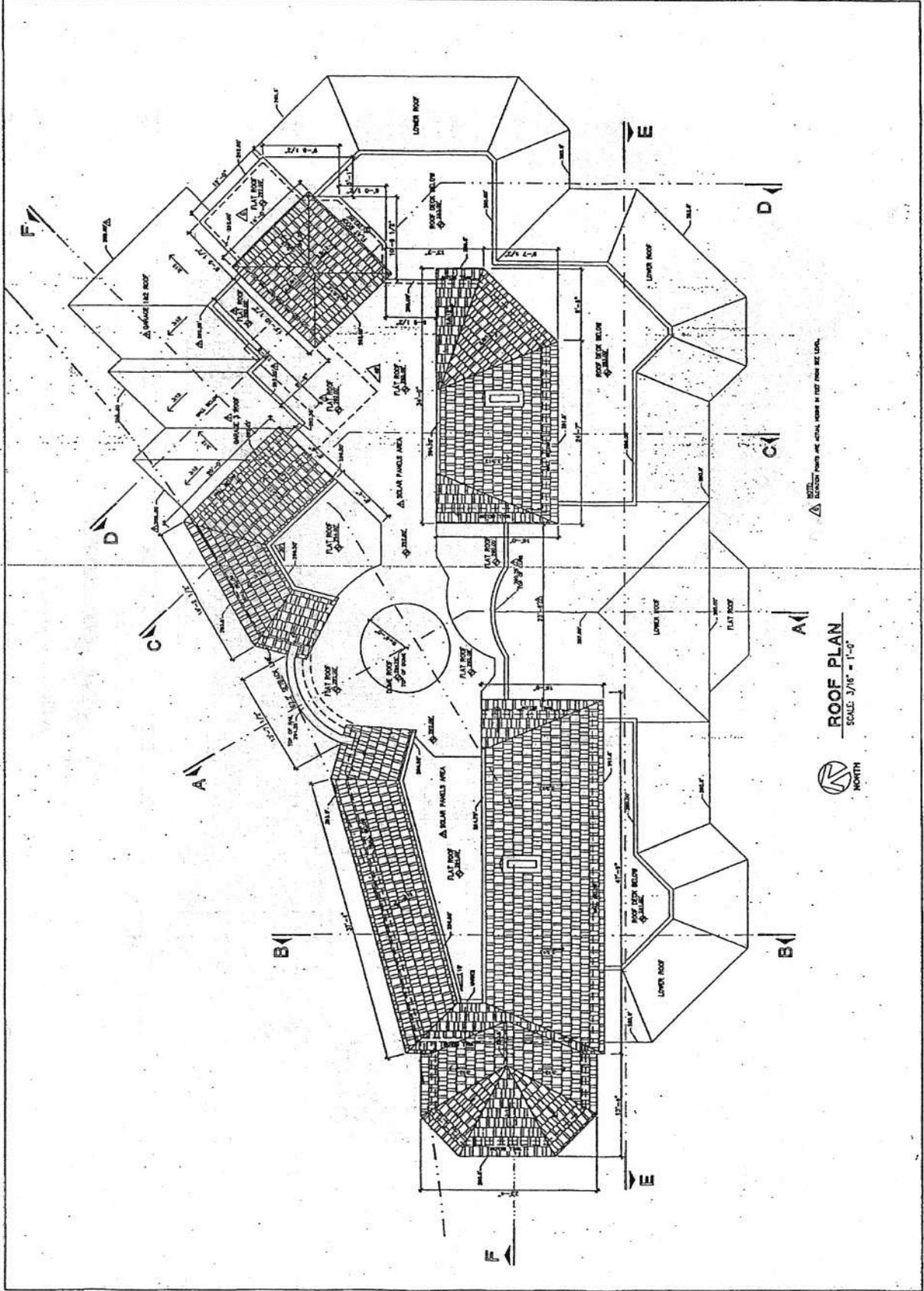
PROJECT: SAFAPUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
07/03/07	B.B.
07/05/07	PLANNING
07/06/07	LSHA
07/07/07	REV.
07/08/07	PLANNING
07/09/07	REVISION
07/12/07	REVISION
07/13/07	REVISION

DATE: 11/05/09  
 DESIGNER: JF  
 DATE: NOV, 2009  
 SCALE: A1X

PROJECT: SAFAPUR RESIDENCE  
 SHEET NO. 290101  
 SHEET TITLE: ROOF PLAN

**A-5**  
 OF 10 SHEETS



NOTE: DIMENSIONS POINT TO ACTUAL CORNER OF FOOT PRINT NOT USED.

**ROOF PLAN**  
 SCALE: 3/8" = 1'-0"  
 NORTH

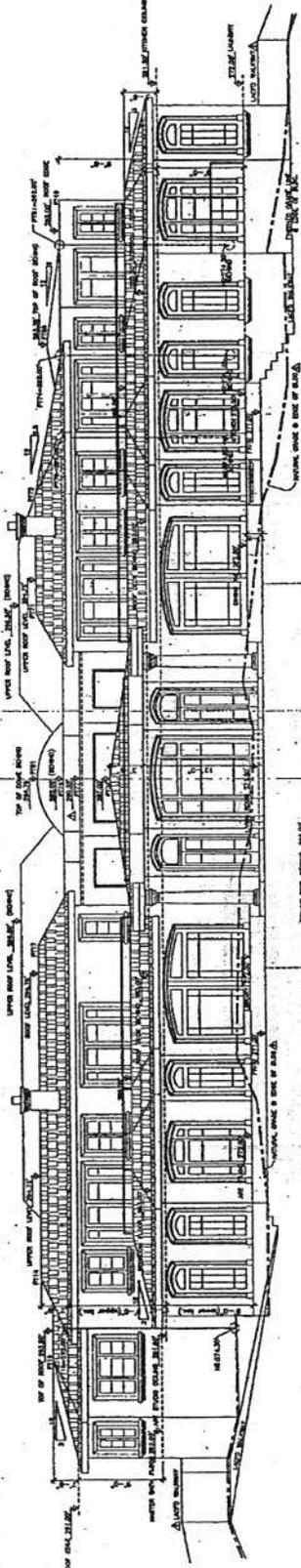


PROJECT: SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MAUNU, CA

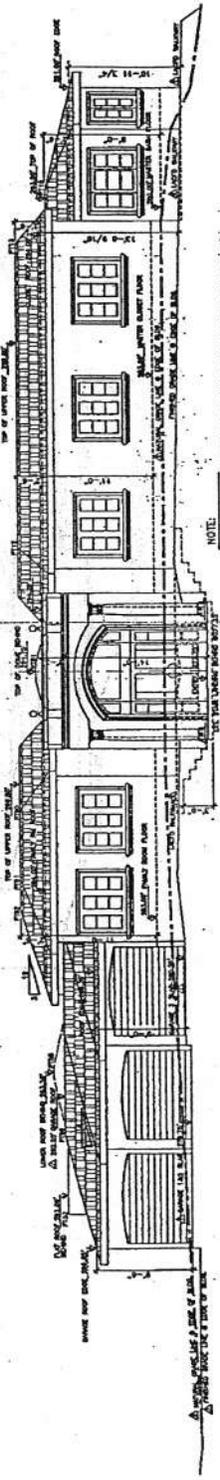
DATE	REVISION
02/25/09	1ST SUB
03/02/09	2ND SUB
03/07/09	3RD SUB
03/07/09	FOR REV.
03/08/09	PLANNING
03/09/09	REVISION
06/13/09	REVISION
10/17/09	REVISION

DESIGNER: MF  
 CHECKER: F  
 DATE: NOV. 2009  
 SCALE: A.N.

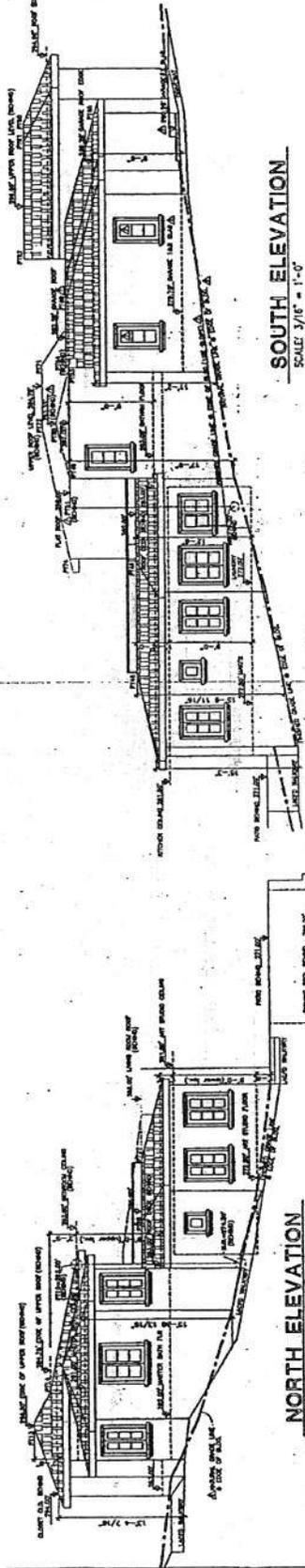
ISSUE TITLE: ELEVATIONS  
 JOB NO.: 290101  
**A-6**  
 OF 11 SHEETS



**WEST ELEVATION**  
 SCALE: 3/16" = 1'-0"



**EAST ELEVATION**  
 SCALE: 3/16" = 1'-0"



**SOUTH ELEVATION**  
 SCALE: 3/16" = 1'-0"

**NORTH ELEVATION**  
 SCALE: 3/16" = 1'-0"





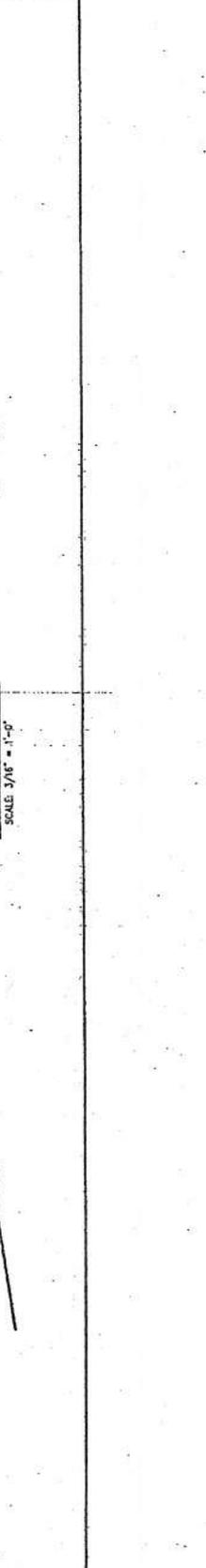
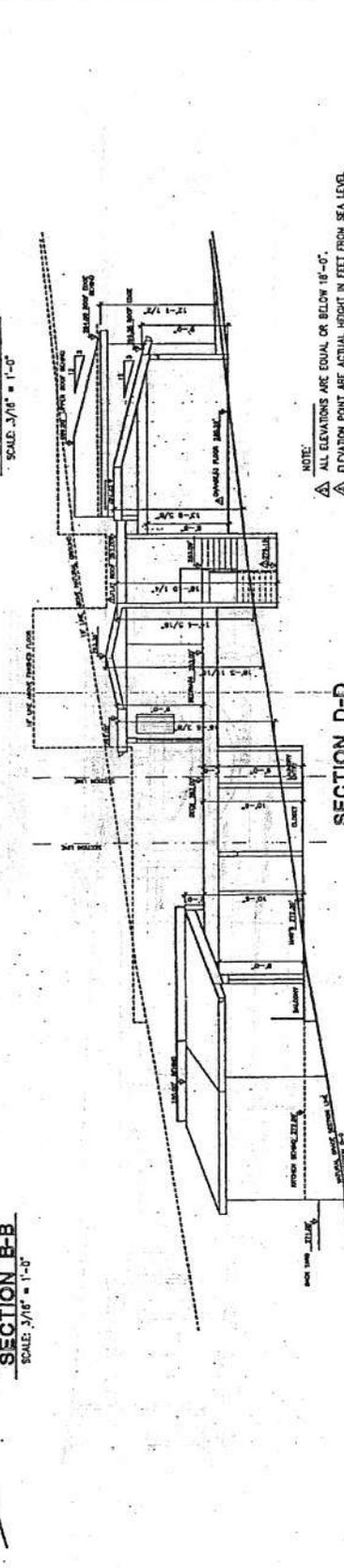
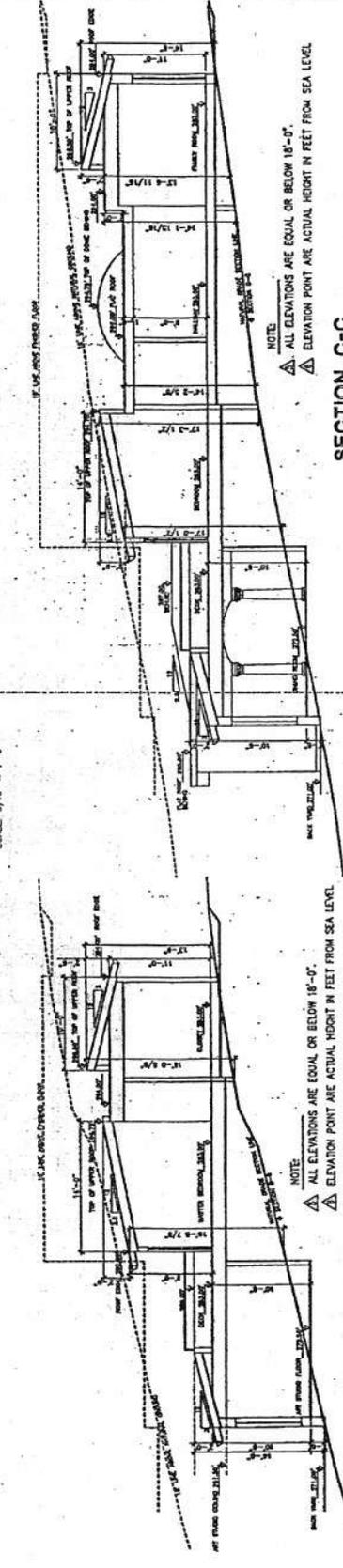
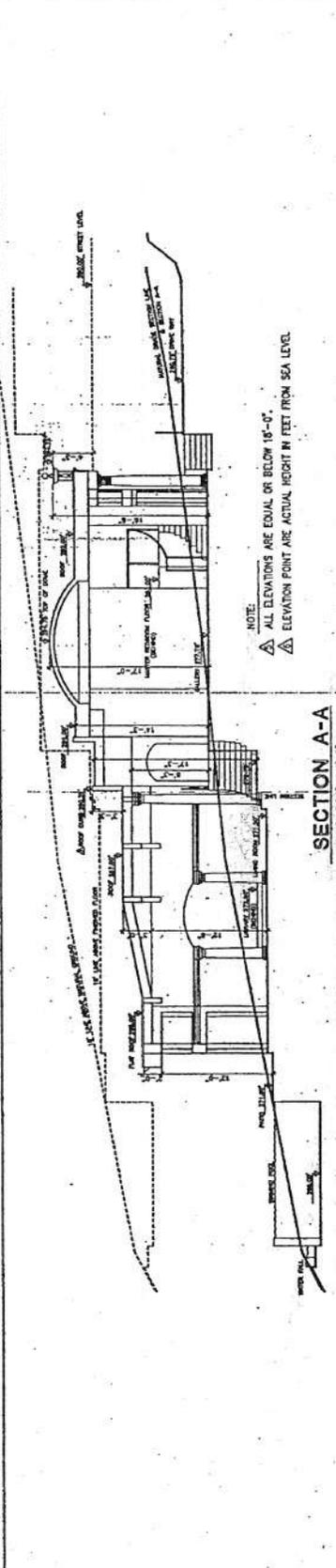
THE POLYMARK  
ARCHITECTS  
1000 WEST 10TH AVENUE  
DENVER, CO 80202  
TEL: 303.733.1111

PROJECT: SAFAPOUR RESIDENCE  
NEW ONE STORY RESIDENCE  
LOCATION: 29600 HARVESTER ROAD  
MALIBU, CA

DATE: 09/20/10  
BY: J. SAFAPOUR  
CHECKED: F  
DATE: NOV. 2009  
SCALE: A.S.  
DRAWN: MF

SECTIONS  
DRAWING NO. 250101  
OF SHEETS

**A-8**





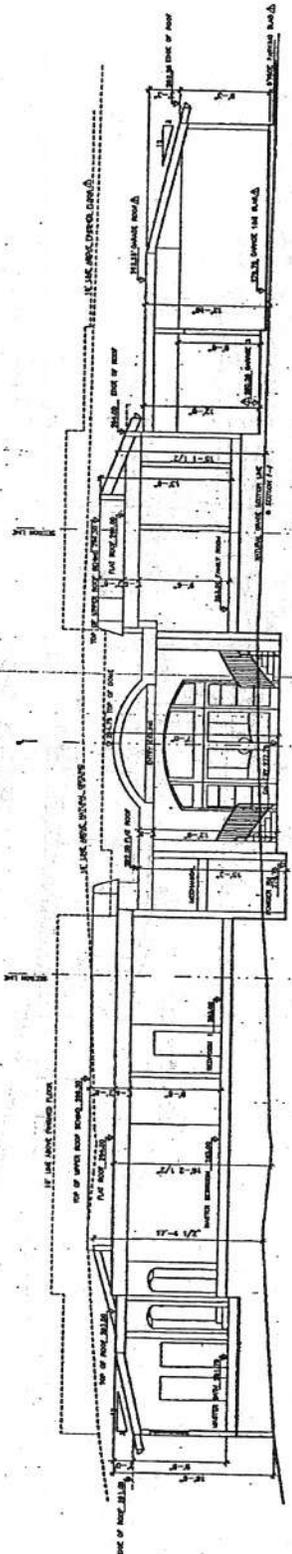
PROJECT: SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
07/20/07	1ST SUB
07/20/07	2ND SUB
07/20/07	3RD SUB
07/20/07	4TH SUB
07/20/07	5TH SUB
07/20/07	6TH SUB
07/20/07	7TH SUB
07/20/07	8TH SUB
07/20/07	9TH SUB
07/20/07	10TH SUB

DRAWN BY: MF  
 CHECKED BY: F  
 DATE: NOV. 2009  
 SCALE: A.N.

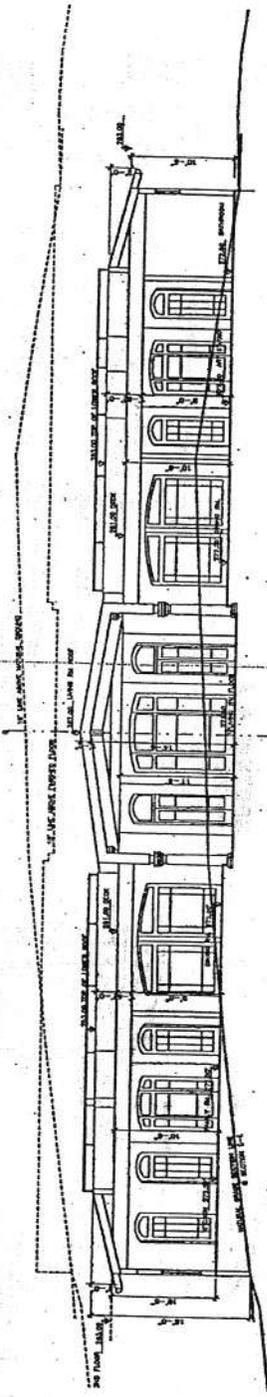
SECTION: SECTIONS  
 JOB NO: 281010

A-9  
 OF 100 04/27/11



SECTION F-F (SECTION AT MAIN ENTRY)  
 SCALE: 3/16" = 1'-0"

NOTE:  
 ▲ ALL ELEVATIONS ARE EQUAL OR BELOW 15'-0".  
 ▲ ELEVATION POINT ARE ACTUAL HEIGHT IN FEET FROM SEA LEVEL.



SECTION E-E (SECTION AT LIVING ROOM)  
 SCALE: 3/16" = 1'-0"







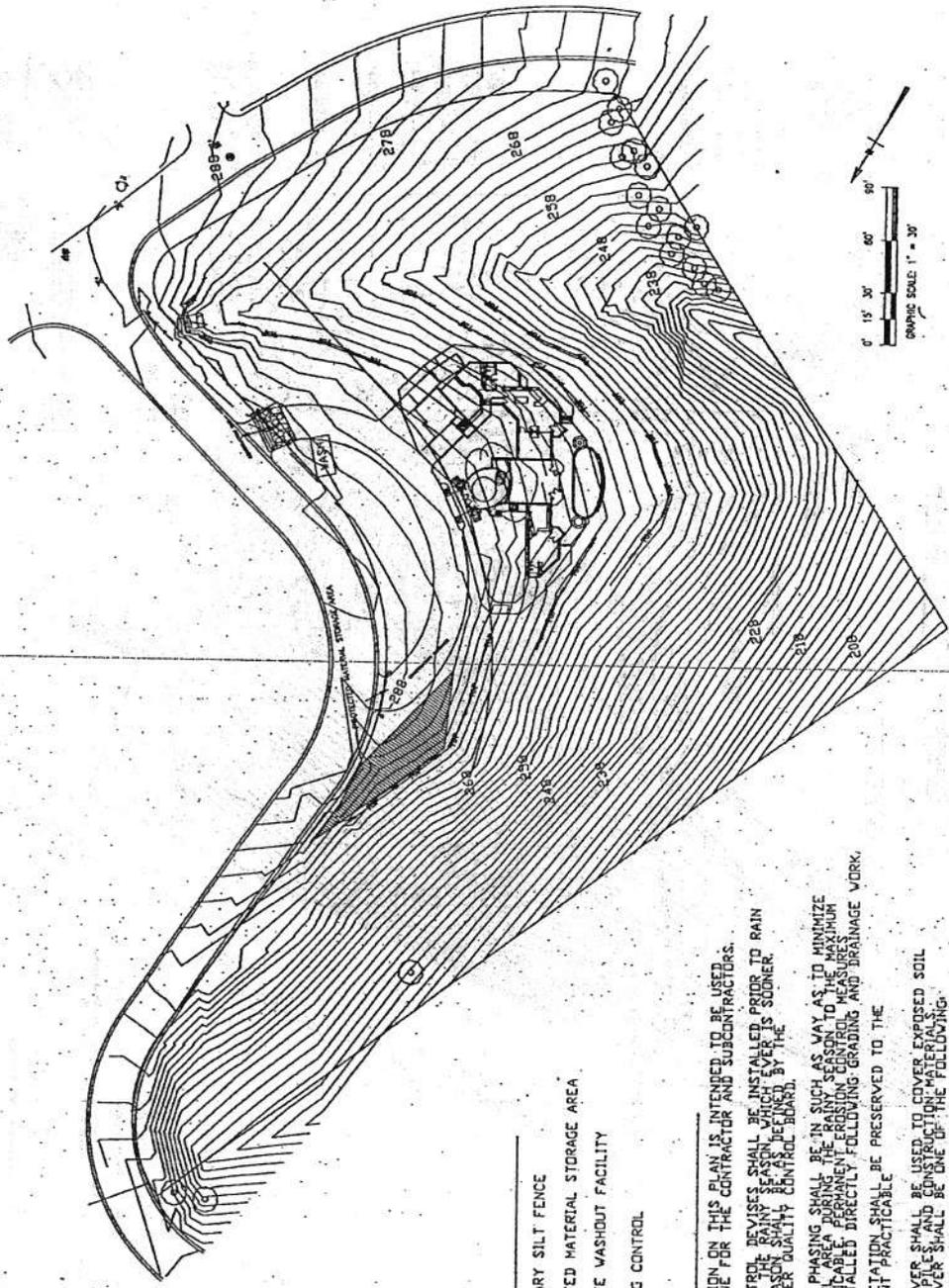


PROJECT: SAFAPUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
09/03/01	1ST SUB.
10/05/01	PLANNING
09/08/01	ESHA
09/07/01	GEN. REV.
09/28/01	PLANNING
10/28/01	REVISION
10/12/01	REVISION

DESIGNER: J.P.  
 CHECKED: J.F.  
 DATE: NOV. 2009  
 SCALE: A-1

GRADING PLAN  
 SHEET NO. 28101  
**G-1**  
 OF 3 SHEETS



WATER POLLUTION PREVENTION PLAN

- LEGEND**
- TEMPORARY SILT FENCE
  - PROTECTED MATERIAL STORAGE AREA
  - WASH
  - CONCRETE WASHOUT FACILITY
  - TRACKING CONTROL

**NOTES**

1. THE INFORMATION ON THIS PLAN IS INTENDED TO BE USED AS A GUIDELINE FOR THE CONTRACTOR AND SUBCONTRACTORS.
2. SEDIMENT CONTROL DEVICES SHALL BE INSTALLED PRIOR TO RAIN FORECASTS OR THE RAINY SEASON, WHICH EVER IS SOONER. REGIONAL WATER QUALITY CONTROL BOARD.
3. CONSTRUCTION PHASING SHALL BE IN SUCH AS WAY AS TO MINIMIZE DISTURBED SOIL AREA DURING THE RAINY SEASON TO THE MAXIMUM EXTENT PRACTICABLE. EROSION PREVENTION MEASURES SHALL BE INSTALLED DIRECTLY FOLLOWING GRADING AND DRAINAGE WORK.
4. EXISTING VEGETATION SHALL BE PRESERVED TO THE MAXIMUM EXTENT PRACTICABLE.
5. TEMPORARY COVER SHALL BE USED TO COVER EXPOSED SOIL AREA, STOCK PILES AND CONSTRUCTION MATERIALS.
6. TEMPORARY COVER SHALL BE ONE OF THE FOLLOWING:  
 SOIL STABILIZING EMULSION (ORGANIC)  
 EROSION CONTROL BLANKET  
 STRAW MULCH
7. DUST CONTROL SHALL BE ONE OF THE FOLLOWING METHODS:  
 WATER APPLICATION  
 SOIL STABILIZING EMULSION (ORGANIC)

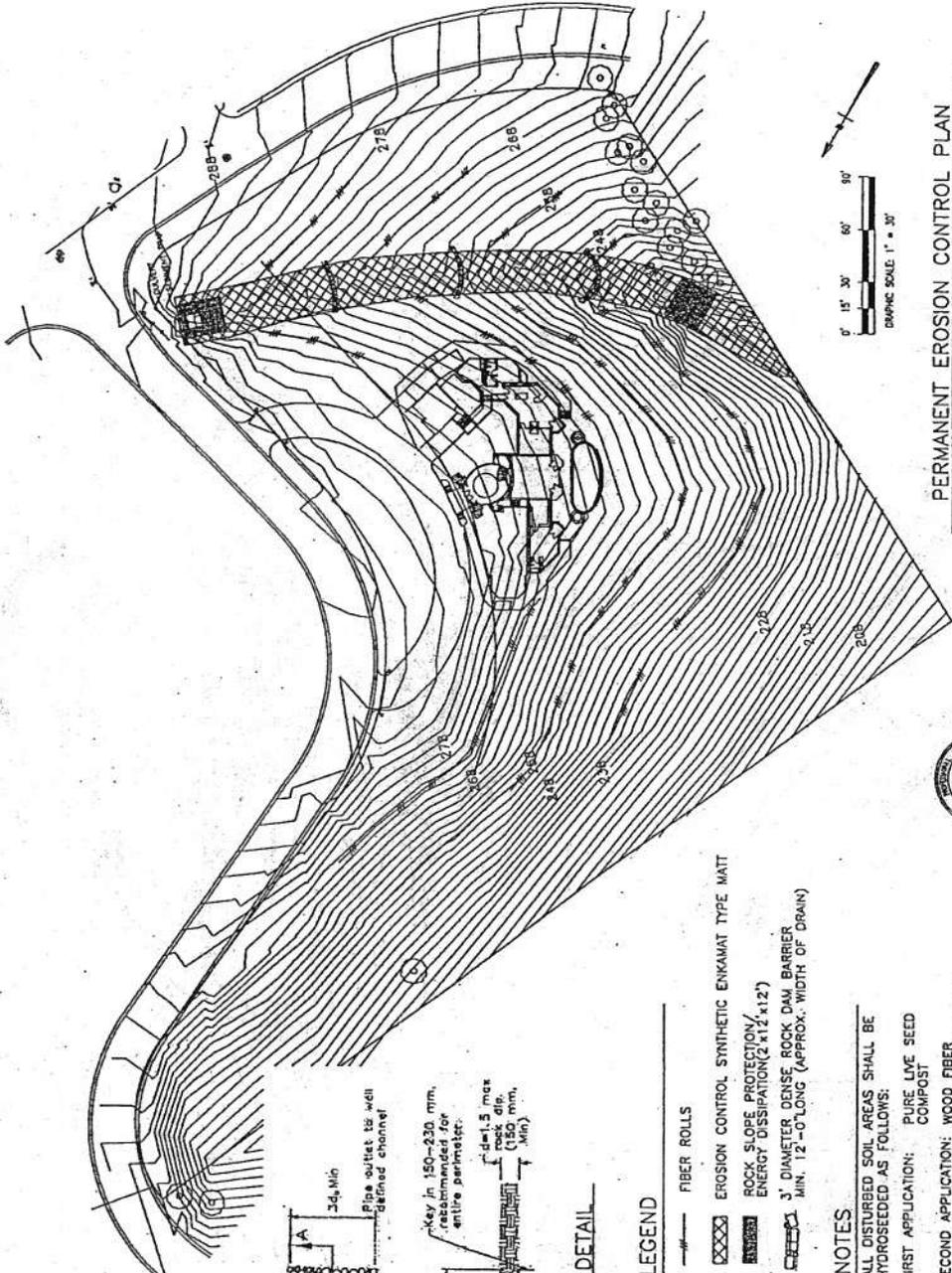
PROJECT: SAFPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
09/23/11	1ST SUB.
10/25/11	2ND SUB.
09/27/11	3RD SUB.
09/27/11	4TH SUB.
09/27/11	5TH SUB.
09/27/11	6TH SUB.
09/27/11	7TH SUB.
09/27/11	8TH SUB.
09/27/11	9TH SUB.
09/27/11	10TH SUB.
09/27/11	11TH SUB.
09/27/11	12TH SUB.
09/27/11	13TH SUB.
09/27/11	14TH SUB.
09/27/11	15TH SUB.
09/27/11	16TH SUB.
09/27/11	17TH SUB.
09/27/11	18TH SUB.
09/27/11	19TH SUB.
09/27/11	20TH SUB.
09/27/11	21TH SUB.
09/27/11	22TH SUB.
09/27/11	23TH SUB.
09/27/11	24TH SUB.
09/27/11	25TH SUB.
09/27/11	26TH SUB.
09/27/11	27TH SUB.
09/27/11	28TH SUB.
09/27/11	29TH SUB.
09/27/11	30TH SUB.

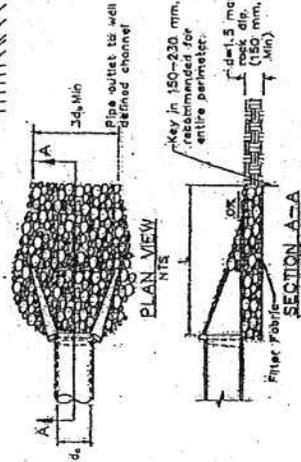
DRAWN: MF  
 CHECKED: SF  
 DATE: NOV, 2009  
 SCALE: A1:1

GRADING PLAN  
 SHEET NO. 290101  
 OF 2 SHEETS

G-2



PERMANENT EROSION CONTROL PLAN



LEGEND

- FIBER ROLLS
- XXXXX EROSION CONTROL SYNTHETIC ENKAMAT TYPE MATT
- ROCK SLOPE PROTECTION/ ENERGY DISSIPATION (2'x12'x12')
- 3' DIAMETER DENSE ROCK DAM BARBER MIN. 12'-0" LONG (APPROX. WIDTH OF DRAIN)

NOTES

- ALL DISTURBED SOIL AREAS SHALL BE HYDROSEEDED AS FOLLOWS:
- FIRST APPLICATION: PURE LIME SEED COMPOST
- SECOND APPLICATION: WOOD FIBER STABILIZING EMULSION
- ALL EXPOSED SEDIMENT SHALL BE REMOVED PRIOR TO PLACING ROCKS



Jay Palumbo  
 CONSULTING ENGINEERS, INC.  
 10000 WILSON AVENUE, SUITE 100  
 WILSON, CALIFORNIA 94094  
 TEL: (415) 947-1100  
 FAX: (415) 947-1101

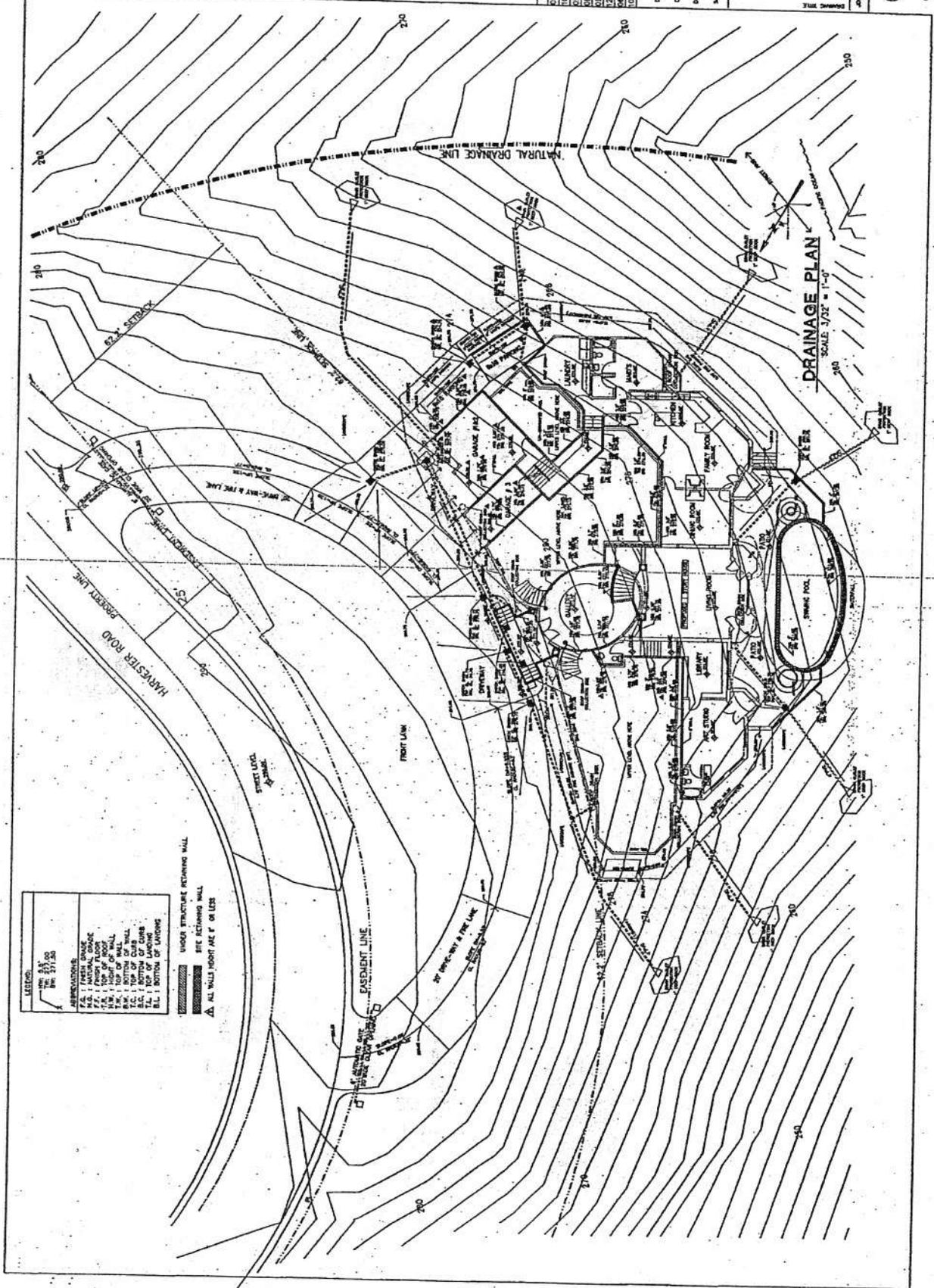
PROJECT: SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29800 HARVESTER ROAD  
 MAIRAU, CA

DATE	DESCRIPTION
07/22	PRELIMINARY
07/29	PRELIMINARY
08/07	REVISION
08/27	REVISION
09/08	PLANNING
09/08	ESHA
10/03	PLANNING
07/01	SET OUT

DESIGNED BY: JF  
 CHECKED BY: JF  
 DATE: NOV. 2009  
 SCALE: A11

DRAINAGE &  
 GRADING PLAN  
 SHEET NO. 200007

G-3  
 1/4" = 1'-0"



LEGEND:

SYMBOL	DESCRIPTION
(Symbol)	APPROXIMATIONS
(Symbol)	F.A. 1 FRESH RANGE
(Symbol)	F.F. 1 FRESH FLOOR
(Symbol)	F.R. 1 TOP OF ROOF
(Symbol)	F.W. 1 TOP OF WALL
(Symbol)	F.C. 1 TOP OF CURB
(Symbol)	F.L. 1 BOTTOM OF CURB
(Symbol)	F.B. 1 BOTTOM OF LAUNCH
(Symbol)	WOOD STRUCTURE REMAINING WALL
(Symbol)	STEEL STRUCTURE REMAINING WALL
(Symbol)	ALL WALL HEIGHT ARE F OR LSR



# NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

4 MAL-13-0911

## Received

DEC 15 2013

Date of Notice: December 16, 2013

### 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:

Bonnie Blue California Coastal Commission  
Senior Planner South Central Coast District  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265  
(310) 456-2489

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. 05-186, Variance No. 10-021, Site Plan Review No. 06-001, and Offer to Dedicate No. 13-002** - An application to allow the construction of a new 7,416 square foot, one-story single-family residence with attached garage, swimming pool, associated hardscape, grading, alternative onsite wastewater treatment system, landscaping, with habitat restoration and erosion control to address an outstanding Coastal Act violation, including a variance to reduce the required setback from environmentally sensitive habitat area, a site plan review for construction on slopes, and an offer to dedicate a trail easement.

Appellant: Brian Pietro, 5763 Busch Drive, Malibu, CA 90265  
Applicant: Jay Falamaki, 836 South Bundy Drive, #301, Los Angeles, CA 90049  
Property Owner: Iraj and Mahvash Safapour  
Appeal Filed: October 16, 2013  
Application Filing Date: November 16, 2005  
Property Address: 29600 Harvester Road  
APN: 4469-012-017

### Final Action Information

Final Local Action:  Approved  Approved with Conditions  Denied  
Final Action Body: Approved on December 9, 2013 by the City Council

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: December 9, 2013 City Council Meeting		November 27, 2013
Adopted Findings and Conditions: City Council Resolution No. 13-41	X	
Site Plans and Elevations		November 27, 2013

### 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: Patricia Salazar, Senior Administrative Analyst

**Exhibit 5**  
**Final Local Action Notice**  
**Appeal No. A-4-MAL-13-0257**

## CALIFORNIA COASTAL COMMISSION

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

DEC 19 2013

California  
Coastal Commission



## APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s)

Name: Brian Pietro

Mailing Address: 5763 Busch Drive

City: Malibu

Zip Code: 90265

Phone: 310-924-1776

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

SFR on private lot

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

Corner of Busch Drive and Harvester Road. 29600 Harvester Road, Malibu, CA 90265

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

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

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

## TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-4-MAL-13-0257

DATE FILED: 12/19/13

DISTRICT: So. Central Coast

Exhibit 6  
Local Appeals  
Appeal No. A-4-MAL-13-0257

**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: December 9, 2013

7. Local government's file number (if any): Appeal No. 13-006

**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:

Iraj and Mahvash Safapour, c/o Jay Falamaki 10951 Pico Blvd #326, Los Angeles, CA 90064

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) Dr. Raymond Hall. drhall@pilo1.com

(2) Neighbor, Danusia. danusianl@gmail.com

(3) Michael Plen. plencat@aol.com

(4) Unknown

## **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 construction approval by the Malibu City Council stands in defiance of basic common sense, and more specifically, in defiance of certainly the spirit of the Coastal Act, if not the letter of the law.

The building site is located along a dedicated public trail (Busch Drive) that leads to the trailhead (Zuma Ridge Trail) at the end of Busch Dr. It is located at a prime and primary public viewing location, with a panoramic view of the ocean (Zuma Beach area) in the near distance, below.

This appeal filing on my part is not a ruse in order to protect our personal view. One reason we chose this property years ago was due to the view, true enough, but the idea that an individual can so blatantly flaunt the words in the Land Use Plan and Coastal Act, as it pertains to public scenic view, public scenic roads, and be allowed to get away with it because he is mysteriously somehow "guaranteed" the right to do so, seems outrageous and completely inconsistent with the notion of preserving natural public resources and minimizing development impact.

I went before the Malibu Planning Commission and they supported unanimously, the building of the home. I then appealed that decision and went before the City Council. The appeal was defeated by a vote of 3 to 2.

This property is located on the corner of Busch Drive and Harvester Road in the Malibu Park neighborhood of Malibu. Thousands upon thousands of people per year enjoy the panoramic vista of the ocean from this vantage point. This is the most heavily trafficed intersection in all of Malibu Park, and is used not only by motorists but countless hikers, joggers, bikers, equestrians, local residents and visitors alike. The intrusion of this type of a massive home, sited where it is on the property, will cause irreparable harm to public viewing from what is defined as a public road(s). This CAN be mitigated, but the property owner is not being forced to, so as a result, he is building what he wants, where he wants.

This proposed 7460 square foot single family residence was approved for construction (denying my appeal) by the Malibu City Council, on a vote of 3 to 2 (1 "no" vote, 1 abstaining). The prevailing Council members stated that the property owner was "guaranteed" the right to build a home on his property, was "guaranteed" his 18 foot height, and was "guaranteed" (based on the mathematical equation of the size of his property) 10,000 square feet of footprint (including front driveway area and rear patio, swimming pool area).

This home has been positioned on the highest part of the land, allowing for setback, and been given variances for the ESHA and blue line streams that border the building pad area on both sides.

My contention is that the home could be moved to a somewhat lower position on the property so it is not blocking panoramic public viewing of the ocean as badly, and/or could be downsized so as to not be so massive in appearance, and/or could be entirely redesigned so the architectural style is much more in keeping with the surrounding homes and/or blends into the natural contour of the downslope much better. The property owner has already received variances for being too close to ESHA and blue line stream areas., which allow him to build a home of this size and mass.

The prevailing Council members lamented that there were not laws in place to protect the public view or to enforce "neighborhood character" as even those who voted in favor of construction as proposed, generally agreed the home was too obtrusive, too large and generally inappropriate for the immediate neighborhood, positioned where it is. In spite of that, the majority voted in favor of the construction.

I feel that while certain "guarantees" are being awarded the property owner, other written laws and guidelines are being given short shrift by this Council - the rights of this one individual are being allowed to trump the laws concerning public viewing areas, scenic areas and scenic roads, not to mention guidelines as to how to mitigate situations such as these. The intent of the Coastal Act and the very intent of our own Malibu Land Use Plan is being ignored in exchange for this property owner's perceived "guaranteed rights" to build.

It is possible for the natural resources to be protected much better AND for the property owner to build a reasonable home on his property. No one forced him to buy this lot. No one has forced him to build such a large home or a home on this particular spot on the land. This lot has a long and troubled history, beginning with illegal importation of fill dirt many years ago, which after much stalling and threat of litigation from the State, was partially removed. The property owner then successfully negotiated with the City to keep some of the fill dirt in place in exchange for returning the riparian stream back to its original condition. That never happened. Then, the new owner arrived and proposed his building plans, which award him variances and the "guaranteed right" to block public viewing of the ocean, block public viewing from public scenic roads, as defined in the MLUP and Coastal Act.

Furthermore, to further complicate matters, it has been discovered that the "drainage course" and "runoff course" located roughly parallel to Busch Drive was erroneously defined as such by Malibu City Staff at some point in the past, but in fact, it is a Coastal Comm. defined ESHA riparian blue line stream. The property owner is enjoying a City Staff redefinition of this "watercourse" to a "drainage course" or "runoff culvert" as once described by property owner's geologist to the Planning Comm.

These positions and findings by the prevailing three Council members run totally contrary to language found in the Coastal Act or in the adopted Local Plan. For example:

#### Coastal Act:

1. Section 30251 Scenic and Visual Qualities ".....development shall be sited and designed to protect views to and along the ocean and scenic coastal areas.....to be visually compatible with the character of surrounding areas" (The prevailing three Council members contend that it is simply a matter of personal taste, and too subjective to rule on).

2. Section 30240 Environmentally Sensitive Habitat Areas; Adjacent Developments "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas"

And then, language from the Malibu Land Use Plan:

1. "Places on and along public roads...that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered scenic roads". (The prevailing three contended that since Busch Drive and Harvester Roads are not listed on a City-generated list of what is defined as a "scenic road" they are not scenic roads!).
2. "Places on.... or visible from scenic roads.....that offer scenic vistas of the beach and ocean ....are considered scenic areas". (What part about this statement is unclear? How does this statement "guarantee" the property owner to build as proposed?)
3. "Development shall be sited and designed to minimize impacts on scenic areas visible from scenic...public viewing areas, through measures including but not limited to, siting development in the least visible portion of the site". (If this property were like most, not located right in front of one of the most scenic roads in all of western Malibu, then this would not be such a large issue or an issue at all - once the house and fence go up, from street level, much of the view will be obliterated).
4. "Development shall be sited on the flattest area of site except where there is an alternative location that would be more protective of visual resources". (This is not a flat lot with no possible alternatives. It is a downslope lot that could be given an additional variance in order to be built another 20 feet down the slope, thereby mitigating much of the view blockage - furthermore, the style of the home could be changed so that the visual "mass" of the home is far less - such as with a mid-century modern styled home, or ranch-style home, rather than the proposed Mediterranean home).
5. "All new structures shall be sited and designed to minimize impacts to visual resources by ensuring visual compatibility with the character of the surrounding area". (Isn't this a pretty clear statement?)

In conclusion, I feel it is glaringly apparent that this person's perceived "guaranteed rights" were given priority over the public's rights, which is what the Coastal Commission is all about, correct? Please note, that one Council member felt very uncomfortable with allowing this home to go through without severe alteration to the plan, but felt that there was nothing written to disallow it - perhaps she needs to read her own Malibu Land Use Plan a bit more closely - and she abstained. The other Council member who voted a loud and resounding "NO!" was entirely against the philosophy of the prevailing three, that painted the property owner more as a victim than a violator. Correctly he saw this as a public rights issue and rightly saw this as a case of a private property owner's actions negatively impacting the public good and public resources.

Is there nothing that can be done to at least have the homebuilder modify the plan so that this home, over double the size of neighboring homes, protects the public scenic view from a public road?

**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: December 17, 2013

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

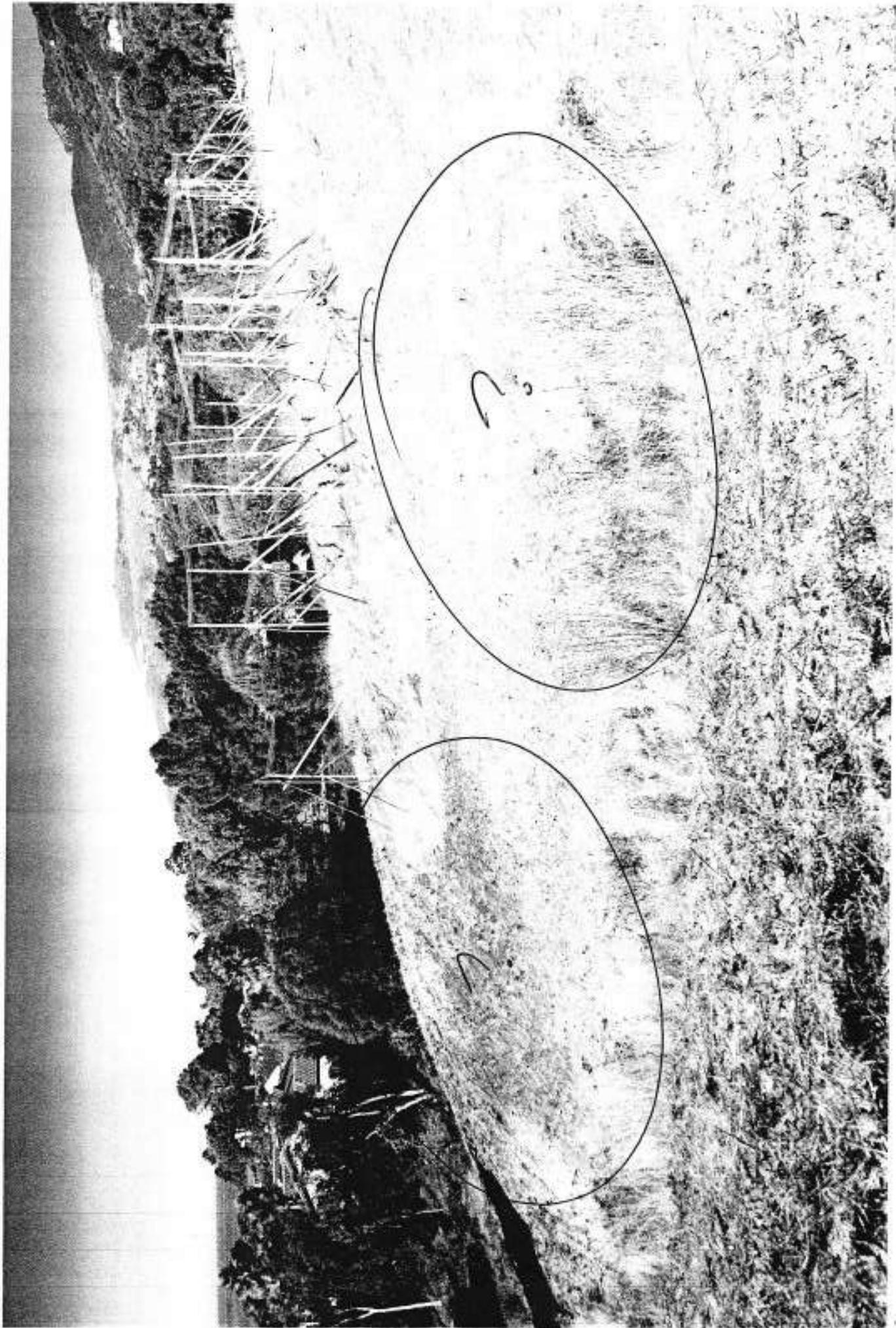
**Section VI. Agent Authorization**

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

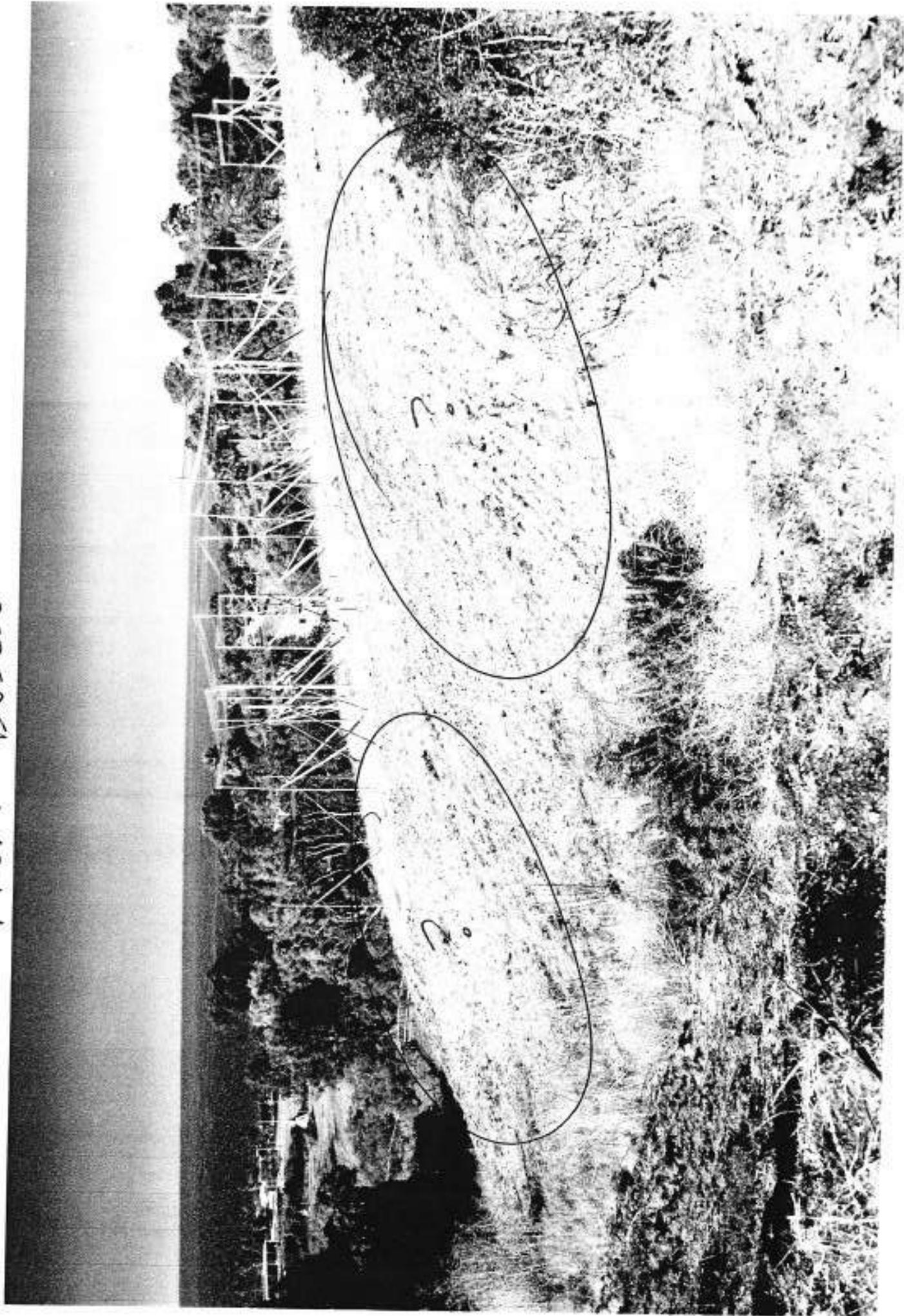
\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

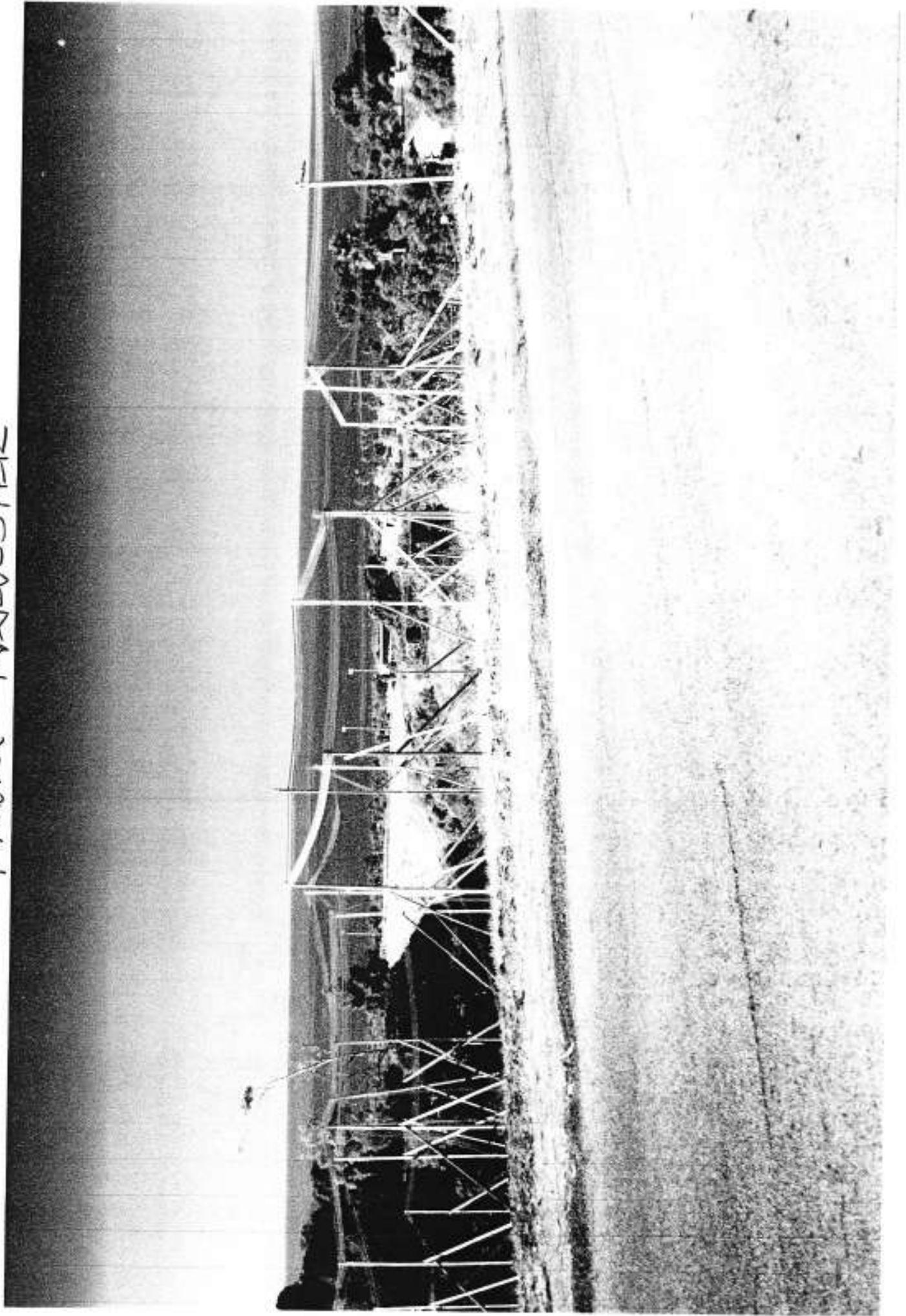
FROM Busch



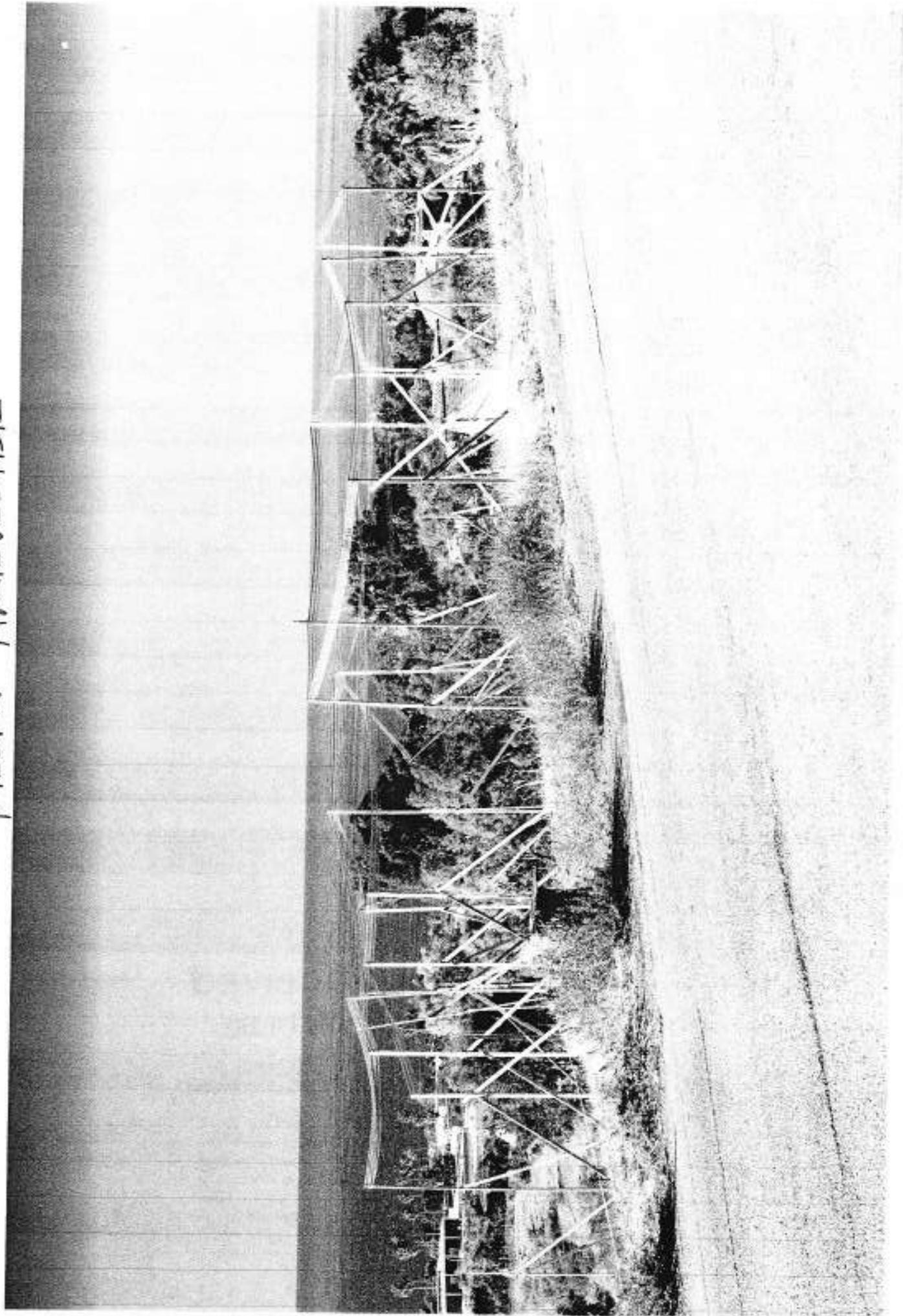
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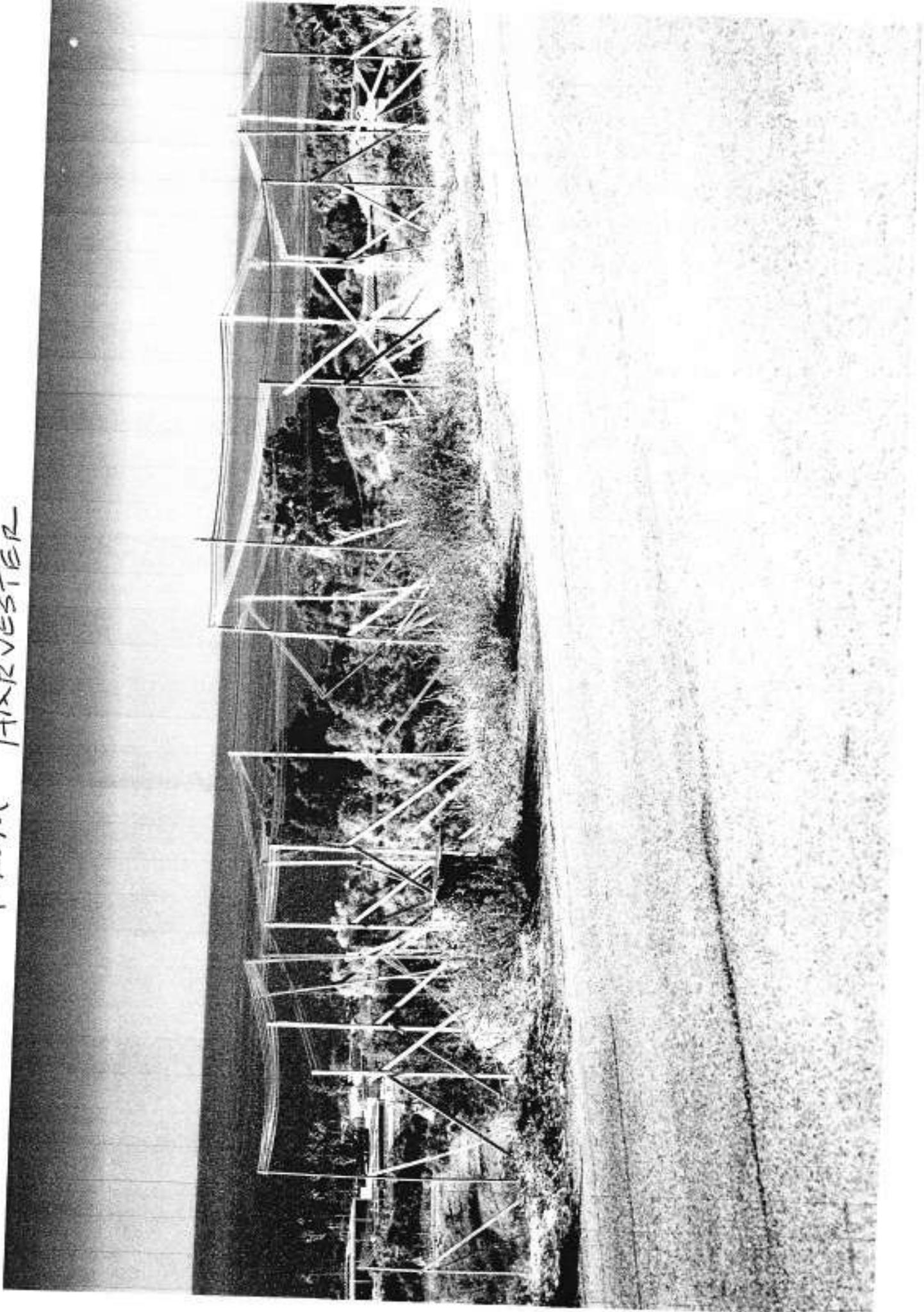
FROM HARVESTER



FROM HARVESTER



From HARVESTER



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

JAN 08 2014



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: Carol Bretonne

Mailing Address: 5765 Busch Drive

City: Malibu

Zip Code: 90265

Phone: 310-2592224

### SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

SFR on private lot

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

29600 Harvester Road, Malibu, CA 90265

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

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

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

#### TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

**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: December 9, 2013

7. Local government's file number (if any): Appeal No. 13-006

**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:

Iraj and Mahvash Safapour, c/o Jay Falamaki 10951 Pico Blvd #326, Los Angeles, CA 90064

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) Dr. Raymond Hall. drhall@pillo1.com

(2) Neighbor, Danusia. danusian1@gmail.com

(3) Michael Plen. plencat@aol.com

(4) Brian and Jennifer Pietro, brianpietro@mac.com

## 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.

The Malibu City Council approval of the construction at 29600 Harvester Avenue in Malibu is in opposition to the Coastal Act and the Malibu LUP and should be reversed by the California Coastal Commission.

The building site is located in the most visible portion of the building site, and in no way protects public view and along a dedicated public trail (Busch Drive) that leads to the trailhead (Zuma Ridge Trail) at the end of Busch Dr. The Malibu City Council has stated that the builder is entitled to build "by right" up to 18 feet, regardless of the environmental impacts of the .

Why should this property owner be allowed to defy the Land Use Plan and Coastal Act and why is it not important to preserve our natural public resources and minimizing development impact? The property i has a stream on it that the City Council has arbitrarily decided is a "degraded water course", although the Coastal Commission ruled in 2008 that the stream be restored as a condition of building on the property. This has not been done. Why does the City have the right to redefine what is clearly a riparian blue line stream, and now call it a "drainage course"? The City is playing on the side of the developer by defining it as a "degraded water course" rather than a stream, or a riparian stream.. This CAN be mitigated, but the property owner is not being forced to by the Malibu City Council.

The Council members stated that even if the property is ESHA the property owner was "guaranteed" the right to build his 18 foot height, and 10,000 square feet of footprint (including front driveway area and rear patio, swimming pool area) on the highest part of the land, which was created largely by the importing of fill dirt years ago. It has been given variances for the ESHA and blue line streams that border the building pad area on both sides.

This home could be moved to a lower position on the property so it is not blocking panoramic public views, and it could be downsized so as to not be so huge, or it could be entirely redesigned to be much more in keeping with the surrounding homes and to blends into the contour of the downslope much better. The property owner has already received variances for being too close to ESHA and blue line stream areas., which allow him to build a home of this size and mass.

The Malibu City Council members stated that there were no laws in place to protect the public view or to enforce "neighborhood character" generally agreed the home was too large, and generally inappropriate for the immediate neighborhood, positioned where it is.

This lot has a long and troubled history, beginning with illegal importation of fill dirt many years ago,

which after much stalling and threat of litigation from the State, was partially removed. The property owner then successfully negotiated with the City to keep some of the fill dirt in place in exchange for returning the riparian stream back to its original condition. When the new owner arrived and proposed his building plans, which award him variances and the "guaranteed right" to build, he also was able to get the blue-line stream magically transformed into a "drainage course" by the Malibu City Staff. The property owner is enjoying a City Staff redefinition of this "watercourse" to a "drainage course" or "runoff culvert" as once described by property owner's geologist to the Planning Comm.

These positions and findings by the prevailing three Council members run totally contrary to language found in the Coastal Act or in the adopted Local Plan. For example, Section 30240 Environmentally Sensitive Habitat Areas; Adjacent Developments "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas"

In conclusion, the developer's rights here seem to be trumping the public's rights, the rights of the natural environment, and the rights of the public to trust the definition of what constitutes ESHA, riparian streams, and blue-line streams... and I am also concerned that the City Staff has exerted an enormous amount of power and influence on these matters.

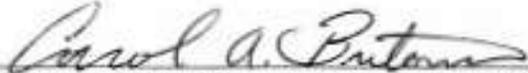
Is there nothing that can be done by the California Coastal Commission to help correct these seeming violations of California Law designed to protect our precious coastal resources? We feel that the house can be downsized and moved towards the beach per their own overlay drawings as per their allowed area to build.

Thank you.

**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: December 17, 2013

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

**Section VI. Agent Authorization**

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

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4416  
VOICE (562) 590-5071 FAX (562) 591-5084

4-MAL-13-0911

Received

DEC 26 2013



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: RAYMOND F. HALL  
Mailing Address: 5770 BUSCH DRIVE  
City: MALIBU, CA Zip Code: 90265 Phone: 310 621-8333

SECTION II. Decision Being Appealed

1. Name of local/port government: MALIBU PLANNING COMMISSION

2. Brief description of development being appealed:

I WOULD APPEAL THE BUILDING LOCATION - WHICH IS SAID TO BE A 7500 SQ FT HOUSE, FENILING, SWANSEY, POOL, ETC. THE LOCATION OF THE PROPOSED HOUSE WILL OBSCURE BLUE WATER AND COASTAL VIEWS THAT RESIDENTS, BIRDS (CALLIST), HIKERS & MOTORIST ENJOY ON A DAILY BASIS.

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

29600 HARVESTER RD, MALIBU, CA 90265  
PARCEL IS ON WEST CORNER OF BUSCH & HARVESTER

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

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

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

SECTION IV. Reasons Supporting This Appeal

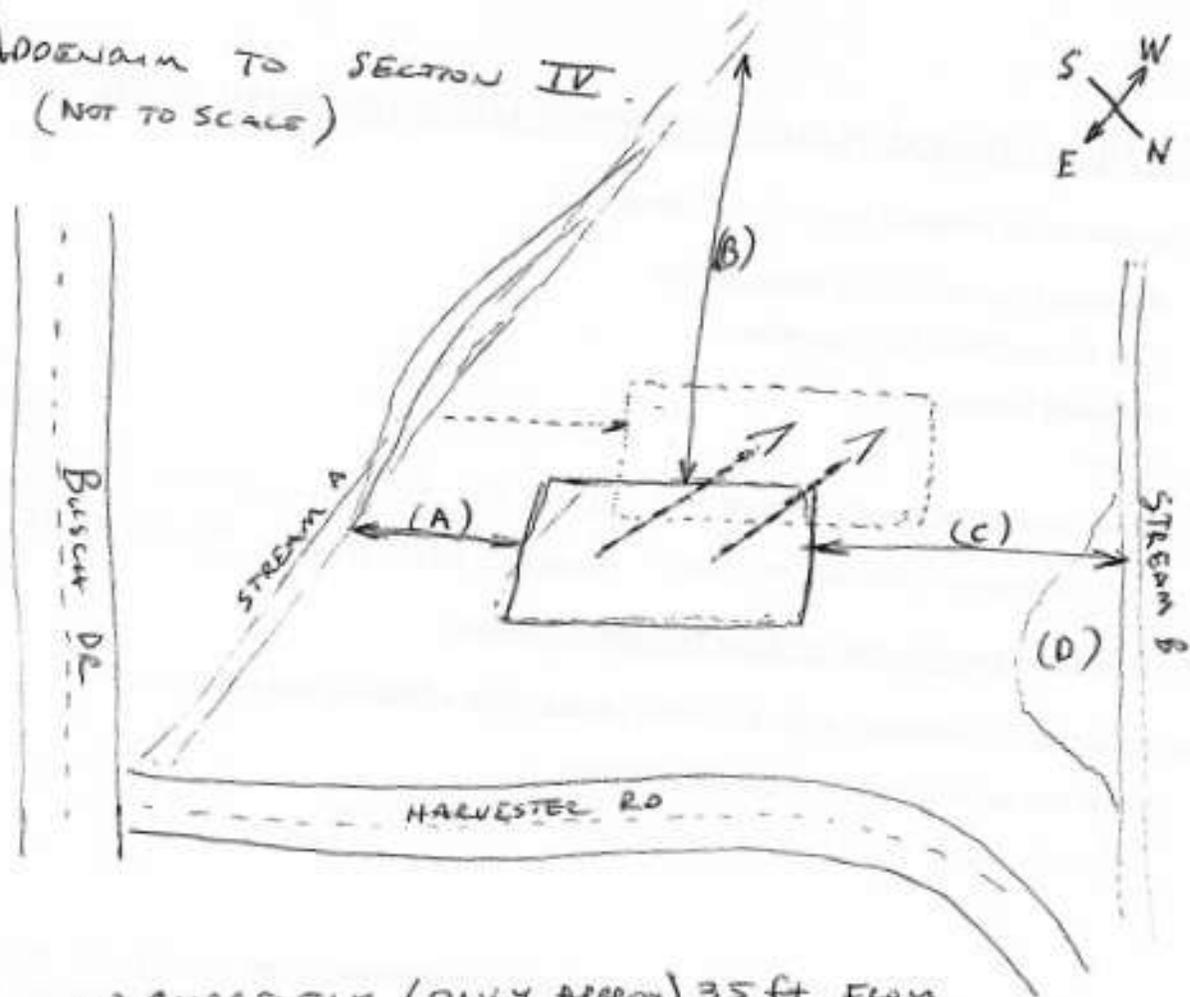
PLEASE NOTE:

- 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.

1) WE REALIZE THAT THE PREVIOUS OWNER OF THIS PROPERTY HAD PENALTIES AND FINES FOR ILLEGAL DUMPING AND GRADING OF SOIL, EFFECTING THE STREAMS THAT BORDER PROPERTY. I WOULD LIKE TO ASK CAL COASTAL COMMISSION TO CONFIRM THAT RECTIFICATION OF ANY AND ALL INFRACTIONS HAS OCCURRED ~~IN~~ IN ACCORDANCE TO THE CAL COASTAL COMMISSIONS GUIDELINES.

2) IN REGARDS TO THE LOCATION OF THE HOUSE ON THIS (WHAT I WOULD APPROXIMATE TO BE) A 4 ACRE PLOT OF LAND, AND TO CONFORM TO MAJIBU ~~CITY'S~~ CITY'S AND COSTAL'S ORDINANCE TO LOCATE THE HOUSE ON THE PROPERTY THAT WOULD MITAGE THE VISUAL IMPACT FROM ADJACENT HOMES AND SCENIC ROADS, WE FIRMLY BELIEVE THAT THE HOUSE, GARAGE, ETC COULD BE MOVED 10 FEET DOWN AND TO THE RIGHT (WEST) WHICH WOULD BE A SIGNIFICANTLY MORE CENTRAL LOCATION BETWEEN THE STREAMS AND WOULD REMOVE THE STRUCTURES FROM THE BLUE WATER/OCEAN VIEW IMPERANCE THAT THE PROPOSED SITE CURRENTLY HAS. I HAVE ATTACHED THE FOLLOWING PAGE AS A VISUAL DESCRIPTION OF WHAT I AM RECOMMENDING =

ADDENDUM TO SECTION IV.  
(NOT TO SCALE)



- A) CURRENTLY (ONLY APPROX) 35 ft FROM STREAM A. THIS SHOULD BE MOVED NW 20 FT TO PLACE LOT HALF WAY BETWEEN PROTECTED STREAMS
- B) THE APPLICANT COULD MOVE STRUCTURE DOWN HILL (WHICH HAS A VERY GRADUAL SLOPE) LOWERING THE VISUAL IMPACT FROM THE SCENIC ROAD
- C) THERE IS CURRENTLY APPROX 150 ft of SPACE TO MOVE HOUSE TO THE RIGHT (SEE DOTTED LINES) WHICH WOULD NOT ONLY PROTECT OUR VIEWS, BUT ALSO THE WATERWAY (STREAM A). THE CITY PLANS APPEAR AS IF THERE IS "NATIVE" BRUSH (D) THAT THE APPLICANT IS ATTEMPTING TO AVOID BY [CONVENIENTLY] BUILDING THE HOUSE ON THE TOP OF THE PLATFORM BUILDING SITE. I WALK IN THIS AREA DAILY AND HAVE NO IDEA WHAT ~~VEGETATION~~ "NATIVE" BRUSH THE PLAN IS REFERRING TO.

SUMMARY: THE PLANNING CREATES THE <sup>ILLUSION</sup> ~~PERCEPTION~~ THAT THE SITE IS IN THE MIDDLE OF THE PROPERTY, EQUIPASTANT FROM THE STREAMS; WHICH IT IS ABSOLUTELY NOT. THE APPLICANT PLANS TO BUILD A VERY LARGE HOUSE ON THE HIGHEST PORTION OF THE LAND POSSIBLE, CREATING THE BEST OCEAN VIEW POSSIBLE FOR HIMSELF BUT VIRTUALLY DESTROYING IT FOR EVERYONE ELSE. PLEASE HELP US PROTECT OUR RIGHTS AS CITIZENS AND PROPERTY OWNERS IN THIS PREVIOUS AREA OF SCENIC COASTAL VIEWS.

**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: DEC 09, 2013

7. Local government's file number (if any): COASTAL DEW PERMIT # 05-186

**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:

I DO NOT HAVE THIS INFORMATION

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) OWNER OF PROPERTY - ADDRESS UNKNOWN

(2)

(3)

(4)

**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: 12/20/13

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

**Section VI. Agent Authorization**

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

\_\_\_\_\_  
Signature of Appellant(s)

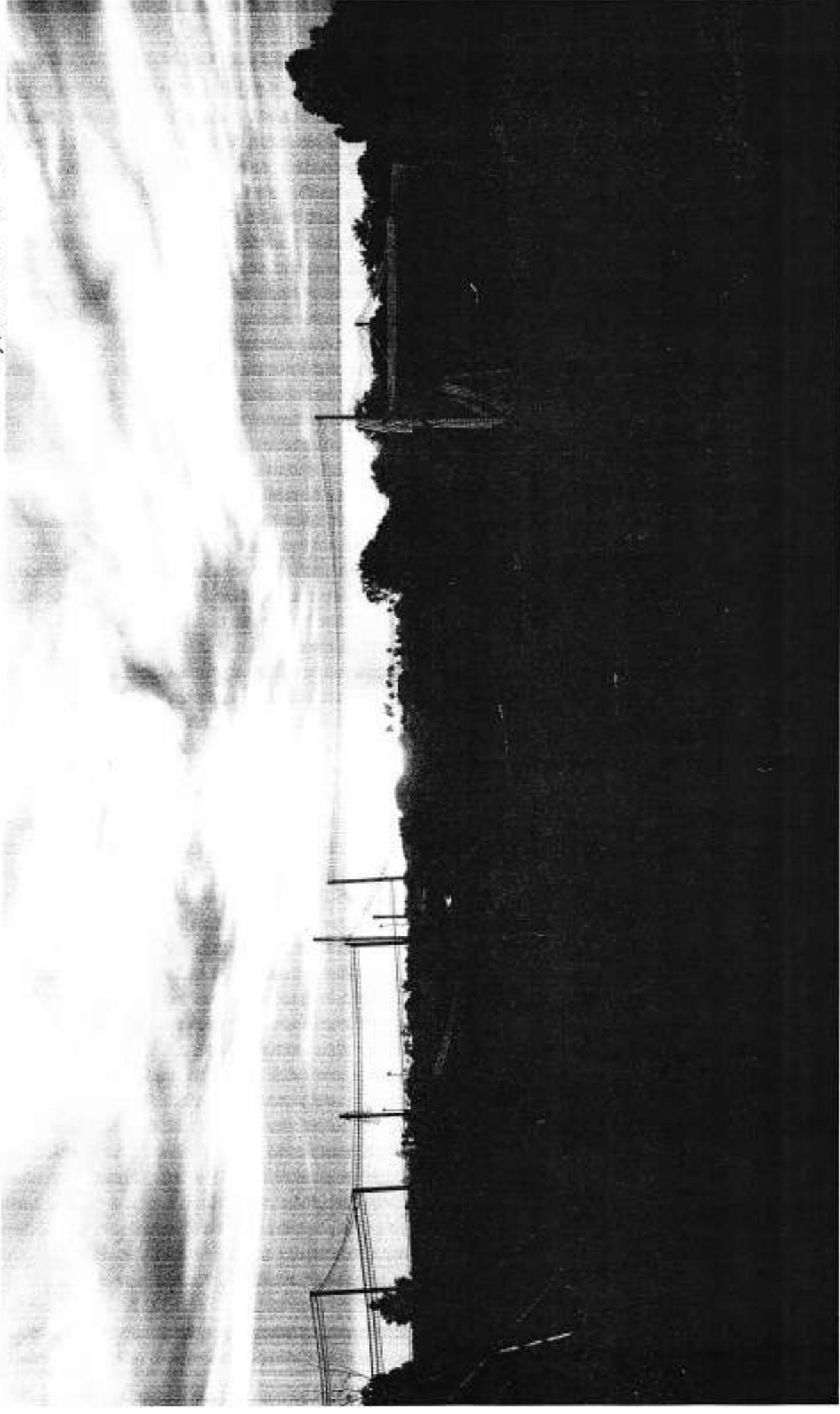
Date: \_\_\_\_\_

Home 1400 15  
ADDRESS ON  
FARMHOUSE OR VA  
EMAIL/INTERVIEW



DEAN VIEW OBSTRUCTION FROM SCENIC ROAD IN MICH - 29600 HARRINGTON NEAR  
INTERSECTION OF BUSCH RD / HARRINGTON  
PICTURE TAKEN FROM ROAD (20)

Aerial Photo is  
AVAILABLE ON  
FEATURES OR VIA  
INTERNET IF NEEDED -



29600 Haverster Road - Photo Taken 12-15-13 Near Intersection of Susca Rr

Haverster Rd  
(.)

**CALIFORNIA COASTAL COMMISSION**

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

**Received**

JAN 03 2014

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: Michael Plen

Mailing Address: 29623 Harvester Rd

City: Malibu

Zip Code: 90265

Phone: 310-924-4998

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Malibu

2. Brief description of development being appealed:

SFR on private lot

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

29600 Harvester Road, Malibu, CA 90265

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

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

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

**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: December 9, 2013

7. Local government's file number (if any): Appeal No. 13-006

**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:

Iraj and Mahvash Safapour, c/o Jay Falamaki 10951 Pico Blvd #326, Los Angeles, CA 90064

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) Dr. Raymond Hall, drhall@pilot.com

(2) Neighbor, Danusia, danusianl@gmail.com

(3) Carol Brettone, 4malibugal@gmail.com

(4) Brian and Jennifer Pietro, brianpietro@mac.com

## 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.

The Malibu City Council approval of the construction at 29600 Harvester Avenue in Malibu is in opposition to the Coastal Act and the Malibu LUP and should be reversed by the California Coastal Commission.

The building site is located in the most visible portion of the building site, and in no way protects public view and along a dedicated public trail (Busch Drive) that leads to the trailhead (Zuma Ridge Trail) at the end of Busch Dr. The Malibu City Council has stated that the builder is entitled to build "by right" up to 18 feet, regardless of the environmental impacts of the .

This property has gone through so many changes in 20+ years from the dirt dumping to physically altering the land, to ownership changes, that have muddied the waters of a clear view now. As a group, we never were allowed to make our own geological study. As evidenced by the lights being put up at the school, this corner is a very impactful view to the community. The lady on the board shrugged it off as an unimportant place of view. I watch people daily cherish this view as what they have know as the beauty of Malibu. Even when asked if the property could face the "100 year storm", the man for the council was very skeptical. There has never any discussion of compromise... a smaller home set further down the hill and to protect the view and land issues and have all around be happy.

If it feels like it's gone on too long and we're still debating its legitimacy, it's only because we feel there is legitimate reason to speak out. The Coastal Commission codes that that apply to this are crucial that we ask they be observed and ask for reformation.

In that night of voting, 1 person abstained and another voted no, showing a sincere concern that this land development had issues to be re-evaluated correctly. One lady on the board later said it was awful that this property is going through this back and forth when it really needs a MUCH clearer evaluation. Not a slam dunk board meeting!!

Why should this property owner be allowed to defy the Land Use Plan and Coastal Act and why is it not important to preserve our natural public resources and minimizing development impact? The property has a stream on it that the City Council has arbitrarily decided is a "degraded water course", although the Coastal Commission ruled in 2008 that the stream be restored as a condition of building on the property. This has not been done. Why does the City have the right to redefine what is clearly a riparian blue line stream, and now call it a "drainage course"? The City is playing on the side of the developer by defining it as a "degraded water course" rather than a stream, or a riparian stream.. This CAN be mitigated, but the property owner is not being forced to by the Malibu City Council.

The Council members stated that even if the property is ESHA the property owner was "guaranteed" the right to build his 18 foot height, and 10,000 square feet of footprint (including front driveway area and rear patio, swimming pool area) on the highest part of the land, which was created largely by the importing of fill dirt years ago. It has been given variances for the ESHA and blue line streams that border the building pad area on both sides.

This home could be moved to a lower position on the property so it is not blocking panoramic public views, and it could be downsized so as to not be so huge, or it could be entirely redesigned to be much more in keeping with the surrounding homes and to blends into the contour of the downslope much better. The property owner has already received variances for being too close to ESHA and blue line stream areas., which allow him to build a home of this size and mass.

The Malibu City Council members stated that there were not laws in place to protect the public view or to enforce "neighborhood character" generally agreed the home was too large, and generally inappropriate for the immediate neighborhood, positioned where it is.

This lot has a long and troubled history, beginning with illegal importation of fill dirt many years ago, which after much stalling and threat of litigation from the State, was partially removed. The property owner then successfully negotiated with the City to keep some of the fill dirt in place in exchange for returning the riparian stream back to its original condition. When the new owner arrived and proposed his building plans, which award him variances and the "guaranteed right" to build, he also was able to get the blueline stream magically transformed into a "drainage course" by the Malibu City Staff. The property owner is enjoying a City Staff redefinition of this "watercourse" to a "drainage course" or "runoff culvert" as once described by property owner's geologist to the Planning Comm.

These positions and findings by the prevailing three Council members run totally contrary to language found in the Coastal Act or in the adopted Local Plan. For example, Section 30240 Environmentally Sensitive Habitat Areas; Adjacent Developments "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas"

In conclusion, the developer's rights here seem to be trumping the public's rights, the rights of the natural environment, and the rights of the public to trust the definition of what constitutes ESHA, riparian streams, and blueline streams.... and I am also concerned that the City Staff has exerted an enormous amount of power and influence on these matters.

Is there nothing that can be done by the California Coastal Commission to help correct these seeming violations of California Law designed to protect our precious coastal resources?

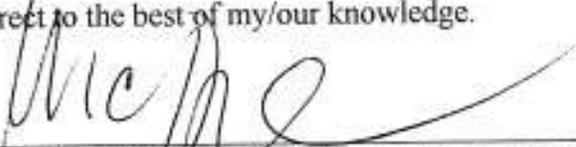
This is the last gate for which this beautiful area will have to pass before it moves on to something that will change all around us forever. Please stop and take a breath and look at your laws, rules and codes and decide that this needs more discussion/change and further thinking.

Thank you  
Michael Plen

**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.

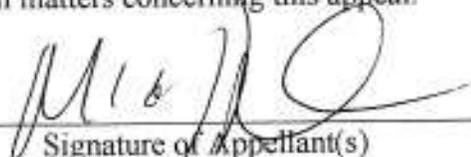
  
\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: December 17, 2013

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

**Section VI. Agent Authorization**

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

  
\_\_\_\_\_  
Signature of Appellant(s)

Date: 1/2/14



Project Location

Exhibit 7  
Aerial Photographs  
Appeal No. A-4-MAL-13-0257

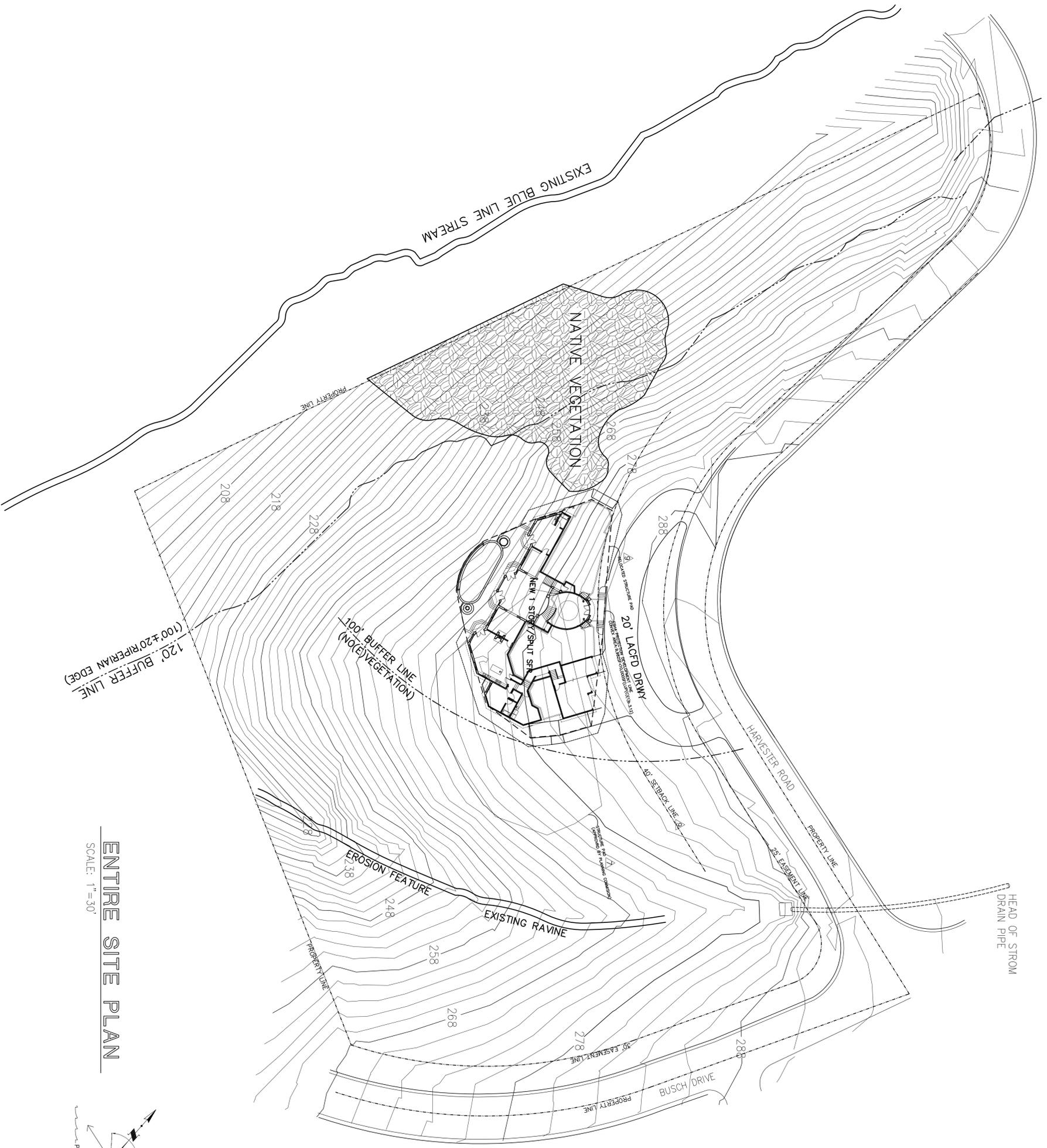
Proposed Offer to Dedicate Trail



Approximate Residential Development Location

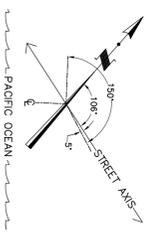






**ENTIRE SITE PLAN**

SCALE: 1"=30'



DATE	REVISION
09/03	1ST SUB.
10/05	PLANNING
09/06	ESHA
08/07	ERR. REV.
09/08	PLANNING
12/09	RESUBMIT
06/12	RESUBMIT
10/12	RESUBMIT
06/13	GRADING
08/14	COASTAL

DRAWN: MF  
 CHECKED: JF  
 DATE: AUG 2014  
 SCALE: A.N.

**PROJECT:** SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
**LOCATION:** 29600 HARVESTER ROAD  
 MALIBU, CA

DRAWING TITLE  
**ENTIRE SITE PLAN & STREAMS LINES**

JOB NO. 290101

**A-1.1**

OF SHEETS

**Jay Palamaki**  
**design studio**  
 836 S. BERRY DR., #201, LA, CA 90009  
 TEL: (424) 281-2255 FAX: (424) 204-6014  
 E-MAIL: JAY@PALAMAKI.COM

**FIRE DEPARTMENT NOTES:**

REQUIRED FIRE FLOW IS BASED ON THE FOLLOWING CALCULATION:

BASIC FIRE FLOW: 2500 GPM  
 REDUCTION FOR FIRE SPRINKLERS AND/OR CONSTRUCTION TYPE : -1250 GPM  
 REQUIRED FIRE HYDRANT PRESSURE : 1250 GPM AT 20psi  
 FOR 2 HR. DURATION

\*\*\*- THE INSPECTION, HYDROSTATIC TEST & FLUSHING OF THE FIRE SPRINKLER PIPING SHALL BE WITNESSED BY AN AUTHORIZED FIRE DEPARTMENT REPRESENTATIVE. FIRE CODE 901.6

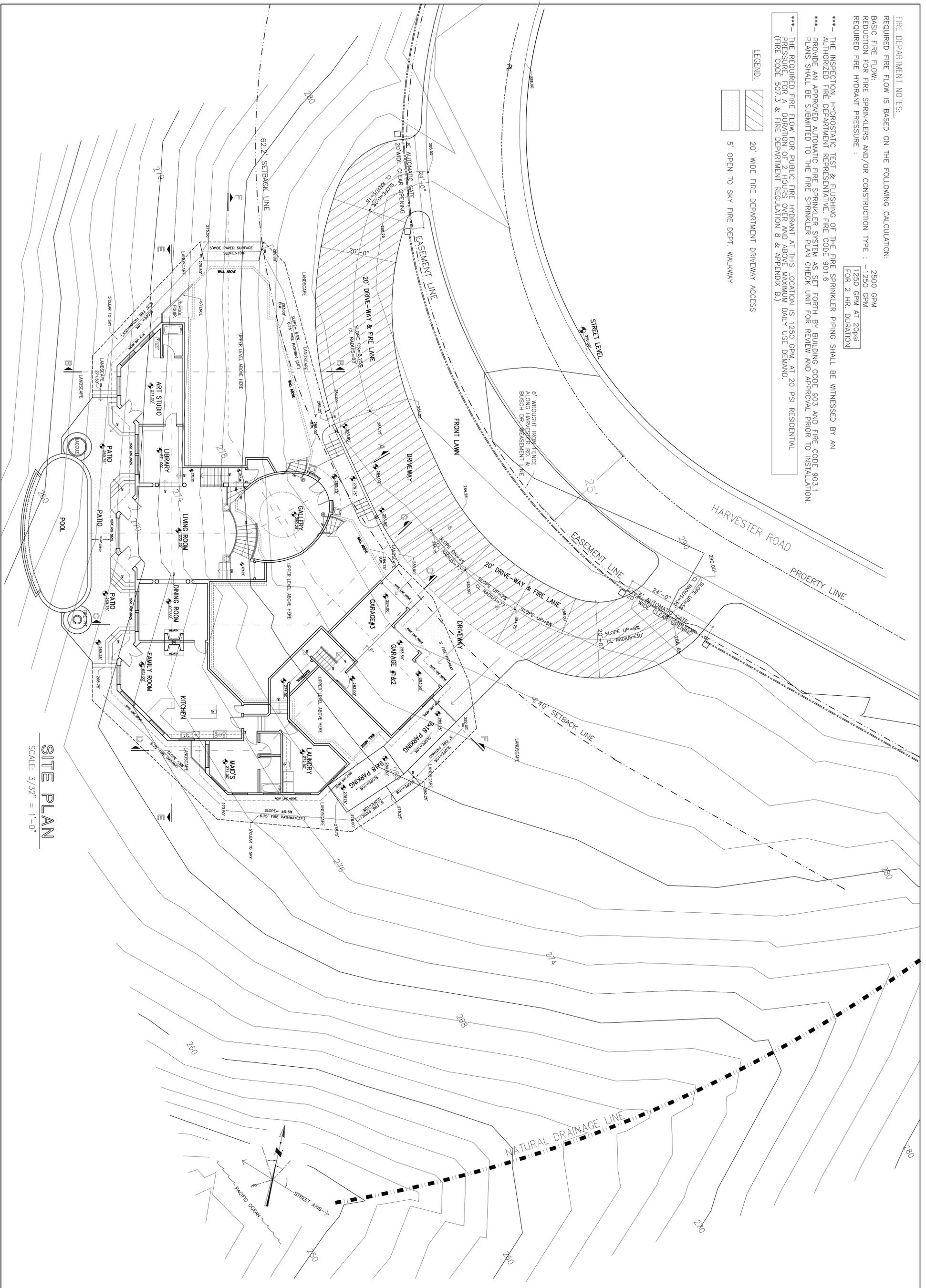
\*\*\*- PROVIDE AN APPROVED AUTOMATIC FIRE SPRINKLER SYSTEM AS SET FORTH BY BUILDING CODE 903 AND FIRE CODE 903.1 PLANS SHALL BE SUBMITTED TO THE FIRE SPRINKLER PLAN CHECK UNIT FOR REVIEW AND APPROVAL PRIOR TO INSTALLATION.

\*\*\*- THE REQUIRED FIRE FLOW FOR PUBLIC FIRE HYDRANT AT THIS LOCATION IS 1250 GPM, AT 20 PSI RESIDENTIAL (FIRE CODE 507.3 & FIRE DEPARTMENT REGULATION 8 & APPENDIX B.)

**LEGEND:**

20' WIDE FIRE DEPARTMENT DRIVEWAY ACCESS

5' OPEN TO SKY FIRE DEPT. WALKWAY



**SITE PLAN**  
 SCALE: 3/32" = 1'-0"



DATE	REVISION
09/03	1ST SUB.
10/05	PLANNING
09/06	ESHA
08/07	ERB REV.
09/08	PLANNING
12/09	RESUBMIT
06/12	RESUBMIT
10/12	RESUBMIT
06/13	GRADING
08/14	COASTAL

**PROJECT:** SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE

**LOCATION:** 29600 HARVESTER ROAD  
 MALIBU, CA

**DRAWN:** MF  
**CHECKED:** JF  
**DATE:** AUG 2014  
**SCALE:** A.N.

**DRAWING TITLE**  
 SITE PLAN

**JOB NO.:** 290101

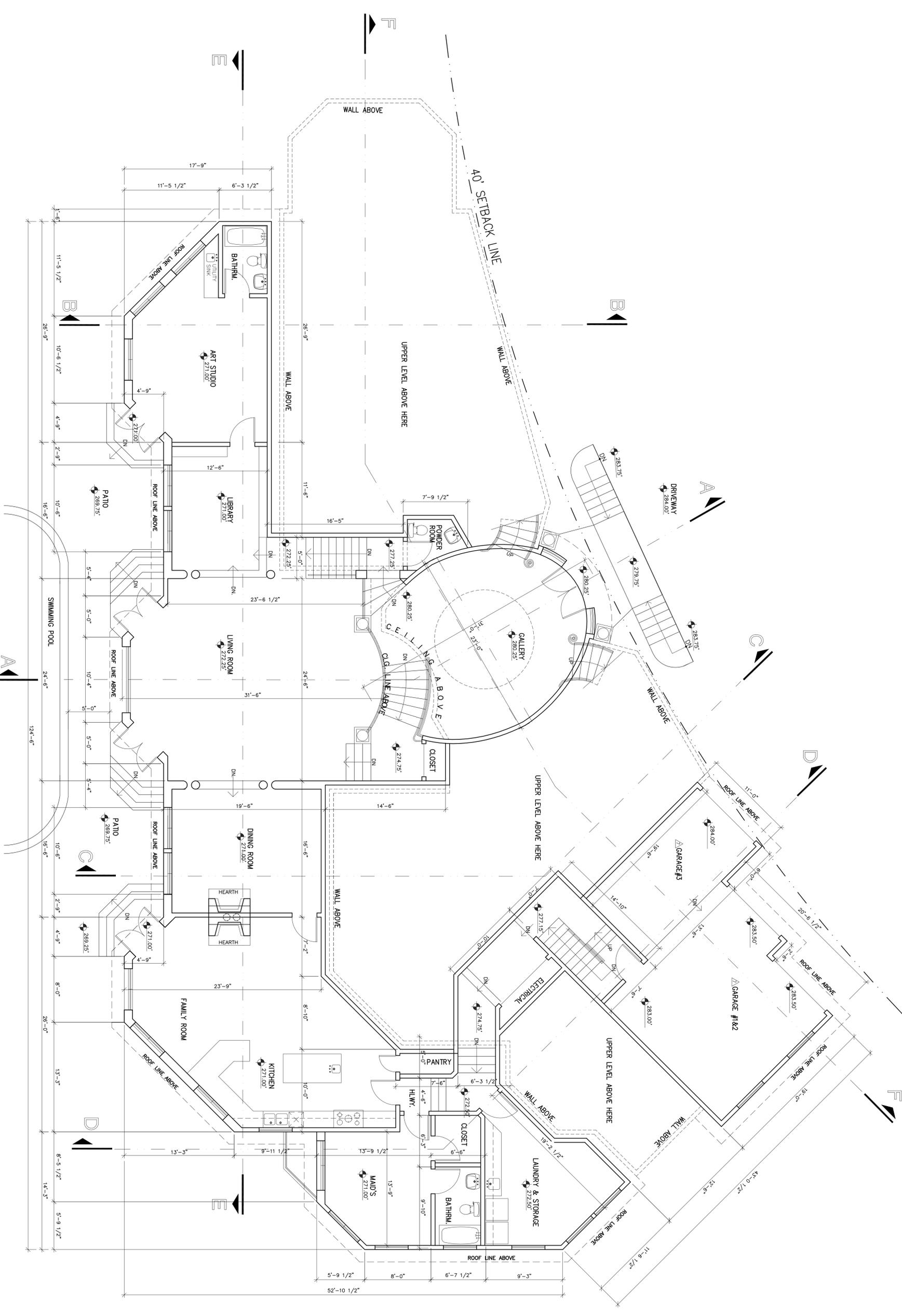
**A-2**

OF \_\_\_\_\_ SHEETS

**Jay Palamaki**

**design studio**

836 S. BROAD DR., 201, LA, CA 90009  
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 E-MAIL: JAV@PALAMAKI.COM



**LOWER LEVEL FLOOR PLAN**  
SCALE: 3/16" = 1'-0"

**NOTE:**  
 ▲ ELEVATION POINTS ARE ACTUAL HEIGHT IN FEET FROM SEE LEVEL.  
 ▽ ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION & ARE BELOW 18'-0"

DATE	REVISION
09/03	1ST SUB. ▽
10/05	PLANNING ▽
09/06	ESHA ▽
08/07	ERR. REV. ▽
09/08	PLANNING ▽
12/09	RESUBMIT ▽
06/12	RESUBMIT ▽
10/12	RESUBMIT ▽
06/13	GRADING ▽
08/14	COASTAL ▽

PROJECT: SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
 LOCATION: 29600 HARVESTER ROAD  
 MALIBU, CA

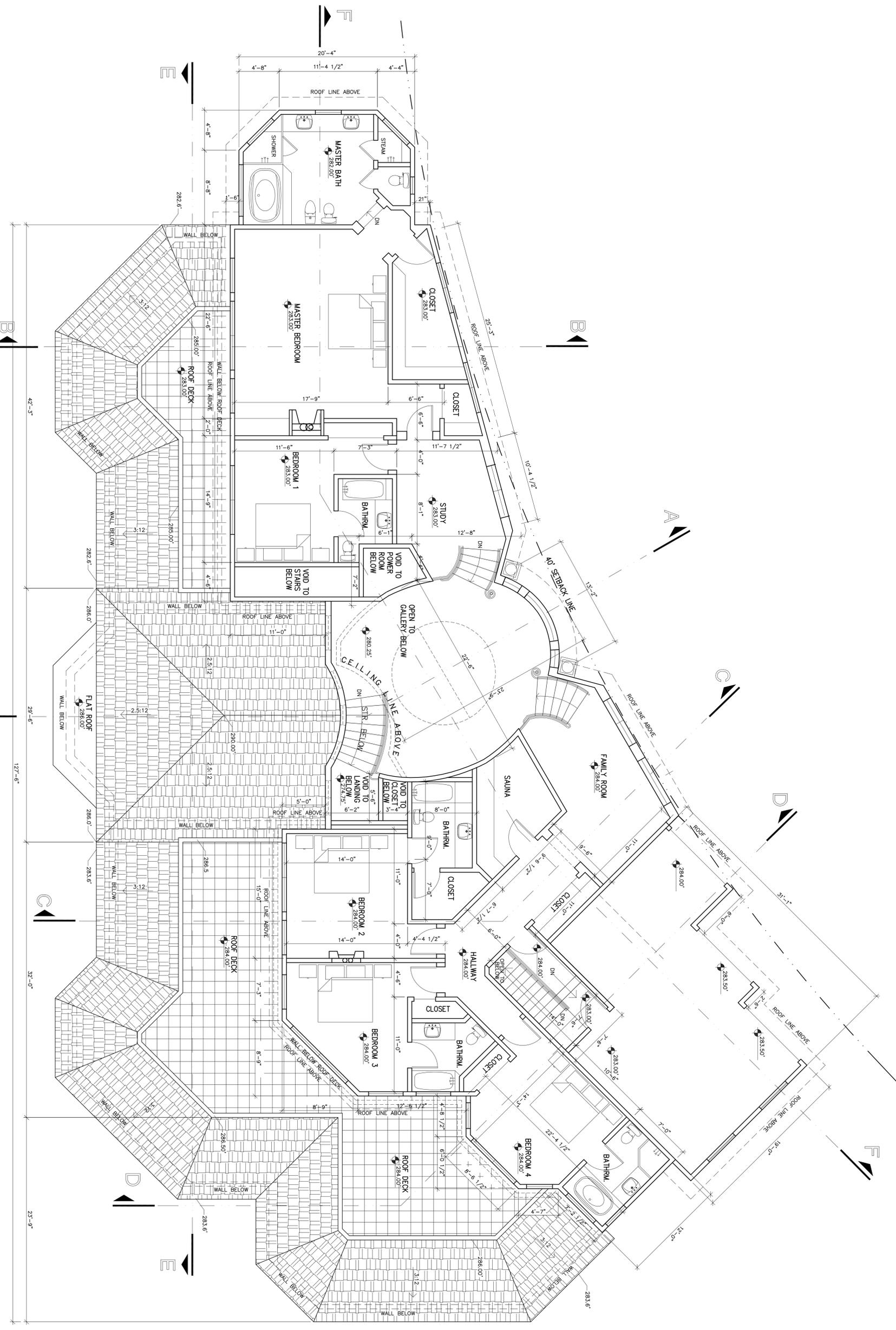
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 CHECKED: JF  
 DATE: AUG 2014  
 SCALE: A.N.

DRAWING TITLE: LOWER LEVEL FLOOR PLAN  
 JOB NO.: 290101

**A-3**

OF \_\_\_\_\_ SHEETS

**Jay Palamaki**  
**Design studio**  
 836 S. BROAD DR., #201, LA, CA 90009  
 TEL: (424) 281-2255 FAX: (424) 204-6014  
 E-MAIL: JAY@PALAMAKI.COM



**UPPER LEVEL FLOOR PLAN**

SCALE: 3/16" = 1'-0"

**NOTE:**  
 6. ELEVATION POINTS ARE ACTUAL HEIGHT IN FEET FROM SEE LEVEL.  
 9. ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION & ARE BELOW 18'-0"

**Jay Palamaki**  
**design studio**  
 836 S. BERRY DR., #201, LA, CA 90009  
 TEL: (424) 251-2255 FAX: (424) 204-6014  
 E-MAIL: JAY@PALAMAKI.COM

**PROJECT:** SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
**LOCATION:** 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
09/03	1ST SUB.
10/05	PLANNING
09/06	ESHA
08/07	ERR. REV.
09/08	PLANNING
12/09	RESUBMIT
06/12	RESUBMIT
06/13	GRADING
08/14	COASTAL

**DRAWN:** MF  
**CHECKED:** JF  
**DATE:** AUG 2014  
**SCALE:** A.N.

**DRAWING TITLE**  
 UPPER LEVEL FLOOR PLAN

**JOB NO.** 290101

**A-4**

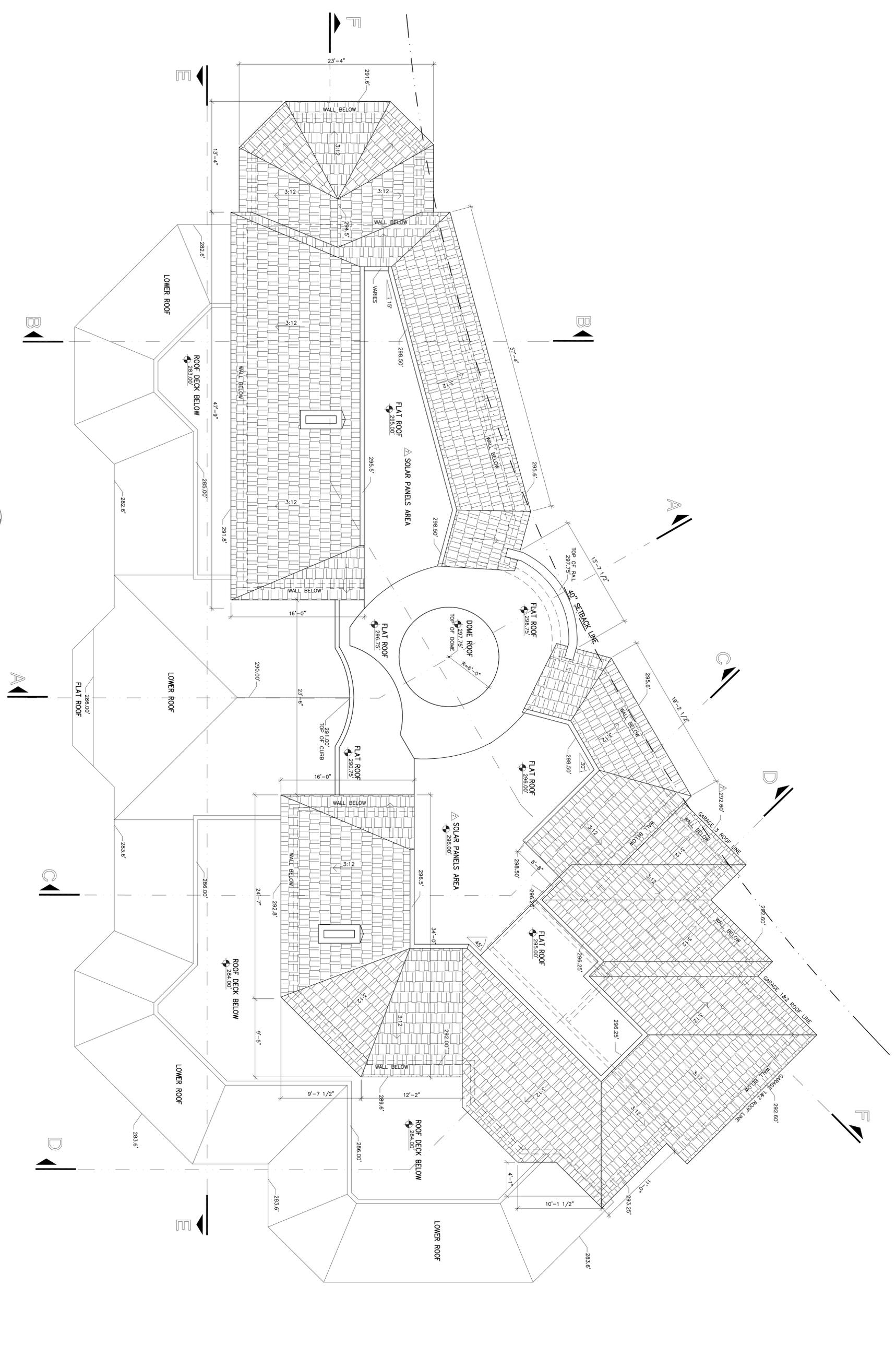
OF \_\_\_\_\_ SHEETS

**PROJECT:** SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
**LOCATION:** 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
09/03	1ST SUB.
10/05	PLANNING
09/06	ESHA
08/07	ERR. REV.
09/08	PLANNING
12/09	RESUBMIT
06/12	RESUBMIT
10/12	GRADING
06/13	COASTAL
08/14	COASTAL

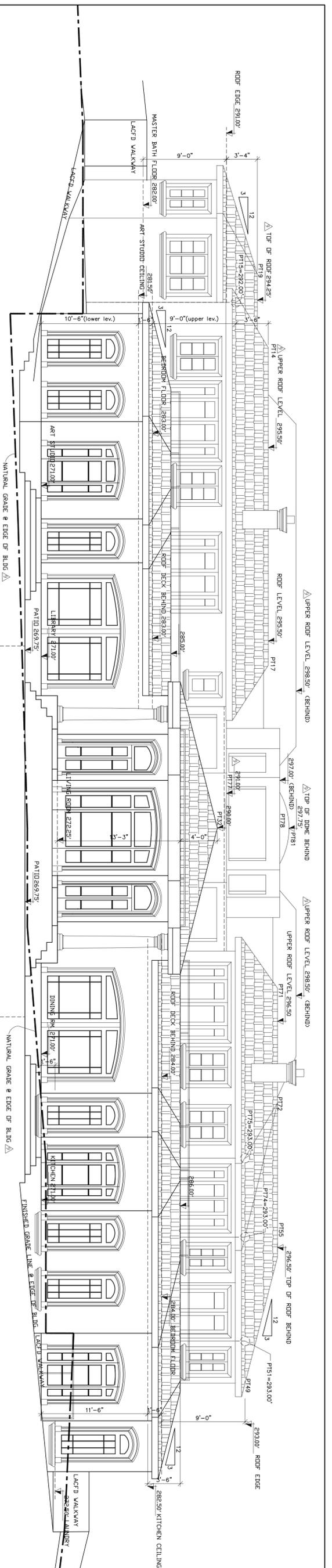
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**CHECKED:** JF  
**DATE:** AUG 2014  
**SCALE:** A.N.

**DRAWING TITLE**  
 ROOF PLAN  
**JOB NO.** 290101



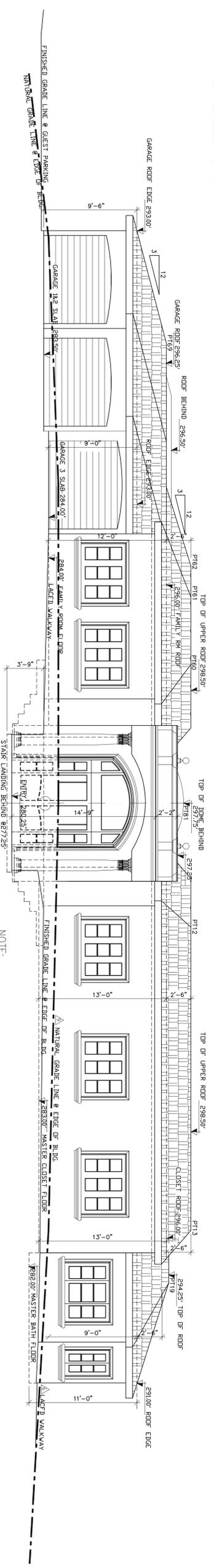

**ROOF PLAN**  
 SCALE: 3/16" = 1'-0"

**NOTE:**  
 6. ELEVATION POINTS ARE ACTUAL HEIGHT IN FEET FROM SEE LEVEL.  
 9. ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION & ARE BELOW 18'-0".



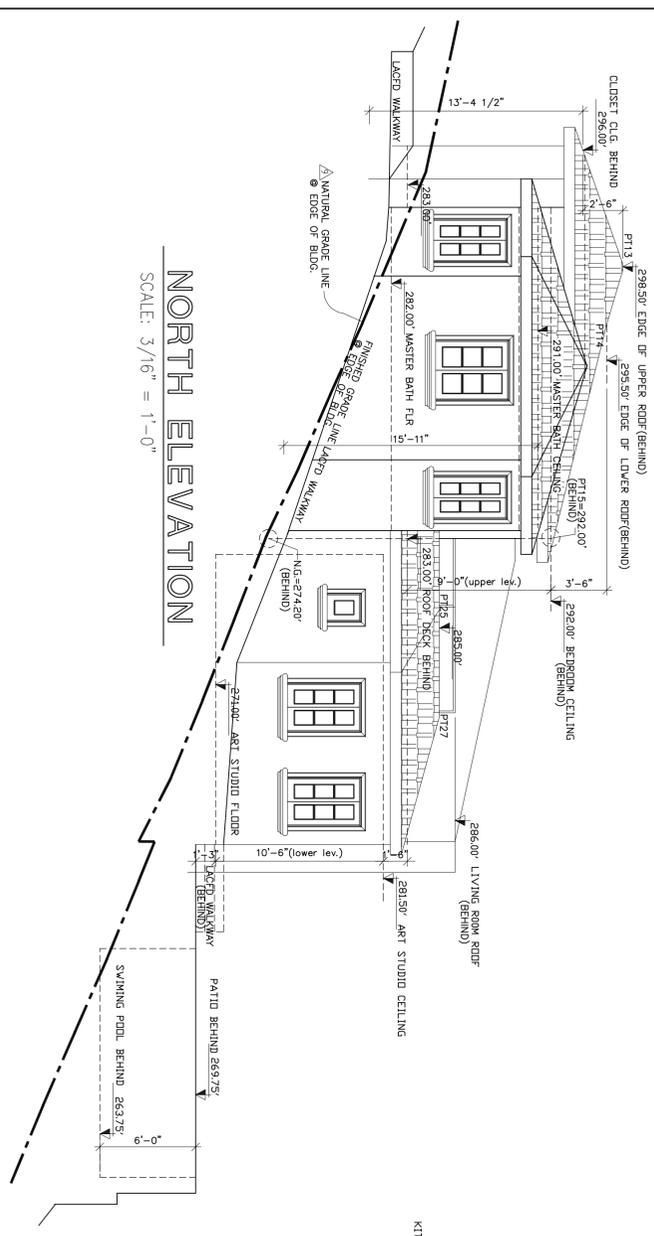
NOTE:  
 5 ALL ELEVATIONS ARE EQUAL OR BELOW 18'-0"  
 6 FOR EACH ELEVATION POINT (P1#) PLEASE SEE PLOT PLAN A-1  
 7 ELEVATION POINT ARE ACTUAL HEIGHT IN FEET FROM SEA LEVEL  
 8 ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION  
 9 & ARE BELOW 18'-0".

**WEST ELEVATION**  
 SCALE: 3/16" = 1'-0"

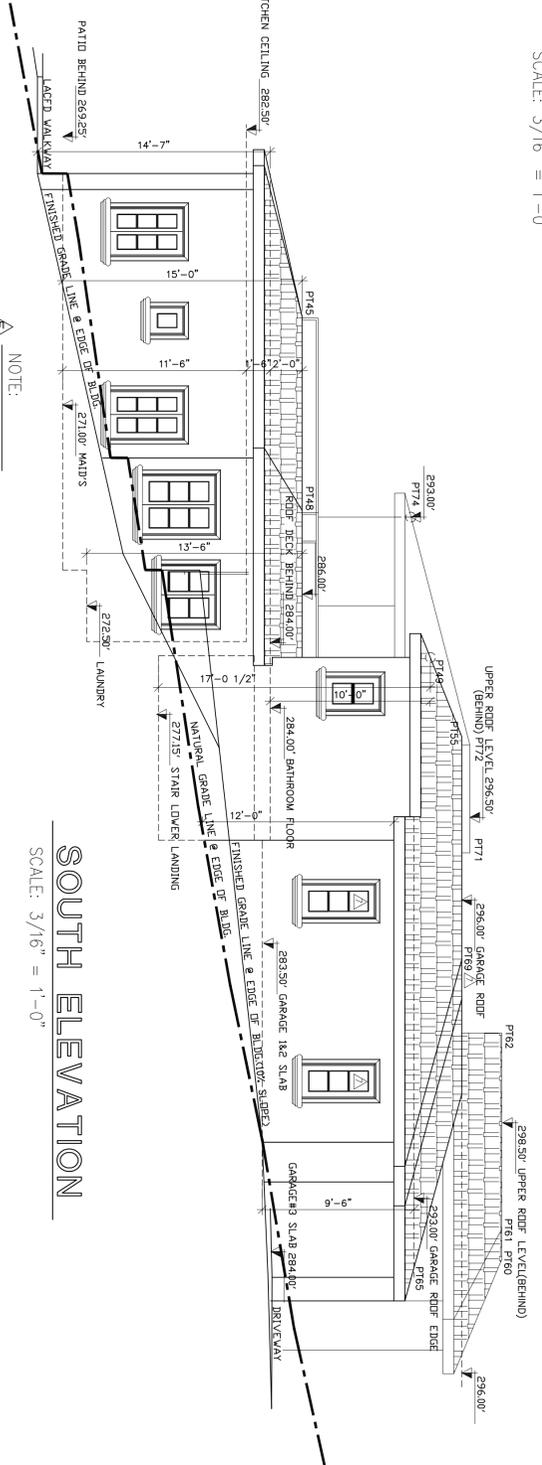


NOTE:  
 FOR EAST ELEVATION, VARIOUS WALL PLANS ARE DRAWN FLAT

**EAST ELEVATION**  
 SCALE: 3/16" = 1'-0"



**NORTH ELEVATION**  
 SCALE: 3/16" = 1'-0"



**SOUTH ELEVATION**  
 SCALE: 3/16" = 1'-0"

NOTE:  
 5 ALL ELEVATIONS ARE EQUAL OR BELOW 18'-0"  
 6 FOR EACH ELEVATION POINT (P1#) PLEASE SEE PLOT PLAN A-1  
 7 ELEVATION POINT ARE ACTUAL HEIGHT IN FEET FROM SEA LEVEL  
 8 ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION  
 9 & ARE BELOW 18'-0".

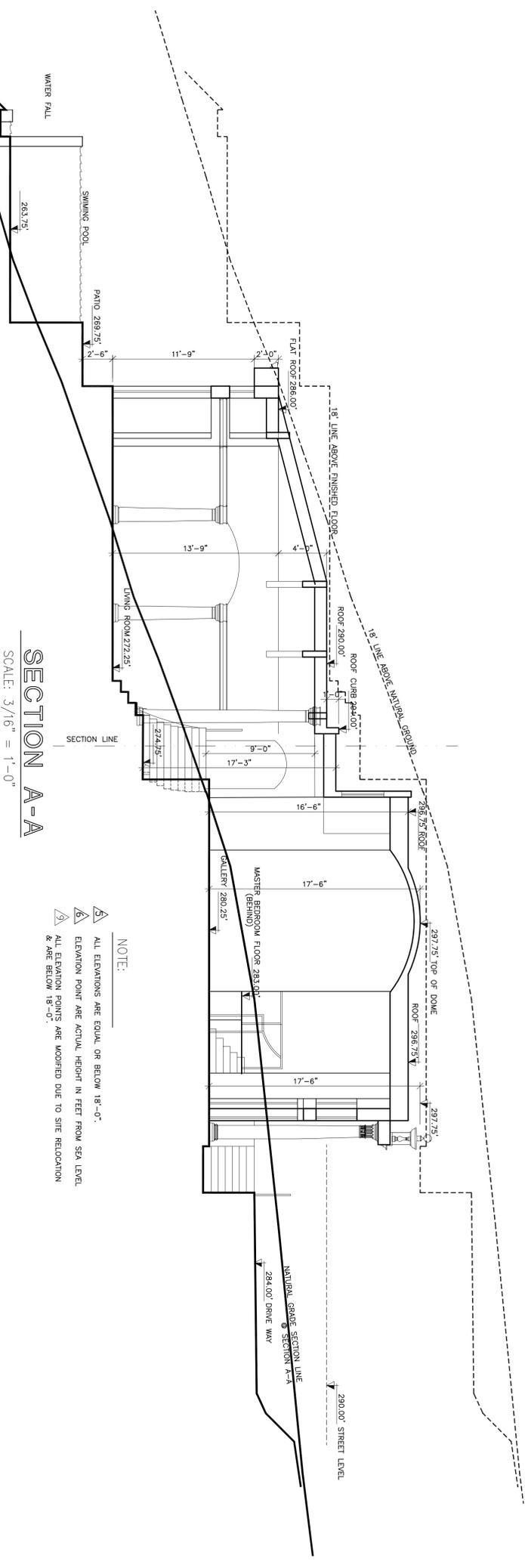
**PROJECT:** SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
**LOCATION:** 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
09/03	1ST SUB.
10/05	PLANNING
09/06	ESHA
08/07	ERR REV.
09/08	PLANNING
12/09	RESUBMIT
06/12	RESUBMIT
06/13	GRADING
08/14	COASTAL

DRAWN: MF  
 CHECKED: JF  
 DATE: AUG 2014  
 SCALE: A.N.

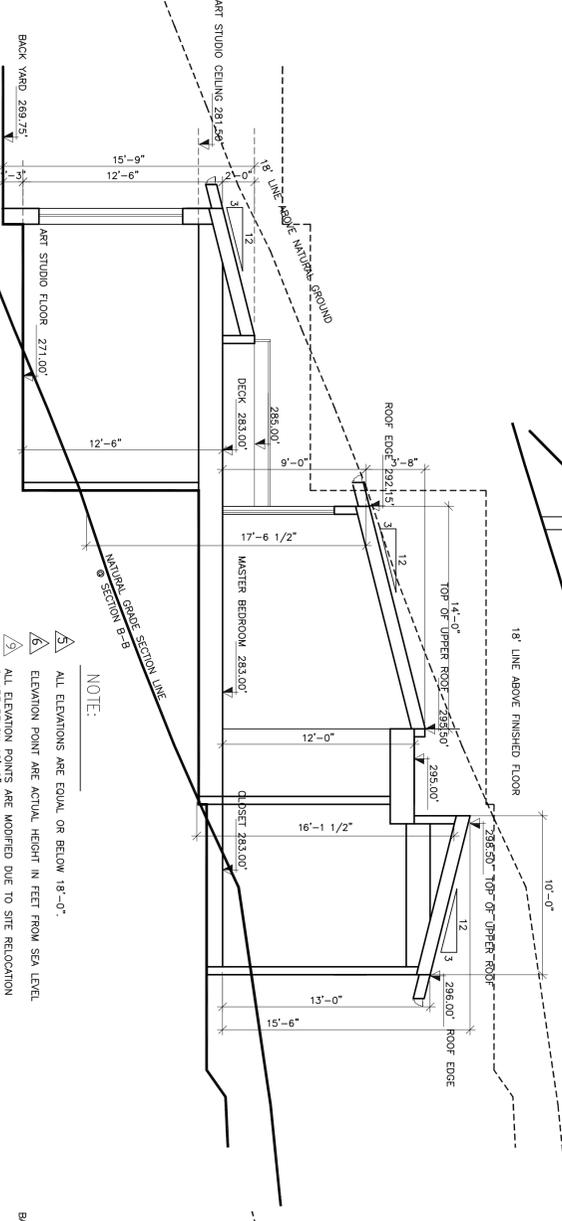
**DRAWING TITLE**  
 ELEVATIONS  
 JOB NO. 290101

**Jay Palamaki**  
**Design studio**  
 835 S. BUNNY DR., 201, LA CAÑON  
 TEL: (424) 251-2255 FAX: (424) 204-6014  
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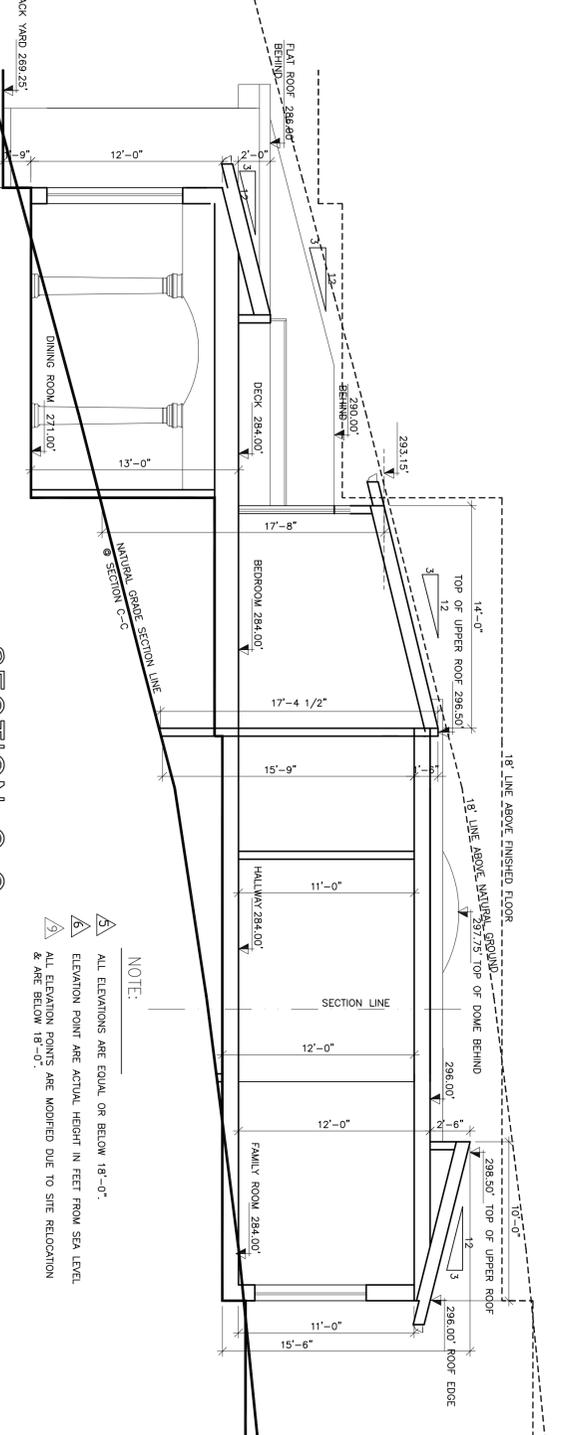
**SECTION A-A**  
SCALE: 3/16" = 1'-0"

NOTE:  
 ▲ ALL ELEVATIONS ARE EQUAL OR BELOW 18'-0"  
 △ ELEVATION POINT ARE ACTUAL HEIGHT IN FEET FROM SEA LEVEL  
 ▽ ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION & ARE BELOW 18'-0"



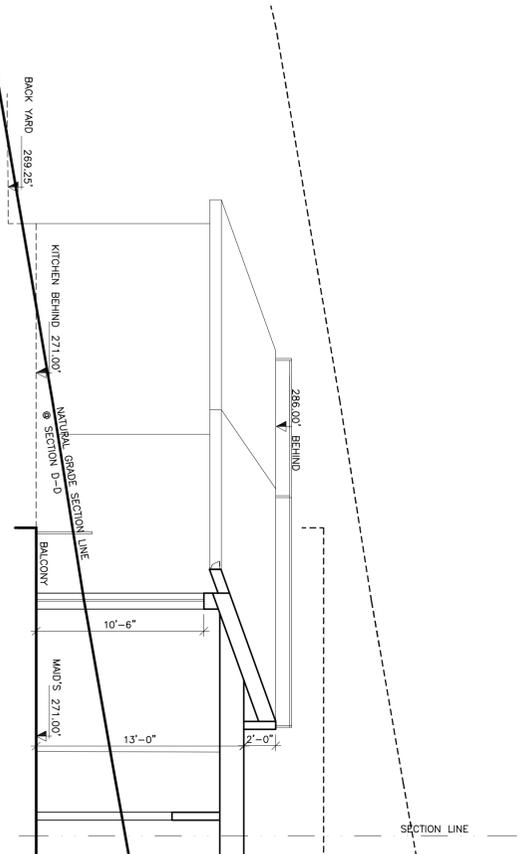
**SECTION B-B**  
SCALE: 3/16" = 1'-0"

NOTE:  
 ▲ ALL ELEVATIONS ARE EQUAL OR BELOW 18'-0"  
 △ ELEVATION POINT ARE ACTUAL HEIGHT IN FEET FROM SEA LEVEL  
 ▽ ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION & ARE BELOW 18'-0"



**SECTION C-C**  
SCALE: 3/16" = 1'-0"

NOTE:  
 ▲ ALL ELEVATIONS ARE EQUAL OR BELOW 18'-0"  
 △ ELEVATION POINT ARE ACTUAL HEIGHT IN FEET FROM SEA LEVEL  
 ▽ ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION & ARE BELOW 18'-0"



**SECTION D-D**  
SCALE: 3/16" = 1'-0"

NOTE:  
 ▲ ALL ELEVATIONS ARE EQUAL OR BELOW 18'-0"  
 △ ELEVATION POINT ARE ACTUAL HEIGHT IN FEET FROM SEA LEVEL  
 ▽ ALL ELEVATION POINTS ARE MODIFIED DUE TO SITE RELOCATION & ARE BELOW 18'-0"

**PROJECT:** SAFAPOUR RESIDENCE  
 NEW ONE STORY RESIDENCE  
**LOCATION:** 29600 HARVESTER ROAD  
 MALIBU, CA

DATE	REVISION
09/03	1ST SUB. ▽
10/05	PLANNING ▽
09/08	ESHA ▽
08/07	ERR REV. ▽
09/08	PLANNING ▽
12/09	RESUBMIT ▽
06/12	RESUBMIT ▽
10/12	RESUBMIT ▽
06/13	GRADING ▽
08/14	COASTAL ▽

**DRAWN:** MF  
**CHECKED:** JF  
**DATE:** AUG 2014  
**SCALE:** A.N.

**DRAWING TITLE**  
 SECTIONS  
**JOB NO.**  
 290101

**Jay Palamaki**  
**design studio**  
 836 S. BERRY DR., 201, LA, CA 90009  
 TEL: (424) 281-2255 FAX: (424) 204-6014  
 E-MAIL: JAY@PALAMAKI.COM



1 filling, pipe installation and vegetation removal engaged in by  
2 Defendant in violation of the California Coastal Act of 1976  
3 (Pub. Res. Code §§ 30000, et seq.) upon Defendant's lot located  
4 at 5807 Busch Drive, Malibu, California 90265, in the County of  
5 Los Angeles designated by the following Assessor's Parcel Number  
6 (APN): 4469-012-017("Subject Parcel").

7           A. EMERGENCY COASTAL DEVELOPMENT PERMIT

8           2. Within ten (10) days from the entry of judgment,  
9 Defendant shall submit to Plaintiff a complete emergency coastal  
10 development permit ("Emergency CDP") application which shall  
11 include a restoration plan, prepared by a qualified expert, to  
12 perform the work necessary to remove any sedimentation in the  
13 Blue Line ravine, resulting from Defendant's unpermitted  
14 activities, to restore such ravine to its pre-violation  
15 condition. The Emergency CDP application shall also include  
16 proposed measures for the temporary stabilization and compaction  
17 of the fill stockpiled near the ravine on the Subject Property.  
18 Any permit that is issued shall be subject to reasonable terms  
19 and conditions in order to ensure that such development or action  
20 will be in accordance with the provisions of Division 20 of the  
21 California Coastal Act.

22           3. Defendant shall complete restoration of the  
23 Subject Parcel, pursuant to the Emergency CDP, to the  
24 satisfaction of Plaintiff, within twenty (20) days from  
25 Plaintiff's approval of Defendant's Emergency CDP application.  
26 Within seven (7) days from the restoration of the Subject  
27 Property, Defendant shall submit to Plaintiff a contractor's

1 report indicating that the restoration has been completed and  
2 describing the manner in which such restoration was performed.

3 4. Upon receipt of the contractor's report, Plaintiff  
4 shall be given access to the Subject Property to inspect the  
5 quality of the restoration. If Plaintiff so desires, Defendant's  
6 contractor shall be made available to Plaintiff to be present at  
7 the inspection and/or to answer any questions concerning the  
8 restoration. Should Plaintiff conclude that additional work is  
9 necessary to complete the restoration process, Defendant shall  
10 perform such work within thirty (30) days of receipt of  
11 Plaintiff's written request to perform the additional work.

12 \* 5. One (1) year after Plaintiff's approval of the  
13 restoration work, Defendant shall either submit a report to  
14 Plaintiff or allow Plaintiff access to the Subject Property so  
15 that Plaintiff may be satisfied that such restoration was  
16 successful. Should Plaintiff conclude that additional work is  
17 necessary to complete the restoration process, Defendant shall  
18 perform such work within thirty (30) days of receipt of  
19 Plaintiff's written request to perform the additional work.

20 B. SINGLE FAMILY RESIDENCE AND LOCAL APPROVAL

21 6. Within thirty (30) days from the entry of  
22 judgment, Defendant shall apply to the City of Malibu ("City")  
23 for local approval of the proposed development, including the  
24 proposed single family residence ("SFR"). Plaintiff shall  
25 cooperate with Defendant and the City in the processing of  
26 Defendant's application. If the City grants the application,  
27 Defendant shall submit a permit application to Plaintiff within



1 contractor shall be made available to Plaintiff to be present at  
2 the inspection and/or to answer any questions concerning the  
3 restoration. Should Plaintiff conclude that additional work is  
4 necessary to complete the restoration process, Defendant shall  
5 perform such work within thirty (30) days of receipt of  
6 Plaintiff's written request to perform the additional work.

7 10. One (1) year after Plaintiff's approval of the  
8 restoration work, Defendant shall either submit a report to  
9 Plaintiff or allow Plaintiff access to the Subject Property so  
10 that Plaintiff may be satisfied that such restoration was  
11 successful. Should Plaintiff conclude that additional work is  
12 necessary to complete the restoration process, Defendant shall  
13 perform such work within thirty (30) days of receipt of  
14 Plaintiff's written request to perform the additional work.

15 D. PAYMENT OF CIVIL FINE

16 11. Defendant shall pay Plaintiff a total of  
17 \$15,000.00 in civil penalties and such payment shall be made in  
18 the manner prescribed in this paragraph. Within thirty (30) days  
19 of the entry of this judgment, Defendant shall deliver to the  
20 Office of the Attorney General, 300 South Spring Street, Fifth  
21 Floor, Los Angeles, California 90013, attention Daniel A. Olivas,  
22 a certified or cashier's check in the amount of five thousand  
23 dollars (\$5,000.00), made out to: "State of California, Violation  
24 Remediation Account, Coastal Conservancy Fund." A second payment  
25 of five thousand dollars (\$5,000.00) shall be made in the same  
26 manner thirty (30) days after the first payment is made to  
27 Plaintiff. A third payment of five thousand dollars (\$5,000.00)

1 shall be made in the same manner thirty (30) days after the  
2 second payment is made to Plaintiff.

3 E. OTHER TERMS

4 12. Should Defendant violate any deadline set by this  
5 judgment, a penalty may be imposed upon Defendant in the amount  
6 of one thousand dollars (\$1,000.00) for each day Defendant is in  
7 violation of such deadline. Before any such penalty is imposed,  
8 Plaintiff shall give Defendant ten (10) days written notice (by  
9 certified mail, return receipt requested) of Plaintiff's intent  
10 to enforce this penalty provision. If at the end of such ten  
11 (10) days Defendant is still in violation of this judgment,  
12 Plaintiff may enforce this penalty provision. Defendant shall  
13 pay Plaintiff such penalty within seven (7) days of receipt of  
14 Plaintiff's written notice (by certified mail, return receipt  
15 requested) to enforce this penalty provision. Payment of the  
16 penalty shall be made in the manner prescribed above at paragraph  
17 11 and shall be computed from the first day Defendant stood in  
18 violation of the judgment. Payment of such penalty shall not  
19 relieve Defendant of his duties under this judgment. Defendant  
20 shall not be liable for any penalty as described in this  
21 paragraph if failure to perform pursuant to this judgment was the  
22 result of no fault of Defendant but was the result of an Act of  
23 God or *force majeure*.

24 13. Should either party be required to enforce any  
25 part of this judgment, the prevailing party shall be entitled to  
26 its costs including reasonable attorneys' fees expended in such  
27 enforcement proceeding.

1           14. This Court has jurisdiction over the subject  
2 matter of and the parties to this litigation.

3           15. This judgment is final and settles all causes of  
4 action alleged in the complaint.

5           16. None of the provisions herein shall constitute  
6 evidence or an admission of liability on the part of Defendant.

7           17. Plaintiff and Defendant shall bear their  
8 respective attorneys' fees and costs incurred in this litigation.

9           18. Plaintiff and Defendant waive any statement of  
10 decision and all rights of appeal from this judgment.

11           19. This judgment may be assigned to or by a judge,  
12 commissioner or judge pro tem of the Superior Court for the  
13 County of Los Angeles.

14           20. The Court retains jurisdiction for the purpose of  
15 enabling either party to apply to the Court for any further  
16 orders or directions as may be necessary and appropriate for this

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1 judgment's construction, execution, modification, and enforcement  
2 of compliance.

3  
4 THE CLERK IS ORDERED TO ENTER THIS JUDGMENT.

5  
6 DATE: AUG 21 1992

7  
8 IRVING A. GUY  
9 JUDGE OF THE SUPERIOR COURT

10  
11 FORM OF JUDGMENT APPROVED BY:

12 DATE: 6/15, 1992

13 DANIEL E. LUNGREN, Attorney General  
14 of the State of California  
15 JAN S. STEVENS,  
16 Assistant Attorney General  
17 DANIEL A. OLIVAS,  
18 Deputy Attorney General

19 

20 DANIEL A. OLIVAS  
21 Attorneys for Plaintiff  
22 CALIFORNIA COASTAL COMMISSION

23 DATE: 7/28, 1992

24 C. SAMUEL BLICK, ESQ.

25   
26 C. SAMUEL BLICK, ESQ.  
27 Attorney for Defendant  
AMIR TAHMASSEBI

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
 89 SOUTH CALIFORNIA ST., 2ND FLOOR  
 VENTURA, CA 93001  
 (805) 641-0142

Staff: SPF-VNT  
 Staff Report: 10-26-94  
 Hearing Date: Nov 15-18, 1994  
 Commission Action:



STAFF REPORT: REGULAR CALENDAR  
RESTORATION ORDER

WII

APPLICATION NO.: 4-92-206-RO

OWNER: Amir Tahmasebi

AGENT: Steven Bacchetti

RESTORATION LOCATION: 5807 Busch Drive, City of Malibu; Los Angeles County

RESTORATION DESCRIPTION: Removal of a culvert and 3,800 cubic yards of fill. Restoration of the drainage area including recontouring the slope to the natural topography and revegetation of all disturbed areas.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Applications G4-92-206 (Tahmasebi) and 4-92-206 (Tahmasebi).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission, as a non-exclusive enforcement remedy based on its partial denial of CDP 4-92-206 (Tahmasebi), approve the following restoration order because the development has occurred without the benefit of a coastal development permit, is inconsistent with landform alteration, environmentally sensitive habitat area and geologic stability policies of the Coastal Act, and it is causing continuing resource damage by increasing siltation of a blue-line stream, decreasing the habitat value of a blue-line stream and its tributary, and causing ongoing erosion of a tributary to a blue-line stream.

I. RESTORATION ORDER

Pursuant to its authority under California Public Resources Code Section 30826, the California Coastal Commission hereby orders Mr. Amir Tahmasebi, all of his agents, and any other persons acting in concert with the foregoing to fully comply with paragraphs A, B, and C as follows:

A. Restore the property (as further described below) to the condition it was in prior to the undertaking of the development activity (as further described below) in violation of the California Coastal Act of 1976. Specifically, the applicant shall remove the culvert, any drainage devices at the terminus of the culvert, and all fill within and adjacent to the drainage course; return the topography to its natural contours; and restore the vegetation to its

Exhibit 10  
 Restoration Order 4-92-206RO  
 Excerpt  
 Appeal No. A-4-MAL-13-0257

natural riparian and chaparral vegetation consistent with the adjacent downstream vegetation of the stream.

B. Within sixty days of the date of this order, the owner shall submit to the Commission, for its review and approval, a complete coastal development permit application for the removal of the culvert, and all fill within and adjacent to the drainage course, and restoration of the site to its pre-violation condition as described in Paragraph A above. The application shall include the following:

1. Detailed plans showing the removal of the culvert, any existing drainage devices at the end of the culvert and all fill. These plans shall specify the methods and techniques for removal of all unpermitted development, and an estimation as the time required to complete this portion of the project.
2. A restoration plan to return the topography to its natural contours and revegetate the area as it previously existed with riparian and chaparral plants consistent with the vegetation further downstream. The restoration plan shall include all of the following items:

A. A preliminary biological survey of the site and the adjacent riparian areas with a description of the native habitat and a list of the existing trees, shrubs, and herbs associated with this habitat;

B. Technical specifications for the implementation of the proposed plan including a schedule of activities, a final list of plant materials, and description of the methods to be used during implementation of the plan. The specifications shall require, to the greatest extent possible, that all biological materials used on the project site be of local origin; that is, that seeds, cuttings, salvaged plants, microorganisms, and top soil originate on site or from the nearest possible source that matches the site in climatic and biologic factors. The specifications shall also include maintenance criteria for weeding, re-planting and other mid-program corrections.

C. A monitoring program detailing the proposed timelines for beginning work and completing the project. This report shall include further recommendations and requirements for additional restoration activities should the initial plan fail.

C. Fully comply with the terms and conditions of the above required coastal development permit as approved by the Commission.

II. IDENTIFICATION OF THE PROPERTY

The property which is the subject of this restoration order is described as follows:

5807 Busch Drive, City of Malibu; Los Angeles County  
APN: 4469-012-017  
Lot 35 of Block 1 of Tract 10853 in Los Angeles County

III. FINDINGS

This order is issued on the basis of the following findings adopted by the Commission on October 13, 1994:

1. Violation. On or about April 27, 1990, development consisting of the removal of vegetation, placement of a culvert and energy disaporator, and the importation of fill in a drainage course which leads to a blue-line stream, as further described in coastal Development Permit 4-92-206 (Tahmasebi), was performed at the subject property without the benefit of a coastal development permit. Completion of the compaction of fill was done under an emergency permit G4-92-206. The terms of the emergency permit required that the development be removed within five months of the issuance of the emergency permit if a regular coastal development permit is not sought for. In this case, the applicant submitted an application 16 months after the emergency permit was issued. Thus, for 11 months this site was in violation of the terms of the emergency permit.

2. Coastal Act Consistency. The Commission hereby incorporates by reference the findings for the denial portion of the permit application for the construction of a single family residence and the retention of the culvert and fill contained in coastal development permit 4-92-206. As stated in said findings, the portion of the development consisting of the placement of a culvert and energy disaporator, and the importation of fill is not in conformance with the Chapter 3 policies of the Coastal Act. The after-the-fact development is not required for the construction of the proposed residence. Furthermore, the after-the-fact development is not engineered properly to support a residence, and as such is not consistent with Section 30253 of the Coastal Act which requires that all new development shall assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The after-the-fact development was not properly designed to mitigate erosion of the tributary and siltation into the blue-line stream. This action is not consistent with Section 30240 of the Coastal Act which mandates that development in areas adjacent to environmentally sensitive habitat areas be designed to prevent impacts which would significantly degrade such areas. Finally, the development is not consistent with Section 30251 which requires that the scenic and visual qualities of coastal areas be considered and protected as a resource of public importance, with the minimization of the alteration of natural land forms.