

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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W33a



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ADDENDUM

DATE: January 6, 2015

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item 33a, Wednesday, January 7, 2015, Coastal Development Permit Appeal No. A-4-MAL-14-0047 (Malibu)

The purpose of this addendum is to 1) add clarifying changes to the findings of the report, 2) respond to a January 5, 2015 letter, submitted to Commission staff on behalf of the appellants and to attach said letter to this addendum, and 3) to attach correspondence received since the December 18, 2014 staff report. Regarding the following revisions to the findings of the report, language to be inserted is shown underlined and language to be deleted is shown in line out.

1) **Amend** the following within the last full paragraph on page 14 of the staff report:

As part of the City's approval, the applicant is required (by condition) to submit a CDP application for removal of certain retaining wall structures, that are not integrally related to the approved development, on the 28118 PCH bluff face and to restore the bluff. Separately, the City requires a CDP for removal of an unpermitted U-shaped retaining wall at the bluff edge on the applicant's 28126 PCH property. The City has also made it clear to the appellant that a CDP is required to address the unpermitted development on the 28106 PCH property's bluff and at the toe of the bluff at beach level. The appellant has not yet submitted a CDP application to address the unpermitted work. ~~The City wants both the applicant and appellant to join as co-applicants in a separate CDP application to address the unpermitted development.~~

2) In a letter dated January 5, 2015, the appellant raises issues associated with fire hazards, geologic hazards, and development standards associated with the development, similar to those raised in the original appeal. The appellant's timely filed appeal contentions were fully reviewed and evaluated in the December 18, 2014 Staff Recommendation Report.

However, one important clarifying point relates to 1) the Fire Department's review. With regard to the Fire Department's review, the department's referral sheet (attached with the appellant's January 5, 2015 letter below) includes a project description that accurately describes that an

existing structure, will be substantially remodeled (amounting to replacement structure) and sited on a new pile foundation on the beach. Accordingly, the fire department determined that this description warranted no further review and therefore checked the form entry that “The project DOES NOT require Fire Department Plan Review.” The project was evaluated as new development under the LCP and the description on the Fire Department referral sheet indicates the Fire Department was aware of the extent of development and checked the box requiring no further review of the project.

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Appeal Number: A-4-MAL-14-0047

Richard Sol [richardsolarchitect@gmail.com]

To: [Dreher, Nicholas@Coastal](#)

Cc: [Christensen, Deanna@Coastal](#)

Attachments: (4) [Download all attachments](#)

[2015 0104 AGB Trust Re~1.pdf \(73 KB\)](#) [Open as Web Page]; [2013 0410 LACFD Review.PDF \(786 KB\)](#) [Open as Web Page]; [2014 0811 City Council~1.pdf \(59 KB\)](#) [Open as Web Page]; [2014 0728 Kowalewsky R~1.pdf \(14 MB\)](#) [Open as Web Page]

Monday, January 05, 2015 2:42 PM

You replied on 1/5/2015 4:35 PM.

Nicholas / Would you please decimate the 4 attachments comprised of APPELLANT'S COMMENTS TO THE STAFF'S SUBSTANTIAL ISSUE DETERMINATION together with the following 3 attachments to all of the member of the Coastal Commission today.

I apologize for the burden that I have placed on you with this Monday request but the window that you gave me to respond to your report over the Holiday season gave me too little time to prepare for the hearing. I hope that it will not compromise my ability to get my response read by the Commissioners before the hearing.

If you cannot deliver this package to all the members of the CCC today, please send me their e-mail addresses and I will take care of its delivery this afternoon.

I would appreciate you sending me confirmation of your actions. Thank you. / Richard

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W33a

APPELLANT'S COMMENTS ON STAFF'S SUBSTANTIAL ISSUE DETERMINATION

APPEAL NO: A-4-MAL-14-0047

APPLICANT: Ryan Family LLC

APPELLANT: AGB Trust

LOCAL DECISION: Coastal Development Permit (#07-155) approved by the Malibu City Council on August 11, 2014

PROJECT LOCATION: 28118 and 28126 Pacific Coast Highway, City of Malibu
Los Angeles County
APNs 4460-033-010 and 4460-033-011

BACKGROUND

- **April 10, 2013:** Fire Department Review Referral Sheet is executed by the LACFD (Los Angeles County Fire Department) in which it concludes, "The project **DOES NOT** require Fire Department Plan Review". This is due to the single fact that the Project was described by the City of Malibu staff to the LACFD as a "Substantial remodel of ESFR (replacement structure) with new pile foundation on beach". See Attachment No. 1 (Fire Department Review dated 4/10/13).
- **May 5, 2014:** The City of Malibu Planning Commission approved the project as a "substantial remodel". The videotape of this hearing is available on the City of Malibu Website.
- **August 11, 2014:** The Malibu City Council corrected the project description and approved the project as "construction of a new single family residence on the beach". See Attachment No. 2 (Transcript of discussion & motion). The videotape of this hearing is also available on the City of Malibu Website.

I. SUBSTANTIAL FIRE HAZARDS EXIST

The Project is situated on a landlocked property located in an extreme fire hazard area with no fire access. The Project is immediately adjacent to natural and combustible chaparral growing on the bluff face of the adjacent parcel owned by the Appellant (The AGB Trust). Immediately above that coastal bluff and chaparral is the home in which the Appellant resides.

The LACFD did not initiate a Fire Department review; it responded to a request for a review that was initiated by the City of Malibu. Furthermore, the LACFD did not determine the project description, it did not review the project plans nor visit the project site; it relied on the City of Malibu to provide the project description based upon the City's knowledge of the project and the site. Pursuant to LACFD policy adopted in 1988, new construction must comply with the current Fire Code while remodels are exempt from LACFD review. Substantial remodels are generally treated as remodels; however, substantial remodels have been processed as new construction when the scope of the remodel warranted it.

On 6/29/2011, the City of Malibu staff initiated a Fire Department Review in connection with the Project's CDP application. At that time, the Malibu City staff described the Project to the LACFD as a "substantial remodel". As a direct result of that project description given by the Malibu City staff, the LACFD waived its review and approved the Project. See Attachment No. 1. The LACFD's reliance on the City's description is further evidenced by the fact that the LACFD did not review the Project plans nor visit the Project site. This fact emphasizes the exclusive and principal role that the City of Malibu plays in the LACFD's review.

At the August 11, 2014 Malibu City Council hearing on the appeal of the CDP previously issued by the City of Malibu Planning Commission, the City Council discussed the scope of work and adopted Resolution No. 14-42 which revised the project description to be "construction of a new single-family residence on the beach". Since that day, neither the Malibu City staff nor the Applicant has updated the LACFD on the change to the Project's description from a "substantial remodel" to a "new single-family residence". The AGB Trust holds that City Council's Resolution No. 14-42 supersedes the waiver previously provided by the "remodel" description put forth by the Malibu City staff in 2011.

The project at 28118 PCH proposes to replace which was originally a 1-story, 652 square-foot beach cabana with a new 2-story, 2,000 square foot beach house. As stated and discussed at the August 11, 2014 City Council hearing, the permit history of the expansion(s) of the size of the original beach cabana is unclear. See Attachment No. 2. This was one of the main reasons that Councilmember Joan House moved that the proposed project for all intents and purposes be deemed new construction. The City Council adopted her motion. See Malibu City Council Resolution No. 14-42.

The LACFD's review dated 4/10/2013 of the Project is deficient because it was

based upon an inaccurate project description that is superseded by City Council Resolution No. 14-42. To date, the Project has not received any review by the LACFD commensurate with its new residence status. The fire hazard posed by this new development conflicts with the standards set forth in Chapter 9 and Chapter 13 of the LIP (Local Implementation Plan of the City of Malibu Local Coastal Program).

In the case of this particular Project, the Appellant holds that it is a gross failure by the City staff to not require an appropriate review by the LACFD that is commensurate with the "construction of a new single-family residence". The fire sprinkler system and non-combustible building materials described in the staff report are basic requirements for structures in an extreme fire hazard zone and do not substitute for the absence of fire access. That is the purview of the LACFD alone which has not been conducted to date.

The City Council's Resolution No. 14-42 supersedes the exemption previously provided by the substantial remodel or replacement structure classification put forth by Malibu City staff. City employees should follow the lead and relevant resolution of its City Council. This should include informing the LACFD of the Project's revised classification as a new residence. If City employees do their job and relay the project description as determined by the City Council to the LACFD, then the LACFD will do its job finding the applicable sections of the Fire Code and complete an appropriate review that protects life and property. First and foremost, this is what the Appellant seeks in the *de novo* hearing.

II. SUBSTANTIAL STRUCTURAL HAZARDS EXIST

The Project does not conform to the standards set forth in Chapter 9 of the LIP with respect to structural integrity. Specifically, the Project as proposed does not meet the purpose and intent of the LIP "to insure that permitted development is sited and designed to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along canyons, hillsides, bluffs and cliffs".

The Project proposes to demolish (1) "unpermitted beach level decking, stairs, and trellises within the subject property", (2) "the eastern portion of the first floor which encroaches over the east property line", (3) the "existing timber pile foundation and understructure walls" and (4) "seepage pits and distribution box of the existing septic system". The beach level deck, stairs, trellis, the eastern portion of the first floor, the pile foundation, the understructure retaining walls, the septic pump station and the related plumbing and electrical feeds encroach upon the adjoining property located at 28106 PCH which is owned by the Appellant. All of that demolition and removal from the applicant's property will leave both a geologic and structural hazard on the adjoining property (28106 PCH), which the LIP is written to prevent.

The limited removal of un-permitted concrete and wood retaining walls below and alongside the existing beach level structure which are in the wave uprush zone have been extended without permits onto the adjoining property at 28106 PCH and negatively altered the drainage therein. The Project does not address the negative edge effect that (a) the demolition of the un-permitted construction at the beach level, the un-permitted construction on the bluff face and the un-permitted construction at the bluff top and (b) the restoration of the coastal bluff at all 3 levels will have on the adjoining property at 28106 PCH. See Attachment No. 3 (Report by Don Kowalewsky, Engineering Geologist).

III. SUBSTANTIAL TECHNICAL DEFICIENCIES EXIST

The Project is technically deficient because the City of Malibu staff:

1. Described the Project to the LACFD as a “substantial remodel” which had the net effect of circumventing any LACFD review,
2. Described the Project as elevating the top of the existing foundation and structure 7 feet when in fact it elevated the second story roofline 13 feet,
3. Presumptively concluded that the existing 2,000 square foot structure was fully permitted when the tax roles and City permit records only evidence 652 square feet of permitted area,
4. Failed to conduct its investigation of the permit history of the subject property requested previously requested by Councilperson Joan House (see Attachment No. 2 - transcript) and
5. Improperly described in its NOTICE OF PUBLIC HEARING the scope of work as a remodel when the City Council corrected the record to reflect that the Project is a new 2-story, 2,000 square foot single-family residence that raises the roofline 13 feet upward.

CONCLUSION

The Commission’s regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question”. The Appellant holds that the following questions are worthy of Coastal Commission’s consideration and justification for a *De Novo* review. They are:

DEGREE OF FACTUAL AND LEGAL SUPPORT FOR THE LOCAL GOVERNMENT'S DECISION

The Project is not consistent with the subject provisions of the certified LCP with respect to hazard policies with regard to fire and geologic/structural integrity. Coastal Act Section 30253, which is incorporated into the Malibu LCP as a policy, states:

“New development shall: (1) minimize risks to life and property in areas of high geologic, flood, and fire hazard”.

Other applicable LUP policies are 4.2, 4.3, 4.45, 4.5, 4.51 and 4.52.

The CCC staff report (Page 12, Paragraph 5) is self-contradictory because the referenced LACFD review was made before the Malibu City Council adopted Resolution No. 14-42. The CCC staff report misstates the LACFD's approval of the Project and the processes involved in that approval. The LACFD waived its review; it did not approve the project. The CCC staff report also misstates that fire sprinklers and building materials will mitigate the fire hazard potential that exists around the Project. Pursuant to my discussions with the LACFD supervising fire prevention engineer, fire sprinklers are standard requirements in the Malibu extreme fire hazard zone and a fire sprinkler system and non-combustible building materials are not an acceptable substitute for the absence of fire access.

Furthermore, the prior unpermitted cut, fill and construction conducted by the previous owner of the Applicant's 2 properties (28118 PCH & 28126 PCH) further complicate the Project's hazards, specifically with regard to their repair and the related restoration of the coastal bluff that straddles the 3 coastal properties at 28106 Sea Lane, 28118 PCH and 28126 PCH. The Appellant and its consultants have provided oral testimony and written reports that were presented at the Planning Commission hearing held on May 5, 2014 and at the City Council hearing held on August 11, 2014. (See Attachment No. 3 as well as videotape of May 5, 2014 Planning Commission hearing & August 11, 2014 City Council hearing both of which are available on the City of Malibu website.)

THE PRECEDENTIAL VALUE OF THE LOCAL GOVERNMENT'S DECISION FOR FUTURE INTERPRETATION OF ITS LCP

The Project cannot be classified as a new single-family residence in a resolution adopted by the Malibu City Council and at the same time described and reviewed as a remodel to the LACFD for the sole purpose of circumventing compliance with current Fire Codes. For that reason, the fire requirements for a new 2-story, 2,000 square foot beach residence supersedes the waiver provided by the 50 percent rule generously but incorrectly applied by the Malibu City staff in 2013. To classify such a project as a “substantial remodel” sets a precedent for other development to circumvent compliances with coastal policies, codes and regulations that protect life and property.

THE APPEAL RAISES ISSUES OF REGIONAL OR STATEWIDE SIGNIFICANCE

The Project sets a precedent for circumventing compliance with the Los Angeles County Fire Codes by permitting City staff to describe a project with no fire access and to use a very loose definition of a substantial remodel to and for when basic fire standards can be waived in an extreme fire hazard zone.

THEREFORE, THE APPELLANT (AGB TRUST) HOLDS THAT SUBSTANTIAL ISSUES WITH REGARD TO THE APPROVED PROJECT'S CONSISTENCY WITH THE POLICIES AND PROVISIONS OF THE CERTIFIED LCP HAVE BEEN RAISED AND RESPECTFULLY REQUESTS A REVIEW OF THE MERITS OF THIS APPEAL *DE NOVO*.



City of Malibu

23825 Stuart Ranch Rd., Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 456-7650

FIRE DEPARTMENT REVIEW REFERRAL SHEET

TO: Los Angeles County Fire Department

DATE: ~~6/29/2011~~ 3/28/13

FROM: City of Malibu Planning Department

PROJECT NUMBER: CDP 11-033, OTD 12-008, VAR 12-033, DP 11-018

JOB ADDRESS: 28118 PACIFIC COAST HWY

APPLICANT / CONTACT: Jack & Amanda Ryan

APPLICANT ADDRESS: 32300 Pacific Coast Highway
Malibu, CA 90265

APPLICANT PHONE #: (310)589-0617

APPLICANT FAX #:

PROJECT DESCRIPTION: Substantial remodel of ESFR (replacement structure) with new pile foundation on beach

TO: Malibu Planning Department and/or Applicant

FROM: Fire Prevention Engineering Assistant

Compliance with the conditions checked below is required prior to Fire Department approval.

The project DOES require Fire Department Plan Review and Developer Fee payment

The project DOES NOT require Fire Department Plan Review

The required fire flow for this project is _____ gallons per minute at 20 pounds per square inch for a 2 hour duration. (Provide flow information from the water dept.)

The project is required to have an interior automatic fire sprinkler system.

Final Fuel Modification Plan Approval is required prior to Fire Department Approval

Conditions below marked "not approved" shall be corrected on the site plan and resubmitted for Fire Department approval.

Required Fire Department vehicular access (including width and grade %)
as shown from the public street to the proposed project.

Required and/or proposed Fire Department Vehicular Turnaround

Required 5 foot wide Fire Department Walking Access (including grade %)

Width of proposed driveway/access roadway gates

App'd N/app'd

_____	_____
_____	_____
_____	_____
_____	_____

*County of Los Angeles Fire Department Approval Expires with City Planning permits expiration, revisions to the County of Los Angeles Fire Code or revisions to Fire Department regulations and standards.

**Minor changes may be approved by Fire Prevention Engineering, provided such changes achieve substantially the same results and the project maintains compliance with the County of Los Angeles Fire Code valid at the time revised plans are submitted. Applicable review fees shall be required.


SIGNATURE

4/10/13
DATE

Following is Richard Sol's partial transcription of the City Council hearing held on August 11, 2014 at 6:30 pm in the City Council Chambers, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA on Appeal No. 14-003. Transcription is based upon video of hearing found on City of Malibu's website.

Councilmember Sibert: Is there any discussions with the Fire Department to make the definitions of a remodel consistent?

Senior Planner Blue: Not that I'm aware of.

City Attorney Hogin: There may be some civil issues here involving trespass and there may be some remedies for an innocent property owner who's had to endure that kind of encroachment. From our point of view, we're just trying to sort out the permitting end of it. And I don't know enough about this job - I'll defer to staff.

(Later in the hearing)

Senior Planner Blue: We reviewed as a new structure

Councilmember Rosenthal: If we change the remodel standards, we use the ones in place now. Will the removal of Molasky's work on the Ryan property affect the stability of the slope?

Senior Planner Blue: We did include a condition in the resolution that both properties must be left in a safe manner.

Amanda Ryan: The walls are not tied in. Everything falls short of our property line. Don't need to touch anything on AGB Trust's property.

Councilmember Rosenthal: Will it affect AGB?

Amanda Ryan: No negative impact.

Councilmember House: What is size of existing house:

Senior Planner Blue: I don't have an exact calculation for this property since we treated it as essentially a new replacement structure we didn't sort that all out for this.

Councilmember House: I have so much difficulty with this project and I know that everyone has worked very hard but let me take you on a trip down memory lane. We moved there in 1975 and this particular little cottage was just a little cottage of about 450 SF and some of you who watched TV and time, remember Harry O - Harry O was filmed at little cottage and all they had was 450 SF and the little sailboat in front. And then time moved on and we had the pier come down and we had the big rains and we dropped 14 feet of sand off of Paradise Cove. You remember that. And I remember when the gunite went in. I also remember (interjected comment from Mayor, laughter) ... anyway (more informal commentary) I had a friend who rented that 450 SF. I was down there (more informal commentary) Barbara Moser ... she lived down there and I would go to the beach every day and walk the beach and run the beach, stop by and say hi to Barbara and it was still 450 sf. So between now, from then to now, all of a sudden we have ... was any of that other stuff permitted? It was never permitted, it was permitted after the fact.

Senior Planner Blue: There were, the difficulty was sorting out what was permitted is that the older building permits go back to actually the 40's and 50's but they didn't distinguish - I don't think the 28118 address existed and so it's hard, difficult to determine which permits go with which property and whether it was on the bluff property or

Councilmember House: All I remember is that I have empirical evidence because I existed there and I asked 3 times for you to supply me, not though you, through Joyce have the permit numbers and have what was permitted and what came legal, non-conforming and I still don't have it. And that's kind of disappointing to me because its very critical to what goes on here but you know I still would like to see that information.

City Planning Director Parker-Bozylinski:
So Councilman House, you know I regret ever putting the word "substantial remodel" into this staff report. Let me just repeat again this is not a remodel

under the City standards. It is not a remodel under brand new house. Just think of this as a vacant house, somebody is coming in and they want to build a house. And so what they're proposing and what they're building would be allowed with these discretionary permits if that was a vacant house. The only reason we put the words "substantial remodel" in there was to describe it for fire department purposes. For City purposes, it is not a remodel."

Councilmember House: I am very unhappy with this called a "substantial remodel" of a legal, nonconforming. I don't have a problem with your putting in a building of a single-family home. But to call it a substantial remodel for another reason. The fire department is not our issue. You're looking at the parking for the fire department, you're looking at the wastewater for somebody else, you're looking at different things and all of us know how seriously we have been knocked around because of the legal, non-conforming, how every architect, how everybody who's in contracting knows how to work the room and get what they want. And you know I will not support that way that it is worded now because it is not a substantial remodel. It shouldn't be there. It's a new single family home. I don't have a problem with that if that's what they want to call it. But I am not very happy that I didn't get the history of why you put "legal, non-conforming" because you had to have permits, you had, I mean you always had to have 450 SF and I was down there. I do want to make a disclosure that I did meet with Richard Sol and his client and I did talk to Jaime on the phone and I just know this area so well. And so this is not, to put "legal, non-conforming" you're actually saying 50 percent of 450 would be 225 square feet to add on but there is no way they can save any wall, there is no way they can save any structure. I'm not there at all.

Mayor Peak: Can we call it a tear down?

Councilmember House: Yes, it is a tear down. I mean I told someone that it was slum (inaudible) down there.

City Planning Director Parker-Bozylinski: So then again Councilman House, the reason that we called it legal, non-conforming was just for clarify sake, the reason we called it legal, non-conforming had nothing to do with the development standard. It was called legal, non-conforming cause we were making the point that there was a legal lot there and they had a legal house there. And so it wasn't legal, non-conforming because of the setbacks. It was the unique nature that it had no vehicular access and so the legal, non-conforming was meant to describe that, not the remodel of the house. It was the fact that it was a legal lot and a house of some size, whether it's 450 or what the size was the point was it was a legal lot with a legal house on it and there now for all intents and purposes, you're absolutely right, tearing the house down and building a new house.

Councilmember House: That's what they're really doing. Then why did you put in your agenda report "for a substantial remodel of a legal, non-conforming single family residence on the beach and site work?"

Senior Planner Blue: One of the issues is we've been going through all the issues of remodels as we have been dissecting for standards that apply to remodels. One of the issues that comes up in a reoccurring way is the question of whether there is foundation work involved or not. The definition of remodel says that you can't alter the foundation and so, and then there's other language in the LCP that talks about if you remove more than 50 percent of the walls or you alter the foundation, then it's not a remodel, it's a replacement structure. As so to distinguish between a remodel where you're keeping 50 percent of the walls or a substantial remodel where you're a replacement structure because you're altering the foundation, we in addition to the fire department reviewing it as a remodel, we wanted to make that distinction in-between the 50 percent part and it being substantially remodeled where it's also altering the foundation. I don't know if that clarifies anything at all but that was another reason for the distinction – whether or not there was foundation work involved.

(Senior Planner Blue described the fire department requirements.)

(Councilmember House & Mayor Peak discussed the LACFD standards.)

Council La Monte: It's a replacement because the fire department requested it, right? (He then expressed that did not think that a joint CDP is a good idea.)

Councilmember Sibert: (Agreed with House that it's not a remodel.)

Councilmember Rosenthal: It's 1200, not 2100 square feet.

Amanda Ryan: It's 2000 square feet.

Mayor Peak: It's going to be 2 stories, not the present 1-1/2 stories.

Mayor Peak: (Questioned the elevation of the top of bluff.)

Senior Planner Blue: Staff reexamined that.

Mayor Peak: We as a council want everything that goes on there to be considered new construction. Fire Department can have their own determination, they already had made that. From this point going forward, the City is treating that as a new construction. So with that being said, does she have a second for her denial?

Councilmember Sibert: I'll second it.

(Discussion)

Mayor Peak: I would like to make a motion to deny Appeal No. 14-003 and approve CDP 11-003, Variance No. 12-003, Site Plan Review No. 13-011, Minor Modification No. 13-003, Offer to Dedicate No. 12-008 and Demolition Permit No. 11-018 for a new construction single family residence on the beach to incorporate a concrete pile and grade beam foundation to raise the structure 7 feet while maintaining at least 50 percent of the exterior walls, reconfigure the interior and add a new roof and roof deck...

Councilmember House: They don't have to do the 50 percent of the exterior walls because it's not...

Mayor Peak: Well then I can't approve it on what it is right now because they can do whatever they want. I...

Senior Planner Blue: Would you like us to revise the resolution to change the findings and all of that to reflect new construction rather than the substantial remodel?

Mayor Peak: Yes I would. Do I have a second?

Councilmember La Monte: I'll second that.

Councilmember Rosenthal: So what does that mean in real life?

City Planning Director Parker-Bozylinski: Basically, we're going to change nothing for all intents and purposes because we've always seen it as new construction. We're just going to reword it to say that it's new construction as oppose to, we're not going to call it a substantial remodel, we're just going to call it new construction of a single family house on this parcel.

Councilmem Rosenthal: So what does that mean about the way it can be built and what's going on? It means nothing?"

(Discussion)

City Attorney Hogin: You're approving this application, these plans.

(Discussion)

Amanda Ryan: What the city labeled it as really was not going to be relevant to how the County and other departments outside the city or the Coastal Department would review that. Is that true if this is changed here because building with the building looked at it and the reasoning for how the fire department looked at it, the fire department didn't care about what happened to our foundation, they simply cared about what was being remaining of the existing structure. So as long as they are reviewing our same plans and it's not going to change their review, I'd like to

understand if that's the case before...

City Attorney Hogin:

We're really in not a position to tell you how other agencies are going to respond. What's In front of you all is the City's code and LCP, the application that's in front of you and you'll make that determination. What the fire department does with that I don't know.

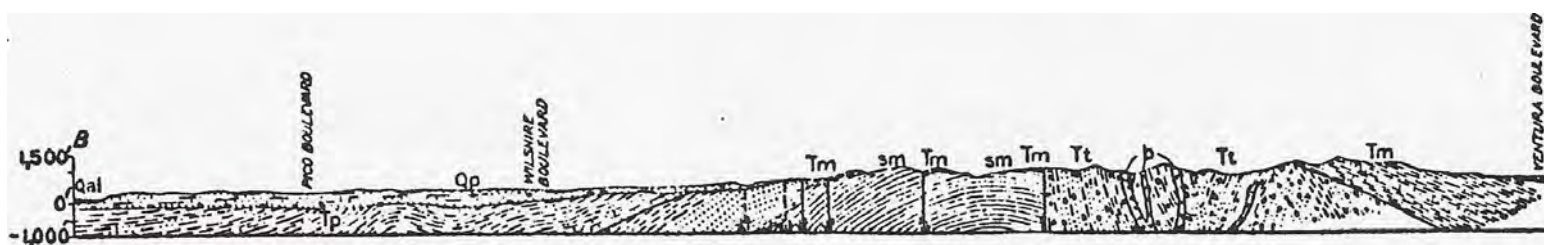
Amanda Ryan:

Ok.

City Attorney Hogin:

As I understand the motion on the floor, it's staff's recommendation with instruction to re-word the references to legal, non-conforming and substantial remodel to clarify that this is a new or replacement structure.

(Motion carried 5-0.)



Donald B. Kowalewsky

ENVIRONMENTAL &
ENGINEERING GEOLOGY

July 28, 2014

Job # 14667H2.001

AGB Trust

P.O. Box 2252

Malibu, California 90265

SUBJECT: Engineering geologic opinion report concerning both the reconstruction of the coastal bluff and topographic conditions on properties located at 28106, 28118 and 28126 Pacific Coast Highway, Malibu, California.

Discussion of Site Conditions

Between June 9, 2005 and September 16, 2006 (based on aerial photos available at californiacoastline.org), substantial modifications were made to the coastal slope in the vicinity of the common property line for the properties at 28106, 28118 and 28126 Pacific Coast Highway. These modifications included grading of a portion of the slope and installation of eleven retaining walls. The retaining walls were constructed of various materials including: concrete block, railroad ties, and mortared stone. Review of City records indicates that the work was performed without benefit of geotechnical reports, civil or structural engineering, grading permits, or building permits. This work is not allowed under current City policy or California Coastal Commission policy.

Based on discussions with the current owner of 28106 Pacific Coast Highway, that work was performed by the previous owner of both 28118 and 28126 Pacific Coast Highway without the knowledge that the work was being performed on the 28106 Pacific Coast Highway property and without approval of the owner of the property at 28106 Pacific Coast Highway.

My observations of the existing tiers of retaining walls found all of the walls constructed of used railroad ties to be substandard for support of the vertical height that they are intended to support and that in many cases those walls are leaning downslope, indicating they are not performing as intended.

To illustrate the conditions that currently exist along the property line and the conditions that previously existed, I have provided topographic cross-section A-A'. The cross-section is based on topographic surveys prepared prior to and subsequent to the slope modifications. Based on that cross-section, it is clear that cuts were made into the natural slope and earth fill was placed behind retaining walls. Because these walls, cuts, and fills cross the property line, it would not be feasible to repair the slope with work on only one property without concurrent work being performed on the adjacent property. The following paragraph clarifies why that work can not feasible be performed on only one property at a time.

If the property to the east (28106 Pacific Coast Highway) removed retaining walls to the property line and attempted to re-grade on only the eastern property, east facing vertical excavations would exist along the property line where the 2006 fill had been placed and subsequently removed on only the eastern property. Similarly, west facing vertical excavations would exist along the property line where the 2006 cuts had been made and subsequently reconstructed through the placement of new earth fill on only the eastern property. (It should be noted that if the work is done on only the western (28118 and 28126 Pacific Coast Highway) properties, similar but reverse conditions involving vertical slopes would exist). These vertical slopes would occur during and remain subsequent to that work. Vertical excavations are not stable. Consequently, performing that work only east or west of the property line would place the adjoining property at risk. Since the building code prohibits work that will adversely affect offsite properties, either the work must be done concurrently or a retaining wall must be constructed along the property line. Another retaining wall on the coastal bluff is also a violation of the City's LCP just as the non-permitted walls are a violation of the City's LCP.

It is my opinion that it is feasible to reconstruct the slope to approximate its original topography. (See below for the proposed methodology). However, it is not feasible to do so unless the adjoining property owners perform that work concurrently.

Slope Repair Methodology

A. Slope grading and retaining wall construction.

Although no site specific geotechnical investigations have been performed by this office, extensive investigation work was performed for 28118 and 28126 Pacific Coast Highway. In addition, the undersigned engineering geologist has been involved with numerous slope repairs in the Malibu area. Consequently, the methodology for slope reconstruction is established and effective. It will not require use of any concrete retaining walls. However, before that work is

performed, properly engineered plans should be provided to the City for review and approval to assure that proposed work will not be in violation of any policies or codes.

It is proposed to reconstruct the slope using certified compacted earth fill that is reinforced with geogrid (Appendix A). This method will allow the slope to be constructed back to its original grades that varied between 2:1 and steeper than 1:1 gradients. Prior to and during the placement of earth fill, pipe and gravel subdrains will need to be installed beneath the fill to assure that hydrostatic pressures do not subsequently develop and cause the slope to fail. When the reconstruction project is completed and properly vegetated, it should be indistinguishable from the pre-2005 condition.

Earth movement and fill compaction can be performed with relatively small earth moving equipment such as bobcats and walk behind compactors. This type of equipment can reach the area of proposed work along the existing pathway that descends the slope on the 28118 and 28126 properties. In addition, this type of equipment does not require access through or across the beach.

B. Top of slope retaining wall.

Aerial photographs indicate that in 2006 a “U” shaped retaining wall was constructed at the top of the coastal bluff on the 28126 Pacific Coast Highway property. A portion of the eastern side of that retaining wall encroaches onto the property at 28106 Pacific Coast Highway. Construction of that wall and placement of earth fill above that wall extended the level yard area out over the original top of slope. That retaining wall is 55 feet long and in excess of 10 feet in height at the southwest corner.

This area of non-permitted work (involving both retaining wall construction and grading to place earth fill on the upslope side of that wall) can be restored to its pre-existing topography. That work would first require removal and export of the earth fill. Subsequently, the concrete block retaining wall and its foundation should be removed. This work will disturb the native soils underlying the areas where the wall was constructed and earth placed. Consequently, remedial grading at the top of the slope involving additional soil removal and placement of certified compacted earth fill reinforced with geogrid (Appendix A) will be required to prevent future slope failures in this area and to restore the original topography. .

Comments On Report by GeoConcepts

GeoConcepts, Inc. prepared a "Slope Restoration Supplemental" report dated 5/8/13 for the 28118 Pacific Coast Highway property. That report specifically stated that it was their understanding that a retaining wall along the common property line was not necessary. They specifically stated:

'Based on the current redevelopment plans and additional information provided by the project structural and coastal engineers, it is our understanding that a retaining wall along the common property line is not necessary. Currently, the proposed structure on the subject site will be raised about seven (7) feet and will be supported on a new concrete pile foundation system. If earth materials were to fail onto the subject site from 28106 PCH, the elevated residence and new concrete pile foundation system are not anticipated to be affected by the anticipated debris.'

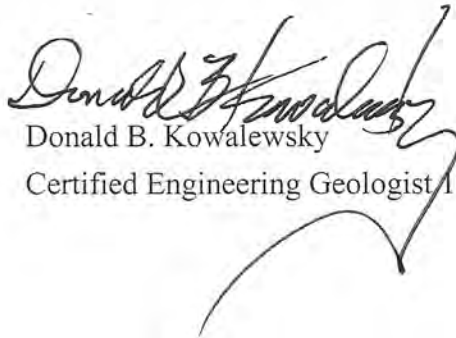
The fact that the new structure might not be affected by debris falling from the adjoining property is not justification for ignoring the building code which prohibits work that will adversely affect offsite property. Removing retaining walls will affect both sides of the wall, resulting in failure on the 28106 Pacific Coast Highway property. The AGB Trust, owner of 28106 Pacific Coast Highway, does not want slope failures to occur on its property.

Top of Coastal Bluff

City policy requires that structures be set back from the top of Coastal Bluffs. The criteria for the setbacks are related to the height of the bluff slope, the angle of the bluff face, the potential erosion rate of the bluff, the overall stability of the bluff, and the City's LCP. Regardless of the rules used to determine the setback, the actual top of the bluff must be determined. Geologists are trained in geomorphology (the nature of the terrain). Surveyors are trained to define specific changes in topography. By using topographic maps prepared by licensed surveyors, topographic cross-sections can be drawn by a geologist to demonstrate the specific slope conditions. From that cross-section (and the topographic map from which the cross-section was prepared) the top of a coastal bluff can usually be determined with good accuracy.

Topographic cross-sections of the coastal bluff on the 28118 and 28126 Pacific Coast Highway properties have been prepared by The J. Byer Group, Inc., GeoConcepts, Inc., and this office. The J. Byer Group prepared several reports for slope repair between 2000 and 2002.

GeoConcepts prepared several reports for site development between 2011 and 2013. Geologic cross-sections in those documents all show the top of the bluff at an elevation of approximately 115 feet above sea level. (Specifically, Section E-E' (page 24) of the J. Byer Group report dated 12/12/00, and Section B-B' (page 27) of the GeoConcepts 10/14/11 report). (Those cross-sections are attached for reference). This office prepared the accompanying cross-section B-B' which shows the top of the bluff at an elevation of 114 feet above sea level. It is my opinion that the City should require that in order for structures to conform with the City LCP and LIP setbacks should be determined using the topographic contour line 114 as the top of the bluff.

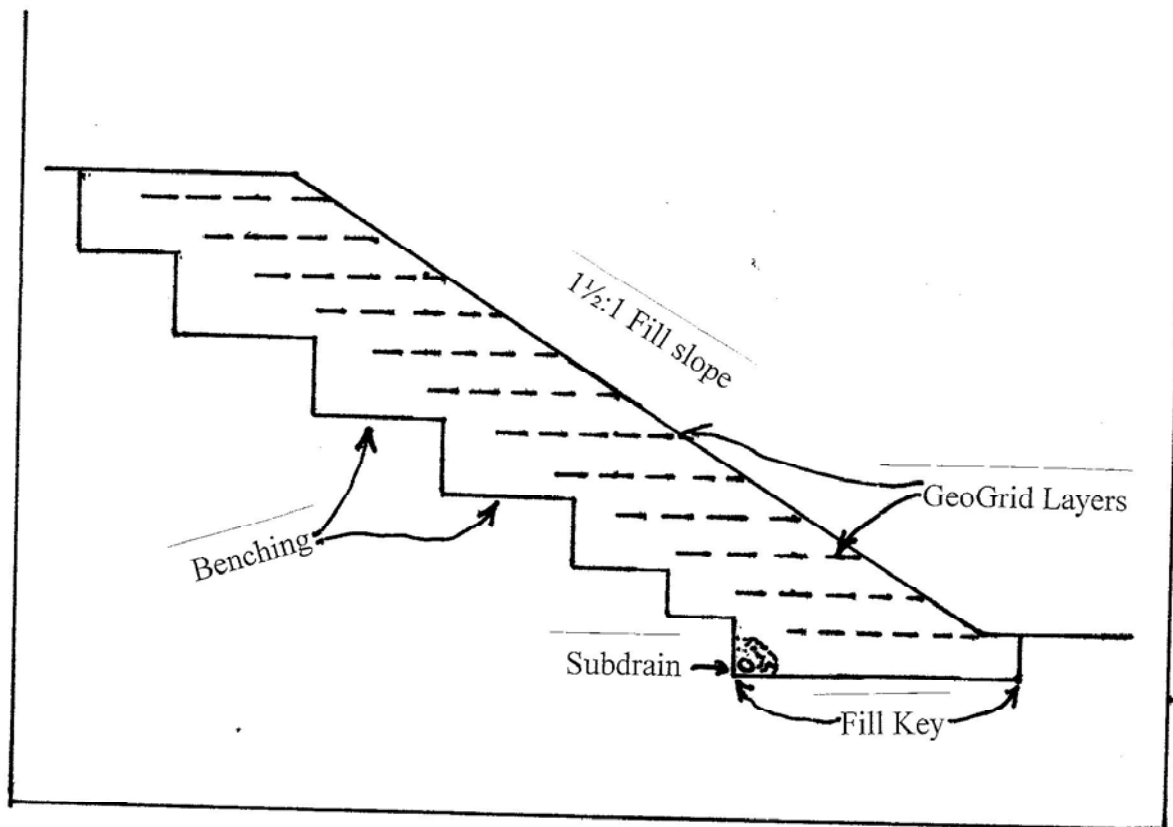

Donald B. Kowalewsky
Certified Engineering Geologist 1025



APPENDIX A

METHOD OF SLOPE RECONSTRUCTION

GeoGrid Reinforced Slope Detail

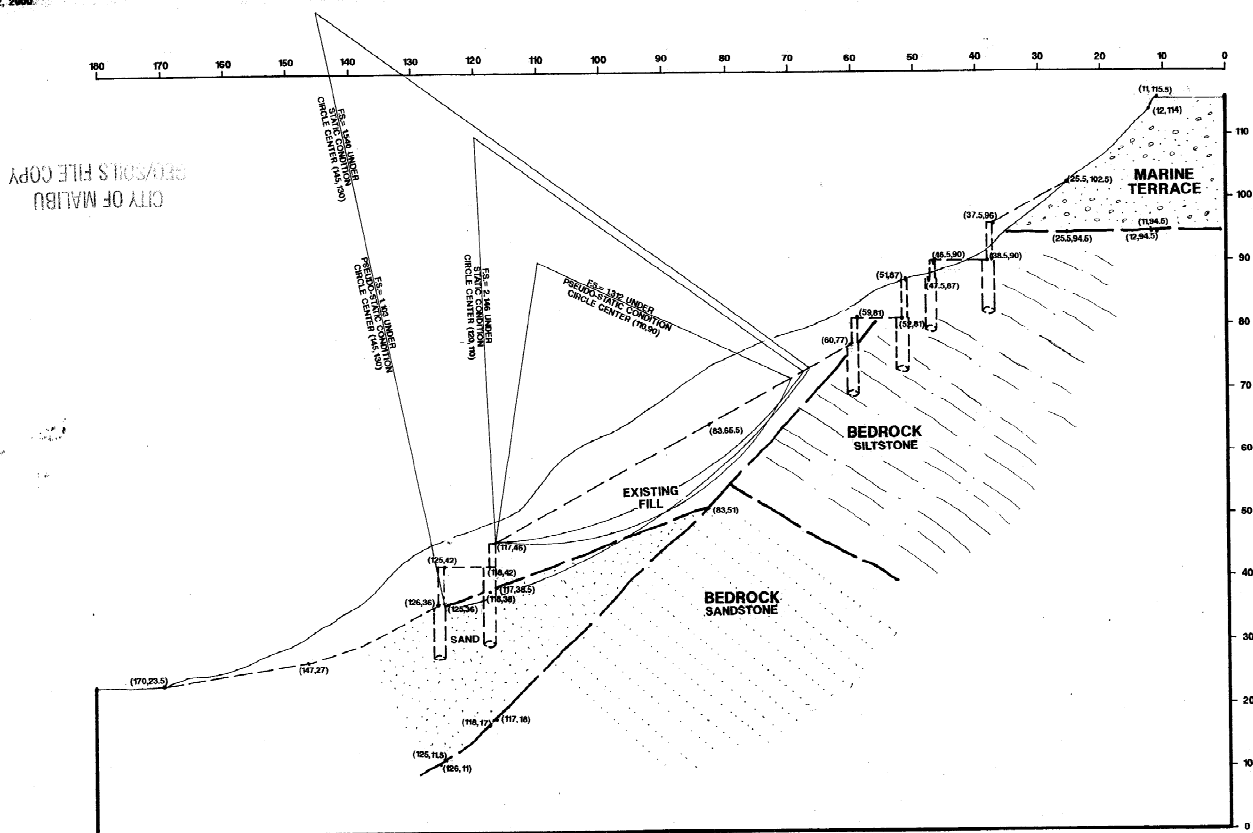


Reinforced fill slope details:

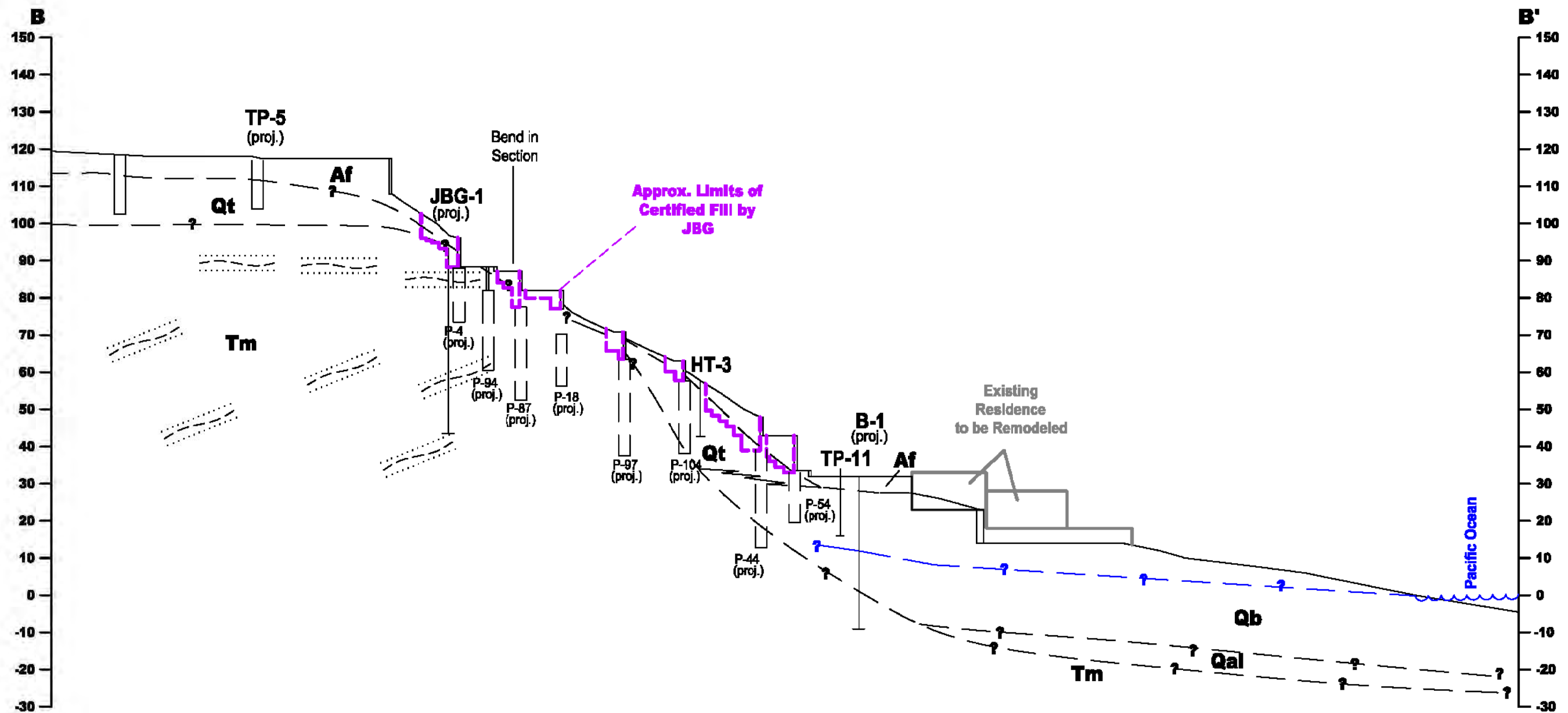
1. All vegetation and other deleterious materials in proposed fill areas should be stripped and removed from the fill area prior to fill placement.
2. Because the final fill slope must be steeper than 2:1 (26°), fill will need to be reinforced with a geogrid utilized in such a manner that the fill achieves the desired soil strength.
3. The earth fill should be reinforced with:
 - Type of geogrid: Mirafi 3XT or equivalent
 - Maximum vertical grid spacing of 2 feet.
 - Horizontal depth of geogrid 10 feet minimum.
4. Geogrid to be placed such that when the slope is trimmed to finish grade, no more than 3 inches of soil remains between the finished slope face and the outer edge of the geogrid.
5. Fill shall be initially placed in a fill key that is a minimum of 10 feet wide and 3 feet into dense natural earth materials. Where the initial fill is to be placed behind an engineered retaining wall, the wall can act as the fill key. The lowest layer of geogrid should be at the top of the fill key or top of retaining wall.

APPENDIX B

TOPOGRAPHIC & GEOLOGIC CROSS-SECTIONS



SECTION E-E



Issued By:



GeoConcepts, Inc.
Geology & Geotechnical Engineering

14428 Hamlin Street, Suite 200 Office (818) 994-8895
Van Nuys, CA 91401 Fax (818) 994-8599
www.GeoConceptsinc.com

Description:

Cross-Section B-B'

Base Map Provided By:

Meyer Architecture, Inc.

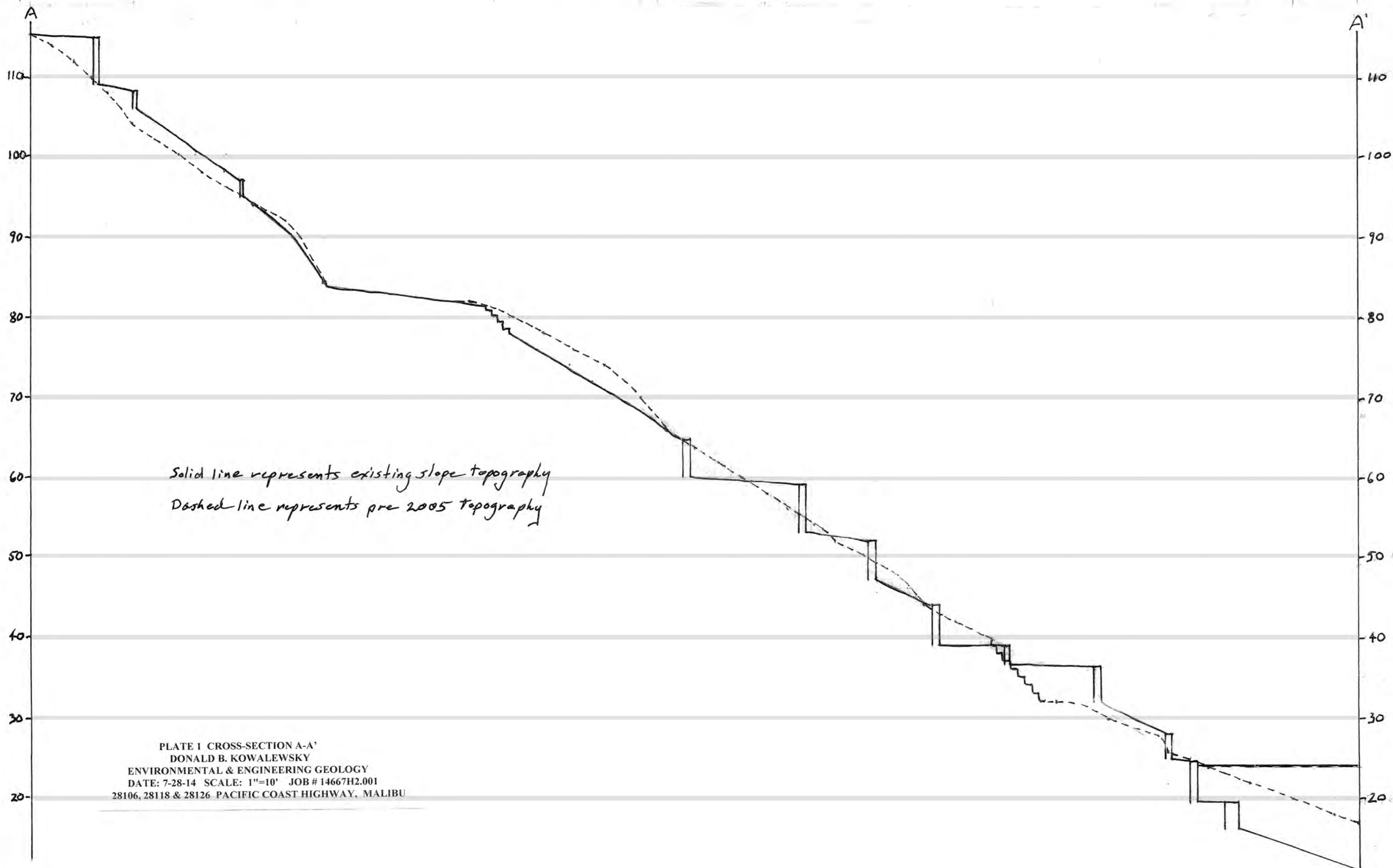
Project Address:

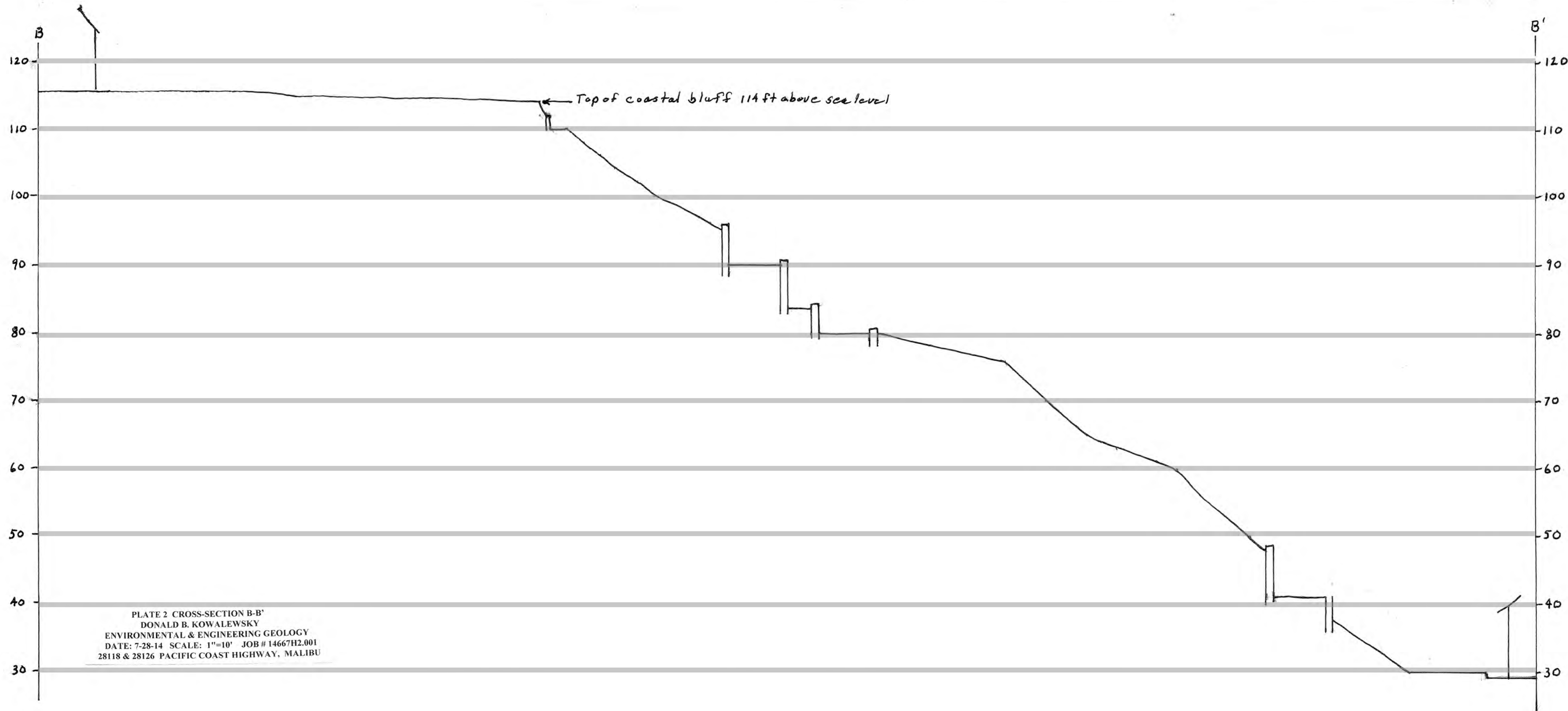
28118 Pacific Coast Hwy
Malibu, California

Date: Oct., 2011

Scale: 1" = 30'

Job No. 4297-1





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Item W33a Response to Staff Report Ltr

Anne Blemker [ablemker@mccabeandcompany....]

To: [Dreher, Nicholas@Coastal](#)
Cc: [Amanda Ryan \[ajryan0808@yahoo.com\]](#)
Attachments: [Ltr to CCC Staff 1-2-15.pdf \(177 KB\)](#) [Open as Web Page]

Friday, January 02, 2015 7:13 PM

Hi Nick,

Attached please find a letter in response to the staff report. Please let us know if you have any questions or need additional information.

Thanks for all your work on this.

Anne

Anne Blemker
McCabe & Company
Phone: 310-463-9888
10520 Oakbend Drive
San Diego, CA 92131

McCABE & COMPANY

Government Affairs Consulting

10520 OAKBEND DRIVE
SAN DIEGO, CA 92131
(310) 463-9888
FAX (858) 368-9722

1121 L STREET, SUITE 100
SACRAMENTO, CA 95814
(916) 553-4088
FAX (916) 553-4089

January 2, 2015

Nicholas Dreher
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

Re: A-4-MAL-14-0047 (Ryan Family), Item W33a

Dear Mr. Dreher:

Thank you for your time and effort in reviewing the voluminous appeal materials and preparing a very thorough staff report for the above-referenced item. **The applicant is in agreement with the recommendation for No Substantial Issue.**

Per our telephone conversation earlier this week, I'd just like to identify two points in the staff report that may require additional clarification or correction. Please see below.

Page 9

"The appellant contends they became aware of all unpermitted property along the 28106 PCH bluff face and beach-level in May 2012."

In 2006, the appellant applied to the City of Malibu for a permit to construct a guest house on their property. At that time, the attached survey was submitted as part of their application. The survey depicts the unpermitted development in question.

Page 14

"The City wants both the applicant and appellant to join as co-applicants in a separate CDP application to address the unpermitted development."

The City has specifically advised the applicant to file individual CDP applications for each property rather than join as co-applicants with the appellant. Below is an e-mail message from the Assistant City Attorney to the applicant's attorney and appellant's attorney (and City Planning staff) in which it is advised that each property owner pursue a separate application. The full e-mail chain has been transmitted to you previously.

Counsel:

As we discussed at our joint meeting on April 10th at City Hall, the I have looked into the issue that was raised of each property possibly "piggy backing" on the other's CDP to remove unpermitted structures that exist primarily on one property but extend partially onto the other's property. While I understand the

practical appeal of this approach, my suggestion is that all work done on a property must be tied to a CDP that is issued for that property. In other words, all work that is done on 28118 & 28106 PCH should be tied to the Ryan's permits; all work done on 2816 PCH should be undertaken pursuant to permits issued to AGB trust. No doubt the parties would save time and expense in terms of remediation of the hillside structures and removal of the deck if they could agree on how to coordinate the physical removal of the structures that straddle the property lines once each owner has the necessary permits – but that is up to the owners to work out. Please let me know if you have any questions.

*Tarquin Preziosi
Assistant City Attorney,
Malibu & Palos Verdes Estates
Jenkins & Hogin, LLP
1230 Rosecrans Ave, Ste 110
Manhattan Beach, CA 90266
Tel: (310) 643-8448
Fax: (310) 643-8441
tpreziosi@localgovlaw.com*

Please note that the addresses were inadvertently cited incorrectly in the above e-mail. Correct addresses are as follows: Ryan property: 28118 & 28126 PCH, AGB Trust property: 28106 PCH.

We hope that this clarifies any outstanding issues and look forward to receiving an NSI determination at the January 7, 2015 hearing. Please let us know if you need any additional information or have any questions. Thank you for your attention to this matter.

Sincerely,


Anne L. Blemker

Attachment

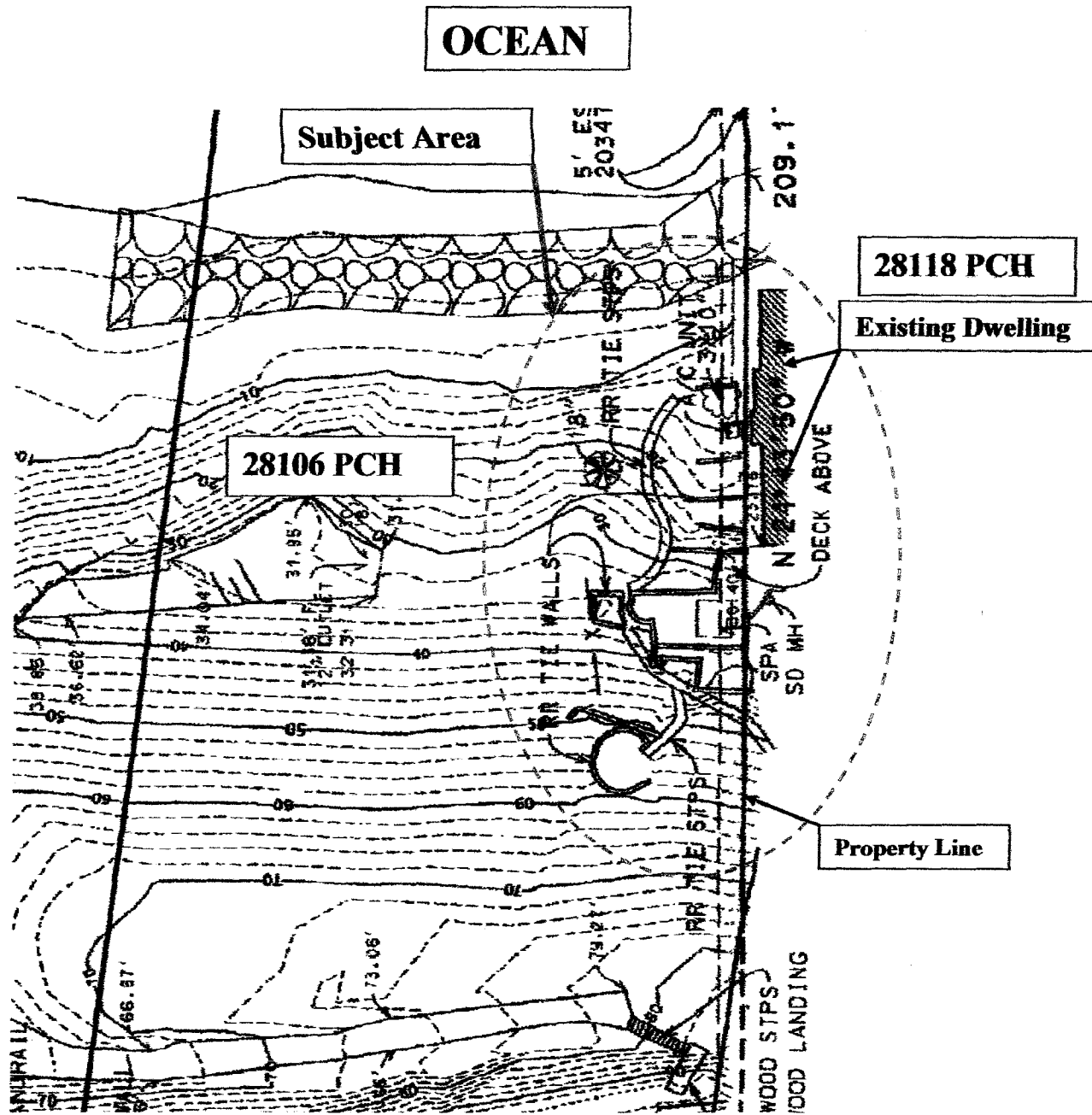


Plate 1: A portion of the geologic map within Grover and Hollingsworth and Associates report dated December 13, 2006 for Ellen Palavsky.

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Sol's Postponement Request

Anne Blemker [ablemker@mccabeandcompany....]

To: [Dreher, Nicholas@Coastal](#)
Cc: [Amanda Ryan \[ajryan0808@yahoo.com\]](#)

Tuesday, December 30, 2014 2:56 PM

Hi Nick,

I was just speaking to Chair Kinsey's assistant and she said that they received a request for postponement via e-mail. Could you please forward that to us? And for the record, we do not support a postponement.

Thanks,
Anne

Anne Blemker
McCabe & Company
Phone: 310-463-9888
10520 Oakbend Drive
San Diego, CA 92131

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Re: Appeal - Item 33a

Richard Sol [richardsolarchitect@gmail.com]

To: [Dreher, Nicholas@Coastal](#)
Cc: [Christensen, Deanna@Coastal](#)

Monday, December 22, 2014 5:16 PM

Nicholas / Your staff report for the appeals filed by the AGB Trust was received today via e-mail. Thank you.

2 points:

First, the AGB Trust formally requests that the California Coastal Commission's hearing on the AGB Trust's appeal be reschedule to a hearing in February 2015. Your staff report is quite extensive and its release 2 days before Christmas together with your scheduling the hearing on January 7, 2015 compromises the AGB Trust's ability to approach the Commissioners over the Holidays and prepare its presentation. The CCC staff has taken 4 months to prepare its report while only providing the appellant (The AGB Trust) with only 8 working days (12/22-12/24, 12/29-12/31 & 1/5-1/6) to prepare its response to a 24 page staff report with 107 pages of exhibits. With this e-mail, I am requesting on behalf of the AGB Trust a 1-month extension of the hearing date.

Second, the AGB Trust filed 2 separate appeals to the City of Malibu for which it paid 2 separate appeal fees; one regarding 28118 PCH and the other regarding 28126 PCH. The Malibu City Council gave the AGB Trust 2 time frames to address the City Council at its appeal hearing held in August 2014. With this e-mail, I am requesting on behalf of the AGB Trust confirmation that the AGB Trust will be given twice the allotted time to address the 2 projects before the CCC when the hearing is held.

I would be grateful if you would administer the former request and respond to the latter request.

Thank you. / Richard

Richard Sol Architect Inc
24955 Pacific Coast Highway, Suite C101
Malibu, California 90265
Tel: 310 456 6909
Mobile: 310 717 8210
Fax: 310 456 3629

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Re: Appeal - Item 33a

Richard Sol [richardsolarchitect@gmail.com]

To: [Dreher, Nicholas@Coastal](#)
Cc: [Christensen, Deanna@Coastal](#)

Wednesday, December 24, 2014 6:28 PM

You forwarded this message on 12/26/2014 7:51 AM.

Nicholas / I am writing this e-mail as the architect-representative of the AGB Trust.

The scheduled hearing on January 7, 2015 of AGB Trust's appeal (Item 33A on the January 7, 2015 CCC Calendar) falls in the middle of the Holiday Season. Assuming that I should have a position paper to the Commissioners a few days before the hearing (say Friday, January 2nd) and given my practice commitments (that were already on my calendar before I received your report only 2 days ago), I have determined that it is impossible for me to prepare a response to your findings and recommendation as well as prepare a 3-minute presentation to the Coastal Commission in that small time frame.

The fact is that the CCC staff took 4 months to prepare its report in which it concludes that there are no substantial issues, disseminate its report on December 22, 2014 and schedule the related public hearing on January 7, 2015. As a result, I have only 5 working days to (a) respond to the staff's findings, (b) reach-out to the Commissioners and (c) prepare for the public hearing all during the Holiday Season. That is a hardship that compromises my client's appeal.

Therefore, I am formally requesting that the California Coastal Commission re-schedule Item 33A presently set for hearing on the January 7, 2015 CCC calendar to the next available hearing date.
Would you please immediately forward this request to all the Commissioners.

Thank you. / Richard

Richard Sol Architect Inc
24955 Pacific Coast Highway, Suite C101
Malibu, California 90265
Tel: [310 456 6909](tel:3104566909)
Mobile: [310 717 8210](tel:3107178210)
Fax: [310 456 3629](tel:3104563629)

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Appeal Number: A-4-MAL-14-0047

Richard Sol [richardsolarchitect@gmail.com]

To: Steve Kinsey [SKinsey@MarinCounty.Org]; Jana Zimmer [zimmerccc@gmail.com];
Martha McClure [mmccclureccc@co.del-norte.ca.us]; Carole Groom [cgroom@smcgov.org];
Sarah Glade Gurney [sarahcoastalcom@yahoo.com]

Cc: Dreher, Nicholas@Coastal; Christensen, Deanna@Coastal

Attachments: 2014 1219 CCC Public H~1.PDF (1 MB) [Open as Web Page]

Monday, December 29, 2014 7:27 PM

You forwarded this message on 12/30/2014 4:49 PM.

Chairman Kinsey & Coastal Commissioners / **Pursuant to the ex-parte communication requirements, the 2 key Commission staff members listed above (Nicholas Dreher & Deanna Christensen) have been copied with this same letter and attachment.**

I am the architect representing the AGB Trust with regard to the appeal captioned above. The AGB Trust's appeal was filed on September 8, 2014 and the staff's report was received via e-mail just last Monday, December 22nd, 2014.

The scheduled hearing on January 7, 2015 of AGB Trust's appeal (Item 33A on the January 7, 2015 CCC Calendar) falls in the middle of the Holiday Season. I have realized that key persons at the City, County and State levels who are relevant to arguing against the CCC staff's findings are difficult to reach during this holiday period. It is near impossible for the AGB Trust to prepare a proper response to the CCC staff's findings, contact the Commissioners and prepare a 3-minute presentation to the Coastal Commission in that small time frame.

Therefore, I am formally requesting that the California Coastal Commission re-schedule Item 33A presently set for hearing on the January 7, 2015 CCC calendar to the next available hearing date. I have relayed this request to CCC staff analyst Nicholas Dreher but, given the time constraints, wanted to also relay this to you directly.

Thank you in advance for this consideration. / Richard Sol

Richard Sol Architect Inc
24955 Pacific Coast Highway, Suite C101
Malibu, California 90265
Tel: 310 456 6909
Mobile: 310 717 8210
Fax: 310 456 3629

CALIFORNIA COASTAL COMMISSION

South Central Coast District Office
89 South California Street, Suite 200
Ventura, California 93001-2801
(805) 585-1800 FAX (805) 641-1732

Page: 1

Date: December 19, 2014

**IMPORTANT PUBLIC HEARING NOTICE
SUBSTANTIAL ISSUE DETERMINATION**APPEAL NUMBER: **A-4-MAL-14-0047**

LOCAL GOVT CDP No. 11-033

PERMIT NUMBER:

APPLICANT(S): Ryan Family, LLCAPPELLANT(S): AGB TrustDECISION BEING APPEALED:

Construction of an approximately 2,100 sq. ft., 24-ft. tall new single-family residence on the beach, including a new concrete pile and grade beam foundation, demolition and remodel of an existing residential structure, modifications to an onsite wastewater treatment system, demolition of unpermitted beach level work, a variance to allow offsite parking, and an offer to dedicate a lateral access easement.

PROJECT LOCATION: 28118 & 28126 Pacific Coast Highway, City of Malibu, Los Angeles County
(APNs 4460-033-010 and 4460-033-011)

HEARING DATE AND LOCATION:DATE **Wednesday, January 7, 2015**TIME **Meeting Begins at 9:00AM**PLACE Santa Monica Civic Center – East Wing
1855 Main Street, Santa Monica, CA 90401

PHONE (415) 407-3211

ITEM NO: W33a

HEARING PROCEDURES:

New appeals undergo a two-step process before the Commission, known as the 'substantial issue' phase, and 'de novo' phase. At the 'substantial issue' phase, section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If at least three Commissioners request to take public testimony at the substantial issue phase of the appeal prior to determining whether or not to hear an appeal, the only persons qualified to testify orally before the Commission are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in the local government's action on the coastal development permit is final, and there will be no 'de novo' phase of the appeal hearing.

Handwritten in red ink:
RCD 12/22/14
R. SOL

IMPORTANT PUBLIC HEARING NOTICE SUBSTANTIAL ISSUE DETERMINATION

AVAILABILITY OF STAFF REPORT:

A copy of the staff report on this matter will be available no later than 10 days before the hearing on the Coastal Commission's website at <http://www.coastal.ca.gov/mtgcurr.html>. Alternatively, you may request a paper copy of the report from Nick Dreher, Coastal Program Analyst, at the South Central Coast District Office.

SUBMISSION OF WRITTEN MATERIALS:

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

We request that you submit your materials to the Commission staff the week before the scheduled Commission meeting (staff will then distribute your materials to the Commission).

Mark the agenda number of your item, the application number, your name and your position of support or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission staff person listed on page 2.

If you wish, you may obtain a current list of Commissioners' names and addresses from any of the Commission's offices and mail the materials directly to the Commissioners. If you wish to submit materials directly to Commissioners, we request that you mail the materials so that the Commissioners receive the materials no later than Thursday of the week before the Commission meeting. Please mail the same materials to all Commissioners, alternates for Commissioners, and the three non-voting members on the Commission with a copy to the Commission staff person listed on page 2.

You are requested to summarize the reasons for your position in no more than two or three pages, if possible. You may attach as many exhibits as you feel are necessary.

Please note: While you are not prohibited from doing so, you are discouraged from submitting written materials to the Commission on the day of the hearing, unless they are visual aids, as it is more difficult for the Commission to carefully consider late materials. The Commission requests that if you submit written copies of comments to the Commission on the day of the hearing, that you provide 20 copies.

ALLOTTED TIME FOR TESTIMONY:

Oral testimony at the substantial issue stage is limited to 3 minutes combined total per side to address the question of substantial issue.

Oral testimony at the de novo stage may be limited to 5 minutes or less for each speaker depending on the number of persons wishing to be heard.

ADDITIONAL PROCEDURES:

No one can predict how quickly the Commission will complete agenda items or how many will be postponed to a later date. The Commission begins each meeting session at the time listed and considers each item in order, except in extraordinary circumstances. Staff at the appropriate Commission office can give you more information prior to the hearing date.

Questions regarding the report or the hearing should be directed to Nick Dreher, Coastal Program Analyst, at the South Central Coast District Office (see contact information provided in the letterhead on page 1).

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Appeal No. A-4-Mal-14-0047 (Ryan Family LLC, Malibu)

Richard Sol [richardsolarchitect@gmail.com]

To: [Dreher, Nicholas@Coastal](#); [Christensen, Deanna@Coastal](#)

Friday, January 02, 2015 6:40 PM

Nicholas / Due to your release of the staff report 2 days before Christmas and the Holidays themselves, I will not be able to provide my comments to you by 5:00 pm today (January 2) as you suggested in your email of December 22, 2014.

The fact remains that the CCC staff took 4 months to prepare its report in which it concludes that there are no substantial issues, disseminated its report on December 22, 2014 and scheduled the related public hearing for January 7, 2015. As a practical result, the AGB Trust (appellant) had only 5 working days (12/23-12/24, 12/29-12/31) to prepare a response to the staff by today, January 2, 2015 (as you indicated i your e-mail) which is insufficient. That is a hardship that compromises my client's appeal. Therefore, I plan to ask the Commissioners at the January 7th hearing for a 1-month extension of the hearing so that I can provide a written response that is complete.

In the meantime, I will do my best to prepare a response to the staff report over the weekend and, in the interest of time, will e-mail it directly to the Commissioners and to you as well.

Please enter this e-mail into the record.

Thank you in advance for your understanding. / Richard

Richard Sol Architect Inc
24955 Pacific Coast Highway, Suite C101
Malibu, California 90265
Tel: 310 456 6909
Mobile: 310 717 8210
Fax: 310 456 3629

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Re: Appeal Number: A-4-MAL-14-0047

Richard Sol [richardsolarchitect@gmail.com]

To: [Dreher, Nicholas@Coastal](#)

Cc: [Christensen, Deanna@Coastal](#)

Monday, January 05, 2015 2:51 PM

Nicholas / Would you please disseminate my e-mail package (not decimate). Spell check.....a gift and a curse! / Richard

Richard Sol Architect Inc

24955 Pacific Coast Highway, Suite C101

Malibu, California 90265

Tel: 310 456 6909

Mobile: 310 717 8210

Fax: 310 456 3629

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Re: Appeal Number: A-4-MAL-14-0047

Richard Sol [richardsolarchitect@gmail.com]

To: [Dreher, Nicholas@Coastal](#)

Cc: [Christensen, Deanna@Coastal](#)

Monday, January 05, 2015 6:26 PM

Nick / Correct me if I am wrong but my impression of your role in AGB Trust's appeal was to review the AGB Trust's appeal and write your staff report. I then submitted my comments to your determination.

It seems to me that you have done your job and I have done mine. The only action that should remain is that at the hearing, you orally give your report and I then I give mine. The Ryan Family LLC then makes its statements, the Commission asks questions, deliberates and decides the matter.

You and I could go back and forth with comments on comments many, many times. However, given the fact that you gave me less than a reasonable time over the Holidays to prepare my comments to your staff report that was released Christmas week, I feel that you are now acting as an advocate of the Applicant. The practical outcome of your last minute scheduling of the hearing and now issuing an addendum 2 days before the hearing so that I cannot deliver a written response to your response to the Commissioners is that the AGB Trust has been unfairly treated and processed.

It seems to me that the oral presentation that you will give at the hearing followed by the oral presentation that I will give at the hearing will keep on the same level of the playing field. Your twelfth hour addendum and withholding of my written comments from the Commissioners (through tomorrow) is passively but negatively affecting the AGB Trust's appeal. That's unfair. / Richard

Richard Sol Architect Inc
24955 Pacific Coast Highway, Suite C101
Malibu, California 90265
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Mobile: 310 717 8210
Fax: 310 456 3629

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Item 33A / January 7, 2015

Richard Sol [richardsolarchitect@gmail.com]

To: [Dreher, Nicholas@Coastal](#); [Christensen, Deanna@Coastal](#)

Sunday, January 04, 2015 3:40 PM

You forwarded this message on 1/5/2015 9:00 AM.

Nicholas and Deanna / Would you please send me the email addresses for all of the Coastal Commissioners as soon as possible.

Given the 3 minute limit to my address to the Commissioners, my position paper in response to your staff report is critical to AGB Trust's appeal. For that reason, I would like to e-mail it directly to the Commissioners.

Thank you. / Richard

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CALIFORNIA COASTAL COMMISSION

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W33a

Important Hearing Procedure Note:

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

Appeal Filed:	9/8/2014
49 th Day:	Waived
Staff:	N. Dreher - V
Staff Report:	12/18/2014
Hearing Date:	1/7/2015

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION

APPEAL NO.: A-4-MAL-14-0047

APPLICANT: Ryan Family, LLC

APPELLANT: AGB Trust

LOCAL DECISION: Coastal Development Permit (#07-155) approved by the Malibu City Council on August 11, 2014

PROJECT LOCATION: 28118 and 28126 Pacific Coast Highway, City of Malibu, Los Angeles County
(APNs 4460-033-010 and 4460-033-011)

PROJECT DESCRIPTION: Construction of an approximately 2,100 sq. ft., 24-ft. tall new single-family residence on the beach, including a new concrete pile and grade beam foundation, demolition and remodel of an existing residential structure, modifications to an onsite wastewater treatment system, demolition of unpermitted beach level work, a variance to allow offsite parking, and an offer to dedicate a lateral access easement.

STAFF RECOMMENDATION: No Substantial Issue Exists

MOTION & RESOLUTION: Page 7

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified LCP or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Staff recommends that the Commission, after public hearing, determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. The motion and resolution for the "no substantial issue" finding are found on **page 7**.

The City of Malibu approved a Coastal Development Permit (CDP) for construction of an approximately 2,100 sq. ft., 24-ft. tall new single-family residence on the beach, including a new concrete pile and grade beam foundation raising the residence seven feet off of the beach, demolition and remodel of an existing residential structure, modifications to an onsite wastewater treatment system, demolition of unpermitted beach level work, a variance to allow offsite parking, and an offer to dedicate a lateral access easement. The approved project is located on a developed beach-level property at 28118 Pacific Coast Highway, located approximately 500 feet southeast (downcoast) of the pier at Paradise Cove. The site is an infill parcel that is adjacent to existing single-family beachfront residences on both sides. The project site, and adjacent sites, are zoned Rural Residential (RR-2), which permits the development of single-family residential structures.

The subject property is located on a beach level lot that extends north roughly midway up a coastal bluff. The Pacific Ocean is to the south of the subject lot. The subject parcel and the appellant's neighboring properties share certain connected unpermitted development on the bluff and at beach level. The unpermitted development on the neighboring appellant's property is being pursued by the City's enforcement staff. The unpermitted work on the subject lot is being addressed in part through the City-approved development and via two future separate CDP applications.

The appellant contends that the location and configuration of the City-approved residence poses a fire hazard risk to the appellant's property (which is immediately adjacent to the east). The appellant contends that the City "described and consequently misdirected the County Fire Department to consider the development as a remodel which caused the development to circumvent compliance with current fire codes for new residences." However, the project description provided to Fire Department staff was as follows: "Substantial remodel of ESFR (replacement structure) with new pile foundation on beach". So, although the description was for a substantial remodel of an existing single family residence (ESFR), it included additional information stating that the City considered the structure to be a replacement structure and that it included a new pile foundation on the beach. The Fire Department responded that: "The project DOES NOT require Fire Department Plan Review". In this case, the City followed its standard procedures for determining if review is required for a structure where more than 50 percent of exterior walls are to remain. Based on consultation with the Fire Department, the City determined both that 1) Fire Plan Review was not required and 2) the project's incorporation of a sprinkler system and fire rated exterior materials mitigated potential fire hazards.

The appellant contends that the City-approved removal of unpermitted beach-level work on the appellant's property will adversely impact the stability of unpermitted bluff development on the

appellant's property. In this case, the City relied upon three separate geotechnical analyses that all found the removal of the applicant's unpermitted work will not adversely impact the appellant's property's stability. Additionally, the appellant contends that all unpermitted work on the appellant's property must be restored prior to development of the applicant's property. The City determined the best way to proceed is to assist the applicant and appellant in reaching a joint approach to address the unpermitted bluff and beach level development (most of which is constructed on the appellant's 28106 PCH property). The City required the applicant to submit a future coastal development permit application for the removal of unpermitted development on the bluff that is not integrally related to the new development approved in the subject CDP. An agreement between the parties has not yet occurred, but the subject City approval will not impair the appellant's ability to address the unpermitted beach level and bluff development on its own property at 28106 PCH.

The appellant also contends that the City relied upon inaccurate information and made modifications to development standards inconsistent with the certified LCP. However, the City made the required findings for increasing the standard height, reducing the sideyard setback and siting the approved total development area at this location, consistent with applicable Rural Residential zoning district and related Implementation Plan development standards.

Finally, the appellant contends that the City provided improper notice of the project. Specifically, the appellant contests the use of the term "substantial remodel" to describe the project when the incorporation of a new foundation elevates review of the project to that of completely new development under the Local Coastal Plan. While the public notice did use the term "substantial remodel", it also included a detailed description of the various components of the project, including the construction of a new caisson-grade beam foundation and retention of existing exterior walls. In the case of both Planning Commission and City Council hearings, the project descriptions reflected the fact that 50 percent of the existing exterior walls will remain and the associated staff report findings evaluated the project as new development under the LCP. Summaries of development are often used in noticing development projects. In this case, the project description was sufficiently specific to convey the extent and location of the development proposed. Additionally, the notice provided information directing the public to contact City staff for questions or additional information. Further, copies of the staff report were available upon request from City staff and from the City's website. Lastly, the appellant is not alleging injury due to the notice, but is speculating that unidentified members of the public may have been misled.

These contentions, when evaluated in light of the City's thorough record and findings, do not raise a substantial issue of conformance with the certified policies and provisions of the Malibu Local Coastal Plan.

The project approval will not be an adverse precedent for future residential development. Further, the approved development is supported by substantial evidence in the record and will not have an adverse effect on significant coastal resources. Because the development is relatively small in scope, it will not have a significant adverse effect on significant coastal resources, and does not raise issues of regional or statewide significance, and the local action does not set an adverse precedent for future coastal development permits.

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

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EXHIBITS

- Exhibit 1.** Vicinity Map
 - Exhibit 2.** Site Aerial View
 - Exhibit 3.** Project Plans
 - Exhibit 4.** Appeal by AGB Trust
 - Exhibit 5.** Final Local Action Notice
 - Exhibit 6.** Fire Department Referral Sheet
 - Exhibit 7.** Site Photos
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I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

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

1. Appeal Areas

Approvals of CDPs by cities may be appealed if the development authorized will be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603[a]). Any action on an application for development that constitutes a major public works project or a major energy facility may also be appealed to the Commission. (Coastal Act Section 30603[a][5]).

The project sites at issue in this appeal are located on a beach property at 28118 Pacific Coast Highway and a blufftop property at 28126 Pacific Coast Highway in the City of Malibu (Exhibit 1). As there is a beach at this location, the appeal jurisdiction for this area extends 300 feet inland from the inland extent of the beach. As such, the entire project site is within this appeal area and the City's coastal development permit for the subject project is appealable to the Commission.

2. Grounds for Appeal

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

3. Substantial Issue Determination

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

4. De Novo Review

Should the Commission determine that a substantial issue does exist, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the entire proposed development is in conformity with the certified Local Coastal Program and, for projects between the sea and the first public road paralleling the sea, the public access and recreation policies of Chapter 3 of the Coastal Act. (Coastal Act Section 30604[b] & [c]).

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was approved by the City of Malibu Planning Commission on May 5, 2014. The action by the Planning Commission was appealed to the Malibu City Council by AGB Trust on May 14, 2014. The appeal was denied and the permit for the project was approved by the Malibu City Council on August 21, 2014. The Notice of Final Action for the project was received by Commission staff on August 25, 2014 (**Exhibit 5**). Commission staff provided notice of the ten working day appeal period, which began on August 27, 2014, and ended on September 9, 2014. AGB Trust filed the subject appeal on September 8, 2014, during the Commission's appeal period (**Exhibit 4**). Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal and requested that the City provide its administrative record for the permit. The administrative record was received on October 3, 2014. Pursuant to section 30621(a) of the Coastal Act, a hearing on an appeal shall be set no later than 49 days after the date on which the appeal is filed with the Commission, but according to section 30625(a), the applicant can waive that time limit. On September 11, 2014, prior to the 49 day deadline for Commission action, the applicant waived its right to a hearing within 49 days in order to allow Commission staff adequate time to review the City's vast administrative record, including the technical reports associated with the project.

II. MOTION AND RESOLUTION

MOTION:

I move that the Commission determine that Appeal No. A-4-MAL-14-0047 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

*The Commission hereby finds that Appeal No. A-4-MAL-14-0047 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.*

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE DETERMINATION

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION, SETTING AND BACKGROUND

The Malibu City Council approved a CDP for construction of a new single-family residence on the beach consisting of a new concrete pile and grade beam foundation (elevating the residence seven feet off of the beach) and site work consisting of modifications to the onsite wastewater treatment system to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 Pacific Coast Highway – also owned by the applicant) and demolition of unpermitted beach level work, including a variance to allow offsite parking, a site plan review for construction of a structure over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and a demolition permit in the Rural Residential-2 zoning district located at 28118 Pacific Coast Highway. (**Exhibits 1-3**)

There is an existing 2,111 square foot beach-level residential structure in the proposed project footprint. The project will result in a 69 square foot reduction compared to existing total development square footage. The existing 2,111 square foot structure will be reconfigured and remodeled (retaining more than 50% of the existing exterior walls) to arrive at a 2,041.7 square foot residence.

The approved project received State Lands Commission review, including the finding that the project footprint will not be within the 10 feet from the mean high tide line setback required by the LCP, and will not encroach into sovereign lands.

B. PRIOR SITE DEVELOPMENT AND BACKGROUND

In 2003, the California Coastal Commission issued Coastal Development Permit (CDP) No. 4-01-169 to Marcia Carsey to allow a bluff slope restoration and repair consisting of a soldier-pile supported retaining wall system and cart path covering both 28118 Pacific Coast Highway (PCH) and 28126 PCH.

In 2005, Steven Molasky took ownership of the property. Sometime between 2005 and 2012, substantial unpermitted bluff and beach level development took place, including creosote timber pile retaining walls at several locations up and down the applicant and the neighboring property to the east (downcoast) which is owned by the appellant. Additionally, the existing beach-level residential structure at 28118 PCH was illegally expanded onto the appellant's property. The

accounts regarding the property owners' responsibilities of the construction of unpermitted work are disputed. However, it is clear from aerial records and past permitted development records that all beach-level work on the appellant's property (28106 PCH), some development on the subject beach-level property, and all of the retaining wall and terrace structures spanning the three adjacent parcels (28118, 28126 and 28106 PCH) are unpermitted.

In 2010, the applicant, Ryan Family, LLC, acquired the two adjacent parcels (28118 PCH and 28126 PCH). The appellant contends they became aware of all unpermitted property along the 28106 PCH bluff face and beach-level in May 2012.

So, a portion of the unpermitted development is located on each of the applicant's properties at 28118 and 28126 PCH, as well as the appellant's property at 28106 PCH. Typically, unpermitted development is the responsibility of the property owner. The appellant in this case alleges that it had no knowledge of and is not responsible for the unpermitted development on its property. A determination of responsibilities between the two property owners is a civil matter between the owners and is beyond the scope of the CDP considered by the City (and the appeal considered herein). In approving the subject CDP, the City required the removal of unpermitted beach-level work on the applicant's property that was integrally related to the proposed development. The CDP also includes a condition requiring submittal of a separate CDP application by the applicant to address unpermitted bluff development at 28118 and 28126 PCH. Moving forward, the City enforcement staff is pursuing further actions, to address the unpermitted bluff and beach-level development across all involved parcels. The City's goal is for the property owners to work together in the near term to address all unpermitted bluff and beach level work in a joint effort. In fact, nothing prevents the appellants from signing on to the CDP application for removal of bluff work (required as a condition to the subject City approval). While the current scope of that required CDP application involves the applicant's properties alone, the appellant could potentially join and work to address the violation along with the applicant, or pursue a CDP for development on its own property separately.

C. APPELLANT'S CONTENTIONS

The City's action was appealed by AGB Trust, the owner of the adjacent property to the east at 28106 Pacific Coast Highway. The appeal was filed on September 8, 2014, attached as **Exhibit 4**. The appellant contends that the approved development is inconsistent with the LCP for the following reasons: 1) fire hazards, 2) geologic hazards as a direct result of removal of existing permitted and unpermitted beach level development, 3) mischaracterization of the scale of existing compared with proposed development, and 4) deficient local public hearing notice. The appellant contends that the Los Angeles County Fire Department was not given an accurate characterization of the project in advance of its decision as to whether plan review was required in this case. Additionally, the appellant contends that any removal of beach level unpermitted work will adversely impact the appellant's property. The appellant also insists that this permit action should include joint applicant-appellant remediation and restoration of the bluff face over which extensive unpermitted development exists. The contentions of the appeal are discussed and addressed in greater detail below.

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

D. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal cites several hazard policies of the LCP.

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

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

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

1. FIRE HAZARD

LCP Policies Cited in the Appeal

The appeal only made general assertions about the Implementation Plan fire hazard requirements and standards. However, based upon the appellant's contentions, the following policies and provisions are applicable.

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

New development shall:

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

LUP 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.

LUP 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.

LUP Policy 4.45 states:

New development shall minimize risks to life and property from fire hazard through:

- *Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;*
- *Siting and designing development to avoid hazardous locations;*
- *Incorporation of fuel modification and brush clearance techniques in accordance with applicable fire safety requirements and carried out in a manner which reduces impacts to environmentally sensitive habitat to the maximum feasible extent;*
- *Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;*
- *Use of fire-retardant, native plant species in landscaping.*

LUP Policy 4.50 states:

New development shall provide for emergency vehicle access and fire-flow water supply in accordance with applicable fire safety regulations.

LUP Policy 4.51 states:

All new development shall demonstrate the availability of an adequate water supply for fire protection, as required by applicable fire safety regulations.

LUP Policy 4.52 states:

Where applicable, property owners shall comply with applicable fire safety regulations for management of combustible vegetative materials (controlled burns) in fire hazardous areas.

LUP Policy 4.53 states:

The City shall coordinate with County, State and National Park agencies to develop a closure policy for public recreation areas during periods of extreme fire hazard.

The City-approved project includes partial demolition and remodel/reconstruction of an existing 2,111 square foot residential structure located on the beach. This structure is currently elevated approximately two feet off of the beach level. The Rural Residential (RR2) zoning district standards would allow for a maximum of 2,826 square feet of development area on the subject site. The proposed project will reduce the existing 2,111 square foot structure to 2,042 square feet. The City approved a development proposal that included demolition/removal of less than 50 percent of the existing structure.

In the course of referring the proposed project to local and state agencies, the planning and building department made a determination that the proposed project, for building and fire department purposes, was a substantial remodel of an existing structure, rather than an entirely new structure. However, the project description included on the Referral Sheet to the Fire Department (dated 3/28/13) was as follows: “Substantial remodel of ESFR (replacement structure) with new pile foundation on beach”. So, although the description was for a substantial remodel of an existing single family residence (ESFR), it included additional information stating that the City considered the structure to be a replacement structure and that it included a new pile foundation on the beach. The Fire Department responded via the same form (**Exhibit 6**) that: “The project DOES NOT require Fire Department Plan Review”. For purposes of CDP review, the City correctly acknowledged that the deepened caisson foundation changed the characterization under the Local Coastal Plan from a remodel to new development. Accordingly, for purposes of coastal development review under the certified LCP, the City made the findings approving the proposed project as new development.

The appellant contends that the City “described and consequently misdirected the County Fire Department to consider the development as a remodel which caused the development to circumvent compliance with current fire codes for new residences.” The appellant contends that the City approval is inconsistent with the LCP’s policies concerning fire hazards, due to the fact that the City-approved residence will not be accessible by fire engine via an existing permitted switchback golf cart access path. The appellant raises concerns regarding the structures next door at 28106 PCH, specifically their susceptibility to fire hazards as a result of the approved taller structure at the base of the bluff.

The relevant LCP provisions require all new development be sized, designed and sited to minimize risks to life and property from fire hazard. Additionally, LUP Policy 4.50 requires new development to provide for emergency vehicle access and fire-flow water supply in accordance with applicable fire safety regulations.

In this case, the City’s approval indicated that a structural remodel, as defined by the Fire Department, of a legal nonconforming structure is allowed with no additional access requirements. The record indicates that the City’s approval followed applicable regulations, including their standard internal review procedures established in consultation with Fire Department staff, as to whether full Fire Department Plan Review is required. The record further indicates that the project was accurately characterized when referred to the Fire Department for determination of whether further review was required. Although the project was described as a substantial remodel, it was also noted to be a replacement structure with a new pile foundation.

Based on its consideration of this project description and location of development, the Fire Department confirmed that no plan review was required.

Furthermore, the applicant proposed, and the City incorporated in its approval, a fire sprinkler system for the residence, use of fire-rated exterior materials and removal of scattered unpermitted timber decking and trellises at beach level. These project components were in whole or in part incorporated to reduce the fire hazard potential. Additionally, the residence will continue to utilize the existing cart path access for emergency purposes.

While completely new development, such as in the case of an empty beach lot, would have triggered the City's process for full Plan Review by the Fire Department, the City and Fire Department agreed in this case that the level of remaining existing structure did not require such review. The resulting City-approved project will incorporate sprinklers and building materials necessary to mitigate fire hazard potential. Thus, the local action has factual and legal support in the record regarding fire hazards. Therefore, the Commission finds that the appellant's contention regarding fire hazard review does not raise a substantial issue of conformance with the certified Local Coastal Plan policies.

2. DEMOLITION-CAUSED GEOLOGIC HAZARDS

The appeal only made general assertions about the Implementation Plan geologic hazard requirements and standards. However, based upon the appellant's contentions, the following policies and provisions are applicable.

Coastal Act Section 30253 (incorporated into the LCP) states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*
- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.*
- (4) Minimize energy consumption and vehicle miles traveled.*
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

LUP 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.

The City-approved project includes removal of unpermitted beach-level decking and retaining wall structures from 28118 PCH. These structures span both the applicant's 28118 PCH and the appellant's 28106 PCH properties. The City approved the removal of these items only on the 28118 PCH parcel, leaving the unpermitted structures, including bluff toe retaining walls, to remain on the appellant's 28106 PCH parcel and to be resolved at a later date.

In the appeal, the appellant does not dispute the geologic stability associated with the City-approved residential development. However, in order for the applicant to construct the City-approved residence, in its approved configuration, existing decking and other structural development linking/spanning 28118 PCH and 28106 PCH will be separated. As discussed above, the applicant's properties (28126 and 28118 PCH) and appellant's property (28106 PCH) share a property line. The applicant will separate the joined developments at the property line. This will serve to create a City-approved side yard setback from the appellant's property. This activity will result in the continuing existence of unpermitted development at the base of the appellant's property, including creosote timber pile retaining walls at the bluff toe. The appellant's stated concern is that severing the unpermitted development on its property may result in compromised bluff stability due to weakened toe support.

LUP Policy 4.2 requires all new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

In approving the development, the City was limited to approving development proposed by the applicant only on the applicant's property. The City cannot, in approving a coastal development permit, compel that applicant to conduct work on another person's property, without the consent of that other property owner. According to City staff, it would be preferred for the two property owners to reach an amicable resolution, to apply jointly for a CDP to remediate and restore the bluff face and beach seaward of the bluff on both the applicant and appellant's properties bluff. Unfortunately, the parties have not yet reached an agreement. Meanwhile, the applicant moved forward with the City to obtain the subject CDP for the residential development of 28118 PCH.

As part of the City's approval, the applicant is required (by condition) to submit a CDP application for removal of certain retaining wall structures, that are not integrally related to the approved development, on the 28118 PCH bluff face and to restore the bluff. Separately, the City requires a CDP for removal of an unpermitted U-shaped retaining wall at the bluff edge on the applicant's 28126 PCH property. The City has also made it clear to the appellant that a CDP is required to address the unpermitted development on the 28106 PCH property's bluff and at the toe of the bluff at beach level. The appellant has not yet submitted a CDP application to address the unpermitted work. The City wants both the applicant and appellant to join as co-applicants in a separate CDP application to address the unpermitted development.

Accordingly, the City approved the subject residential development fully aware of the continuing problem of unresolved unpermitted development. The City required the applicant

to resolve the unpermitted work on its 28118 PCH property, either through the subject CDP directly or as a condition of this CDP for a separate CDP application.

In any case, the appellant now claims that the City-approved work will pose structural problems to the appellant's property due to removal of unpermitted work only on the 28118 PCH side. The City relied on numerous geotechnical reports and evaluations from GeoConcepts, Inc., David C. Weiss (project structural engineer) and Peak Surveys in concluding that the unpermitted structures on the subject property could be disconnected from the portions that exist on 28106 PCH and safely removed from the subject property without adverse impacts to the project site or adjacent properties. Therefore, it is clear that the City had sufficient factual and legal support for its decision that requiring removal of unpermitted beach development on the applicant's property will not result in placing development on the appellant's property at risk from geologic hazards. As such, it is appropriate for the City to require such removal of the unpermitted development that is integrally related to the proposed development in advance of future actions needed to address the remaining unpermitted development on the subject properties and the neighboring property at 28106 PCH.

The City approval does not permit activities to be conducted on the appellant's property and separation activities along the property line were found to pose no resulting threat to the appellant's bluff/stability, based on substantial evidence in the administrative record. In light of these facts, the City's approval adequately addressed the LCP policies requiring the new development minimize risks from geologic hazard.

Therefore, the Commission finds that the appellant's contention regarding bluff stability as a result of removal activities on the applicant's property does not raise a substantial issue of conformance with the City's certified Local Coastal Plan policies.

3. LOCATION OF NEW DEVELOPMENT

The appeal only made general assertions about the Implementation Plan development standards. However, based upon the appellant's contentions, the following policies and provisions are applicable.

Implementation Plan Section 6.5(B) states, in part:

1. 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, pursuant to Section 13.27 of the Malibu LIP the maximum height shall be 24 feet (flat roofs) or 28 feet (pitched roofs) above existing or finished grade, whichever is lower.[Emphasis added]

Implementation Plan Section 13.27.1 states, in part:

A. The Planning Director may consider only the following applications for site plan review:

1. Height increases over the base district maximum of 18 feet up to a maximum of 28 feet in height.

[...]

(B) The Planning Director may grant minor modification permits authorizing the following:

1. Reduce setback and open space requirement by no more than 20%....

Implementation Plan Section 13.27.5 states, in part:

(B). The Planning Director may approve a minor modification application only if the Planning Director affirmatively finds that the proposal meets all of the following:

- 1. That the project is consistent with the policies of the Malibu LCP.*
- 2. That the project does not adversely affect neighborhood character.*
- 3. The proposed project complies with all applicable requirements of state and local law.*

The City-approved project involves the construction of a new single-family residence on the beach, including a new concrete pile and grade beam foundation, demolition and remodel of an existing residential structure. The parcel is zoned Rural Residential-Two acres (RR2) and is subject to the non-beachfront residential development standards. According to City staff, the application of non-beachfront standards to beachfront lots within RR2 is a standard practice in the City. This is done in order to assimilate approaches to beach-level development regardless of zoning district. Beach level Single Family-M lots tend to be smaller and only contain beach property, whereas RR lots are typically larger, more rural and generally when they are on the shoreline, they involve a bluff. Accordingly, the City has routinely applied non-beachfront development standards to the RR district parcels regardless of proposed location of the house – in this case on the beach. Therefore, the non-beachfront development standards apply in this RR lot.

The appellant contends the City described the development as raising the existing foundation and structure seven feet when in fact it raised the foundation seven feet but raised the roofline 13 feet.” The appellant also contends that the City “presumptively concluded that the original structure contained 1,900 plus square feet of permitted structure when the tax rolls and City permit records only evidence 652 square feet of permitted space.” Lastly the appellant contends the minor modification findings by the City to reduce the east side yard setback are contrary to the purpose of the City’s fire hazard policies.

Height of Structure

The residential structure will be 23.3 feet tall. The Rural Residential 2 zoning district and applicable development standards (IP Sections 6.5 and 13.27.1) allow for a maximum height of 24 feet for residential structures with flat roofs on beach lots. To satisfy the requirements for site plan review of construction over 18 feet, the City found 1) that the project is consistent with the policies and provisions of the LCP; 2) the project does not adversely affect neighborhood

character; 3) the project provides maximum feasible protection to significant public views required by Chapter 6 of the Malibu LCP; 4) the project complies with all applicable requirements of state and local law; 5) the project is consistent with the City's general plan and local coastal program; and 6) the portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence.

The City-approved structure is constructed in a similar manner to other beach-level residential developments to the west (upcoast). The City-approved structure is configured in a set-down manner, with a higher elevation against the bluff and descends in height as it extends south toward the ocean. Accordingly, the tallest portion contours closer to the bluff slope, limiting the potential for view impacts above or to either side of the structure. Moreover, the bluff top properties' ocean views to the south will not be obstructed. The residence will not impact views to the ocean or past the residence to the east from the public access pier (500 feet west and upcoast of the project).

Therefore, the Commission finds that the appellant's contention regarding height does not raised a substantial issue of conformance with the City of Malibu's certified Local Coastal Plan.

Residential Floor Area

The appellant contends that the City's approval improperly sets the existing permitted development at over 1,900 square feet and suggests the accurate figure is closer to 652 square feet. The City's record demonstrates that the existing total development square footage amounts to 2,111. This is based upon historic, pre- and post-LCP permitting records. Commission staff also reviewed historic/chronological photos dating back to 1979. It is clear that once Mr. Molasky took possession of the property, he undertook certain unpermitted development, including overhang awnings and poles rising above the structure. However, the core two story residential structure remains consistently sized before and after his possession. There is no indication the subject existing residence was expanded by Marcia Carsey (pre-2005) without the benefit of a permit. Additionally, all visual evidence of the structure demonstrates development far in excess of 652 square feet since 1979.

In any case, the City-approved project will utilize over 50 percent of existing exterior walls. Moreover, the approved 2,041.7 square foot residence is consistent with the maximum 2,826 square foot total development square footage that is allowed under the zoning district requirement. Even if the only permitted work existing on the lot consists of 652 square feet, as the appellant contends, the 50% of the existing structure's walls are being utilized and the total development square footage is consistent with the zoning district requirements/limitations.

Therefore, the Commission finds that the appellant's contention regarding existing versus approved total development area does not raised a substantial issue of conformance with the City of Malibu's certified Local Coastal Plan.

Setback

The Rural Residential zoning district (RR2) and non-beachfront residential development standards require 25 percent of property width to serve as a side yard setback – in this case a 7.5 foot setback is required. However, the applicant proposed a 6 foot setback. IP Section 13.27.1.B.1. allows for a maximum 20 percent reduction in the side yard setback. Six feet is exactly 80 percent of 7.5 feet. Pursuant to the certified Implementation Plan Section 13.27, the City made the required findings to allow for the reduced side yard setback, including 1) that the project is consistent with the policies and provisions of the Malibu LCP; 2) that the project does not adversely affect neighborhood character; and 3) the proposed project complies with all applicable requirements of state and local law.

In making the three required findings for the reduced setback, the City determined that the six-foot setback is greater than the maximum setback required for typical beach front development in the Single Family-M zone configured similarly to the subject property. Additionally, the City found that reduced side yard setbacks are not unusual for narrow lots in the RR zone at beach level. In fact, five feet is the minimum required setback for fire code requirements. The only potential impact would be that the structure would be closer to a beach level structure on the adjacent parcel. However, in this case there is no existing beach level structure on the adjacent downcoast property. The setback reduction is permissible under the LCP if certain criteria are met, the City had sufficient factual and legal basis for concluding that the criteria are met by the proposed development, and the City made all required findings for approval.

Therefore, the Commission finds that the appellant's contention regarding setback does not raised a substantial issue of conformance with the City of Malibu's certified Local Coastal Plan.

New Development Conclusion

Taken together, the Commission finds that the appellant's contentions regarding new development standards do not raise a substantial issue of conformance with the City of Malibu's certified Local Coastal Plan.

4. NOTICING

The appeal only made general assertions about the LCP's hearing notice requirements. However, based upon the appellant's contentions, the following policies and provisions are applicable.

Implementation Plan Section 13.12.1 (Notice of Appealable Developments) states:

A. Within ten (10) calendar days of accepting an application for an appealable coastal development permit or at least seven (7) calendar days prior to the first public hearing on the development proposal, the City shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to:

1. Each applicant

2. *All persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction;*
3. *All property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed;*
4. *Local, regional and state agencies known to be interested in the project including but not limited to: Los Angeles County, Ventura County, NPS, SMMC, CDPR, CDFG, NMFS, USFWS;*
5. *The South Central Coast District of the Coastal Commission.*

B. The notice shall contain the following information:

1. *A statement that the development is within the coastal zone;*
2. *The date of filing of the application and the name of the applicant;*
3. *The number assigned to the application;*
4. **A description of the development and its proposed location;**
5. *The date, time and place at which the application will be heard by the city approving authority;*
6. *A brief description of the general procedure concerning the conduct of hearing and local actions;*
7. *The procedures for filing local and Coastal Commission appeals, including any local fees required.*

[Emphasis Added]

The appellant contends that the City “improperly described in its NOTICE OF PUBLIC HEARING the scope of work as a remodel when the City Council corrected the record to reflect that the development is a new single-family residence.” Specifically, the appellant contests the use of the term “substantial remodel” to describe the project when the incorporation of a new foundation elevates review of the project to that of completely new development under the Local Coastal Plan. Lastly, the appellant is not alleging injury due to the notice, but is speculating that unidentified members of the public may have been misled.

Although not specifically cited by the appellant, the certified Malibu Implementation Plan Section 13.12.1 contains a noticing requirement provision requiring “a description of the development and its proposed location.” In this case, the City-approved development was noticed for a Planning Commission hearing and a City Council hearing to hear an appeal of the Planning Commission’s approval of the subject coastal development permit.

Local notice for the March 3, 2014 Malibu Planning Commission Meeting (continued to May 5, 2014 and noticed the same) describes the project as:

An application for a substantial remodel of legal nonconforming single-family residence on the beach to incorporate a new concrete pile and grade beam foundation to raise the seven feet while maintaining at least 50 percent of exterior walls, reconfigure the interior and add a new roof and roof deck, and site work consisting of modifications to the onsite wastewater treatment system to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 Pacific Coast Highway) and demolition and restoration of unpermitted work on the bluff face, and including a demolition permit, a variance to allow offsite parking,

a conditional use permit to allow offsite wastewater treatment, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, and an offer to dedicate a lateral access easement along the shore. Location: 28211 Pacific Coast Highway. (emphasis added)

Local appeal notice for 14-003 and 14-004 for the August 11, 2014 Malibu City Council Meeting describes the project as:

Appeal of Planning Commission Resolution No 14-30, approving Coastal Development Permit No. 11-033 for 28118 Pacific Coast Highway for a Substantial Remodel of a Legal Nonconforming Single-family Residence on the Beach and Site work, including modifications to the onsite wastewater treatment system to pump wastewater offsite to 28126 Pacific Coast Highway for Treatment and Disposal, and Appeal of Planning Commission Resolution No. 14-35, Approving Conditional Use Permit No. 13-014 to Allow 28126 Pacific Coast Highway to Provide Offsite Treatment of Wastewater for 28118 Pacific Coast Highway (emphasis added).

The City's August 21, 2014 Final Local Action Notice contains the following project description:

For construction of a new single-family residence on the beach consisting of a new concrete pile and grade beam foundation and site work consisting of modifications to the onsite wastewater treatment system to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 Pacific Coast Highway) and demolition of unpermitted beach level work, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and demolition permit in the rural residential-two acre zoning district located at 28118 Pacific Coast Highway (emphasis added).

The LCP requires that notice include a description of the development. In this case, the provided description within the public notices included the "substantial remodel" term. In the case of the Planning Commission hearing notice, the description included reference to the new concrete pile and grade beam foundation, whereas the notice in advance of the City Council appeal hearing did not. While the public notice did use the term "substantial remodel", it also included a detailed description of the various components of the project, including the construction of a new caisson-grade beam foundation and retention of existing exterior walls. Often, the descriptions between different stages of review can be summarized. In this case, the project description was sufficiently specific to convey the extent and location of the development proposed.

Additionally, the notice provided information directing the public to contact City staff for questions or additional information. Further, copies of the staff report were available upon request from City staff and from the City's website. The staff reports associated with these notices, in every case, included a description and evaluation of the new foundation and extent of site development. While the City reviewed the project as new development under the LCP and applied all LCP policies and provisions throughout the hearing processes, the City Council action in the appeal provided clarification to the project description that the CDP approval was for a new residential structure.

While the notice may have been summarized, the City conducted the correct analysis and the terminology used still indicated the character and intensity of development involved. Additionally, the appellant received, reviewed and understood the nature of the development after receiving the notice. No other interested parties have come forward to raise the issue of inadequate notice. The LCP requires a project description to accompany the notice and in each case there was a project description that in one form or another, that accurately described the proposed development.

Therefore, the Commission finds that the appellant's contentions regarding improper public noticing of the project to not raise a substantial issue of conformance with the City of Malibu's certified Local Coastal Plan.

5. REMOVAL OF BLUFF AND BEACH-LEVEL UNPERMITTED DEVELOPMENT

The appellant requested an additional condition to the City's coastal development permit approval, to require the applicant to restore the bluff along the applicant's and appellant's property to its 2003 condition, prior to documented unpermitted bluff development.

As described in the Project Description section above, there is a significant amount of unpermitted bluff and beach level development that extend across the applicant and appellant's parcel lines. The City's enforcement staff are pursuing further actions needed to address the unpermitted work. The majority of the unpermitted work is on the appellant's property. The City, and the Commission, cannot compel the applicant to conduct restoration work on the appellant's property. However, the City did condition the subject approval to require the applicant to submit a separate CDP application to address unpermitted development midway up the bluff on 28118 and 28126 PCH. Additionally, the City is working with the applicant to address an unpermitted u-shaped retaining wall at the bluff edge on the applicant's 28126 property. That u-shaped wall extends onto the appellant's property as well, much like the majority of the unpermitted bluff alterations on these properties. This unpermitted development is not integrally related to the beach level development considered in the subject CDP and it is appropriate for such development to be considered in a separate CDP (s).

The City has facilitated a joint meeting between the applicant and appellant to attempt joint and amicable resolution of the unpermitted development. The parties have not yet reached an agreement. In any case, there is unpermitted development on the bluff. Typically, unpermitted development is the responsibility of the property owner. The appellant in this case alleges that it had no knowledge of and is not responsible for the unpermitted development on its property. A determination of responsibilities between the two property owners is a civil matter between the owners and is beyond the scope of the CDP considered by the City (and the appeal considered herein). Additionally, the City could not require the applicant to carry out removal of unpermitted development or habitat restoration on the appellant's property as the applicant has no authority to do so. Nothing in the City's approval would delay or prevent the appellant or applicant from resolving the remaining unpermitted development on its property. As described above, three separate geotechnical analyses concluded the applicant's activities involving

removal of unpermitted work on 28118 will not adversely impact the bluff or development on the appellant's property. As stated above, the City will continue to pursue further actions necessary to address the unpermitted work on the appellant's property at 28106 PCH.

Therefore, the Commission finds the appellant's request for restoration of 28106 PCH does not raise a substantial issue of conformance with the City of Malibu's certified Local Coastal Plan.

E. SUBSTANTIAL ISSUE REVIEW CONCLUSION

Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal alleges several inconsistencies between the City's approval and the certified LCP. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the City's record includes extensive factual evidence and legal support for the City's findings that the project is consistent with the development standards and hazard policies and provisions of the certified LCP. While there are conflicting factual accounts in this case regarding prior unpermitted work, the appellant has not provided substantial evidence to demonstrate that the approved project will affect off-site properties, that it will adversely impact coastal views, or that the development does not conform to the standards set forth in the certified LCP. There is substantial evidence in the City's record demonstrating that the approved project assures that there will be no significant adverse effect on off-site properties, and that it has been sited and designed to minimize risks to life and property from geologic and fire hazard, consistent with Policies 4.1-4.5 of the City's certified Land Use Plan and Coastal Act Section 30253, which is incorporated into the City's Land Use Plan as a policy. The geotechnical analysis of the approved design that the City relied upon in its action on the subject permit meets or exceeds the standard of care commonly exercised in the profession. Additionally, the City's conclusions regarding modifications to development standards are grounded in and consistent with the provisions of the certified LCP.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the project consists of residential development of a single, small, infill, beach-level property. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is an infill beachfront lot that was previously developed and is adjacent to existing single-family residences. The approved project is consistent with the LCP's hazard policies, as well as the shoreline development policies of the LCP. The development is also consistent with LCP development standards, including those pertaining to neighborhood character and coastal views. The structure is outside the required 10-foot from the mean high tide line setback and does not encroach upon sovereign lands. There are no significant coastal resources and no environmentally sensitive habitat area (ESHA) on the site that would be negatively affected by the project.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the Commission finds that the City applied its LCP policies correctly in finding that the project is consistent with the policies of the LCP with respect to the grounds of the appeal. This includes the decision by the City to leave the private property issues between the applicant and appellant to be resolved separately by those parties. As such, the City's decision will have no adverse precedential value for future CDP decisions.

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

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

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

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

1. Certified City of Malibu Local Coastal Plan;
2. City of Malibu Planning Commission Staff Report dated April 29, 2014 (Coastal Development Permit No. 11-033) and attachments thereto;
3. City of Malibu Planning Commission Resolution No. 14-30
4. City of Malibu Planning Commission Resolution No. 14-30
5. City of Malibu City Council Resolution 14-42 and attachments thereto;
6. Los Angeles County Fire Department Review Referral Sheet, dated March 28, 2013, signed April 10, 2013.
7. Structural Engineering Reports and subsequent responses prepared by DCWSE dated July 11, 2012, May 3, 2013, August 19, 2013, April 7, 2014, and April 22, 2014;
8. Wave Uprush Study and Responses prepared by Pacific Engineering Group (PEG) dated December 3, 2010, November 11, 2011, July 5, 2012, May 6, 2013, July 31, 2013, October 24, 2013, and April 7, 2014;
9. Letter prepared by civil engineering consultant Peak Surveys dated April 23, 2014;
10. State Lands Commission Letter to Amanda Ryan, dated March 1, 2012.



Exhibit 1
Vicinity Map
Appeal No. A-4-MAL-14-0047



Exhibit 2
Site Aerial View
Appeal No. A-4-MAL-14-0047

28118 PCH RESIDENCE

28118 PACIFIC COAST HWY
MALIBU, CA 90263

For complete project information and
the Engineer's seal and signature of the
Project Engineer, please refer to the
Title Block on the next sheet.
The Engineer's seal and signature of the
Project Engineer, please refer to the
Title Block on the next sheet.

NO.	DATE	REVISION
1	01/15/2014	Initial EIR EIR Revisions
2	01/15/2014	Initial EIR EIR Revisions
3	01/15/2014	Initial EIR EIR Revisions
4	01/15/2014	Initial EIR EIR Revisions
5	01/15/2014	Initial EIR EIR Revisions
6	01/15/2014	Initial EIR EIR Revisions
7	01/15/2014	Initial EIR EIR Revisions
8	01/15/2014	Initial EIR EIR Revisions
9	01/15/2014	Initial EIR EIR Revisions
10	01/15/2014	Initial EIR EIR Revisions

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ARCHITECTS
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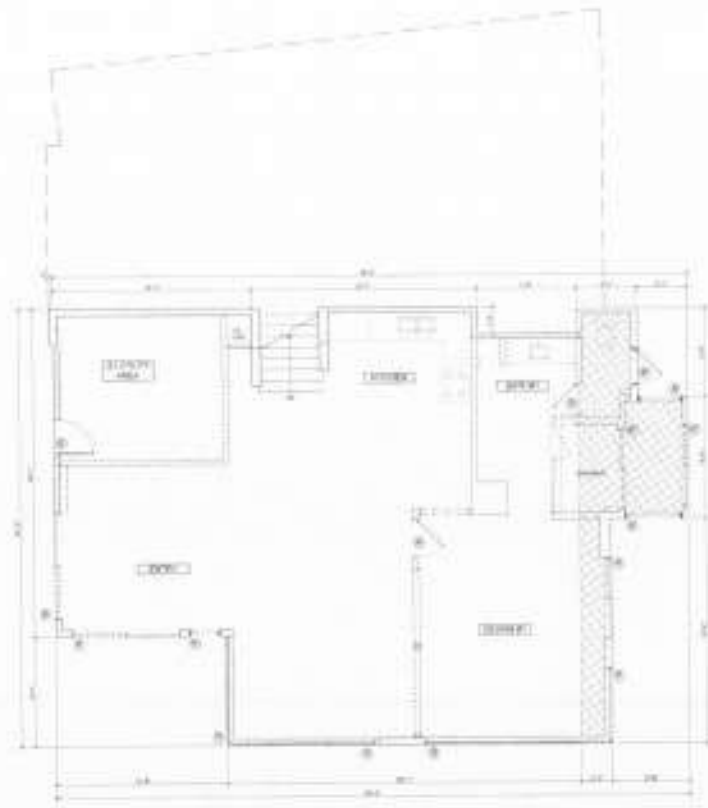
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PLANS

PROJECT NO.:
A-0.2

PROJECT: 28118 PCH RESIDENCE
DATE: 01/15/2014
DRAWN BY: JEFFREY L. BURDGE
CHECKED BY: JEFFREY L. BURDGE



EXISTING SECOND FLOOR DEMOLITION PLAN
Scale: 1/8" = 1'-0"



EXISTING FIRST FLOOR DEMOLITION PLAN
Scale: 1/8" = 1'-0"

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FOR DIMENSIONS
AND NOTES
NOT TO SCALE
SEE SHEET A-0.1
FOR DIMENSIONS
AND NOTES

LEGEND	
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[Dotted Box]	EXISTING WALLS TO BE DEMOLISHED
(E)	EXISTING TO REMAIN
(D)	EXISTING TO BE DEMOLISHED

28118 PCH RESIDENCE

30115 PACIFIC COAST HWY
MALIBU, CA 90262

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NO.	DATE	REVISION
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2	05/01/2008	FOR REVIEW AND APPROVAL
3	05/01/2008	FOR REVIEW AND APPROVAL
4	05/01/2008	FOR REVIEW AND APPROVAL
5	05/01/2008	FOR REVIEW AND APPROVAL
6	05/01/2008	FOR REVIEW AND APPROVAL
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8	05/01/2008	FOR REVIEW AND APPROVAL
9	05/01/2008	FOR REVIEW AND APPROVAL
10	05/01/2008	FOR REVIEW AND APPROVAL

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EXISTING ELEVATIONS

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SITE: 28118 PCH
DATE: 04/22/08
DRAWN: ALICIA
CHECKED: JAMES



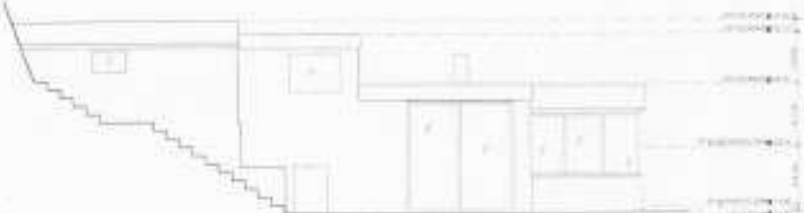
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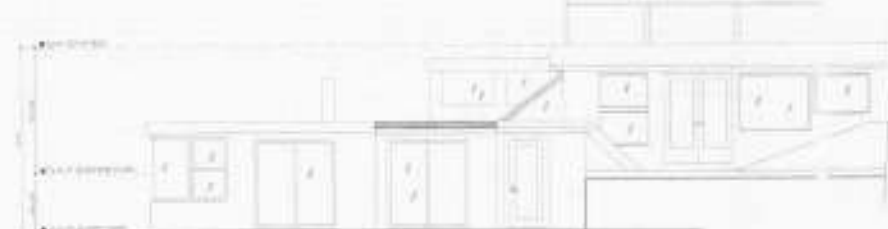
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EAST ELEVATION
SCALE: 1/8" = 1'-0"

28118 PCH RESIDENCE

28118 PACIFIC COAST HWY.
MALIBU, CA 90263

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NO. 0000000000

DATE: 01/11/2011
BY: J. BURDGE
CHECKED: J. BURDGE
DATE: 01/11/2011

BURDGE
Associates
ARCHITECTS

28118 PCH
MALIBU, CA 90263

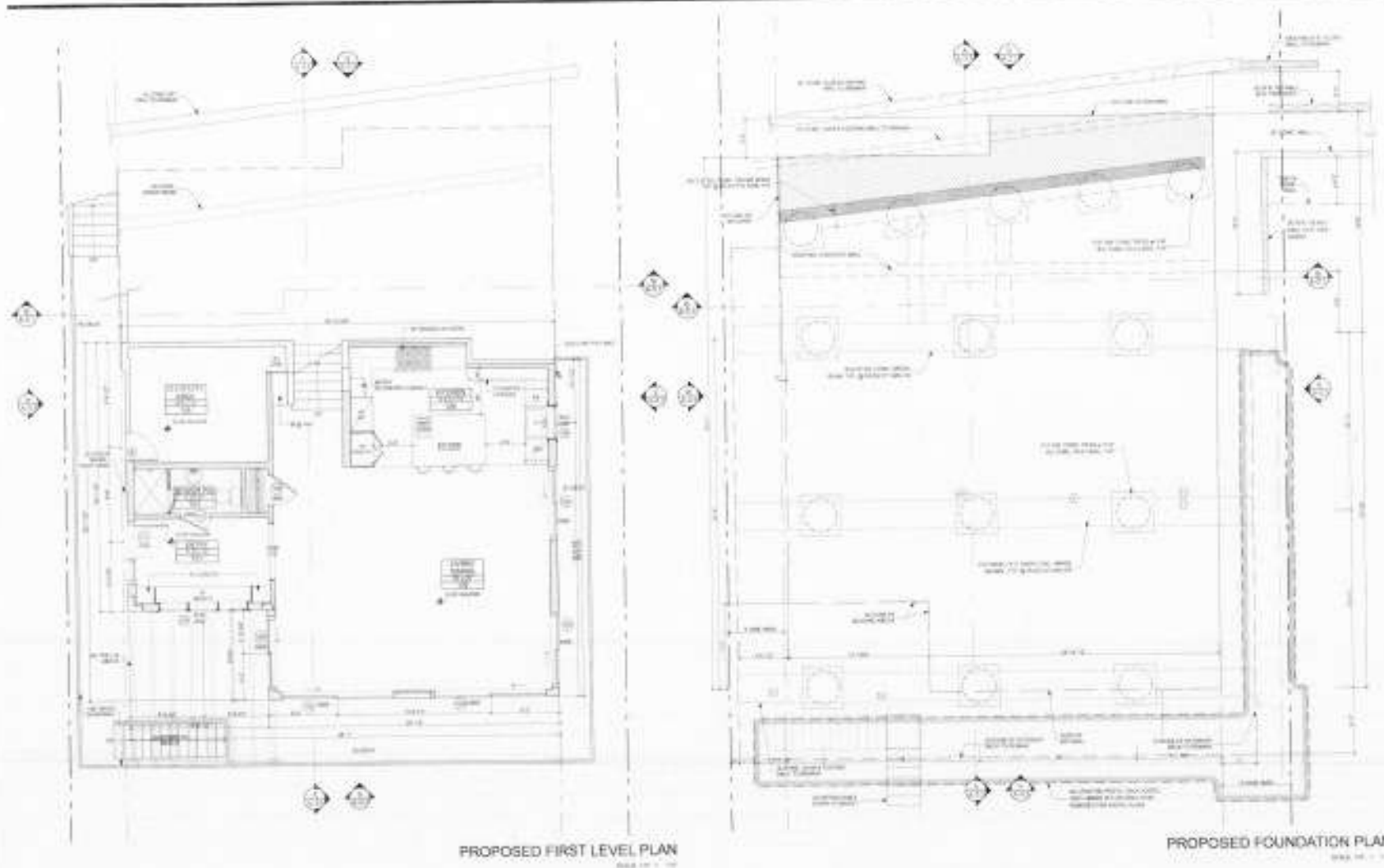
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PROPOSED
FOUNDATION AND FIRST
FLOOR PLAN

DATE: 01/11/2011

A-1.1

PROJECT: 28118 PCH RESIDENCE
SHEET: 01 OF 01
SCALE: AS SHOWN
DATE: 01/11/2011



NOTES:
1. SEE SHEET A-1.2 FOR FLOOR PLAN.
2. SEE SHEET A-1.3 FOR FOUNDATION PLAN.

1. SEE SHEET A-1.2 FOR FLOOR PLAN.
2. SEE SHEET A-1.3 FOR FOUNDATION PLAN.



LEGEND

FOOTING WALL
FOUNDATION WALL
FOUNDATION TO FINISH
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28118 PACIFIC COAST HWY.
MALIBU, CA 90263

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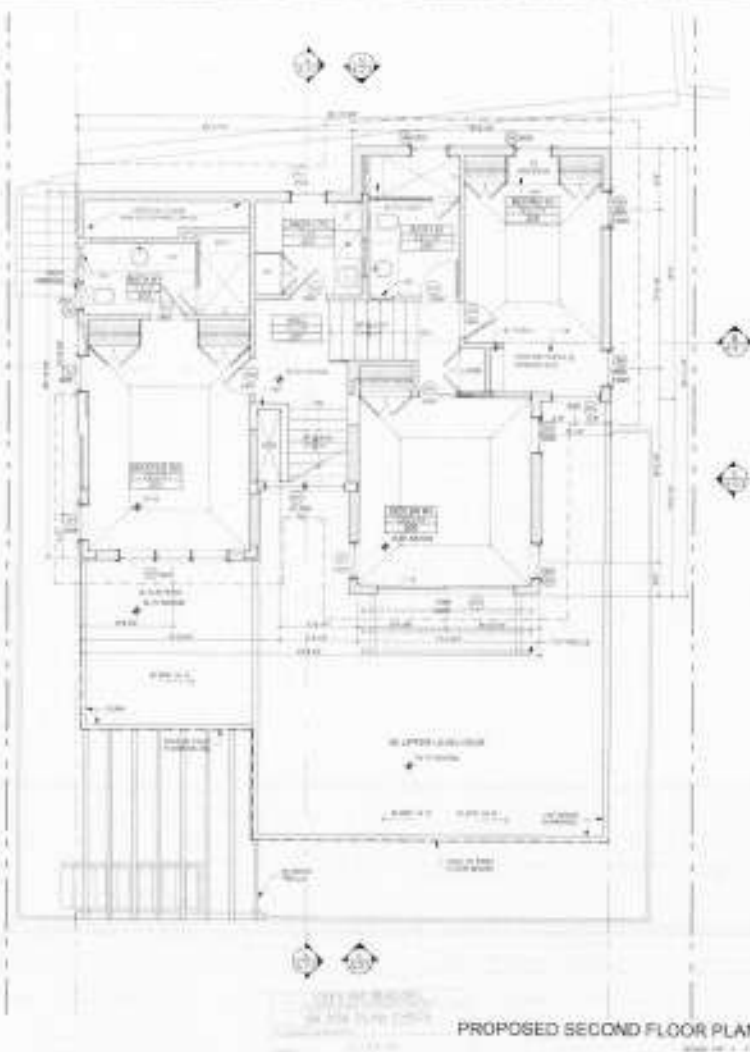
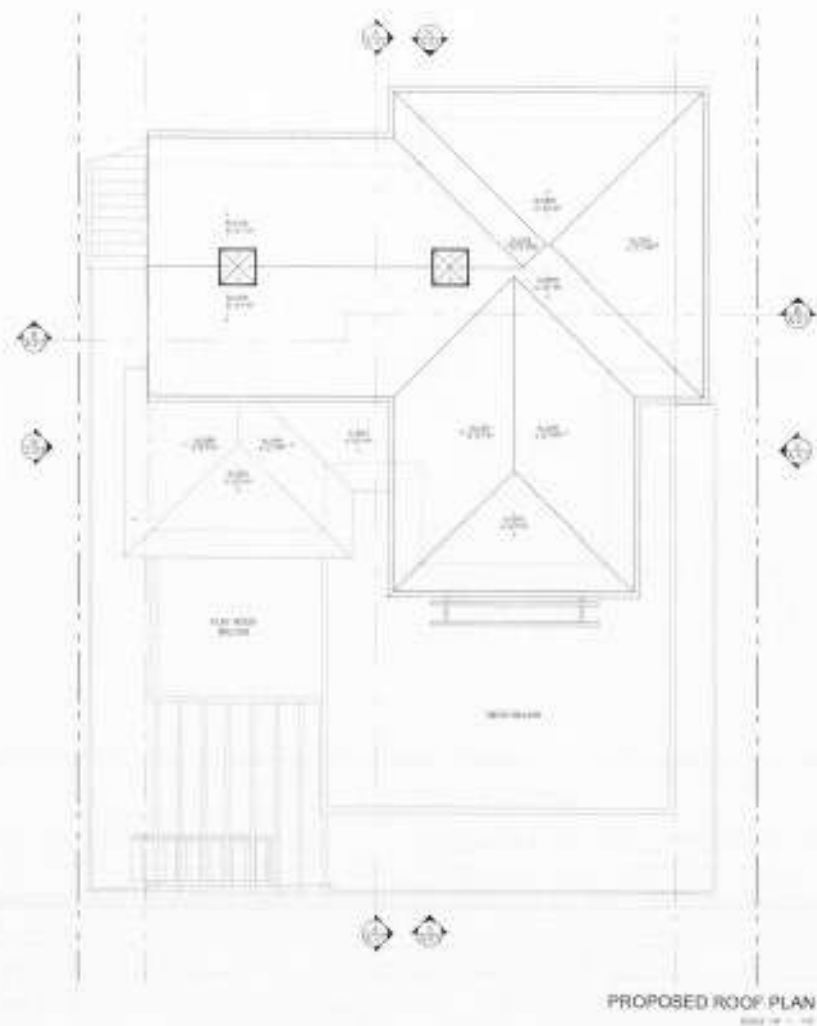
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Journal of Internal Medicine 247: 391–397

800-451-7000

PROPOSED SECOND FLOOR AND ROOF PLAN

A-1.2

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DATE	15/10/2001
NAME	ALBERTO
GRADE	100



4. *Explain the importance of the*
growth of the U.S. economy
in the 19th century.

LEGEND

Abstract

TABLE 1. *Continued*

1

14

28118 PCH RESIDENCE

28118 PACIFIC COAST HWY
MALIBU, CA 90265

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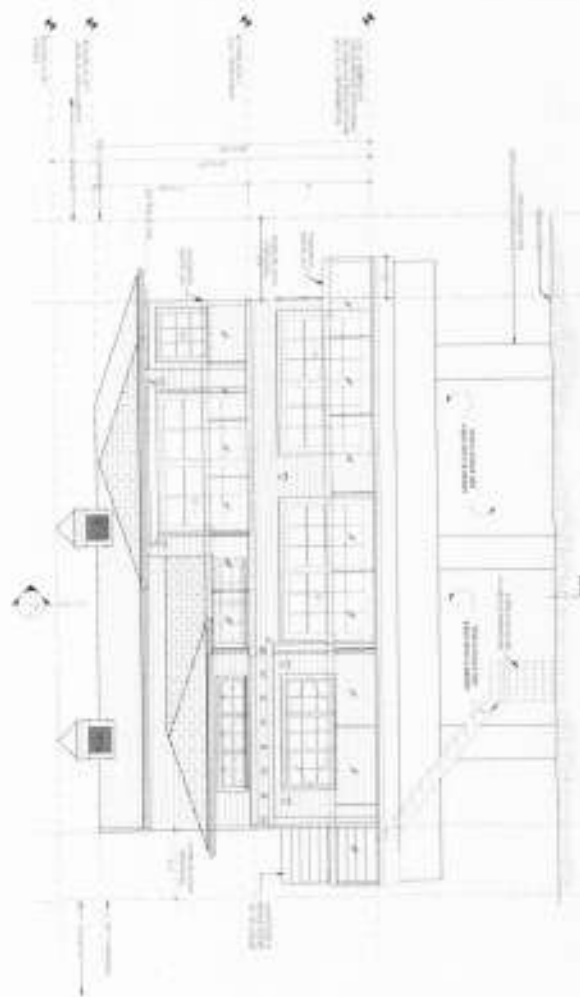
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TEL: 818.333.1111
WWW.BURDGEARCHITECTS.COM

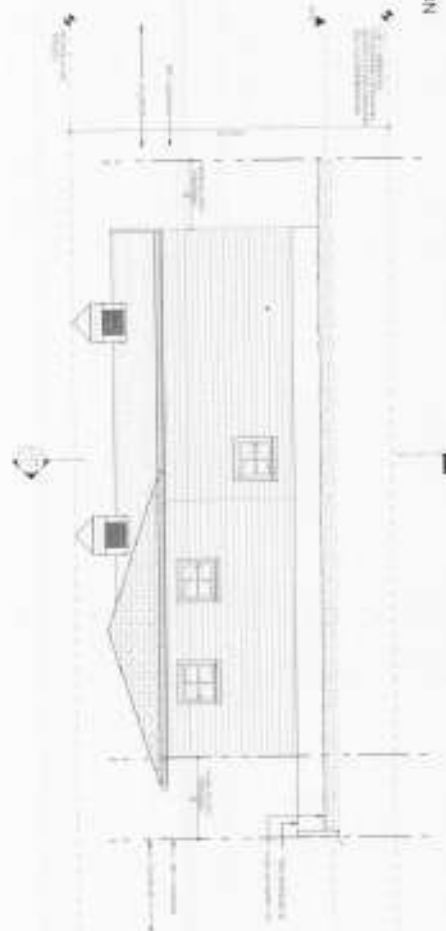
PROPOSED ELEVATIONS

A-2.1

PROJECT: 28118 PCH
SHEET: 01-01-01
SCALE: 1/8" = 1'-0"



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



NORTH ELEVATION
SCALE: 1/8" = 1'-0"

28118 PCH RESIDENCE

28118 PACIFIC COAST HWY
MALIBU, CA 90265

THIS DOCUMENT IS THE PROPERTY OF BURDGE & ASSOCIATES ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF BURDGE & ASSOCIATES ARCHITECTS.

NO.	DATE	REVISION
1	01/11/11	ISSUED FOR PERMITTING
2	01/11/11	REVISED PER PERMITTING
3	01/11/11	REVISED PER PERMITTING
4	01/11/11	REVISED PER PERMITTING
5	01/11/11	REVISED PER PERMITTING
6	01/11/11	REVISED PER PERMITTING
7	01/11/11	REVISED PER PERMITTING
8	01/11/11	REVISED PER PERMITTING
9	01/11/11	REVISED PER PERMITTING
10	01/11/11	REVISED PER PERMITTING

BURDGE & ASSOCIATES
ARCHITECTS
MALIBU, CA 90265
TEL: 310.316.1111
FAX: 310.316.1112
WWW.BURDGEARCHITECTS.COM

PROPOSED ELEVATIONS

NO.	DATE	REVISION
1	01/11/11	ISSUED FOR PERMITTING
2	01/11/11	REVISED PER PERMITTING
3	01/11/11	REVISED PER PERMITTING
4	01/11/11	REVISED PER PERMITTING
5	01/11/11	REVISED PER PERMITTING
6	01/11/11	REVISED PER PERMITTING
7	01/11/11	REVISED PER PERMITTING
8	01/11/11	REVISED PER PERMITTING
9	01/11/11	REVISED PER PERMITTING
10	01/11/11	REVISED PER PERMITTING



WEST ELEVATION
SCALE 1/8" = 1'-0"



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

20115 PACIFIC COAST HWY
HAULE, CA 95001

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 161–167

NO	DATE	WOL
1	2022.12.20	2022.12.20
2	2022.12.21	2022.12.21
3	2022.12.22	2022.12.22
4	2022.12.23	2022.12.23
5	2022.12.24	2022.12.24
6	2022.12.25	2022.12.25
7	2022.12.26	2022.12.26
8	2022.12.27	2022.12.27
9	2022.12.28	2022.12.28
10	2022.12.29	2022.12.29
11	2022.12.30	2022.12.30
12	2022.12.31	2022.12.31

BURDGE
Associates
ARCHITECTS

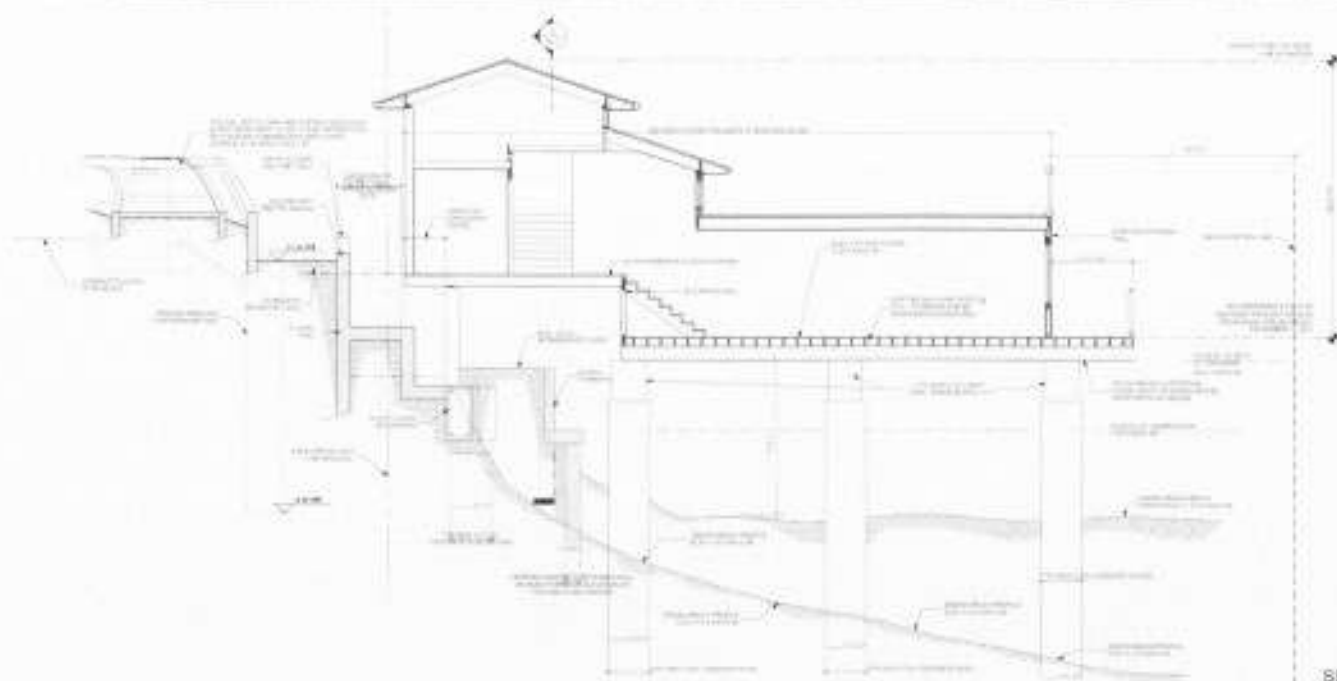
[illegible][illegible]

2000-2001

PROPOSED SECTIONS

A-3.1

PROPERTY	200 ELGIN RESIDENCE
APR	700 S.W. 11TH ST.
OWNER	WILLIAM
ADDRESS	2000 S.W. 11TH



SECTION A



SECTION R

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

SEP 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: AGB TRUST
 Mailing Address: 28106 PACIFIC COAST HWY.
 City: MALIBU Zip Code: 90265 Phone: RICHARD SEL
 310 456 6909

SECTION II. Decision Being Appealed

1. Name of local/port government:
CITY OF MALIBU
2. Brief description of development being appealed:
SEE ATTACHMENT A
3. Development's location (street address, assessor's parcel no., cross street, etc.):
28118 & 28126 PACIFIC COAST HWY, MALIBU, CA 90265
APNs: 4460-033-010 & 4460-033-011
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-14-0047

DATE FILED:

9/8/14

DISTRICT:

South Central Coast

Exhibit 4
 Appeal by AGB Trust
 Appeal No. A-4-MAL-14-0047

ATTACHMENT A
(Brief description of development being appealed)

Construction of a new single-family residence on the beach consisting of a new concrete pile and grade beam foundation and site work consisting of modifications to the onsite wastewater treatment system to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 Pacific Coast Highway) and demolition of unpermitted beach level work, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback and a demolition permit in the rural residential-two acre zoning district located at 28118 Pacific Coast Highway (Ryan Family, LLC) as described in Coastal Development Permit No. 11-033, Variance No. 12-033, Site Plan Review No. 13-011, Minor Modification No. 13-033 and Demolition Permit No. 11-018.

Allow the property in the rural residential-two acre zoning district located at 28126 Pacific Coast Highway (Ryan Family, LLC) to receive, treat and dispose of wastewater from 28118 Pacific Coast Highway (Ryan Family, LLC) as described in Conditional Use Permit No. 13-013.

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~~ MALIBU
☒ Planning Commission - MALIBU
☐ Other

6. Date of local government's decision:

AUGUST 11, 2014

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

CITY COUNCIL RESOLUTION
14-42 & 14-43

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:

RYAN FAMILY LLC
9720 WILSHIRE BLVD., 5TH FLR.
BEVERLY HILLS, CA 90212

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) JACK & AMANDA RYAN
C/O RYAN FAMILY LLC
9720 WILSHIRE BLVD, 5TH FLR.
BEVERLY HILLS, CA 90212
- (2) CITY OF MALIBU
ATTENTION: PATRICIA SALAZAR
23825 STUART RANCH ROAD
MALIBU, CA 90265
- (3)

(4)

SECTION IV. Reasons Supporting This Appeal

PROPERTY AND PROJECT BACKGROUND

The Development proposes to (a) demolish all of the existing foundation, all of the existing roofs, all of the existing interior partitions and more than 50 percent of the exterior walls¹ and (b) construct a new single family beach residence on a new concrete caisson foundation without any fire and emergency access, without on-site parking and without an on-site wastewater system. The submitted Project replaces a 1-story (split level) "beach cabana" with vague entitlements for no more than 652 square feet. The Development replaces the existing timber piling foundation with a new concrete caisson foundation that is elevated 7 feet and a new 2-story single-family residence that is more than 1,900 square feet in size and that is elevated 13 feet higher than the existing roofline. The proposed project has been given an extraordinary number of discretionary approvals to facilitate development on this unusual site that is land-locked and has no fire access.

RECITALS

A. On March 3, 2014, the Planning Commission held its first hearing on the 2 subject CDPs. The City of Malibu Planning Department staff in its related Notice of Public Hearing and in its Commission Agenda Report prepared February 20, 2014 represented one of the 2 Coastal Development Permits as a "*substantial remodel of a legal nonconforming single-family residence on the beach to incorporate a new concrete pile and grade beam foundation to raise the structure seven feet while maintaining at least 50 percent of exterior walls*". A transcript of the motion and reason for continuing the hearing is attached.

B. On May 5, 2014, the Planning Commission held its second hearing on the subject 2 CDPs. The City of Malibu Planning Department staff in its related Notice of Public Hearing and in its Commission Agenda Report dated February 20, 2014 again represented the CDP as a "*substantial remodel of a legal nonconforming single-family residence on the beach to incorporate a new concrete pile and grade beam foundation to raise the structure seven feet while maintaining at least 50 percent of exterior walls*".

C. On August 11, 2014, the City Council held its public hearing on AGB Trust's 2 appeals of the 2 CDPs granted by the Planning Commission. The City of Malibu Planning Department staff in its related Notice of Public Hearing and in its staff report to the Council members again represented the project as a "*substantial remodel of a legal nonconforming single-family residence on the beach*". At the conclusion of that City Council hearing, the Malibu City Council resolved to approve Planning "staff's recommendation with instruction to re-word the references to legal, non-conforming and

*substantial remodel to clarify that this is a new or replacement structure."*² The City Council denied the 2 appeals by AGB Trust with the proviso that the staff was to change the description of the project from a "substantial remodel" to a "new single-family residence".

REASONS SUPPORTING THIS APPEAL

I. The Development does not conform to the standards set forth in Chapter 9 and Chapter 13.5 of the LIP (Local Implementation Plan of the City of Malibu Local Coastal Program) with respect to a fire hazard. Specifically, the Development as proposed does not meet the purpose and intent of the LIP *"to insure that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard"*.

Specifically, the Development was initially and incorrectly submitted to the County Fire Department (Los Angeles County Fire Department) as a substantial remodel, which according to the signatory of that County Fire Department review, was determined and directed by a member of the Malibu Planning Department staff. The "remodel" designation exempted the Development from review by the Fire Department. At the August 11, 2014 City Council appeal hearing, the Development was officially classified as a new single-family residence. However, the Development does not propose nor include any measures to provide fire access pursuant to the County Fire Department fire code. According to the testimony given by the applicant at the August 11, 2014 City Council appeal hearing, it appears that the applicant plans to preserve its County Fire Department exemption by perpetuating its remodel or replacement structure status to the County Fire Department alone.

At the August 11, 2014 City Council hearing and in response to Councilmember Joan House's questions regarding the categorization of the Development, Planning Director Joyce Parker-Bozylinski stated:

*"So Councilman House, you know I regret ever putting the word "substantial remodel" into this staff report. Let me just repeat again this is not a remodel under the City standards. It is not a remodel under the City's standards so we have looked at this like a brand new house. Just think of this as a vacant house, somebody is coming in and they want to build a house. And so what they're proposing and what they're building would be allowed with these discretionary permits if that was a vacant house. The only reason we put the words "substantial remodel" in there was to describe it for fire department purposes. For City purposes, it is not a remodel."*³

The Development is also immediately adjacent to natural and combustible chaparral growing on the bluff face at 28106 PCH. Immediately above that chaparral is the AGB Trust residence.

² As summarized by City Attorney Christi Hogin at the August 11, 2014 City Council hearing.

³ See audio of the August 11, 2014 City Council hearing at the 4:07:30 hour that can be seen on the City of Malibu Website.

The Development is located on a landlocked property and accessed through an approximately 1,000 foot long private easement through the adjacent property located at 28126 PCH. The existing paved cart path that meanders from the bluff top down to the Development does not meet the standard access requirements of the County Fire Department. The farthest corner of the Development is approximately 800 feet from the closest fire turnaround proposed at the bluff top at 28126 PCH. This is well outside the 150-foot field of operation required by the County Fire Department. At its August 11, 2014 public hearing, the Malibu City Council decreed that the Development is in fact a "new single-family residence". The last County Fire Department review was on April 10, 2013. To date, the Development has not been re-submitted to the County Fire Department for a new review in light of its new status. Since there are no mitigating measures to substitute for the total absence of fire access⁴, the fire hazard remains.

The fire hazard is further compounded by (a) the increase in the size of the structure from the existing 652 square feet "beach cabana" to the new, approximate 2,000 square foot single-family residence and (b) the east side yard setback reduction from 7.5 feet to 6 feet. For that reason, the increase in the size (and fuel) of the Development together with the "minor modification to reduce the east side yard setback" are contrary to the purpose of **Chapter 9 and Chapter 13.5 of the LIP** with respect to the hazard of fire.

II. The Development does not conform to the standards set forth in Chapter 9 of the LIP with respect to structural integrity. Specifically, the Development as proposed does not meet the purpose and intent of the LIP *"to insure that permitted development is sited and designed to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or in any way require the construction of protective devices that would substantially alter natural landforms along canyons, hillsides, bluffs and cliffs"*.

The Development proposes to demolish (1) *"unpermitted beach level decking, stairs, and trellises within the subject property"*, (2) *"including the eastern portion of the first floor which encroaches over the east property line"*, (3) the *"existing timber pile foundation and understructure walls"* and (4) *"seepage pits and distribution box of the existing septic system"*. The beach level deck, stairs, trellis, the eastern portion of the first floor, the pile foundation, the understructure retaining walls, the septic pump station and the related plumbing and electrical feeds encroach upon the adjoining property located at 28106 PCH. All of that demolition and removal from the applicant's property alone will leave both a geologic and structural hazard on the adjoining property (28106 PCH), which the LIP is written to prevent.

The limited removal of un-permitted concrete and wood retaining walls below and alongside the existing beach level structure which are in the wave uprush zone have been extended without permits onto the adjoining property at 28106 PCH and negatively altered the drainage therein. The Development does not address the negative edge effect that (a) the demolition of the un-permitted construction at the beach level, the un-permitted construction on the bluff face and the un-permitted construction at the bluff top and (b) the restoration of the coastal bluff at all 3 levels will have on the adjoining

⁴ Per 8/27/14 telephone consultation with Los Angeles County Fire Prevention Engineer.

property at 28106 PCH⁵.

III. All of the opinions expressed in the following documents and presentations are incorporated in this appeal by reference.

1. Richard Sol letter to the Planning Commission dated February 1, 2014,
2. Richard Sol supplemental letter to the Planning Commission dated May 4, 2014,
3. Richard Sol appeal of CDP with Addendum dated May 4, 2014 and
4. The presentations made by Richard Sol and Edwin Reeser at the March 3, 2014 Planning Commission hear,
5. The presentations made by Richard Sol and Edwin Reeser at the May 5, 2014 Planning Commission hearing and
6. The presentations made by Richard Sol and Don Kowalewsky at the August 11, 2014 City Council hearing.

The first 3 documents are attached. The video/audio files of the Planning Commission hearings and the City Council hearing can be viewed on the City of Malibu Website.

IV. The Development is technically deficient because the City Planning staff:

1. Described and consequentially misdirected the County Fire Department to consider the Development as a remodel which caused the Development to circumvent compliance with current fire codes for new residences,
2. Described the Development as raising the existing foundation and structure 7 feet when in fact it raised the foundation 7 feet but raised the roofline 13 feet,
3. Presumptively concluded that the original structure contained 1,900 plus square feet of permitted structure when the tax roles and City permit records only evidence 652 square feet of permitted space and
4. Improperly described in its NOTICE OF PUBLIC HEARING the scope of work as a remodel when the City Council corrected the record to reflect that the Development is a new single-family residence.

ADDITIONAL CONDITIONS REQUESTED

The AGB Trust wishes to have the un-permitted cut, fill, construction & alterations to the surrounding drainage upon its property conducted by the previous owner around the year 2006 without AGB Trust's permission and without its knowledge restored to its 2003 permitted status. It is AGB Trust's considered opinion that the restoration of the bluff top and bluff face should be made before the Development is entitled. Therefore, the AGB Trust requests that the CCC consider using its mandate to protect the California coastline by conditioning the Development in a manner that the restoration of this coastal bluff precede the Development itself.

⁵ See (a) Partial Topographic Survey prepared by Clemons Land Surveying dated 3/26/14 showing plan of un-permitted work at 28106, 28118 & 28126 PCH and (b) Donald B. Kowalewsky Engineering Geologic Opinion Report dated 7/28/14.

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.

Larry S. Forni TRUSTEE OF THE
AGB TRUST
Signature of Appellant(s) or Authorized Agent

Date: 9/8/2014

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

Section VI. Agent Authorization

I/We hereby
authorize

RICHARD SOL
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Larry S. Forni
Signature of Appellant(s)

Date: 9/8/2014

SEP 08 2014

**ADDITIONAL INFORMATION TO SUPPORT APPEAL REQUEST
(IN CHRONOLOGICAL ORDER):**

California Coastal Commission
South Central Coast District

- 2003 0213 CCC Staff Report: Regular Calendar for 3/4-7/03 hearing re: 28118 & 28126 PCH
- 2013 0123 City of Malibu Commission Agenda Report prepared for 28126 PCH
- 2013 0201 Sol Letter to Malibu Planning Commission (on behalf of the AGB Trust)
- 2013 0327 City of Malibu Quality Assurance Committee Review
- 2013 0328 City of Malibu Status Letter
- 2013 0401 Bonnie Blue (City of Malibu Planner) email to City Departments
- 2013 0410 City of Malibu Fire Department Review Referral Sheet

- 2014 0123 City of Malibu Notice of Public Hearing (for "a substantial remodel")
- 2014 0219 City of Malibu letter re: structural remodel
- 2014 0220 City of Malibu Commission Agenda Report prepared 2/20/14 for 3/3/14 meeting re: 28118 & 28126 PCH
- 2014 0303 City of Malibu Planning Commission 1st Hearing (see audio file on the City of Malibu website)
- 2014 0303 Sol Transcription of the motion to extend the hearing
- 2014 0330 Sol Appendix No. 2 showing un-permitted alterations to coastal bluff
- 2014 0429 City of Malibu Supplemental Commission Agenda Report prepared 4/29/14 for 5/5/14 meeting re: 28118 & 28126 PCH
- 2014 0504 Sol Supplemental Letter to Planning Commission on behalf of the AGB Trust
- 2014 0505 City of Malibu Planning Commission 2nd Hearing (see audio file on the City of Malibu website)
- 2014 0717 City of Malibu Notice of Public Hearing (for "a substantial remodel" at 28118 PCH)
- 2014 0717 City of Malibu Notice of Public Hearing (for CUP at 28126 PCH)
- 2014 0728 Donald B. Kowalewsky Engineering Geologic Opinion Report
- 2014 0730 Malibu City Council Agenda Report prepared 7/30/14 for 8/11/14 meeting re: 28118 & 28126 PCH
- 2014 0808 GeoSoils, Inc Coastal Engineering Review
- 2014 0811 Malibu City Council Hearing (see audio file on City's website)
- 2014 0811 Malibu City Council Executed Resolution 14-42
- 2014 0811 Malibu City Council Executed Resolution 14-43



NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

4-MAL-14-0759

Received

AUG 25 2014

Date of Notice: August 21, 2014

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: California Coastal Commission
Bonnie Blue, Senior Planner
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 expired for this matter):

Project Information

Coastal Development Permit No. 11-033, Offer to Dedicate No. 12-008, Site Plan Review No. 13-011, Minor Modification No. 13-003, Variance No. 12-033, Demolition No. 11-018, and Appeal No. 14-003 – For construction of a new single-family residence on the beach consisting of a new concrete pile and grade beam foundation and site work consisting of modifications to the onsite wastewater treatment system to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 Pacific Coast Highway) and demolition of unpermitted beach level work, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and a demolition permit in the rural residential-two acre zoning district located at 28118 Pacific Coast Highway

Application Date: June 29, 2011
Issue Date: May 5, 2014
Applicant: Jack & Amanda Ryan, 32300 Pacific Coast Highway, Malibu, CA 90265
Owner: Ryan Family, LLC
Location: 28118 Pacific Coast Hwy
APN: 4460-033-010

Final Action Information

Final Local Action: ☐ Approved ☒ Approved with Conditions ☐ Denied
Final Action Body: Approved by the City Council on August 11, 2014

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)
Adopted Staff Report: August 11, 2014 City Council Meeting	X	
Adopted Findings and Conditions: City Council Resolution No. 14-42	X	
Site Plans and Elevations	X	

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

Exhibit 5
Final Local Action Notice
Appeal No. A-4-MAL-14-0047

RESOLUTION NO. 14-42

RECEIVED
JUN 25 2014
California Coastal Commission
San Diego District

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 14-003 AND APPROVING COASTAL DEVELOPMENT PERMIT NO. 11-033, VARIANCE NO. 12-033, SITE PLAN REVIEW NO. 13-011, MINOR MODIFICATION NO. 13-003, OFFER TO DEDICATE NO. 12-008 AND DEMOLITION PERMIT NO. 11-018 FOR CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE ON THE BEACH CONSISTING OF A NEW CONCRETE PILE AND GRADE BEAM FOUNDATION AND SITE WORK CONSISTING OF MODIFICATIONS TO THE ONSITE WASTEWATER TREATMENT SYSTEM TO PUMP WASTEWATER TO THE NEW TREATMENT SYSTEM BEING CONSTRUCTED ON THE ADJACENT LOT (28126 PACIFIC COAST HIGHWAY) AND DEMOLITION OF UNPERMITTED BEACH LEVEL WORK, INCLUDING A VARIANCE TO ALLOW OFFSITE PARKING, A SITE PLAN REVIEW FOR CONSTRUCTION OVER 18 FEET IN HEIGHT, A MINOR MODIFICATION TO REDUCE THE EAST SIDE YARD SETBACK, AN OFFER TO DEDICATE A LATERAL ACCESS EASEMENT AND A DEMOLITION PERMIT IN THE RURAL RESIDENTIAL-TWO ACRE ZONING DISTRICT LOCATED AT 28118 PACIFIC COAST HIGHWAY (RYAN FAMILY, LLC)

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

Section 1. Recitals.

A. Ryan Family, LLC, the Applicant, acquired two adjacent parcels, 28118 Pacific Coast Highway (PCH) and 28126 PCH, in 2010.

B. In 2003, the California Coastal Commission issued Permit No. 4-01-169 to the prior property owner to allow a bluff slope restoration and repair consisting of a soldier-pile supported retaining wall system and cart path covering both properties.

C. On February 4, 2013, the Planning Commission adopted Resolution No. 13-07 approving Coastal Development Permit (CDP) No. 11-034 and associated entitlements for development at 28126 PCH to allow construction of a new two-story single-family residence, detached garage, swimming pool, pool house, sports court, driveway and a new alternative onsite wastewater treatment system (AOWTS) on the bluff-top, and a less than 50 percent remodel of the legal nonconforming beach-level second unit and as-built approval and upgrades to the existing shoreline protective device.

D. On January 23, 2014, a Notice of Planning Commission Public Hearing for CDP No. 11-033 was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

E. On February 7, 2014, a Notice of Cancellation was posted for the February 18, 2014 Planning Commission meeting and a Notice of Continuance was posted, continuing the hearing from the February 18, 2014 Regular Planning Commission meeting to the March 3, 2014 Regular

Planning Commission meeting.

F. On March 3, 2014, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

G. At the conclusion of the public hearing, the Commission deliberated, and voted to reopen the public hearing and continue it to the April 21, 2014 Regular Planning Commission meeting to allow time for the Applicant and the Appellant (owner of 28106 PCH) to try to come to a mutually acceptable path to resolving outstanding code violations that affect both properties that is the result of unpermitted work constructed by a previous property owner.

H. On April 21, 2014, the Planning Commission continued the public hearing to the May 5, 2014 Regular Planning Commission meeting.

I. On May 5, 2014, the Planning Commission adopted Planning Commission Resolution No. 14-30 for the subject property to approve CDP No. 11-033, Variance (VAR) No. 12-033, Site Plan Review (SPR) No. 13-011, Minor Modification (MM) No. 13-003, Offer to Dedicate (OTD) No. 12-008 and Demolition Permit (DP) No. 11-018 for a substantial remodel of a legal nonconforming single-family residence on the beach to incorporate a new concrete pile and grade beam foundation to raise the structure seven feet while maintaining at least 50 percent of exterior walls, reconfigure the interior and add a new roof and roof deck, and site work consisting of an understructure retaining wall, modifications to the onsite wastewater treatment system (OWTS) to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 PCH) and demolition and restoration of unpermitted work on the bluff face, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and a demolition permit. Also on May 5 2014, the Planning Commission adopted Planning Commission Resolution No. 14-35 approving a conditional use permit (CUP) to allow 28126 PCH to provide offsite wastewater treatment and disposal for the subject property. Due to unpermitted work conducted by a prior owner of the two properties without benefit of permits, the Planning Commission included conditions of approval in each resolution requiring the Applicant to submit plans during the plan check phase to remove unpermitted structures and remediate the bluff slope back to the contours shown in the 2003 plans approved by the California Coastal Commission.

J. On May 14, 2014, Winnie W. Hou, Trustee of the AGB Trust (Appellant), owner of the adjacent property to the east, 28106 PCH, filed Appeal (AP) No. 14-003 of the CDP approved for 28118 PCH and AP No. 14-004 of the CUP approved at 28126 PCH. Also on May 14, 2014, staff deemed the subject appeal submittal complete.

K. On July 17, 2014, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property.

L. On August 11, 2014, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Appeal of Action.

The appeal submitted on May 14, 2014, alleges that: 1) the findings and conditions set forth in Planning Commission Resolution No. 14-30 are not supported by the evidence in the record; and 2) the decision is contrary to law.

Specifically, the Appellant contends: 1) Insufficient information was provided in the CDP application identifying the scope of the demolition, grading, drainage and remediation work associated with the correcting unpermitted development, and that professionally prepared plans to address hazards and edge effects to 28106 PCH should be reviewed as a CDP, rather than by the Planning Director and Building Official; 2) The proposed understructure retaining wall is a de facto bulkhead that does not comply with Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 10.3, and the existing shoreline protective device must be addressed; 3) Impacts to the base of the bluff of the Appellant's property resulting from the proposed project have not been adequately addressed; 4) The project did not require Los Angeles County Fire Department (LACFD) review because the reviewing County engineer was directed by City staff to consider the project as a remodel; 5) The minor modification findings to reduce the side yard setback cannot be made and any reduction of the setback further increases the risk of a fire igniting the adjacent native coastal bluff and putting the Appellant's adjacent bluff-top residence at risk; 6) The offsite parking variance grants a special privilege to the applicant; and 7) The project intensifies and expands the existing structure which is inconsistent with LIP Section 13.5.

In the August 11, 2014 Council agenda report, Planning Department staff responded to each of the Appellant's contentions.

Section 3. Findings for Denial of Appeal.

Based on evidence in the record and in the Council agenda report for the subject project presented at the August 11, 2014, City Council hearing, the City Council hereby makes the following findings of fact denying Appeal No. 14-003 and finds that substantial evidence in the record supports the required findings for approval of the proposed project, as conditioned by the conditions of approval included in Section 7 of this resolution. In addition, the analysis, findings of fact, and conclusions set forth in the agenda report are incorporated herein as though fully set forth.

A. The Applicant has submitted preliminary information prepared by the project geotechnical consultants with recommendations for how to remediate the bluff-top retaining wall at 28126 PCH. In consultation with the Building Safety Division, the Planning Director determined that it is not feasible to conduct the work in conformance with the LCP and the project approvals and that a new

CDP is required. Condition No. 17 calls for the Applicant to submit a new CDP application to address the demolition, grading, drainage and revegetation work on the bluff face and at the toe of the bluff to restore the bluff to the condition permitted by the California Coastal Commission Permit No. 4-01-169 and shown in the contours of the 2003 survey. Condition No. 20 reiterates the requirements of Chapter 33 (Safeguards During Construction) of the 2013 California Building Code, which will ensure that the demolition plans submitted for removal of unpermitted decks, trellises and residence additions will not create hazards for the Appellant's property. The Appellant has not submitted substantial evidence identifying specific "edge effects" of concern associated with the proposed project. It is the Appellant's responsibility to submit a CDP application with the necessary professionally prepared engineered plans and supporting documentation to address abatement of the unpermitted work on its property.

B. The City Coastal Engineer has reviewed and approved the understructure retaining wall for conformance with the LCP, including LIP Section 10.4 (Shoreline and Bluff Development Standards). The house will be supported on a new pile foundation system and will not require a shoreline protective device for the life of the development. The project coastal engineering and structural engineering reports document that the understructure retaining wall is necessary to protect the toe of the bluff, which supports portions of the OWTS system for offsite pumping and the cart path (the property's sole vehicular access) from wave attack. Such protection is allowed pursuant to LIP Section 10.4(K). Furthermore, the project coastal engineering and structural engineering consultants, and the City Coastal Engineer, have documented that there is no existing shoreline protective device on the subject property. The Appellant has not provided any substantial evidence to contradict the determinations made by the project consulting engineers or the City Coastal Engineer, or Findings J1 through J5 of Planning Commission Resolution No. 14-30.

C. The Applicant's coastal engineering and structural engineering consultant addressed the issue of potential hazards to adjoining properties in reports and plans that were submitted, reviewed and approved by the City Coastal Engineer prior the Planning Commission's decision on May 5, 2014. The wave uprush limit line and beach profile information that were requested by the City Coastal Engineer as a plan check submittal item were included on the structural foundation plans submitted on April 8, 2014. No substantial evidence has been provided to contradict the determinations made that the proposed project will not adversely impact the coastal processes, coastal access or adjacent properties.

D. The City does not direct the LACFD's review of projects. Under the Building Code, which is the standard of review utilized by LACFD, along with the Fire Code, a structural remodel may include a new foundation while maintaining its status as a remodel with legal nonconformities. Therefore, the standard of review for the Fire Department, an agency of Los Angeles County independent from the City Planning Department, is not necessarily the same as the Malibu LCP. If the Appellant objects to the level or standard of review utilized by the LACFD, the proper forum to make that argument is with the Fire Department, not the City.

E. The minor modification decreases the side yard by 18 inches, leaving a setback of six feet. This setback not only meets minimum Building and Fire Code setback requirements, it also exceeds the maximum five foot setback required for denser, beachfront infill development. While it is impossible to eliminate all fire hazards from a project, in this case, fire hazards will be greatly reduced by virtue of the demolition of unpermitted, deteriorated timber structures, construction utilizing new fire-rated exterior and roofing materials that meet the Building and Fire Code, and installation of interior fire sprinklers. Once the code violations are abated by the Applicant and the Appellant, no other structures would exist in the vicinity of the reduced setback. The Appellant has reiterated unsubstantiated contentions regarding hazards caused by the project as a lack of compliance with the LCP and state and local law, but has provided no new information or substantial evidence to contradict Findings D1, D2 and D3.

F. The variance process exists in part to provide relief from a development standard when a property is constrained by unique physical characteristics that would otherwise preclude development. The subject property is a legal lot as evidenced by the certificate of compliance issued by the City in 2003 and acknowledged by the California Coastal Commission in its approval of Permit No. 4-01-169. The offsite parking variance is necessary due to unique physical characteristics, specifically, the lack of vehicular access and space for meeting code requirements for offstreet parking within the bounds of the parcel. For a landlocked property without vehicular access, an offsite parking variance is an appropriate use of the variance provisions found in the LCP and does not constitute a special privilege.

G. LIP Section 13.5 contains the LCP's nonconforming structure policies. These policies are aimed at limiting the modifications that can be made when a property owner wishes to remodel or alter a legal nonconforming structure and still maintain the existing structure nonconformities. The subject project has been properly reviewed as a new single-family home under the LCP, using the same standards that would apply to new development. LIP Section 13.5 is not applicable to new development such as a replacement structure.

Section 4. Environmental Review.

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

Section 5. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to LIP Sections 13.20.1(A) and 13.9, the City Council adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 11-033, VAR No. 12-033, SPR No. 13-011, MM No. 13-003, OTD No. 12-008 and DP No. 11-018 for a new single-family residence on the beach consisting of a new concrete pile and grade beam foundation and site work consisting of modifications to the OWTS to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 PCH) and demolition of unpermitted beach level work, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and a demolition permit, subject to the conditions in Section 7 of this resolution.

The proposed project has been reviewed and approved by the City Geologist, City Coastal Engineer, City Biologist, City Environmental Health Administrator, City Public Works Department and the LACFD. Subject to the conditions of approval, the project is consistent with all applicable LCP codes, standards, goals and policies. The City Council hereby makes the following findings of fact as required by the LCP.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

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

The project proposes a new beach level residence located at the base of a bluff on a parcel with no direct street frontage. The property is zoned Rural Residential-Two Acres (RR-2) and is subject to non-beachfront residential development standards. The project was determined to be a new single-family home because it will incorporate an entirely new concrete pile and grade beam foundation. According to the definition in LIP Section 2.1, a remodel does not include a new or altered foundation. Therefore, treated like new construction, the project was reviewed for conformance with current LCP development standards.

With the inclusion of the variance, site plan review, and minor modification which address the physical constraints of the project site, the project is consistent with the uses allowed in the RR zoning district and all applicable LCP standards and policies.

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

The project is located between the first public road and the sea; however, no development is proposed seaward of the existing main residence, and the property owner has voluntarily incorporated recordation of a public lateral access easement along the shore into the project description. A condition of approval has been included in Section 7 to memorialize the offer. Therefore, no potential project-related or cumulative impact on public access and/or recreation is anticipated and the proposed project conforms to the public access and recreational policies in Chapter 3 of the Coastal Act of 1976.

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

As discussed in Section 2, the project is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the residential development requirements of the LCP and is consistent with the RR-2 zoning classification of the subject parcel.

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

1. No Project – The existing residence exists in a dilapidated and unsafe condition with numerous unpermitted accessory structures onsite on the bluff face as well as on the beach. The project site has been a frequent target of trespassing and vandalism in recent years. The no project alternative does not meet the project objectives and leaves an eyesore and attractive public health and safety nuisance unabated.
2. Completely demolish the Residence and Construct an Entirely New Residence – The applicant considered demolishing the entire existing nonconforming structure. However, the subject property consists of a steep bluff slope and beach sand, with no direct or proximate street frontage. Due to these physical constraints, it is infeasible to comply with current LACFD access requirements. The LACFD reviewed the project plans which include construction of a new foundation while maintaining at least 50 percent of exterior walls and determined that the under the Fire Code and Building Code, the project would be considered a remodel and would be allowed to maintain its existing nonconforming access. Because obtaining LACFD approval of a new residence may not be possible, demolition and reconstruction would not meet the project objectives of having a primary residence on the subject property and is not a feasible alternative.
3. Proposed Project with AOWTS – The applicant considered construction of an AOWTS to serve the remodeled residence. However, since the project is a new replacement structure subject to current LCP standards and policies, the project would be precluded from utilizing the existing seepage pits on the beach for wastewater disposal. Construction of a new leachfield and bulkhead that extends seaward of the residence would be required. Because wastewater treatment can be accommodated offsite at 28126 PCH without the construction of a seaward bulkhead for the life of the development, construction of an AOWTS onsite to serve the project is not the least environmentally damaging alternative.

4. Proposed Project – The proposed project includes removal of existing onsite unpermitted decking and trellises on the beach, as well as portions of the residence that encroach over the east side yard. A condition of approval has been included in Section 7 to require submittal a separate CDP that will remediate the structurally and functionally unrelated bluff-face unpermitted development elsewhere on the property. The overall project total development square footage will be reduced by 69 square feet, to 2,042 square feet, which is less than the 2,826 square feet allowed for the property. While the project will maintain at least 50 percent of the exterior walls, it was reviewed for LCP conformance as a new single-family home. The residence will be elevated seven feet and supported entirely on the new concrete pile and grade beam foundation out of wave uprush hazards, and the existing timber cap beams and floor joists will be repaired as needed. The existing seepage pits and distribution box of the existing septic system will be removed, while a new sewer ejector pump will be installed into the existing OWTS, outside the wave uprush zone, and a force main will be constructed to pump wastewater up to the bluff-top AOWTS at 28126 PCH. A condition of approval has been included which stipulates approval of the proposed project is contingent upon obtaining a CUP for 28126 PCH as the receiving site. A new understructure retaining wall will be constructed beneath the north portion of the subject residence as far landward as feasible to protect the terrace that supports the OWTS components, as well as the cart path and toe of the bluff. The retaining wall will have a return wall extending landward out of the wave uprush zone on the east side and will tie into the shoreline protection structure approved on the 28126 PCH property to the west (pursuant to Planning Commission Resolution No. 13-07). The offsite, more landward treatment of the project wastewater results allows a greater distance between the treated effluent discharge and the ocean than onsite treatment would, thereby allowing more time for polishing of the effluent and removal of contaminants as it travels subsurface to the ocean. Due to the physical characteristics and constraints of the property, the findings necessary to support the variance, site plan review and minor modification can be made and are discussed in Sections B, C and D, respectively.

The project, as conditioned, and including the discretionary requests, is consistent with applicable provisions of the LCP and has been approved by the City Biologist, City Public Works Department, City Geologist, City Coastal Engineer, City Environmental Health Administrator and the LACFD.

The proposed project meets the development policies of the LCP and has been determined to be the least environmentally damaging feasible alternative.

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

According to the LCP Environmentally Sensitive Habitat Area (ESHA) Overlay Map, the subject parcel is not located in or adjacent to an ESHA; therefore, review by the Environmental Review Board is not required.

B. Variance for Offsite Parking (LIP Section 13.26.5)

A variance is requested to allow four unenclosed offsite parking spaces instead of two enclosed and two unenclosed onsite parking spaces to serve the proposed project. Pursuant to LIP Section 13.26.5, the City Council may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes ten findings of fact. Based on the evidence contained within the record, the City Council approves VAR No. 12-033 as follows.

Finding B1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The sole access to the subject property is provided via a cart path protected by a pile-supported retaining wall system on the bluff-face that was installed in 2005 pursuant to California Coastal Commission Permit No. 4-01-169. The parcel has no adjacent or proximate street frontage. Cars cannot access the site and the only flat portion of the site consists of beach sand. Due to these special circumstances and exceptional characteristics, this legal parcel would be deprived of the ability to use the property for a primary residence consistent with the RR-2 zoning designation, and in a manner similar to other property in the vicinity in the same zone district.

Finding B2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The project proposes to utilize four unenclosed parking spaces provided within an offsite parking easement near the top of the access driveway in the north part of 28126 PCH. These two properties have historically been used together as a compound, and an existing parking easement was already in place on the bluff-top of 28126 PCH. However, because the spaces were located within the required LACFD turn around, they were moved to the location shown in the approved site plan for CDP No. 11-034 for 28126 PCH. Recording an easement for the four spaces will be required as Condition No. 16 of this resolution. The granting of the variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to property or improvements in the same area or zone.

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

The granting of the variance is not a special privilege to the property owner. No alternate location for placement of the required parking is available.

Finding B4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the Local Coastal Program.

The granting of this variance will not be contrary to or in conflict with the general purposes and intent of the zoning provisions, nor to the goals, objectives and policies of the LCP. As previously stated, granting the requested variance will allow residential use of the property consistent with the RR-2 zone district and ensures the required four spaces will be available to project residents.

Finding B5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

This finding does not apply as the variance is not related to ESHA standards.

Finding B6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by LIP Chapter 12.

The variance is not related to stringline standards. Therefore, this finding does not apply.

Finding B7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the RR-2 zoning district.

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

The subject site is physically suitable for the proposed variance in that there is no alternate method or configuration which would eliminate the need for the variance request, and the adjacent property where the parking will be located has historically been used for offsite parking.

Finding B9. The variance complies with all requirements of state and local law.

The project has received LCP conformance review by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Coastal Engineer, City Public Works Department, and the LACFD. Prior to issuance of building permits, the project must have final approval by the LACFD, Waterworks District No. 29, and the City Building Safety Division. The proposed project and variance complies with all applicable requirements of state and local law.

Finding B10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The variance is not related to the reduction or elimination of public parking, and all required parking for the project will be accommodated off public streets. Therefore, this finding does not apply.

C. Site Plan Review for Construction over 18 Feet in Height (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review for construction above 18 feet in height, up to 24 feet with a flat roof or 28 feet with a pitched roof. Two additional findings are required pursuant to Malibu Municipal Code (M.M.C.) Section 17.62.050. The residence is proposed with a pitched roof up to a maximum of 20.48 feet in height, with a cupola feature up to 23.37 feet in height. Based on the evidence contained within the record, the required findings for SPR No. 13-011 are made as follows.

Finding C1. The project is consistent with policies and provisions of the Malibu LCP.

The proposed project has been reviewed for conformance with the LCP by the Planning Department and appropriate City and county agencies. Based on these reviews, Department Review Sheets, site visits, and visual analysis in the record, the project is consistent with all LCP policies and provisions.

Finding C2. The project does not adversely affect neighborhood character.

The nearest beach level residences are the homes on the two adjacent lots to the west at 28124 and 28126 PCH. There are no beach level homes for approximately 600 linear feet to the east. The homes contain beach level residences. The home at 28124 PCH is two stories and over 2,600 square feet, according to the Los Angeles County Assessor. The home at 28126 PCH is a second unit that will be restored to approximately 900 square feet and one-story. The proposed project on the subject property includes raising the home seven feet on a new foundation to clear wave uprush hazards, and incorporates a new pitched roof on the second floor. Based on the story poles installed for the project in January and February 2014, the size and scale of the project will be similar to the other beach level residences. Furthermore, given the dilapidated condition of the existing property, the proposed remodel will remove an existing eyesore and improve neighborhood character.

Finding C3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed project is seen from the beach in front of the residence, which is considered a public viewing area by the LCP. The project site is not visible from PCH and or any other public viewing areas in the vicinity. In any event, significant public views from the beach would be oriented toward the ocean and away from the residence; therefore, the change in the project height and massing has no adverse effects on public views. Standard conditions have been included in Section 7 that require colors and materials in earth tones that are consistent with the surrounding natural environment, and

restrict site lighting. Therefore, the project will provide maximum feasible protection to public views.

Finding C4. The proposed project complies with all applicable requirements of state and local law.

The project has received LCP conformance review by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Coastal Engineer, City Public Works Department, and the LACFD. Prior to issuance of building permits, the project must have final approval by the LACFD, Waterworks District No. 29, and the City Building Safety Division. The proposed project and site plan review comply with all applicable requirements of state and local law.

Finding C5. The project is consistent with the City's general plan and local coastal program.

The project is consistent with the RR zoning designation for the site as described in the Malibu General Plan and LCP Land Use Plan (LUP). As provided herein, the project is consistent with the land use policies of the General Plan and LUP.

Finding C6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in M.M.C. Section 17.40.040(A)(17).

Ocean views for neighboring properties at the beach level are oriented to the south. All other nearby residences are located on the bluff-top where no potential primary view blockage would be caused by the proposed project. As demonstrated by the visual analysis and the installed story poles, the proposed project does not obstruct primary views of visually impressive scenes of the Pacific Ocean or off-shore islands from the main viewing area of any affected principal residence.

D. Minor Modification for Reduction of the East Side Yard Setback (LIP Section 13.27)

The LCP requires that the City make three findings in the consideration and approval of a minor modification to reduce a required side yard setback by up to 20 percent. The project proposes to reduce the east side yard setback from 7.5 feet to 6 feet. The required findings for MM No. 13-003 are made below.

Finding D1. That the project is consistent with policies and provisions of the Malibu LCP.

As previously discussed in Finding A1, the project has been reviewed for conformance with all relevant policies and provisions of the LCP. The side yard setback for nonbeachfront residential properties is cumulatively 25 percent of the lot width. The proposed residence does not provide this setback, and the existing residence actually encroaches over the east property line. After the demolition of the east portion of the residence, a 6 foot, rather than a 7.5 foot setback for the residence will be provided. This setback is greater than the maximum setback required for typical

beach front development in the SFM zone configured similarly to the subject property. The easterly deck will maintain a three foot setback from the property line. All the onsite decking constructed without benefit of permit will be removed. The project is consistent with the policies of the LCP.

Finding D2. That the project does not adversely affect neighborhood character.

Reduced side yard setbacks are not unusual for lots of this type of narrow lot width (50 feet) in the RR zone at the beach level. The adjacent property to the east that could potentially be most affected by the 1.5 foot reduction in the side yard setback does not have any beach level habitable structures. The project does not adversely affect neighborhood character.

Finding D3. The proposed project complies with all applicable requirements of state and local law.

The project complies with all requirements of State and local law. Construction of the proposed improvements will comply with all Building Code requirements and will incorporate all recommendations from applicable City departments.

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

As discussed in Finding A4, the subject parcel is not mapped as ESHA on the LCP ESHA Map. Pursuant to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

F. Native Tree Protection (LIP Chapter 5)

The project area does not contain any protected native trees; therefore, the findings of LIP Chapter 5 are not applicable.

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

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The project is not visible from PCH but is located on the beach. Therefore, the findings set forth in LIP Section 6.4 are made below.

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

As discussed previously in Finding C3, the project is visible from the beach but does not have any significant adverse effects on scenic or visual resources as views are oriented toward the ocean and away from the proposed development. The proposed project will improve visual resources of the area by replacing a dilapidated structure. As discussed herein and demonstrated in the visual analysis and project plans, the project will have no significant adverse scenic or visual impacts.

Finding G2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As discussed in Finding G1, the proposed project is not anticipated to have significant adverse scenic or visual impacts. Additionally, standard conditions of approval for development visible from scenic areas are included which require use of exterior colors and materials that are compatible with the surrounding landscape and recordation of a lighting deed restriction.

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

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

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

As discussed in Findings A3, G1 and G2, the proposed project will not have significant adverse impacts on scenic or visual resources.

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

As discussed in Findings A3, G1 and G2, the proposed project will not have significant adverse scenic or visual impacts, and is the least environmentally damaging feasible alternative.

H. Transfer of Development Credit (LIP Chapter 7)

The proposed project does not include a land division or multi-family development; therefore, the findings in LIP Chapter 7 related to transfer of development credits does not apply.

I. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located in or near an area subject to these hazards. The project was analyzed for the hazards listed in LIP Section 9.2(A)1-7 by the City Geologist, City Coastal Engineer and City Public Works Department, as well as the LACFD, and has been determined to be consistent with all relevant policies and regulations of the LCP and M.M.C. The findings required by LIP Chapter 9 are made as follows.

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

Analysis of the project hazards included review of the project plans and the following documents/data, which are available on file with the City:

- 1) Existing City Geologic data maintained by the City;
- 2) Preliminary Geologic and Soils Engineering Investigation Report and Supplemental Reports prepared by GeoConcepts, Inc. (GCI) dated October 14, 2011, December 15, 2011, October 21, 2013, and April 28, 2014;
- 3) Private Sewage Disposal Report by GCI dated June 22, 2011;
- 4) Slope Restoration Report and Supplement by GCI dated December 7, 2012 and May 8, 2013;
- 5) Onsite Wastewater Treatment System prepared by Ensitu Engineering, Inc. dated October 7, 2013 (design report), October 7, 2013 (Design Flow Report for Offsite Treatment), and October 14, 2013 (preliminary plan);
- 6) Preliminary Foundation Plan prepared by David C. Weiss Structural Engineer (DCWSE) dated June 27, 2011 and subsequent plan dated July 10, 2012, October 24, 2013, and April 8, 2014;
- 7) Structural Engineering Reports and subsequent responses prepared by DCWSE dated July 11, 2012, May 3, 2013, August 19, 2013, April 7, 2014, and April 22, 2014; and
- 8) Wave Uprush Study and Responses prepared by Pacific Engineering Group (PEG) dated December 3, 2010, November 11, 2011, July 5, 2012, May 6, 2013, July 31, 2013, October 24, 2013, and April 7, 2014; and
- 9) Letter prepared by civil engineering consultant Peak Surveys dated April 23, 2014.

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

1. The project site is not located within an earthquake fault zone and no known active faults exist beneath the project site;
2. The project site is located in an earthquake-induced landslide hazard zone;
3. The project site is located in a liquefaction hazard zone;
4. The project site is subject to wave uprush and subject to minimal risk of being impacted by tsunamis;
5. A portion of the project site is located in a Federal Emergency Management Agency (FEMA) identified flood hazard area; and
6. The project site is located within an extreme fire hazard area.

Slope Stability and Landslide

The bluff slope was reconstructed and restored with a caisson-supported retaining wall system and cart path permitted by the California Coastal Commission on the subject property and 28126 PCH in 2003 following a slope failure. According to GCI's October 21, 2013 report, as repaired,

this slope exhibits factors of safety in excess of the 1.5 and 1.1 for static and pseudo-static conditions required by LIP Chapter 9.4(D). GCI states, "Long term stability of the slope is anticipated provided the recommendations contained herein and in the referenced reports are maintained."

A condition of approval has been included requiring the Applicant to submit a separate CDP for remediation of bluff-face structures and retaining walls. With respect to unpermitted work on the 28106 PCH property, in its May 8, 2013 report, GCI concludes that the elevated subject residence and the new concrete pile foundation system are not anticipated to be affected by any anticipated debris that could fall onto the subject property. GCI, DCWSE and Peak Surveys all concurred that unpermitted beach level structures could be disconnected from the portions that exist on 28106 PCH and safely removed from the subject property without adverse impacts to the project site or adjacent properties. A condition of approval requires the Applicant to submit a detailed construction staging plan for Building Safety Division review and approval during building plan check.

Liquefaction

The project site is located within the liquefaction zone on the State of California Seismic Hazard Map. However, according to the December 15, 2011 GCI report, based on the liquefaction analysis performed, liquefaction is not expected to pose a significant hazard to the proposed development. The City Geologist has included a condition of approval requiring the property owner to record an assumption of risk and release for liquefaction hazards.

Wave Uprush/Tsunami

The November 11, 2011 wave uprush study by PEG analyzed wave uprush hazards at the site taking sea level rise into consideration. The study notes that the beach fronting the site "is presently a stable beach that oscillates seasonally between sandy summer profiles and winter profiles, with additional but temporary storm scouring of the beach profile during extratropical storm events that are coincidental with high winter tides." The report indicates the maximum wave uprush on the site will occur at elevation 26.5 feet NAVD188. This line occurs near the north edge of the residence, just seaward of the cart path. The highest critical breaking wave elevation is projected to be at elevation 18.4 feet NAVD88, and that tsunami uprush would not exceed the storm waves analyzed in the report. The proposed project will elevate the existing structure seven feet on a new foundation designed in accordance with PEG's recommendations to achieve a finished floor elevation (FFE) of 25.8 feet. The project has been reviewed and approved by the City Coastal Engineer. As designed and conditioned, the proposed project is consistent with the LCP policies with respect to wave uprush hazards.

¹ NAVD is the North American Vertical Datum 1988.

Flood Hazard

The FEMA Flood Insurance Rate Map (Panel 0637C1518F) indicates the project is located in Zone X, which is not a special flood hazard zone. The City Public Works Department has determined the project, as designed and conditioned, conforms to the LCP.

Fire Hazard

The entire city limits of Malibu are located within a high fire hazard zone; however, the proposed development will incorporate all required measures of the LACFD to minimize risks from wildfire. The existing residence is legal nonconforming as to current LACFD requirements. There is no feasible way to provide vehicular access to the beach level of the subject property to meet current LACFD access standards. While a new beach level structure would not be approved by the Fire Department without meeting current requirements, a structural remodel, as defined by the Fire Department, of a legal nonconforming structure is allowed, as shown in the LACFD referral dated April 1, 2013 with no additional access requirements, and as described in the memorandum prepared by the City Building Safety Division dated February 19, 2014. However, the applicant has included fire sprinklers into the residence design, will utilize fire-rated exterior materials, and all deteriorating unpermitted timber decking and trellises at the beach level will be removed by the project. The residence will continue to utilize the existing cart path access way for emergency access. The cart path was integrated into the retaining wall stabilization system on the bluff-face and approved by the California Coastal Commission Permit No. 4-01-169 for this purpose. LACFD has reviewed and approved the project for consistency with any applicable fire safety regulations. The project will receive final review during building plan check.

The project will incorporate all recommendations contained in the above cited geotechnical and other reports and conditions required by the City Geologist, City Coastal Engineer, City Public Works Department and the LACFD. The proposed project will not increase instability of the site or structural integrity from geologic, flood or any other hazards. Final plans shall be reviewed and approved by these specialists prior to the issuance of a grading or building permit.

Finding 12. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding 11, the proposed project, as designed, conditioned and approved by the City Geologist, City Coastal Engineer, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from analyzed hazards. However, pursuant to LIP Sections 9.4(Y) and 10.6(A), as a condition of approval, the property owner will be required to record deed restrictions acknowledging and assuming the hazard risk of

development at the site. The deed restriction shall state that the proposed project site is subject to high fire hazard, as well as wave action, erosion, flooding, landslides or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against liability, claims, damages or expenses arising from any inquiry or damage due to such hazards.

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

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

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

As stated in Finding I1, the proposed project, as designed, conditioned and approved by the City Geologist, Coastal Engineer, Public Works Department and LACFD, will not have any significant adverse impacts on the site stability or structural integrity from analyzed hazards.

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

No significant adverse impacts are anticipated to any sensitive resource protection policies contained in the LCP. As stated in Finding I1, the proposed project, as designed and conditioned, will not have any significant adverse impacts on the site stability or structural integrity from analyzed hazards.

J. Shoreline and Bluff Development (LIP Chapter 10)

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

Finding J1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

The project site contains a developed bluff slope that descends approximately 100 feet to the beach. The bluff slope was repaired with a caisson-supported retaining wall system permitted by the California Coastal Commission in 2003 in order to protect legal nonconforming beach level

residences, including the subject site's residence, and the west neighbor beach level residence at 28126 PCH. The retaining wall system also supports a cart path that provides the sole access to these residences. Bluff-top and bluff-face retreat are not expected due to the existing bluff-face retaining wall system. No work on the bluff face is proposed with this application; however, a condition of approval has been included to require the Applicant to submit a separate CDP for remediation of unpermitted work on the bluff-face and revegetation of the slope back to the condition permitted by the California Coastal Commission.

The project proposes to elevate the existing residence seven feet to an FFE of 25.8 on a new concrete pile and grade beam foundation designed to resist wave uprush forces. A shoreline protective device is not required or proposed for the replacement structure, and the project is consistent with LIP Section 10.4(B) which requires new development on a beach to be sited outside areas subject to wave uprush, flooding and erosion hazards for the life of the structure. According to DCWSE, all of the construction equipment and the drill rig will reach the project site by way of the cart path, so that no materials or equipment will be brought across the beach, and concrete will be pumped down from the top of the bluff. A condition of approval requires the applicant to provide a construction staging plan prior to issuance of building permits.

The project also incorporates an understructure pile-supported retaining wall as part of the foundation that serves multiple purposes and functions like a bulkhead to protect existing walls that support the terrace where the OWTS is located, as well as the toe of the bluff where the cart path is located. The project will also include a return wall on the east side and will tie into the modified shoreline protective device previously approved by the Planning Commission at 28126 PCH to the west. The retaining wall has been located as landward as feasible beneath the residence. According to the project coastal engineer, if left unprotected, the toe of the bluff will be eroded in a design storm event. Should the bluff toe be undermined by wave uprush forces, the cart path accessway will fail and no access could be made to the onsite residence or to the adjacent beach house at 28126 PCH. The onsite OWTS would also be undermined. These legal nonconforming structures are integral to the function of the residences and their protection by a shoreline device such as the retaining wall is consistent with LIP Section 10.6(K). According to PEG and DCWSE, the wall will cause no adverse impacts on shoreline sand supply or public access due to the extreme landward location of the wall on the design beach profile. PEG states, "Although the retaining wall and supporting grade beam are in the uprush zone, the calculated uprush velocities at the wall are minimal and will not create additional scour or adverse conditions due to uprush reflection." In subsequent letters dated April 7, 2014, PEG and DCWSE each concurred that the proposed project will not adversely affect the subject property or adjacent property as a result of wave uprush hazards.

Finally, California State Lands Commission signed off on the project indicating it asserted to claim that the project intrudes on sovereign lands. The project does not extend the seaward footprint of development and the property owner has voluntarily included an offer to dedicate a public lateral access easement as an element of the project description. A condition memorializing the offer is included as a condition of project approval.

As designed and conditioned, the project will have no significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding J2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding J1, as designed, conditioned, and approved by City staff, the project will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding J3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

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

Finding J4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As stated in Finding J1, as designed, conditioned, and approved by the City staff, the project will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding J5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The new single-family home will be supported on an elevated concrete pile and grade beam foundation designed to resist wave uprush forces for the life of the structure, so that a shoreline protective device is not required to protect the residence. However, an understructure retaining wall is required for protection of legal nonconforming development that is integral to the function of the residence, including the cart path on the bluff face that provides access and the terrace supporting the OWTS. Such protection is consistent with LIP Section 10.4(K).

The OWTS is required even though the project proposes to pump wastewater offsite to the bluff-top of 28126 PCH because the sewage ejector pump and septic tank must remain at the beach level in the terrace area on the landward side of the residence. According to PEG's July 2013 response, "At this location, the proposed retaining wall is located as far landward as possible in compliance with LCP Section 10.4(K) and is the preferred vertical type of wall conforming to LCP Section 10.4(N)."

As discussed in Finding J1, the proposed wall will not result in significant adverse impacts on public access, shoreline sand supply or coastal resources. The detailed feasible alternatives analysis provided in Finding A3 demonstrates that the proposed project, including the understructure

retaining wall and the offsite disposal of wastewater, is the least environmentally damaging alternative.

K. Public Access (LIP Chapter 12)

LIP Chapter 12 requires public access for lateral, bluff-top and vertical access near the ocean, as well as trail access and recreational access, when applicable. No such public access is currently provided on or adjacent to the subject parcel. The subject property consists of a bluff face and beach sand with no public street frontage, and is developed with an existing residence that will be replaced with a new single-family home. The LCP Park Lands Map does not indicate any existing vertical, lateral, bluff-top, recreational or trail access on the property; however, the privately operated Paradise Cove recreation facility is located on the adjacent parcel to the west and is designated with a trail. Recreational access is not applicable to the project, and there is no opportunity for the parcel to provide a bluff-top access or viewing area, or vertical access as the property has no direct public street frontage. The property owner has volunteered to record an offer to dedicate lateral public access along the shoreline. Recordation of the OTD has been memorialized as a condition of the CDP approval in Section 7. The easement will provide public access between the ambulatory MHTL and dripline of the deck. The proposed project does not involve new construction seaward of the existing legal nonconforming building dripline. No substantial evidence of an existing public right of access to the shore has been presented. The project will have no adverse impact, individually or cumulatively, on public access to coastal resources. The project complies with LIP Chapter 12.

L. Land Division (LIP Chapter 15)

This project does not include a land division; therefore, the findings in LIP Chapter 15 do not apply.

M. Demolition Permit (M.M.C. Chapter 17.70)

M.M.C. Section 17.70.060 requires that a demolition permit be issued for projects that result in the demolition of any building or structure. The project is a new single-family home involving a new foundation system; however, the applicant proposes to retain at least 50 percent of the existing exterior walls. The findings for DP No. 11-018 are made as follows.

Finding M1. The demolition permit is conditioned to assure that it will be conducted in a manner that will not create significant adverse environmental impacts.

Conditions of approval included in Section 7 of this Resolution ensure that the project will not create significant adverse environmental impacts, including the requirement for a waste reduction and recycling plan that diverts at least 50 percent of construction and demolition waste.

Finding M2. A development plan has been approved or the requirement waived by the City.

This CDP application is being processed concurrently with DP No. 11-018. Therefore, approval of the demolition permit is subject to the approval of CDP No. 11-033.

Section 6. City Council Action.

Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, the City Council hereby denies Appeal No. 14-003 and approves CDP No. 11-033, VAR No. 12-033, SPR No. 13-011, MM No. 13-003, DP No. 11-018 and OTD No. 12-008 for a new single-family house and associated development at 28118 PCH, subject to the conditions set forth herein.

Section 7. Conditions of Approval.

Standard Conditions

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the project described herein. The scope of work approved includes the following components:
 - a. Demolition of:
 - 1) Unpermitted beach level decking, stairs, and trellises within the subject property;
 - 2) Existing roof and less than 50 percent of the residence exterior walls, including the eastern portion of the first floor which encroaches over the east property line (114.11 square feet), and eastern and northern portions of the second floor (105.1 square feet);
 - 3) Existing timber pile foundation and understructure walls; and
 - 4) Seepage pits and distribution box of the existing septic system.
 - b. Construction of a new single-family house consisting of:
 - 1) New concrete pile and grade beam foundation to raise the first floor FFE of the structure +/- 7 feet to elevation 25.8 feet;
 - 2) Existing timber cap beams and floor joists are to remain and be reinforced as necessary;
 - 3) New understructure retaining wall with east side return wall beneath the north portion of the house to protect the terrace supporting the OWTS, cart path and toe of the bluff from wave uprush hazards, including return walls;

- 4) Modification of the interior and exterior of the residence, including a new first floor roof deck with trellises (16.25 feet above recommended FFE), new second floor bedroom suite (150 square feet), and new second floor pitched roof 20.48 feet above recommended FFE (cupola up to 23.37 feet above recommended FFE);
 - 5) New first floor deck with retractable beach stairs; and
 - 6) Modifications to the existing OWTS to relocate the sewer ejection pump out of the wave uprush zone and install a new duplex pump in the existing septic tank and a force main to pump wastewater to the adjacent lot (28126 PCH) for treatment and disposal.
 - c. Existing and proposed total development square footage (TDSF) for the project is broken out below. The project results in a 69 square foot net decrease in overall TDSF.
 - 1) Existing TDSF:
 $1,114 \text{ square feet (1st floor)} + 997 \text{ square feet (2nd floor)} = 2,111 \text{ square feet}$
 - 2) Proposed TDSF:
 $999.9 \text{ square feet (1st floor)} + 1,041.8 \text{ square feet (2nd floor)} = 2,041.7 \text{ square feet}$
 - d. Discretionary requests:
 - 1) VAR No. 12-033 for offsite parking;
 - 2) SPR No. 13-011 for construction over 18 feet in height;
 - 3) MM No. 13-003 for 20 percent reduction of the east side yard setback;
 - 4) DP No. 11-018; and
 - 5) OTD No. 12-008 for a lateral access easement along the shore from the dripline of the proposed deck to the ambulatory mean high tide line.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **September 20, 2013 (Architectural)**, **August 14, 2013 (Grading/Erosion Control)** and **August 6, 2013 (Landscape/Restoration)** with **Restoration/Monitoring Program (Forde April 11, 2013)**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision and/or prior to issuance of any development permits.
5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Acceptance of Conditions Affidavit, and all Department Review Sheets attached to the May 5, 2014 Planning Commission agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability

Department for plan check.

7. This CDP shall be null and void if the project has not commenced within three years after issuance of the permit, unless a time extension has been granted, or work has commenced and substantial progress has been made (as determined by the Building Official) and the work is continuing under a valid building permit. If no building permit is required, the CDP approval shall expire after three years from the date of final planning approval if construction is not completed. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All development shall conform to requirements of the City Environmental Sustainability Department, City Geologist, City Coastal Engineer, City Environmental Health Administrator, City Public Works Department, LACFD, and Los Angeles County Waterworks District No. 29, as applicable. Notwithstanding this review, all required permits shall be secured.
10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the LCP. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission, have been exhausted. In the event that the Coastal Commission denies the permit or issues the permit on appeal, the CDP approved by the City is void.
12. The applicant must submit payment for any outstanding fees payable to the City prior to issuance of any building or grading permit.

Cultural Resources

13. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
14. If human bone is discovered during geologic testing or during construction, work shall

immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Site-Specific Conditions

15. Approval of this project to treat and dispose of wastewater offsite shall not become effective unless and until the City Council approves a conditional use permit approving 28126 PCH as the receiving site for the wastewater.
16. Prior to final planning approval, the applicant shall submit to the Planning Department evidence of a recorded offsite parking and access covenant consistent with the spaces provided at 28126 PCH.
17. Prior to final planning approval, the applicant shall submit a separate CDP application for the removal of unpermitted bluff face structures, along with the necessary soils, geology, drainage and structural documentation, and native plant revegetation and restoration to conditions consistent with the California Coastal Commission Permit No. 4-01-169 approved in 2003.
18. Prior to issuance of grading or building permits, the applicant shall submit a construction staging plan for review and approval by the Planning Director and Building Safety Division.
19. Provide a structural observation from the engineer of record verifying the structural integrity of the structural framing members proposed under the plan to remain (wood framed walls, sill plates, joists and rafters).
20. The project shall comply with all provisions of Chapter 33 (Safeguards During Construction) of the 2013 California Building Code.

Colors and Materials

21. The project is visible from scenic roads or public viewing areas and shall incorporate colors and materials that are compatible with the surrounding landscape.
 - a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones. Colors shall be reviewed and approved by the Planning Director and clearly indicated on the building plans.

- b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
22. Retaining walls visible from beaches or public viewing areas shall incorporate veneers, texturing and/or colors to blend with the surrounding earth materials. The colors shall be reviewed and approved by the Planning Director and clearly indicated on the grading and building plans.

Construction / Framing / Shoreline Protection

23. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
24. Prior to the issuance of a building/demolition permit, a Waste Reduction and Recycling Plan (WRRP) shall be submitted to the Environmental and Sustainability Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion goal.
25. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.
26. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.
27. When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the recommended finished floor elevation and the highest roof member elevation of each level of the residence. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning Department for review and sign off on framing.
28. All construction debris shall be removed from the beach daily and at completion of development.
29. No stockpiling of dirt or construction materials shall occur on the beach.
30. Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work.

31. No machinery shall be allowed in the intertidal zone at any time unless necessary for protection of life and/or property.
32. The application shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion.
33. Construction equipment shall not be cleaned on the beach.
34. Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

Geology

35. All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
36. Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment of the CDP or a new CDP.

Coastal Engineering

37. Provide design load recommendations for walls extending below the recommended lowest horizontal structural member elevation.

Grading / Drainage

38. A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the Public Works Department prior to the issuance of grading permits as grading or construction activity is anticipated to occur during the rainy season. The following elements shall be included in this plan:
 - a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures; and
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing.
39. A local Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review and approval by the Public Works Department prior to issuance of grading/building permits.

This plan shall include:

- a. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - b. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset;
 - c. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste; and
 - d. Specific BMPs to prevent erosion and BMPs for sediment control prior to discharge from the property.
40. Per LIP Section 8.3(F), grading plans shall be submitted for plan check approval with building plans. No grading permits shall be issued until a building permit is approved.
 41. Non-exempt grading of 19 cubic yards is proposed for the project. In no event shall non-exempt grading exceed 1,000 cubic yards.
 42. The Total Grading Yardage Verification Certificate shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitutes will be accepted.
 43. The project proposes grading on slopes equal or greater than 4 to 1. Grading permits shall not be issued between November 1 and March 31 of each year per LIP Section 8.4. Projects approved for grading shall not receive grading permits unless the project can be rough graded before November 1. A note shall be placed on the project plans that addresses this condition.
 44. The ocean between Latigo Point and the west City limits has been established by the State Water Resources Control Board as an Area of Special Biological Significance (ASBS) as part of the California Ocean Plan. This designation allows discharge of storm water only where it is essential for flood control or slope stability, including roof, landscape, road and parking lot drainage, to prevent soil erosion, the discharge only occurs during wet weather, and is composed only of storm water runoff. The applicant shall provide a drainage system that accomplishes the following:
 - a. Installation of BMPs that are designed to treat the potential pollutants in the storm water runoff so that it does not alter the natural ocean water quality. These pollutants include trash, oil and grease, metals, bacteria, nutrients, pesticides, herbicides and sediment.
 - b. Prohibits the discharge of trash.
 - c. Only discharges from existing storm drain outfalls are allowed. No new outfalls will be allowed. Any proposed or new storm water discharged shall be routed to existing storm drain outfalls and shall not result in any new contribution of waste to the ASBS (i.e., no additional pollutant loading).
 - d. Elimination of non-storm water discharges.

45. Exported soil from the site shall be taken to the County Landfill or to a site with an active grading permit and the ability to accept the material in compliance with LIP Section 8.3.
46. A grading and drainage plan containing the following information shall be submitted to the Public Works Department for approval, prior to the issuance of grading permits for the project:
 - a. Public Works Department General Notes;
 - b. The limits of land to be disturbed during project development; and
 - c. Private storm drain systems.

Biology/Landscaping

47. No new landscaping is proposed with this project; therefore, none is approved. Should the applicant intend to plant any new vegetation with a potential to exceed six feet in height, or change the existing landscaping of 5,000 square feet or more, a detailed landscape plan shall be submitted for review and approval prior to any planting.
48. Grading/landform alteration should be scheduled only during the dry season from April 1 to October 31. If it becomes necessary to conduct grading activities from November 1 to March 31, a comprehensive erosion control plan shall be submitted for approval prior to issuance of a grading permit and implemented prior to initiation of vegetation removal and/or grading activities.

Environmental Health

49. This conformance review is for a three bedroom (34 fixture units) single-family dwelling replacement structure. Wastewater shall be pumped to the new AOWTS at 28126 PCH, which meets the requirements of the Malibu Plumbing Code and the Local Coastal Program.
50. Environmental Health final approval of the OWTS plot plan is required.
51. Plans for replacement of the sewage ejector pump station and a new force main shall be submitted to the Building Safety Division for approval prior to Environmental Health final approval.
52. Approval by the City Coastal Engineer is required prior to final Environmental Health approval.
53. Prior to final Environmental Health approval, the applicant shall submit a conditional use permit approved for offsite wastewater treatment at 28126 PCH and a covenant to hold the two properties as one (28118 PCH and 28126 PCH) that has been recorded with the County Recorder's Office.

Fire Department

54. Per the LACFD April 10, 2013 review sheet, the project does not require Fire Department plan review. Any final review and project requirements for Fire Code compliance are at the discretion of the LACFD.

Water Service

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

Lighting

56. Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:
- a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height and are directed downward, and limited to 850 lumens (equivalent to a 60 watt incandescent bulb);
 - b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 850 lumens;
 - c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 850 lumens;
 - d. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 850 lumens;
 - e. Site perimeter lighting shall be prohibited;
 - f. Outdoor decorative lighting for aesthetic purposes is prohibited;
 - g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
 - h. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property shall not produce an illumination level greater than one foot candle; and
 - i. Lighting of the shore is prohibited.
57. Night lighting from exterior and interior sources shall be minimized. All exterior lighting shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting.

Deed Restrictions

58. Prior to final planning approval, in accordance with the requirements of Subsection M

(Amendments to Plumbing Code) of M.M.C. Section 15.12.050, a covenant running with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to the subject real property and recorded with the Los Angeles County Recorder's Office. The covenant shall serve as constructive notice to any future purchaser for value that the onsite wastewater treatment system serving 28118 PCH is located on 28126 PCH, and that the two properties shall be maintained as one property until and unless separate compliant onsite wastewater treatment systems are provided on each separate parcel and onsite wastewater treatment and disposal for said properties can otherwise be accomplished in conformity with the requirements of the Malibu Plumbing Code, the LCP and any other law or regulation.

59. The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, liquefaction or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City and agrees to indemnify the City against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department prior to final planning approval.
60. The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department prior to final planning approval.
61. In order to implement the property owner's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the property owner agrees to complete the following prior to final Planning approval: the property owner shall execute and record a document, in a form and content acceptable to the Planning Director and California Coastal Commission, irrevocably offering to dedicate to a public agency or private association approved by the California Coastal Commission an easement for lateral public access and passive recreational use along the shoreline. 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 which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the dripline of the proposed deck.

The document shall be recorded free of prior liens which the Planning Director and/or California Coastal Commission determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. 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 a formal legal description and graphic depiction, prepared by a licensed surveyor, of both the property owner's entire parcel and the easement area.

62. The applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in the *Lighting* conditions above. The property owner shall provide a copy of the recorded document to Planning Department prior to final planning approval.

Prior to Occupancy / Final Sign-Off

63. Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the City of Malibu Environmental and Sustainability Department with a Final Waste Reduction and Recycling Report for review and approval. This report shall designate all materials that were land filled and recycled, broken down into material types.
64. The applicant shall request a final Planning Department inspection prior to final inspection by the City of Malibu Environmental and Sustainability Department. A Certificate of Occupancy shall not be issued until the Planning Department has determined that the project complies with this CDP. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
65. Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval, and if applicable, the issuance of the certificate of occupancy.

Fixed Conditions

66. This coastal development permit shall run with the land and bind all future owners of the property.
67. Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

Section 8. Certification.

The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 11th day of August 2014.

SKYLAR PEAK, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

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

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



Planning Commission
Meeting
05-05-14

**Item
5.A.**

Supplemental Commission Agenda Report

To: Chair Pierson and Members of the Planning Commission

Prepared by: Bonnie Blue, AICP, Senior Planner

Reviewed by: Jerry Hittleman, Principal Planner *JH*

Approved by: Joyce Parker-Bozylinski, AICP, Planning Director *JPB*

Date prepared: April 29, 2014 Meeting Date: May 5, 2014

Subject: Coastal Development Permit No. 11-033, Variance No. 12-033, Conditional Use Permit No. 13-014, Site Plan Review No. 13-011, Minor Modification No. 13-003, Offer to Dedicate No. 12-008 and Demolition Permit No. 11-018 - An application for a substantial remodel of a legal nonconforming single-family residence on the beach to incorporate a new concrete pile and grade beam foundation to raise the structure seven feet while maintaining at least 50 percent of exterior walls, reconfigure the interior and add a new roof and roof deck, and site work consisting of modifications to the onsite wastewater treatment system to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 Pacific Coast Highway) and demolition and restoration of unpermitted work on the bluff face, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and a demolition permit for 28118 Pacific Coast Highway, and a conditional use permit to allow offsite wastewater treatment at 28126 Pacific Coast Highway (Continued from March 3, 2014)

Application Filing Date: June 9, 2012
Applicant/Owner: Amanda Ryan, Ryan Family Trust
Location: 28118 and 28126 Pacific Coast Highway, in the appealable coastal zone
APNs: 4460-033-010 and 4460-033-011
Zoning: Rural Residential-Two Acres (RR-2)

RECOMMENDED ACTION: 1) Adopt Planning Commission Resolution No. 14-30 (Attachment 1) approving Coastal Development Permit (CDP) No. 11-033, Variance No.

12-033, Site Plan Review No. 13-011, Minor Modification No. 13-003, Offer to Dedicate No. 12-008 and Demolition Permit No. 11-018 for a substantial remodel of a legal nonconforming single-family residence on the beach to incorporate a new concrete pile and grade beam foundation to raise the structure seven feet while maintaining at least 50 percent of exterior walls, reconfigure the interior and add a new roof and roof deck, and site work consisting of modifications to the onsite wastewater treatment system to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 Pacific Coast Highway) and demolition and restoration of unpermitted work on the bluff face, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and a demolition permit; and 2) Adopt Planning Commission Resolution No. 14-35 (Attachment 2) to approve Conditional Use Permit (CUP) No. 13-014 for 28126 Pacific Coast Highway to provide offsite wastewater treatment for 28118 Pacific Coast Highway.

Attachments 1 and 2 have been prepared in an underline/~~strikethrough~~ format for ease of review and identification of changes.

DISCUSSION: This item was continued from the March 3 and April 21, 2014 Planning Commission meetings. At the March 3, 2014 meeting, the Planning Commission opened the public hearing, took public comment and discussed the project. The Commission continued the public hearing to April 21, 2014 to allow time for the applicant, Ryan Family, LLC, to meet with the neighboring property owner to the east, 28106 Pacific Coast Highway (PCH) owned by AGB Trust, to try to determine a mutually acceptable path to resolving outstanding code violations that affect both properties as a result of unpermitted work constructed by a previous property owner. The Agenda Report and attachments for the March 3, 2014 meeting can be found as Attachment 3. On April 21, 2014, the Planning Commission continued the public hearing to May 5, 2014 at staff's request to allow additional time for the parties to resolve issues.

During the March 3, 2014 public hearing, there was extensive discussion about the difficulties presented by unpermitted work that crosses property lines. The City Attorney advised the Commission that the Commission could not compel the applicant, through conditions of project approval, to complete any work, specifically, the remediation of the unpermitted development, on property owned by another party.

Since the March 3, 2014 Commission meeting, staff made several efforts to arrange meetings with both parties at City Hall. The AGB Trust team attended one meeting on April 10, 2014, which included the Ryan project team, Planning staff and the City Attorney. AGB's architect Richard Sol also met separately with staff several times, as did the Ryan project team. Both parties' attorneys have corresponded with each other and staff. Substantive correspondence submitted by both parties is included as Attachments 4 and 5¹.

¹ Please note that staff has attempted to limit the attached correspondence to substantive documents rather than attempts at scheduling. Complete correspondence may be found in the project file at the Planning Department.

The major issues discussed at the March 3, 2014 meeting, as well as subsequently raised issues, are summarized below:

Primary Issues from March 3, 2014 Meeting:

1. The potential for wave action against the proposed understructure retaining wall would adversely affect the neighboring properties to the west (28126 PCH, owned by applicant Ryan Family, LLC) and the east (28106 PCH, owned by AGB Trust).
2. The status of a shoreline protection device/revetment at 28118 PCH.
3. The instruments to be recorded for the offsite wastewater treatment, access and parking.
4. Whether the code violations at 28118 PCH (retaining walls, decking, bathroom addition, bluff-face patio areas) can be remediated without adversely affecting 28106 PCH.
5. Whether the applicant and AGB Trust can reach a cooperative agreement about how to remediate the unpermitted work that touches both properties.

Subsequently Raised Issues

6. Unpermitted Bluff-top Retaining Wall Remediation and Bluff-top Setback for 28126 PCH residence that was previously approved under CDP 11-034², and is currently under construction.

Issue 1 – Wave Action

On April 8, 2014, the applicant submitted a revised foundation/structural plan that incorporates a new return wall at the east terminus of the new understructure retaining wall. The return wall extends landward parallel with the east property line for a distance of approximately 13.5 feet and out of the wave uprush zone. This return wall was incorporated in lieu of the original design which called for the understructure retaining wall to tie into an existing retaining wall that enters the property from the east, which is now understood to be unpermitted and required to be removed.

The westerly end of the retaining wall ties into a shoreline protection structure approved on the west neighboring property, 28126 PCH. The 28126 PCH shoreline protection structure, as approved by the Planning Commission³, will return landward along the shared property line where the new retaining wall will tie in (refer to sheet PFS1 in Attachment 6).

² Planning Commission Resolution No. 13-07 was adopted on February 3, 2013 to approve CDP No. 11-034 at 28126 PCH. The scope of work included a main bluff-top residence, new onsite wastewater treatment system, and accessory structures, as well as a less than 50 percent remodel of the legal nonconforming beach level second residential unit and improvements to the existing shoreline protection device.

The April 8, 2014 plans were accompanied by a Coastal Engineering Analysis of Proposed East Return Wall prepared by Pacific Engineering Group (PEG), dated April 7, 2014, and an Opinion Letter prepared by David C. Weiss Structural Engineer (DCWSE), dated April 7, 2014 (both included as Attachment 7). The PEG report concludes the proposed project, including all foundation elements and the understructure retaining wall as modified, will have no negative impacts on coastal processes, coastal access or adjacent properties (28126 and 28106 PCH). The DCWSE letter concurs with this assessment. Both reports identify that the proposed new foundation will be structurally independent of neighboring properties and result in no adverse effects on the subject property or adjacent parcels.

The plans and consultant reports have received conformance review and approval by the City Environmental Health Administrator, City Coastal Engineer and City Geologist (Attachment 8).

Issue 2 – Shoreline Protection Status of 28118 PCH

At the March 3, 2014 meeting, AGB's architect submitted photos and a letter asserting that an unpermitted shoreline protective device remained in place on the beach of the subject property (Attachment 9). These rocks are believed to be buried now and in recent years due to high sand levels. Aerials from 2002 through 2013 are included as Attachment 10. The rocks are visible in the 2006 aerial photo which shows them spread across from the Paradise Cove parking lot and east over a portion of the AGB Trust property. During a meeting on April 8, 2014 with staff, DCWSE and PEG stated that while many of the rocks are not likely to be native to the site, they do not serve as a revetment. The City Coastal Engineer reviewed the photographs submitted by Richard Sol, the Coastal Commission 2003 staff report, and the wave uprush report prepared for the subject property. The City Coastal Engineer concluded the rocks referenced in the Coastal Commission's 2003 staff report for CDP No. 4-01-169 were the shoreline protective device at 28126 PCH and that the rocks at 28118 PCH are not considered a shoreline protective device (Attachment 8).

Issue 3 – Instruments to be Recorded

To memorialize the offsite wastewater treatment proposed in CUP No. 13-014 and as required by the Malibu Plumbing Code, the City Attorney prepared a restrictive covenant requiring 28126 and 28118 PCH to be held together as one parcel (Attachment 11). Condition of Approval No. 12 has been included in Planning Commission Resolution No. 14-35 to require the covenant to be recorded prior to final approval from the City Environmental Health Administrator for the offsite wastewater treatment. Condition Nos. 56 and 61 of Planning Commission Resolution No. 14-30 also capture this requirement.

Furthermore, the applicant has prepared for recording a covenant for offsite access and parking spaces. Condition of Approval No. 16 of Planning Commission Resolution No. 14-30 requires this document to be recorded prior to final Planning approval for permit issuance.

Issue 4 – Safe Removal of Unpermitted Structures

One of the Commission's major concerns was whether the unpermitted structures could be safely removed from each property separately if the property owners were unable to reach a cooperative agreement. To help address this issue, and with the permission of the AGB Trust, the applicant commissioned a survey of the improvements on both side of the property line (Attachment 12). Much of the unpermitted improvements are located on the AGB Trust property and consist of the beach level decking, a stone wall, a portion of the 28118 PCH residence bathroom, stairways, trellises, graded patios, retaining walls and other work. However, the structures are interconnected and portions encroach onto the 28118 PCH property. AGB Trust also contends that the unengineered improvements have resulted in damage from uncontrolled drainage occurring on 28106 PCH.

The applicant's consultants have reviewed the structural integrity of these improvements and have met with the City Deputy Building Official who advised them that the Building Code requires that structures be removed in a manner that does not adversely affect adjacent properties. In a letter dated April 22, 2014, the applicant's structural engineer, DCWSE, states that portions of the walls on the 28118 PCH property can be removed and the slope remediated without causing damage to the walls or the property at 28106 PCH. In a letter prepared by the project civil engineer, Peak Surveys, dated April 23, 2014, the consulting civil engineer concurs that the removal of the walls is feasible. The project geotechnical consultant, GeoConcepts, Inc. (GCI), also concurred with this assessment in a letter dated April 28, 2014. All consultant letters can be found in Attachment 13. The City Geologist agreed with these determinations. The work is expected to be similar in nature to the slope remediation occurring across other portions of 28118 PCH, as shown in the proposed grading plans, as well as that approved for the toe of the slope at 28126 PCH.

The engineered plans, along with the necessary soils, geology, drainage and structural documentation will be submitted for review and approval by City specialists during plan check. Plan check will include review by the Building Official for compliance with all the provisions of Chapter 33 (Safeguards During Construction) of the Building Code (Attachment 14). Planning staff will also review the plans for substantial conformance with the findings and conditions of approval adopted in Planning Commission Resolution No. 14-30, as well as for overall conformance with the LCP. Condition of Approval Nos. 20 and 21 have been incorporated into Planning Commission Resolution No. 14-30 to memorialize these requirements. It should also be noted that if, during plan check, it is determined that it is not feasible to conduct the work in conformance with the Building Code, the LCP and the project approvals, a CDP amendment would be required.

Issue 5 – Cooperative Agreement

On April 10, 2014, Planning staff hosted a meeting with the applicant team, AGB Trust team, and the City Attorney. In response to questions raised at the meeting, the City Attorney recommended that each party pursue its own CDP to address remediation of

the unpermitted work on his or her respective property. Once each property owner has obtained CDP approval, the hope is that the property owners will work cooperatively to coordinate the physical structure removal and restoration work.

To facilitate the process, staff has added the conditions of approval described in this report to the attached Planning Commission resolutions to clarify the requirement for remediation on the subject property and the deadlines in which to complete the work. The attached email dated April 22, 2014 from the Ryans' attorney, Paul Porter, describes the approach they intend to take (Attachment 5).

On April 23, 2014, staff met with a representative from AGB Trust to discuss submittal requirements for the CDP the AGB Trust will need to submit for remediation at 28106 PCH. During this meeting and in a subsequent email, the AGB Trust representative reiterated AGB's position that a joint CDP is the only appropriate mechanism for accomplishing the remediation on both properties. The representative indicated AGB Trust would object to the approval of the subject CDP and CUP, as proposed. Staff does not believe it is legally feasible for the City to require a joint CDP.

Issue 6 – Bluff-top Retaining Wall at 28126 PCH

Subsequent to the March 3, 2014 Planning Commission meeting, the AGB Trust raised the issue of an unpermitted bluff-top concrete block retaining wall on 28126 PCH that, based on aerial photographs, appears to have been constructed by the prior property owner between 2005 and 2006 (Refer to April 23, 2014 submittal from Richard Sol in Attachment 4). The retaining wall is identified on the original survey submitted with the CDP No. 11-034 for 28126 PCH prepared by M&M and Company; however, staff did not identify it as work constructed without benefit of a permit at the time as it was covered by vegetation during site visits to the property, as shown in more recent aerial photographs. The construction progression can be seen in photographs between 2002 and 2013 (Attachment 15). No permits for the wall have been identified and the applicants have indicated their willingness to remove it.

Staff reviewed the M & M Survey, as well as the March 2014 survey prepared by Clemons and the 1999 survey that was the basis of the soldier pile slope repair/cart path plans approved by the Coastal Commission in 2003. The retaining wall in question is U-shaped and measures approximately 33 feet by 54 feet by 7 feet. Approximately nine linear feet of the wall encroach on to the AGB Trust property, with heights ranging from approximately two to four feet. The portions of the wall on the subject 28126 PCH property range in height from about two to nine feet.

During the meeting with staff on April 23, 2014, the AGB Trust representative questioned the validity of the bluff-top setback determination made for the main residence at 28126 PCH as approved by the Planning Commission and suggested the top of bluff may have been established too far seaward due to this retaining wall and the associated change in contours.

In general (and as with the 28126 PCH project), when determining the bluff-top setbacks, staff reviews the geotechnical top of bluff as approved by the City Geologist, and also looks at the topographic contours of the property to establish bluff edge based on the interface of the steep bluff face and flatter top of the bluff. This is because the geotechnical top of bluff, which is based on slope stability factors of safety, does not always line up with the topographic contours and features that are relevant to the visual aspects of determining the bluff-top setback requirement as specified in LIP Chapter 6 (Scenic, Visual and Hillside Protection⁴).

Site grading and foundation permits have been issued for the main residence at 28126 PCH, and the majority of this work has been completed. Construction plans for the main residence have received plan check approval and were issued building permits on April 22, 2014.

Staff has re-examined the bluff-top setback approved for 28126 PCH. In this case, staff determined that the topographic top of bluff occurred at approximately the 100 foot contour elevation, coinciding with the geotechnical top of bluff confirmed by the City Geologist. Staff believes this topographic bluff-top determination is valid and appropriate, regardless of the existence of the unpermitted retaining wall, for several reasons (refer to Bluff-top Analysis in Attachment 15):

1. The City Geologist's determination depends on slope stability factors primarily occurring downslope and which are enhanced by the soldier pile slope stability system installed pursuant to the Coastal Commission's approval, rather than affected by an upslope retaining wall.
2. In the 1999, 2003 and M&M topographic surveys, the contours begin to flatten out above the 100 foot contour, just above the top of the location of the cart path, particularly as they move further west. This forms a kind of natural break between the steeper slopes of the cart path area and below, and the gentler slopes leading up to the building pad.
3. The wide angle view of the bluff topography taking into account the trend across multiple properties shows a bluff-top line consistent with the determination.

This information supports the previous findings made to approve CDP No. 11-034 for 28126 PCH, and specifically, consistency with bluff-top development standards of LIP Chapter 6, that the project, including the siting of the residence, complies with the LCP.

Removal of this retaining wall and remediation of the bluff-top was not specifically called out in the project scope of work for CDP No. 11-034; however, the CDP did call for restoring the base of the bluff back to the conditions permitted by the Coastal Commission in 2003 (refer to Condition No. 2(n) of Planning Commission Resolution

⁴ LIP Section 6.5(D)(1) pertaining to Bluff Development states: "(1) In addition to the blufftop development setback requirements necessary to ensure geologic stability contained in Chapter 10 of the certified Malibu LCP, new development proposed on blufftops shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of, but no less than, the setback necessary to ensure that risk from geologic hazards are minimized for the life of the structure."

No. 13-07). To ensure the applicant removes the bluff-top wall and remediates the slope back to the 2003 contours, Condition Nos. 13 and 14 have been incorporated into Planning Commission Resolution No. 14-35 for the offsite wastewater CUP at 28126 PCH to memorialize this requirement. Engineered construction and remediation plans will be required to be reviewed and approved by the Planning Department and City specialists prior to issuance of permits for the remedial work.

The conditions also require that the remediation plans be reviewed and approved by the Building Official for compliance with all the provisions of Chapter 33 (Safeguards During Construction) of the Building Code. Since neither the offsite wastewater disposal authorized under the CUP nor final sign offs for the main residence at 28126 PCH could occur without the completion of the new AOWTS at 28126 PCH, the conditions require that the bluff-top slope remediation shall be completed prior to issuance of a certificate of occupancy for the main residence. The conditions ensure that the unpermitted work will be remediated prior to any occupancy of the residence approved under CDP No. 11-034, and ensures that the work on the site will be consistent with the Planning Commission Resolution No. 13-07, the LCP and the Coastal Act.

SUMMARY: The attached resolutions have been modified to incorporate additional conditions of approval to address issues raised during the March 3, 2014 public hearing, and subsequently. The resolutions, as proposed, allow for the projects at 28118 and 28126 PCH to proceed consistent with City codes and the LCP, while preserving the option for the neighboring property owners to coordinate on construction work, provided the AGB Trust obtains approval of a CDP for the remedial work on its property.

ATTACHMENTS:

1. Planning Commission Resolution No. 14-30 (underline/strikethrough)
2. Planning Commission Resolution No. 14-35 (underline/strikethrough)
3. Agenda Report and Attachments for March 3, 2014 Hearing (available at <http://www.malibucity.org/AgendaCenter/ViewFile/Item/1009?fileID=1150>)
4. AGB Trust Correspondence
5. Ryan Family, LLC Correspondence
6. Revised Foundation/Structural Plan date-stamped April 8, 2014
7. PEG and DCWSE Letters dated April 7, 2014
8. Departmental Review Sheets
9. Correspondence submitted by Richard Sol on March 3, 2014
10. Aerials of Shoreline Rocks
11. Proposed Offsite Treatment Covenant
12. Updated Survey prepared by Clemons dated March 25-26, 2014
13. DCWSE Letter dated April 22, 2014, Peak Surveys Letter dated April 23, 2014 and GCI Letter dated April 28, 2014
14. Chapter 33 (Safeguards During Construction), 2013 California Building Code
15. Bluff-top Retaining Wall Analysis

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-30**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 11-033, VARIANCE NO. 12-033, SITE PLAN REVIEW NO. 13-011, MINOR MODIFICATION NO. 13-003, OFFER TO DEDICATE NO. 12-008 AND DEMOLITION PERMIT NO. 11-018 FOR A SUBSTANTIAL REMODEL OF A LEGAL NONCONFORMING SINGLE-FAMILY RESIDENCE ON THE BEACH TO INCORPORATE A NEW CONCRETE PILE AND GRADE BEAM FOUNDATION TO RAISE THE STRUCTURE SEVEN FEET WHILE MAINTAINING AT LEAST 50 PERCENT OF EXTERIOR WALLS, RECONFIGURE THE INTERIOR AND ADD A NEW ROOF AND ROOF DECK, AND SITE WORK CONSISTING OF MODIFICATIONS TO THE ONSITE WASTEWATER TREATMENT SYSTEM TO PUMP WASTEWATER TO THE NEW TREATMENT SYSTEM BEING CONSTRUCTED ON THE ADJACENT LOT (28126 PACIFIC COAST HIGHWAY) AND DEMOLITION AND RESTORATION OF UNPERMITTED WORK ON THE BLUFF FACE, INCLUDING A VARIANCE TO ALLOW OFFSITE PARKING, A SITE PLAN REVIEW FOR CONSTRUCTION OVER 18 FEET IN HEIGHT, A MINOR MODIFICATION TO REDUCE THE EAST SIDE YARD SETBACK, AN OFFER TO DEDICATE A LATERAL ACCESS EASEMENT AND A DEMOLITION PERMIT IN THE RURAL RESIDENTIAL-TWO ACRE ZONING DISTRICT LOCATED AT 28118 PACIFIC COAST HIGHWAY (RYAN FAMILY TRUST)

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

Section I. Recitals.

- A. On June 9, 2011, an application for Coastal Development Permit (CDP) No. 11-033 was submitted to the Planning Department by the applicant, Amanda Ryan, on behalf of the property owner, Ryan Family Trust. The project proposed a less than 50 percent remodel with foundation improvements to the existing nonconforming beach level residence. The residence is nonconforming as to current Los Angeles County Fire Department (LACFD) access requirements and coastal engineering requirements for finished floor elevation (FFE), among other things. The sole vehicular access to the residence is via a cart path down the bluff face that is shared with 28126 Pacific Coast Highway (PCH), which adjacent to the north and east and under the same ownership as the subject property. The subject residence FFE is 18.5 above sea level, which is seven feet lower than the 25.8 feet recommended by the project coastal engineering consultant. The CDP application was routed to the City Geologist, City Coastal Engineer, City Environmental Health Administrator, City Biologist, the City Public Works Department and the LACFD for review.
- B. On June 29, 2011, a preliminary foundation plan was submitted for the project depicting the proposed improvements. The proposal included construction of several new piles and other repairs, but did not elevate the structure.

- C. On October 18, 2011, a courtesy notice of the proposed project was mailed to all property owners and occupants within a 500 foot radius. Also on October 18, Planning Department staff met with LACFD Fire Prevention Engineering staff to review the plan check requirements for the project. LACFD indicated that foundation improvements would not prevent the project from being considered a remodel based on the proposed plans which called for retaining at least 50 percent of exterior walls. As such, LACFD would allow the project to retain its present legal nonconforming access consisting of a pile-supported cart path down the bluff slope.
- D. On January 17, 2012, revised architectural and preliminary foundation plans were submitted and routed for review to City and county departments.
- E. On February 29, 2012, Planning Department staff conducted a site visit with the City Coastal Engineer and the applicant to document onsite conditions and photograph the property and surrounding area.
- F. On June 26, 2012, the Planning Department sent the applicant an incomplete letter explaining that revising the project to incorporate a whole new foundation that raises the structure to address coastal engineering and structural requirements would be constitute a substantial remodel that would be subject to all current Local Coastal Program (LCP) development standards. The letter also noted that it would be the applicant's responsibility to coordinate with the LACFD on its review thresholds and requirements for the substantial remodel conformance review.
- G. On July 10, 2012, a notice of CDP application was posted on the subject property.
- H. On July 12, 2012, revised architectural and foundation plans were submitted to the Planning Department and routed for review to City and county departments.
- I. On August 6, 2012, the applicant submitted a variance request to provide required parking offsite on the bluff-top of the adjacent property, 28126 PCH.
- J. On March 28, 2013, the Planning Department sent the applicant an incomplete letter. The letter called for the applicant to provide a grading plan for restoration of the unpermitted bluff face retaining walls and other accessory development constructed by the previous owner. The letter also noted that the applicant should confirm that City departments understood that the LCP required review of the substantial remodel as a replacement structure. Finally, the letter also called for the applicant to obtain an updated review sheet from the LACFD based on the current plans.
- K. On April 1, 2013, Planning Department staff sent a memo to all City departments reviewers to clarify the standard of review of the project as a substantial remodel under the LCP constituted a replacement structure subject to current standards and policies.
- L. On May 8, 2013, the applicant submitted revised project plans, including a grading and drainage plan to restore the unpermitted work on the bluff face within the property

boundaries.

- M. On October 7, 2013, the applicant submitted a design flow report prepared by Ensitu Engineering, Inc. with justification for the treating the project's wastewater flows offsite at 28126 PCH using the new alternative onsite wastewater treatment system (AOWTS) approved under CDP No. 11-034. The Planning Commission adopted Planning Commission Resolution No. 13-07 for a new bluff-top residence and associated development, including an AOWTS, on February 3, 2013.
- N. On November 5, 2013, the applicant submitted a revised onsite wastewater treatment plan for the project that called for installing a sewer ejection pump and force main to move the project wastewater up to the bluff-top of 28126 PCH to be treated and disposed. In order to approve offsite wastewater treatment, Malibu Municipal Code (M.M.C.) Section 17.40.040(A)(14) requires approval of a conditional use permit (CUP) for the receiving site. A CUP for 28126 PCH is being processed concurrently with the subject CDP No. 11-034.
- O. In January 2014, story poles depicting the height and bulk of the proposed project were installed on the subject property.
- P. On January 23, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.
- Q. On February 3, 2014 staff deemed the application complete.
- R. On February 4, 2014, Planning Department staff conducted a site visit to photograph the story poles and site conditions, and to evaluate potential visual impacts from the project.
- S. On February 5, 2014, the applicant submitted a request to continue the project to the March 3, 2014 Planning Commission meeting.
- T. On February 7, 2014, a Notice of Cancellation was posted for the February 18, 2014 Planning Commission meeting and a Notice of Continuance was posted, continuing the hearing from the February 18, 2014 Regular Planning Commission meeting to the March 3, 2014 Regular Planning Commission meeting.
- U. Subsequently, the applicant installed additional story poles depicting a portion of the first floor of the project.
- V. On February 13, 2014, staff revisited the site to photograph the new story poles.
- W. On February 19, 2014, the applicant installed additional story poles to depict the entire first floor of the project.
- X. On March 3, 2014, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

- Y. At the conclusion of the public hearing, the Commission deliberated, and voted to reopen the public hearing and continue it to regularly scheduled April 21, 2014 Planning Commission meeting to allow time for the applicant and the property owners of 28106 Pacific Coast Highway (PCH) to try to come to a mutually acceptable path to resolving outstanding code violations that affect both properties that is the result of unpermitted work constructed by a previous property owner.
- Z. On April 21, 2014, the Planning Commission continued the public hearing to May 5, 2014.
- AA. On May 5, 2014, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal as described above. The Planning Commission has found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment, and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Sections 15303(a), (d) and (e) – New Construction or Conversion of Small Structures. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7(B) and 13.9 of the Malibu Local Coastal Program (LCP) Local Implementation Plan (LIP), the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CDP No. 11-033, Variance (VAR) No. 12-033, Site Plan Review (SPR) No. 13-011, Minor Modification (MM) No. 13-003, Offer to Dedicate (OTD) No. 12-008 and Demolition Permit (DP) No. 11-018 for a substantial remodel of a legal nonconforming single-family residence on the beach to incorporate a new concrete pile and grade beam foundation to raise the structure seven feet while maintaining at least 50 percent of exterior walls, reconfigure the interior and add a new roof and roof deck, and site work consisting of modifications to the OWTS to pump wastewater to the new treatment system being constructed on the adjacent lot (28126 PCH) and demolition and restoration of unpermitted work on the bluff face, including a variance to allow offsite parking, a site plan review for construction over 18 feet in height, a minor modification to reduce the east side yard setback, an offer to dedicate a lateral access easement and a demolition permit in the Rural Residential-Two Acre (RR-2) zoning district located at 28118 PCH.

The project has been reviewed for conformance with the LCP by Planning Department staff, the City Biologist, City Geologist, City Coastal Engineer, City Environmental Health Administrator, the City Public Works Department and the LACFD. Subject to the conditions of approval, the project is consistent with all applicable LCP codes, standards, goals and policies.

A. General Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all CDPs.

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

The project proposes a substantial remodel of an existing, legal nonconforming beach level residence located at the base of a bluff on a parcel with no direct street frontage. The property is zoned Rural Residential-Two Acres (RR-2) and is subject to non-beachfront residential development standards. The project was determined to be a substantial remodel because it will incorporate an entirely new concrete pile and grade beam foundation. According to the definition in LIP Section 2.1, a remodel does not include a new or altered foundation. Because a substantial remodel is considered a "replacement structure" under the LCP, and therefore, treated like new construction, the project was reviewed for conformance with current LCP development standards.

With the inclusion of the variance, site plan review, and minor modification which address the physical constraints of the project site, the project is consistent with the uses allowed in the RR zoning district and all applicable LCP standards and policies.

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

The project is located between the first public road and the sea; however, no development is proposed seaward of the existing main residence, and the property owner has voluntarily incorporated recordation of a public lateral access easement along the shore into the project description. A condition of approval has been included in Section 5 to memorialize the offer. Therefore, no potential project-related or cumulative impact on public access and/or recreation is anticipated and the proposed project conforms to the public access and recreational policies in Chapter 3 of the Coastal Act of 1976.

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

As discussed in Section 2, the project is categorically exempt from CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA, and there are no further feasible alternatives that would further reduce any impacts on the environment. The project complies with the residential development requirements of the LCP and is consistent with the RR-2 zoning classification of the subject parcel.

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

1. No Project – The existing residence exists in a dilapidated and unsafe condition with numerous unpermitted accessory structures onsite on the bluff face as well as on the beach. The project site has been a frequent target of trespassing and vandalism in recent years. The no project alternative does not meet the project objectives and leaves an eyesore and attractive public health and safety nuisance

unabated.

2. Demolish and Reconstruct a New Residence – The applicant considered demolishing the entire existing nonconforming structure and building a new residence. However, the subject property consists of a steep bluff slope and beach sand, with no direct or proximate street frontage. Due to these physical constraints, it is infeasible to comply with current LACFD access requirements. The LACFD reviewed the project plans which include construction of a new foundation while maintaining at least 50 percent of exterior walls and determined that the project would be considered a remodel and would be allowed to maintain its existing nonconforming access. Because obtaining LACFD approval of a new residence may not be possible, demolition and reconstruction would not meet the project objectives of having a primary residence on the subject property and is not a feasible alternative.

3. Proposed Project with AOWTS – The applicant considered construction of an AOWTS to serve the remodeled residence. However, since the project is a replacement structure subject to current LCP standards and policies, the project would be precluded from utilizing the existing seepage pits on the beach for wastewater disposal. Construction of a new leachfield and bulkhead that extends seaward of the residence would be required. Because wastewater treatment can be accommodated offsite at 28126 PCH without the construction of a seaward bulkhead for the life of the development, construction of an AOWTS onsite to serve the project is not the least environmentally damaging alternative.

4. Proposed Project – The proposed project includes removal of existing onsite unpermitted decking, retaining walls and trellises on the bluff face as well as on the beach. Portions of the residence that encroach over the east side yard will be removed, and overall project total development square footage will be reduced by 69 square feet, to 2,042 square feet, which is less than the 2,826 square feet allowed for the property. The project includes a substantial remodel of the existing residence, and while it will maintain at least 50 percent of the exterior walls, it was reviewed for LCP conformance as a replacement structure. The residence will be elevated seven feet and supported entirely on a new concrete pile and grade beam foundation out of wave uprush hazards, and the existing timber cap beams and floor joists will be repaired as needed. The existing seepage pits and distribution box of the existing septic system will be removed, while a new sewer ejector pump will be installed into the existing OWTS and a force main will be constructed to pump wastewater up to the bluff-top AOWTS at 28126 PCH. A condition of approval has been included in Section 5 which stipulates approval of the proposed project is contingent upon obtaining a CUP for 28126 PCH as the receiving site. A new understructure retaining wall will be constructed beneath the north portion of the subject residence as far landward as feasible to protect the terrace that supports the OWTS components, as well as the cart path and toe of the bluff. The retaining wall will have a return wall extending landward out of the wave uprush zone on the east side and will tie into the shoreline protection structure approved on the 28126 PCH property to the west (pursuant to Planning Commission Resolution No. 13-07). The offsite, more landward treatment of the project wastewater results allows a greater distance between the treated effluent discharge and the ocean than onsite treatment would, thereby allowing more time for polishing of the effluent and removal of contaminants as it travels subsurface to the ocean. Due to the physical characteristics and constraints of the property, the findings necessary to support the variance, site plan review and minor modification can be made and are discussed in Sections B, C and D, respectively.

The project, as conditioned, and including the discretionary requests, is consistent with applicable provisions of the LCP and has been approved by the City Biologist, City Public Works Department, City Geologist, City Coastal Engineer, City Environmental Health Administrator and the LACFD.

The proposed project meets the development policies of the LCP and has been determined to be the least environmentally damaging feasible alternative.

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

According to the LCP Environmentally Sensitive Habitat Area (ESHA) Overlay Map, the subject parcel is not located in or adjacent to an ESHA; therefore, review by the Environmental Review Board (ERB) is not required.

B. Variance for Offsite Parking (LIP Section 13.26.5)

A variance is requested to allow four unenclosed offsite parking spaces instead of two enclosed and two unenclosed onsite parking spaces to serve the proposed project. Pursuant to LIP Section 13.26.5, the Planning Commission may approve and/or modify an application for a variance in whole or in part, with or without conditions, provided that it makes ten findings of fact. Based on the evidence contained within the record, the Planning Commission approves VAR No. 12-033 as follows:

Finding B1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.

The sole access to the subject property is provided via a cart path protected by a pile-supported retaining wall system on the bluff-face that was installed in 2005 pursuant to CCC Permit No. 4-01-169. The parcel has no adjacent or proximate street frontage. Cars cannot access the site and the only flat portion of the site consists of beach sand. Due to these special circumstances and exceptional characteristics, this legal parcel would be deprived of the ability to use the property for a primary residence consistent with the RR-2 zoning designation, and in a manner similar to other property in the vicinity in the same zone district.

Finding B2. The granting of such variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located.

The project proposes to utilize four unenclosed parking spaces provided within an offsite parking easement near the top of the access driveway in the north part of 28126 PCH. These two properties have historically been used together as a compound, and an existing parking easement was already in place on the bluff-top of 28126 PCH. However, because the spaces were located within the required

LACFD turn around, they were moved to the location shown in the approved site plan for CDP No. 11-034 for 28126 PCH. Recording an easement for the four spaces will be required as a Condition No. 16 of this resolution of approval. The granting of the variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to property or improvements in the same area or zone.

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

The granting of the variance is not a special privilege to the property owner. No alternate location for placement of the required parking is available.

Finding B4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the Local Coastal Program.

The granting of this variance will not be contrary to or in conflict with the general purposes and intent of the zoning provisions, nor to the goals, objectives and policies of the LCP. As previously stated, granting the requested variance will allow residential use of the property consistent with the RR-2 zone district and ensures the required four spaces will be available to project residents.

Finding B5. For variances to environmentally sensitive habitat area buffer standards or other environmentally sensitive habitat area protection standards, that there is no other feasible alternative for siting the structure and that the development does not exceed the limits on allowable development area set forth in Section 4.7 of the Malibu LIP.

This finding does not apply as the variance is not related to environmentally sensitive habitat area standards.

Finding B6. For variances to stringline standards, that the project provides maximum feasible protection to public access as required by LIP Chapter 12.

The variance is not related to stringline standards. Therefore, this finding does not apply.

Finding B7. The variance request is consistent with the purpose and intent of the zone(s) in which the site is located. A variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

The requested variance is for relief from a specific development standard and does not authorize a use not otherwise permitted in the RR-2 zoning district.

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

The subject site is physically suitable for the proposed variance in that there is no alternate method or configuration which would eliminate the need for the variance request, and the adjacent property where the parking will be located has historically been used for offsite parking.

Finding B9. The variance complies with all requirements of state and local law.

The project has received LCP conformance review by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Coastal Engineer, City Public Works Department, and the LACFD. Prior to issuance of building permits, the project must have final approval by the LACFD, Waterworks District 29, and the City Building Safety Division. The proposed project and variance complies with all applicable requirements of state and local law.

Finding B10. A variance shall not be granted that would allow reduction or elimination of public parking for access to the beach, public trails or parklands.

The variance is not related to the reduction or elimination of public parking, and all required parking for the project will be accommodated off public streets. Therefore, this finding does not apply.

C. Site Plan Review for Construction over 18 Feet in Height (LIP Section 13.27.5)

LIP Section 13.27.5(A) requires that the City make four findings in the consideration and approval of a site plan review for construction above 18 feet in height, up to 24 feet with a flat roof or 28 feet with a pitched roof. Two additional findings are required pursuant to Malibu Municipal Code (M.M.C.) Section 17.62.050. The residence is proposed with a pitched roof up to a maximum of 20.48 feet in height, with a cupola feature up to 23.37 feet in height. Based on the evidence contained within the record, the required findings for SPR No. 13-011 are made as follows.

Finding C1. The project is consistent with policies and provisions of the Malibu LCP.

The proposed project has been reviewed for conformance with the LCP by the Planning Department and appropriate City and county agencies. Based on these reviews, Department Review Sheets, site visits, and visual analysis in the record, the project is consistent with all LCP policies and provisions.

Finding C2. The project does not adversely affect neighborhood character.

The nearest beach level residences are the homes on the two adjacent lots to the west at 28124 and 28126 PCH. There are no beach level homes for approximately 600 linear feet to the east. The homes contain beach level residences. The home at 28124 PCH is two stories and over 2,600 square feet, according to the Los Angeles County Assessor. The home at 28126 PCH is a second unit that will be restored to approximately 900 square feet and one-story. The substantial remodel on the subject property includes raising the home seven feet on a new foundation to clear wave uprush hazards, and incorporates a new pitched roof on the second floor. Based on the story poles installed for the project in January and February 2014, the size and scale of the project will be similar to the other beach level residences. Furthermore, given the dilapidated condition of the existing property, the proposed remodel will remove an existing eyesore and improve neighborhood character.

Finding C3. The project provides maximum feasible protection to significant public views as required by Chapter 6 of the Malibu LIP.

The proposed project is seen from the beach in front of the residence, which is considered a public viewing area by the LCP. The project site is not visible from PCH and or any other public viewing

areas in the vicinity. In any event, significant public views from the beach would be oriented toward the ocean and away from the residence; therefore, the change in the project height and massing has no adverse effects on public views. Standard conditions have been included in Section 5 that require colors and materials in earth tones that are consistent with the surrounding natural environment, and restrict site lighting. Therefore, the project will provide maximum feasible protection to public views.

Finding C4. The proposed project complies with all applicable requirements of state and local law.

The project has received LCP conformance review by Planning Department staff, the City Biologist, City Environmental Health Administrator, City Geologist, City Coastal Engineer, City Public Works Department, and the LACFD. Prior to issuance of building permits, the project must have final approval by the LACFD, Waterworks District 29, and the City Building Safety Division. The proposed project and site plan review complies with all applicable requirements of state and local law.

Finding C5. The project is consistent with the City's general plan and local coastal program.

The project is consistent with the RR zoning designation for the site as described in the Malibu General Plan and LCP Land Use Plan (LUP). As provided herein, the project is consistent with the land use policies of the General Plan and LUP.

Finding C6. The portion of the project that is in excess of 18 feet in height does not obstruct visually impressive scenes of the Pacific Ocean, off-shore islands, Santa Monica Mountains, canyons, valleys or ravines from the main viewing area of any affected principal residence as defined in MMC Section 17.40.040(A)(17).

Ocean views for neighboring properties at the beach level are oriented to the south. All other nearby residences are located on the bluff-top where no potential primary view blockage would be caused by the proposed project. As demonstrated by the visual analysis and the installed story poles, the proposed project does not obstruct primary views of visually impressive scenes of the Pacific Ocean or off-shore islands from the main viewing area of any affected principal residence.

D. Minor Modification for Reduction of the East Side Yard Setback (LIP Section 13.27)

The LCP requires that the City make three findings in the consideration and approval of a minor modification to reduce a required side yard setback by up to 20 percent. The project proposes to reduce the east side yard setback from 7.5 feet to 6 feet. The required findings for MM No. 13-003 are made below.

Finding D1. That the project is consistent with policies and provisions of the Malibu LCP.

As previously discussed in Finding A1, the project has been reviewed for conformance with all relevant policies and provisions of the LCP. The side yard setback for nonbeachfront residential properties is cumulatively 25 percent of the lot width. The existing nonconforming residence that will be remodeled does not provide this setback, and actually encroaches over the east property line. After the demolition of the east portion of the residence, a 6 foot, rather than a 7.5 foot setback for the

residence will be provided. This setback is greater than the maximum setback required for typical beach front development in the SFM zone configured similarly to the subject property. The easterly deck will maintain a three foot setback from the property line. All the onsite decking and other structures constructed without benefit of permit will be removed. The project is consistent with the policies of the LCP.

Finding D2. That the project does not adversely affect neighborhood character.

Reduced side yard setbacks are not unusual for lots of this type of narrow lot width (50 feet) in the RR zone at the beach level. The adjacent property to the east that could potentially be most affected by the 1.5 foot reduction in the side yard setback does not have any beach level habitable structures. The project does not adversely affect neighborhood character.

Finding D3. The proposed project complies with all applicable requirements of state and local law.

The project complies with all requirements of State and local law. Construction of the proposed improvements will comply with all Building Code requirements and will incorporate all recommendations from applicable City departments.

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

As discussed in Finding A4, the subject parcel is not mapped as ESHA on the LCP ESHA Map. Pursuant to LIP Section 4.7.6(C), the supplemental ESHA findings are not applicable.

F. Native Tree Protection (LIP Chapter 5)

The project area does not contain any protected native trees; therefore, the findings of LIP Chapter 5 are not applicable.

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

The Scenic, Visual and Hillside Resource Protection Chapter governs those CDP applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. The project is not visible from PCH but is located on the beach. Therefore, the findings set forth in LIP Section 6.4 are made below.

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

As discussed previously in Finding C3, the project is visible from the beach but does not have any significant adverse effects on scenic or visual resources as views are oriented toward the ocean and away from the proposed development. The proposed project will improve visual resources of the area by enhancing a dilapidated structure. As discussed herein and demonstrated in the visual analysis and project plans, the project will have no significant adverse scenic or visual impacts.

Finding G2. The project, as conditioned, will not have significant adverse scenic or visual

impacts due to required project modifications, landscaping or other conditions.

As discussed in Finding G1, the proposed project is not anticipated to have significant adverse scenic or visual impacts. Additionally, standard conditions of approval for development visible from scenic areas are included which require use of exterior colors and materials that are compatible with the surrounding landscape and recordation of a lighting deed restriction.

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

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

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

As discussed in Findings A3, G1 and G2, the proposed project will not have significant adverse impacts on scenic or visual resources.

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

As discussed in Findings A3, G1 and G2, the proposed project will not have significant adverse scenic or visual impacts, and is the least environmentally damaging feasible alternative.

H. Transfer of Development Credit (LIP Chapter 7)

According to LIP Section 7.2, transfer of development credits applies to land divisions and multi-family development in specified zones. The proposed project does not include a land division or multi-family development; therefore, the findings in LIP Chapter 7 do not apply.

I. Hazards (LIP Chapter 9)

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards must be included in support of all approvals, denials or conditional approvals of development located in or near an area subject to these hazards. The project was analyzed for the hazards listed in LIP Section 9.2(A)1-7 by the City Geologist, City Coastal Engineer and City Public Works Department, as well as the LACFD, and has been determined to be consistent with all relevant policies and regulations of the LCP and M.M.C. The findings required by LIP Chapter 9 are made as follows.

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

Analysis of the project hazards included review of the project plans and the following documents/data, which are available on file with the City:

- 1) Existing City Geologic data maintained by the City;
- 2) Preliminary Geologic and Soils Engineering Investigation Report and Supplemental Reports prepared by GeoConcepts, Inc. (GCI) dated October 14, 2011, December 15, 2011, and October 21, 2013, and April 28, 2014;
- 3) Private Sewage Disposal Report by GCI dated June 22, 2011;
- 4) Slope Restoration Report and Supplement by GCI dated December 7, 2012 and May 8, 2013;
- 5) Onsite Wastewater Treatment System prepared by Ensitu Engineering, Inc. dated October 7, 2013 (design report), October 7, 2013 (Design Flow Report for Offsite Treatment), and October 14, 2013 (preliminary plan);
- 6) Preliminary Foundation Plan prepared by David C. Weiss Structural Engineer (DCWSE) dated June 27, 2011 and subsequent plan dated July 10, 2012, ~~and~~ October 24, 2013, and April 8, 2014;
- 7) Structural Engineering Reports and subsequent responses prepared by DCWSE dated July 11, 2012, May 3, 2013, and August 19, 2013, April 7, 2014, and April 22, 2014; and
- 8) Wave Uprush Study and Responses prepared by Pacific Engineering Group (PEG) dated December 3, 2010, November 11, 2011, July 5, 2012, May 6, 2013, July 31, 2013, and October 24, 2013, and April 7, 2014; and
- 8.02) Letter prepared by civil engineering consultant Peak Surveys dated April 23, 2014.

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

1. The project site is not located within an earthquake fault zone and no known active faults exist beneath the project site;
2. The project site is located in an earthquake-induced landslide hazard zone;
3. The project site is located in a liquefaction hazard zone;
4. The project site is subject to wave uprush and subject to minimal risk of being impacted by tsunamis;
5. A portion of the project site is located in a Federal Emergency Management Agency (FEMA) identified flood hazard area; and
6. The project site is located within an extreme fire hazard area.

Slope Stability and Landslide

The bluff slope was reconstructed and restored with a caisson-supported retaining wall system and cart path permitted by the CCC on the subject property and 28126 PCH in 2003 following a slope failure. According to GCI's October 21, 2013 report, as repaired, this slope exhibits factors of safety in excess of the 1.5 and 1.1 for static and pseudo-static conditions required by LIP Chapter 9.4(D). GCI states, "Long term stability of the slope is anticipated provided the recommendations contained herein and in the referenced reports are maintained."

With respect to removal of unpermitted work on the bluff face and beach level of 28106 PCH (adjacent to the east), in its May 8, 2013 report, GCI concludes that the elevated residence and the new concrete pile foundation system are not anticipated to be affected by any anticipated debris that could fall onto the subject property. The project structural engineer, DCWSE, concluded that a new retaining wall to stabilize the slope between the two properties was not necessary due to the existing grade of the slope. GCI, DCWSE and Peak Surveys all concurred that unpermitted

structures could be disconnected from the portions that exist on 28106 PCH and safely removed from the subject property without adverse impacts to the project site or adjacent properties.

Liquefaction

The project site is located within the liquefaction zone on the State of California Seismic Hazard Map. However, according to the December 15, 2011 GCI report, based on the liquefaction analysis performed, liquefaction is not expected to pose a significant hazard to the proposed development. The City Geologist has included a condition of approval requiring the property owner to record an assumption of risk and release for liquefaction hazards.

Wave Uprush/Tsunami

The November 11, 2011 wave uprush study by PEG analyzed wave uprush hazards at the site taking sea level rise into consideration. The study notes that the beach fronting the site "is presently a stable beach that oscillates seasonally between sandy summer profiles and winter profiles, with additional but temporary storm scouring of the beach profile during extratropical storm events that are coincidental with high winter tides." The report indicates the maximum wave uprush on the site will occur at elevation 26.5 feet NAVD88. This line occurs near the north edge of the residence, just seaward of the cart path. The highest critical breaking wave elevation is projected to be at elevation 18.4 feet NAVD88, and that tsunami uprush would not exceed the storm waves analyzed in the report. The proposed project will elevate the existing structure seven feet on a new foundation designed in accordance with PEG's recommendations to achieve a FFE of 25.8 feet. The project has been reviewed and approved by the City Coastal Engineer. As designed and conditioned, the proposed project is consistent with the LCP policies with respect to wave uprush hazards.

Flood Hazard

The FEMA Flood Insurance Rate Map (Panel 0637C1518F) indicates the project is located in Zone X, which is not a special flood hazard zone. The City Public Works Department has determined the project, as designed and conditioned, conforms to the LCP.

Fire Hazard

The entire city limits of Malibu are located within a high fire hazard zone; however, the proposed development will incorporate all required measures of the LACFD to minimize risks from wildfire. The existing residence is legal nonconforming as to current LACFD requirements. There is no feasible way to provide vehicular access to the beach level of the subject property to meet current LACFD access standards. While a new beach level structure would not be approved by the Fire Department without meeting current requirements, a remodel of a legal nonconforming structure is allowed, as shown in the LACFD referral dated April 1, 2013 with no additional access requirements, and as described in the memo prepared by the City Building Safety Division dated February 19, 2014. However, the applicant has included fire sprinklers into the residence design. The residence will continue to utilize the existing cart path access way for emergency access. The cart path was integrated into the retaining wall stabilization system on the bluff-face and approved by the CCC under CDP No. 4-01-169 for this purpose. LACFD has

reviewed and approved the project for consistency with applicable fire safety regulations. The project will receive final review during building plan check.

The project will incorporate all recommendations contained in the above cited geotechnical and other reports and conditions required by the City Geologist, City Coastal Engineer, City Public Works Department and the LACFD. The proposed project will not increase instability of the site or structural integrity from geologic, flood or any other hazards. Final plans shall be reviewed and approved by these specialists prior to the issuance of a grading or building permit.

Finding 12. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding 11, the proposed project, as designed, conditioned and approved by the City Geologist, City Coastal Engineer, City Public Works Department and the LACFD, will not have any significant adverse impacts on the site stability or structural integrity from analyzed hazards. However, pursuant to LIP Sections 9.4(Y) and 10.6(A), as a condition of approval, the property owner will be required to record deed restrictions acknowledging and assuming the hazard risk of development at the site. The deed restriction shall state that the proposed project site is subject to high fire hazard, as well as wave action, erosion, flooding, landslides or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City of Malibu and agrees to indemnify the City of Malibu against liability, claims, damages or expenses arising from any inquiry or damage due to such hazards.

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

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

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

As stated in Finding 11, the proposed project, as designed, conditioned and approved by the City Geologist, Coastal Engineer, Public Works Department and LACFD, will not have any significant adverse impacts on the site stability or structural integrity from analyzed hazards.

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

No significant adverse impacts are anticipated to any sensitive resource protection policies contained in the LCP. As stated in Finding 11, the proposed project, as designed and conditioned, will not have any significant adverse impacts on the site stability or structural integrity from analyzed hazards.

J. Shoreline and Bluff Development (LIP Chapter 10)

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

Finding J1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

The project site contains a developed bluff slope that descends approximately 100 feet to the beach. The bluff slope was repaired with a caisson-supported retaining wall system permitted by the CCC in 2003 in order to protect legal nonconforming beach level residences, including the subject site's main residence, and the west neighbor residence at 28126 PCH. The retaining wall system also supports a cart path that provides the sole access to these residences. Bluff retreat is not expected due to the existing retaining wall system. No work on the bluff face is proposed with this application other than removal of unpermitted retaining walls and trellises and restoration and revegetation of the slope back to the condition permitted by the CCC.

The project proposes to elevate the existing residence seven feet to an FFE of 25.8 on a new concrete pile and grade beam foundation designed to resist wave uprush forces. A shoreline protective device is not required or proposed for the replacement structure and the project is consistent with LIP Section 10.4(B) which requires new development on a beach to be sited outside areas subject to wave uprush, flooding and erosion hazards for the life of the structure. According to DCWSE, all of the construction equipment and the drill rig will reach the project site by way of the cart path, so that no materials or equipment will be brought across the beach, and concrete will be pumped down from the top of the bluff. A condition of approval requires the applicant to provide a construction staging plan prior to issuance of building permits.

The project also incorporates an understructure pile-supported retaining wall as part of the foundation that serves multiple purposes. This wall protects existing walls that support the terrace where the OWTS is located, as well as the toe of the bluff where the cart path is located. If found to be necessary during plan check, the project may will also include a return wall on the east side and will tie into the modified shoreline protective device previously approved by the Planning Commission at 28126 PCH to the west; however, any such walls would be minimal as the retaining wall has been located as landward as feasible beneath the residence. According to the project coastal engineer, if left unprotected, the toe of the bluff will be eroded in a design storm event. Should the bluff toe be undermined by wave uprush forces, the cart path accessway will fail and no access could be made to the onsite residence or to the adjacent beach house at 28126 PCH. The onsite OWTS would also be undermined. These legal nonconforming structures are integral to the function of the residences and their protection is consistent with LIP Section 10.6(K). According to PEG and DCWSE, the wall will cause no adverse impacts on shoreline sand supply or public access due to the extreme landward location of the wall on the design beach profile. PEG states, "Although the retaining wall and supporting grade beam are in the uprush zone, the calculated uprush velocities at the wall are minimal and will not create additional scour or adverse conditions due to uprush reflection." In subsequent letters dated April 7, 2014, PEG and DCWSE each concurred that the

proposed project will not adversely affect the subject property or adjacent property as a result of wave uprush hazards.

Finally, California State Lands Commission signed off on the project indicating it asserted to claim that the project intrudes on sovereign lands. The project does not extend the seaward footprint of development and the property owner has voluntarily included an offer to dedicate a public lateral access easement as an element of the project description. A condition memorializing the offer will be included as a condition of project approval.

As designed and conditioned, the project will have no significant adverse impacts on public access, shoreline sand supply, or other resources.

Finding J2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As discussed in Finding J1, as designed, conditioned, and approved by City staff, the project will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding J3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

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

Finding J4. There are no alternatives to the proposed development that would avoid or substantially lessen impacts on public access, shoreline sand supply or other resources.

As stated in Finding J1, as designed, conditioned, and approved by the City staff, the project will not have any significant adverse impacts on public access, shoreline sand supply or other resources.

Finding J5. In addition, if the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, that there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and that it is the least environmentally damaging alternative.

The substantial remodel will be supported on an elevated concrete pile and grade beam foundation designed to resist wave uprush forces for the life of the structure, so that a shoreline protective device is not required to protect the residence. However, an understructure retaining wall is required for protection of legal nonconforming development that is integral to the function of the residence, including the cart path on the bluff face that provides access and the terrace supporting the OWTS. Such protection is consistent with LIP Section 10.4(K).

The OWTS is required even though the project proposes to pump wastewater offsite to the bluff-top of 28126 PCH because the sewage ejector pump and septic tank must remain at the beach level in the terrace area on the landward side of the residence. According to PEG's July 2013 response, "At this location, the proposed retaining wall is located as far landward as possible in compliance with LCP

Section 10.4(K) and is the preferred vertical type of wall conforming to LCP Section 10.4(N).”

As discussed in Finding J1, the proposed wall will not result in significant adverse impacts on public access, shoreline sand supply or coastal resources. The detailed feasible alternatives analysis provided in Finding A3 demonstrates that the proposed project, including the understructure retaining wall and the offsite disposal of wastewater, is the least environmentally damaging alternative.

K. Public Access (LIP Chapter 12)

LIP Chapter 12 requires public access for lateral, bluff-top and vertical access near the ocean, as well as trail access and recreational access, when applicable. No such public access is currently provided on or adjacent to the subject parcel. The subject property consists of a bluff face and beach sand with no public street frontage, and is developed with an existing residence that will undergo a substantial remodel. The LCP Park Lands Map does not indicate any existing vertical, lateral, bluff-top, recreational or trail access on the property; however, the privately operated Paradise Cove recreation facility is located on the adjacent parcel to the west and is designated with a trail. Recreational access is not applicable to the project, and there is no opportunity for the parcel to provide a bluff-top access or viewing area, or vertical access as the property has no direct public street frontage. The property owner has volunteered to record an offer to dedicate lateral public access along the shoreline. Recordation of the OTD has been memorialized as a condition of the CDP approval in Section 5. The easement will provide public access between the ambulatory MHTL and dripline of the deck. The proposed project does not involve new construction seaward of the existing legal nonconforming building dripline. No substantial evidence of an existing public right of access to the shore has been presented. The project will have no adverse impact, individually or cumulatively, on public access to coastal resources. The project complies with LIP Chapter 12.

L. Land Division (LIP Chapter 15)

This project does not include a land division; therefore, the findings in LIP Chapter 15 do not apply.

M. Demolition Permit (M.M.C. Chapter 17.70)

M.M.C. Section 17.70.060 requires that a demolition permit be issued for projects that result in the demolition of any building or structure. The project is a substantial remodel involving a new foundation system; however, the applicant proposes to retain at least 50 percent of the existing exterior walls. The findings for DP No. 11-018 are made as follows.

Finding M1. The demolition permit is conditioned to assure that it will be conducted in a manner that will not create significant adverse environmental impacts.

Conditions of approval included in Section 5 of this Resolution ensure that the project will not create significant adverse environmental impacts, including the requirement for a waste reduction and recycling plan that diverts at least 50 percent of construction and demolition waste.

Finding M2. A development plan has been approved or the requirement waived by the City.

This CDP application is being processed concurrently with DP No. 11-018. Therefore, approval of

the demolition permit is subject to the approval of CDP No. 11-033.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CDP No. 11-033, VAR No. 12-033, SPR No. 13-011, MM No. 13-003, DP No. 11-018 and OTD No. 12-008, subject to the following conditions.

Section 5. Conditions of Approval.

1. The property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. Approval of this application is to allow for the following:
 - a. Demolition of:
 - 1) Unpermitted bluff-face and beach level decking, stairs, trellises and walls within the subject property;
 - 2) Existing roof and less than 50 percent of the residence exterior walls, including the eastern portion of the first floor which encroaches over the east property line (114.11 square feet), and eastern and northern portions of the second floor (105.1 square feet);
 - 3) Existing timber pile foundation and understructure walls; and
 - 4) Seepage pits and distribution box of the existing septic system.
 - b. Construction of:
 - 1) New concrete pile and grade beam foundation to raise the first floor FFE of the structure +/- 7 feet to elevation 25.8 feet;
 - 2) Existing timber cap beams and floor joists are to remain and be reinforced as necessary;
 - 3) New understructure retaining wall with east side return wall beneath the north portion of the house to protect the terrace supporting the OWTS, cart path and toe of the bluff from wave uprush hazards, including return walls, if required during plan check;
 - 4) Substantial remodel of interior and exterior of the residence, including a new first floor roof deck with trellises (16.25 feet above recommended FFE), new second floor bedroom suite (150 square feet), and new second floor pitched roof 20.48 feet above recommended FFE (cupola up to 23.37 feet above recommended FFE);
 - 5) New first floor deck with retractable beach stairs;
 - 6) Modifications to the existing OWTS to relocate the sewer ejection pump out of the wave uprush zone and install a new duplex pump in the existing septic tank and a force main to pump wastewater to the adjacent lot (28126 PCH) for treatment and disposal; and
 - 7) Grading and revegetation to restore the toe of the bluff and bluff face with native species consistent with CCC Permit No. 4-01-169.
 - c. Existing and proposed total development square footage (TDSF) for the project is broken out

below. The project results in a 69 square foot net decrease in overall TDSF.

1) Existing TDSF:

1,114 square feet (1st floor) + 997 square feet (2nd floor) = 2,111 square feet

2) Proposed TDSF:

999.9 square feet (1st floor) + 1,041.8 square feet (2nd floor) = 2,041.7 square feet

d. Discretionary requests:

1) VAR No. 12-033 for offsite parking;

2) SPR No. 13-011 for construction over 18 feet in height;

3) MM No. 13-003 for 20 percent reduction of the east side yard setback;

4) DP No. 11-018; and

5) OTD No. 12-008 for a lateral access easement along the shore from the dripline of the proposed deck to the ambulatory mean high tide line.

3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Department, date-stamped **January 28, 2014 (Architectural)**, ~~and May 8, 2013 (Grading)~~, **and April 8, 2014 (Structural/Foundation)**. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. Pursuant to LIP Section 13.18.2, this permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 10 days of this decision and prior to issuance of any development permits.
5. The applicant shall submit three (3) complete sets of plans to the Planning Department for consistency review and approval prior to the issuance of any building or development permits.
6. This resolution, signed Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check.
7. This CDP shall be null and void if the project has not commenced within three (3) years after issuance of the permit, unless a time extension has been granted, or work has commenced and substantial progress has been made (as determined by the Building Official) and the work is continuing under a valid building permit. If no building permit is required, the CDP approval shall expire after two years from the date of final planning approval if construction is not completed. Extension of the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the three-year period and shall set forth the reasons for the request.
8. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
9. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Geologist, City Biologist, City Public Works Department, and City Environmental Health Administrator, as applicable. Notwithstanding this review, all required permits shall be secured.

10. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.
11. Pursuant to LIP Section 13.20, development pursuant to an approved CDP shall not commence until the CDP is effective. The CDP is not effective until all appeals, including those to the California Coastal Commission (CCC), have been exhausted. In the event that the CCC denies the permit or issues the permit on appeal, the CDP approved by the City is void.
12. The applicant must submit payment for any outstanding fees payable to the City prior to issuance of any building or grading permit.

Cultural Resources

13. In the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Thereafter, the procedures contained in LIP Chapter 11 and those in M.M.C. Section 17.54.040(D)(4)(b) shall be followed.
14. If human bone is discovered during geologic testing or during construction, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Site-Specific Conditions

15. Approval of this project to treat and dispose of wastewater offsite shall not become effective unless and until the Planning Commission approves a conditional use permit approving 28126 PCH as the receiving site for the wastewater.
16. Prior to final planning approval, the applicant shall submit to the Planning Department evidence of a recorded offsite parking and access covenanteasement consistent with the spaces provided at 28126 PCH.
17. Prior to plan check submittal, the applicant shall submit for review and approval by the City Biologist a revegetation plan for the restored area at the toe of the bluff and bluff face that reflects replanting with native bluff species. Native revegetation is exempt from the Landscape Water Conservation Ordinance (M.M.C. Chapter 9.22).
18. Prior to issuance of grading or building permits, the applicant shall submit a construction

staging plan for review and approval by the Planning Director and Building Safety Division.

- 19. Provide a structural observation from the engineer of record verifying the structural integrity of the structural framing members proposed under the plan to remain (wood framed walls, sill plates, joists and rafters).
- 20. Engineered plans for the removal of unpermitted bluff face and beach level structures, along with the necessary soils, geology, drainage and structural documentation, shall be submitted for review and approval by City specialists during plan check.
- 19.21. The project shall comply with all provisions of Chapter 33 (Safeguards During Construction) of the 2013 California Building Code.

Colors and Materials

- 20.22. The project is visible from scenic roads or public viewing areas and shall incorporate colors and materials that are compatible with the surrounding landscape.
 - a. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray, with no white or light shades and no bright tones. Colors shall be reviewed and approved by the Planning Director and clearly indicated on the building plans.
 - b. The use of highly reflective materials shall be prohibited except for solar energy panels or cells, which shall be placed to minimize significant adverse impacts to public views to the maximum extent feasible.
 - c. All windows shall be comprised of non-glare glass.
- 24.23. Retaining walls visible from beaches or public viewing areas shall incorporate veneers, texturing and/or colors to blend with the surrounding earth materials. The colors shall be reviewed and approved by the Planning Director and clearly indicated on the grading and building plans.

Construction / Framing / Shoreline Protection

- 22.24. The applicant/property owner shall contract with a City approved hauler to facilitate the recycling of all recoverable/recyclable material. Recoverable material shall include but shall not be limited to: asphalt, dirt and earthen material, lumber, concrete, glass, metals, and drywall.
- 24.25. Prior to the issuance of a building/demolition permit, a Waste Reduction and Recycling Plan (WRRP) shall be submitted to the Environmental and Sustainability Department for review and approval. The WRRP shall indicate means and measures for a minimum of 50 percent diversion goal.
- 24.26. Construction hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No construction activities shall be permitted on Sundays or City-designated holidays.
- 25.27. Construction management techniques, including minimizing the amount of equipment used simultaneously and increasing the distance between emission sources, shall be employed as

feasible and appropriate. All trucks leaving the construction site shall adhere to the California Vehicle Code. In addition, construction vehicles shall be covered when necessary; and their tires will be rinsed off prior to leaving the property.

- | ~~26.28.~~ When framing is complete, a site survey shall be prepared by a licensed civil engineer or architect that states the recommended finished floor elevation and the highest roof member elevation of each level of the residence. Prior to the commencement of further construction activities, said document shall be submitted to the assigned Building Inspector and Planning Department for review and sign off on framing.
- | ~~27.29.~~ All construction debris shall be removed from the beach daily and at completion of development.
- | ~~28.30.~~ No stockpiling of dirt or construction materials shall occur on the beach.
- | ~~29.31.~~ Measures to control erosion, runoff, and siltation shall be implemented at the end of each day's work.
- | ~~30.32.~~ No machinery shall be allowed in the intertidal zone at any time unless necessary for protection of life and/or property.
- | ~~34.33.~~ The application shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion.
- | ~~32.34.~~ Construction equipment shall not be cleaned on the beach.
- | ~~33.35.~~ Construction debris and sediment shall be properly contained and secured on site with BMPs to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

Geology

- | ~~44.36.~~ All recommendations of the consulting certified engineering geologist or geotechnical engineer and/or the City Geologist shall be incorporated into all final design and construction including foundations, grading, sewage disposal, and drainage. Final plans shall be reviewed and approved by the City Geologist prior to the issuance of a grading permit.
- | ~~35.37.~~ Final plans approved by the City Geologist shall be in substantial conformance with the approved CDP relative to construction, grading, sewage disposal and drainage. Any substantial changes may require amendment of the CDP or a new CDP.

Coastal Engineering

- | ~~36.38.~~ Include the wave runup line on Sheet PFS-2 (rev. 10-25-13). If the wave runup line is landward of the proposed wall, then flanking protection must be provided according to the recommendations of the project coastal engineering consultant and as specified in the City Coastal Engineer's building plan check stage conditions of approval.

- | ~~37.39.~~ Provide design load recommendations for walls extending below the recommended lowest horizontal structural member elevation.
- | ~~38.40.~~ Provide the complete design beach profile on the proposed west and east architectural elevations.

Grading / Drainage

- | ~~39.41.~~ A Wet Weather Erosion and Sediment Control Plan is required, and shall be submitted to the Public Works Department prior to the issuance of grading permits as grading or construction activity is anticipated to occur during the rainy season. The following elements shall be included in this plan:
 - a. Locations where concentrated runoff will occur;
 - b. Plans for the stabilization of disturbed areas of the property, landscaping and hardscape, along with the proposed schedule for the installation of protective measures; and
 - c. Location and sizing criteria for silt basins, sandbag barriers and silt fencing.
- | ~~40.42.~~ A local Storm Water Pollution Prevention Plan (SWPPP) shall be submitted for review and approval by the Public Works Department prior to issuance of grading/building permits. This plan shall include:
 - a. Designated areas for the storage of construction materials that do not disrupt drainage patterns or subject the material to erosion by site runoff;
 - b. Designated area for the construction portable toilets that separates them from storm water runoff and limits the potential for upset;
 - c. Designated areas for disposal and recycling facilities for solid waste separated from the site drainage system to prevent the discharge of runoff through the waste; and
 - d. Specific BMPs to prevent erosion and BMPs for sediment control prior to discharge from the property.
- | ~~41.43.~~ Per LIP Section 8.3(F), grading plans shall be submitted for plan check approval with building plans. No grading permits shall be issued until a building permit is approved.
- | ~~42.44.~~ Non-exempt grading of 19 cubic yards is proposed for the project. In no event shall non-exempt grading exceed 1,000 cubic yards.
- | ~~43.45.~~ The Total Grading Yardage Verification Certificate shall be copied onto the coversheet of the Grading Plan. No alternative formats or substitutes will be accepted.
- | ~~44.46.~~ The project proposes grading on slopes equal or greater than 4 to 1. Grading permits shall not be issued between November 1 and March 31 of each year per LIP Section 8.4. Projects approved for grading shall not receive grading permits unless the project can be rough graded before November 1. A note shall be placed on the project plans that addresses this condition.
- | ~~45.47.~~ The ocean between Latigo Point and the west City limits has been established by the State Water Resources Control Board as an Area of Special Biological Significance (ASBS) as part

of the California Ocean Plan. This designation allows discharge of storm water only where it is essential for flood control or slope stability, including roof, landscape, road and parking lot drainage, to prevent soil erosion, the discharge only occurs during wet weather, and is composed only of storm water runoff. The applicant shall provide a drainage system that accomplishes the following:

- a. Installation of BMPs that are designed to treat the potential pollutants in the storm water runoff so that it does not alter the natural ocean water quality. These pollutants include trash, oil and grease, metals, bacteria, nutrients, pesticides, herbicides and sediment.
- b. Prohibits the discharge of trash.
- c. Only discharges from existing storm drain outfalls are allowed. No new outfalls will be allowed. Any proposed or new storm water discharged shall be routed to existing storm drain outfalls and shall not result in any new contribution of waste to the ASBS (i.e., no additional pollutant loading).
- d. Elimination of non-storm water discharges.

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

47.49. A grading and drainage plan containing the following information shall be submitted to the Public Works Department for approval, prior to the issuance of grading permits for the project:

- a. Public Works Department General Notes;
- b. The limits of land to be disturbed during project development; and
- c. Private storm drain systems.

Biology/Landscaping

48.50. No new landscaping is proposed with this project (other than revegetation of the bluff face and toe); therefore, none is approved. Should the applicant intend to plant any new vegetation with a potential to exceed six feet in height, or change the existing landscaping of 5,000 square feet or more, a detailed landscape plan shall be submitted for review and approval prior to any planting.

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

Environmental Health

50.52. This conformance review is for a three bedroom (34 fixture units) single-family dwelling replacement structure. Wastewater shall be pumped to the new AOWTS at 28126 PCH, which meets the requirements of the Malibu Plumbing Code and the Local Coastal Program.

53.53. Environmental Health final approval of the OWTS plot plan is required.

| ~~52.54.~~ Plans for replacement of the sewage ejector pump station and a new force main shall be submitted to the Building Safety Division for approval prior to Environmental Health final approval.

| ~~53.55.~~ Approval by the City Coastal Engineer is required prior to final Environmental Health approval.

| ~~54.56.~~ Prior to final Environmental Health approval, the applicant shall submit a conditional use permit approved for offsite wastewater treatment at 28126 PCH and a covenant to hold the two properties as one (28118 PCH and 28126 PCH) that has been recorded with the County Recorder's Office.

Fire Department

| ~~55.57.~~ The project does not require Fire Department plan review.

Water Service

| ~~56.58.~~ Prior to the issuance of a building permit, the applicant shall submit an updated Will Serve letter from Los Angeles County Waterworks District No. 29 indicating the ability of the property to receive adequate water service.

Lighting

| ~~57.59.~~ Exterior lighting shall be minimized and restricted to low intensity features, shielded, and concealed so that no light source is directly visible from public viewing areas. Permitted lighting shall conform to the following standards:

- a. Lighting for walkways shall be limited to fixtures that do not exceed two feet in height and are directed downward, and limited to 850 lumens (equivalent to a 60 watt incandescent bulb);
- b. Security lighting controlled by motion detectors may be attached to the residence provided it is directed downward and is limited to 850 lumens;
- c. Driveway lighting shall be limited to the minimum lighting necessary for safe vehicular use. The lighting shall be limited to 850 lumens;
- d. Lights at entrances as required by the Building Code shall be permitted provided that such lighting does not exceed 850 lumens;
- e. Site perimeter lighting shall be prohibited;
- f. Outdoor decorative lighting for aesthetic purposes is prohibited;
- g. Night lighting for sports courts or other private recreational facilities in scenic areas designated for residential use shall be prohibited;
- h. No permanently installed lighting shall blink, flash, or be of usually high intensity or brightness. Lighting levels on any nearby property from artificial light sources on the subject property shall not produce an illumination level greater than one foot candle; and
- i. Lighting of the shore is prohibited.

| ~~58.60.~~ Night lighting from exterior and interior sources shall be minimized. All exterior lighting

shall be low intensity and shielded so it is directed downward and inward so that there is no offsite glare or lighting.

Deed Restrictions

- | ~~59.61.~~ Prior to final planning approval, in accordance with the requirements of Subsection M of Malibu Municipal Code Section 15.12.050, Amendments to Plumbing Code, a covenant running with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to the subject real property and recorded with the Los Angeles County Recorder's Office. The covenant shall serve as constructive notice to any future purchaser for value that the onsite wastewater treatment system serving 28118 PCH is located on 28126 PCH, and that the two properties shall be maintained as one property until and unless separate compliant onsite wastewater treatment systems are provided on each separate parcel and onsite wastewater treatment and disposal for said properties can otherwise be accomplished in conformity with the requirements of the Malibu Plumbing Code, the LCP and any other law or regulation.
- | ~~60.62.~~ The property owner is required to acknowledge, by recordation of a deed restriction, that the property is subject to wave action, erosion, flooding, landslides, liquefaction or other hazards associated with development on a beach or bluff, and that the property owner assumes said risks and waives any future claims of damage or liability against the City and agrees to indemnify the City against any liability, claims, damages or expenses arising from any injury or damage due to such hazards. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning approval.
- | ~~61.63.~~ The property owner is required to execute and record a deed restriction which shall indemnify and hold harmless the City, its officers, agents, and employees against any and all claims, demands, damages, costs and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning approval.
- | ~~62.64.~~ In order to implement the property owner's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the property owner agrees to complete the following prior to final Planning approval: the property owner shall execute and record a document, in a form and content acceptable to the Planning Director and California Coastal Commission (CCC), irrevocably offering to dedicate to a public agency or private association approved by the CCC an easement for lateral public access and passive recreational use along the shoreline. 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 which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the dripline of the proposed deck.

The document shall be recorded free of prior liens which the Planning Director and/or CCC determines may affect the interest being conveyed, and free of any other encumbrances which

may affect said interest. 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 a formal legal description and graphic depiction, prepared by a licensed surveyor, of both the property owner's entire parcel and the easement area.

- | ~~63,65~~ The applicant shall be required to execute and record a deed restriction reflecting lighting requirements set forth in the *Lighting* conditions above. The property owner shall provide a copy of the recorded document to Planning Department staff prior to final Planning approval.

Prior to Occupancy / Final Sign-Off

- | ~~64,66~~ Prior to the issuance of the Certificate of Occupancy, the applicant shall provide the Environmental and Sustainability Department with a Final Waste Reduction and Recycling Report for review and approval. This report shall designate all materials that were land filled and recycled, broken down into material types.
- | ~~65,67~~ The applicant shall request a final Planning Department inspection prior to final inspection by the City of Malibu Environmental and Sustainability Department. A Certificate of Occupancy shall not be issued until the Planning Department has determined that the project complies with this CDP. A temporary Certificate of Occupancy may be granted at the discretion of the Planning Director, provided adequate security has been deposited with the City to ensure compliance should the final work not be completed in accordance with this permit.
- | ~~66,68~~ Any construction trailer, storage equipment or similar temporary equipment not permitted as part of the approved scope of work shall be removed prior to final inspection and approval, and if applicable, the issuance of the certificate of occupancy.

Fixed Conditions

- | ~~67,69~~ This coastal development permit shall run with the land and bind all future owners of the property.
- | ~~68,70~~ Violation of any of the conditions of this approval may be cause for revocation of this permit and termination of all rights granted there under.

Section 6. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 5th 3rd-day of May~~re~~^{re}h 2014.

MIKKE PIERSON, Planning Commission Chair

ATTEST:

PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, ext. 245.

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

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-30 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 5th 3rd day of May~~re~~^{re}h 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

PATRICIA SALAZAR, Recording Secretary

**CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 14-35**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING CONDITIONAL USE PERMIT NO. 13-014 TO ALLOW THE PROPERTY TO RECEIVE, TREAT AND DISPOSE OF WASTEWATER FROM 28118 PACIFIC COAST HIGHWAY IN THE RURAL RESIDENTIAL-TWO ACRE ZONING DISTRICT LOCATED AT 28126 PACIFIC COAST HIGHWAY (RYAN FAMILY TRUST)

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

Section I. Recitals.

- A. On June 9, 2011, applications for Coastal Development Permit (CDP) Nos. 11-033 and 11-034 were submitted to the Planning Department by applicant, Amanda Ryan, on behalf of the property owner, Ryan Family Trust. CDP No. 11-033 was for development at 28118 Pacific Coast Highway (PCH), consisting of a remodel of an existing nonconforming beach-level residence and as-built approval of an onsite wastewater treatment system (OWTS) with seepage pits. CDP No. 11-034 was for development at 28126 PCH consisting of bluff-top demolition and construction of a new single-family residence and accessory development, including a new alternative onsite wastewater treatment system (AOWTS), and beach-level development consisting of a remodel of an existing nonconforming second residential unit. Both applications were routed to the City Geologist, City Coastal Engineer, City Environmental Health Administrator, City Biologist, the City Public Works Department and the Los Angeles County Fire Department (LACFD) for review.
- B. On October 18, 2011, Planning Department staff met with LACFD Fire Prevention Engineering plan checker to review the proposed beach-level remodels at each property. LACFD staff confirmed that the proposed remodels were nonconforming as to current LACFD access requirements but that as remodels they were allowed to retain the nonconformities, particularly the nonconforming vehicular access.
- C. On July 11, 2012, the applicant submitted revised plans for 28118 PCH that included a new foundation for the residence. The plans were routed to City and county departments for review.
- D. On February 4, 2013, the Planning Commission adopted Resolution No. 13-07 approving CDP No. 11-034 and associated entitlements for development at 28126 PCH to allow construction of a new two-story single-family residence, detached garage, swimming pool, pool house, sports court, driveway and AOWTS on the bluff-top, and a less than 50 percent remodel of the legal nonconforming beach-level second unit, as-built OWTS and upgrades to the existing shoreline protective device.
- E. On March 28, 2013, the Planning Department sent an incomplete letter on CDP No. 11-033 (28118 PCH) to the applicant. Among other things, the letter stated that because the project

included an entirely new foundation for the residence, that it would be considered a substantial remodel that is reviewed as a replacement structure under the LCP and subject to current LCP standards and policies the same way new construction would be. The letter also required the applicant to obtain an updated LACFD review of the new plans to confirm what the Fire Department's requirements for the substantial remodel would be.

- F. On April 1, 2013, the Planning Department sent a memo to City departments clarifying the standard of review for CDP No. 11-033 at 28118 PCH was a "replacement structure" subject to current LCP standards and policies, rather than a remodel.
- G. City policy pertaining to wastewater treatment for new development on the beach prohibits the use of seepage pits for disposal. As a replacement structure, the development at 28118 PCH is subject to this policy.
- H. On May 8, 2013, the applicant submitted revised plans for CDP No. 11-033 for 28118 PCH which included installing a new duplex pump and force main so that wastewater could be pumped up from the beach level to the bluff-top AOWTS approved at 28126 PCH under CDP No. 11-034. The proposal was routed to the City departments for review.
- I. M.M.C. Section 17.40.040(A)(14) states:

"14. Wastewater Disposal. All wastewater shall be disposed of on the site where it is created, unless a property is already developed with a habitable structure and a conditional use permit is obtained for off-site treatment or disposal. A conditional use permit, subject to the provisions of Chapter 17.66, may be granted to the site receiving the wastewater only after consideration of the following factors:

- a. Geologic or soils conditions of the sending site which limit on-site wastewater treatment and disposal capacity;
- b. Indications that there are no other technically feasible treatment options available to the sending site;
- c. Compatibility of the proposed off-site treatment and disposal facility with the uses and character of adjacent properties and surrounding neighborhood;
- d. The environmental and public health impacts to the receiving site with respect to site-specific and area-wide geology, site-specific and area-wide hydrology, biological resources/native plant communities, water quality/proximity to receiving waters, and cumulative impacts; and
- e. The environmental benefits of off-site disposal are greater than those from on-site disposal.

Subject to applicable provisions of this code, water may be recycled through toilets and/or used for landscape irrigation."

- J. Subsection M of M.M.C. Section 15.12.050, Amendments to Plumbing Code, reads as follows:

"M. Subsection K1(G) of Appendix K of the 2010 California Plumbing Code/Title 28 Los Angeles County Plumbing Code, is amended to read as follows:

(G) No on-site wastewater treatment system, or part thereof, shall be located in any other property other than the property which is the site of the building or structure served by such on-site wastewater treatment system, nor shall any on-site wastewater treatment system or part thereof be located at any point having less than the minimum distances indicated in Table K-1.

Nothing contained in this Code shall be construed to prohibit the use of all or part of another property for an on-site wastewater treatment system or part thereof, where secondary sewage effluent treatment, or better, is provided, when proper cause, transfer of ownership, or change of boundary not in violation of other requirements has been first established to the satisfaction of the Building Official. The instrument recording such action shall constitute an agreement with the Building Official which shall clearly state and show that the areas so joined or used shall be maintained as a unit during the time they are so used. Such agreement shall be recorded in the office of the County Recorder as part of the conditions of ownership of said properties, and shall be binding on all heirs, successors, and assigns to such properties. A copy of the instrument recording such proceedings shall be filed with the Building Official."

- K. On November 20, 2013, the City Environmental Health Administrator determined the AOWTS proposed for 28126 PCH had adequate capacity to treat and dispose of the wastewater generated by the proposed project at 28118 PCH and approved the conformance review for 28118 PCH for offsite wastewater treatment in the planning stage.
- L. On January 31, 2014, the applicant submitted Conditional Use Permit (CUP) No. 13-014 to allow for 28126 PCH to be the receiving site for treatment and disposal of wastewater generated at 28118 PCH.
- M. On January 23, 2014, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.
- N. On February 7, 2014, a Notice of Cancellation was posted for the February 18, 2014 Planning Commission meeting and a Notice of Continuance was posted, continuing the hearing from the February 18, 2014 Regular Planning Commission meeting to the March 3, 2014 Regular Planning Commission meeting.
- O. On March 3, 2014, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.
- P. At the conclusion of the public hearing, the Commission deliberated, and voted to reopen the public hearing and continue it to regularly scheduled April 21, 2014 Planning Commission meeting to allow time for the applicant and the property owners of 28106 Pacific Coast Highway (PCH) to try to come to a mutually acceptable path to resolving outstanding code violations that affect both properties that is the result of unpermitted work constructed by a previous property owner.

Q. On April 21, 2014, the Planning Commission continued the public hearing to May 5, 2014.

Q. On May 5, 2014, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Commission has analyzed the proposal as described above. The Planning Commission has found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment, and therefore, is exempt from the provisions of CEQA. Accordingly, a CATEGORICAL EXEMPTION will be prepared and issued pursuant to CEQA Guidelines Section 15301(b) – Existing Facilities. The AOWTS for the receiving site, 28126 PCH, has been previously approved under CDP No. 11-034 (Planning Commission Resolution No. 13-07). Categorical Exemption No. 13-003 was issued for CDP No. 11-034 pursuant to CEQA Guidelines Section 15303 – New Construction. While the AOWTS has not yet been constructed, the proposed use as a receiving site for wastewater from 28118 PCH is consistent with CEQA Guidelines Section 15301(b) in that the proposed use involves negligible expansion of the treatment and disposal capacity as approved by the City Environmental Health Administrator. The Planning Commission has further determined that none of the six exceptions to the use of a categorical exemption applies to this project (CEQA Guidelines, Section 15300.2).

Section 3. Conditional Use Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Malibu Municipal Code (M.M.C.) Section 17.66.080, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and approves CUP No. 13-014 to allow the subject property to receive, treat and dispose of wastewater from 28118 (PCI) Pacific Coast Highway.

The project has been reviewed for conformance by Planning Department staff, the City Biologist, City Geologist, City Coastal Engineer, City Environmental Health Administrator, the City Public Works Department and the LACFD. Subject to the conditions of approval, the project is consistent with all applicable codes, standards, goals and policies.

A. Findings for Conditional Use Permit (M.M.C. Section 17.66.080)

Finding A1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.

The subject property is zoned RR-2 which allows for single-family residential and accessory uses. A new single-family residence and accessory structures, including an AOWTS, has already been approved for the site pursuant to the Planning Commission's adoption of Planning Commission Resolution No. 13-07 to approve CDP No. 11-034. CDP No. 11-033 for a substantial remodel of a legal nonconforming beach level residence is being processed concurrently with this CUP. The substantial remodel is subject to current LCP requirements because it is considered a replacement structure due to the new foundation.

The proposed offsite wastewater treatment is consistent with M.M.C. Section 17.40.040(A)(14), based on consideration of the following factors. The project wastewater engineering consultant, Ensitu Engineering, prepared a report dated October 7, 2013, that was included with the associated agenda report. The report notes that the additional treatment required for the replacement structure would require construction of a new leachfield with a bulkhead that would have to extend seaward of the existing residence. A leachfield and bulkhead would conflict with LCP shoreline protection policies which call for projects to avoid construction of shoreline protective devices in favor of less environmentally damaging alternatives. While technically feasible, the leachfield and bulkhead option are further undermined when considered in conjunction with the site's access and area limitations for construction and maintenance.

The report also found no environmental and public health impacts to the receiving site with respect to site-specific and area-wide geology, hydrology, biological resources/native plant communities, water quality/proximity to receiving waters or cumulative impacts. The City Environmental Health Administrator has reviewed and approved the proposed bluff-top system at 28126 PCH for conformance with all LCP and Malibu Plumbing Code requirements. According to the report, disposing of the wastewater in the more landward, upgradient location offered by the bluff-top allows for more travel time as the treated effluent percolates through the ground and provides greater opportunity for polishing and removal of contaminants before it ultimately makes its way subsurface to the ocean. The environmental benefits of offsite disposal are greater than those from onsite disposal.

Finding A2. The proposed use would not impair the integrity and character of the zoning district in which it is located.

The proposed AOWTS is subsurface and will have no impact on the integrity and character of the zoning district. Additionally, as a condition of the CUP approval, the applicant shall remove all portions of the bluff-top retaining wall located on the subject property that was constructed without benefit of permits by the previous property owner and shall remediate the slope back to the contours shown on the 2003 survey.

Finding A3. The subject site is physically suitable for the type of land use being proposed.

The AOWTS has been designed and engineered for this specific site and approved for LCP and M.M.C. conformance by the City Environmental Health Administrator, City Geologist, City Coastal Engineer and City Public Works Department.

Under CDP No. 11-033, the existing OWTS at 28118 PCH will be modified to pump wastewater from the site up to the bluff-top portion of the receiving site on the subject property where it would be treated and disposed. The existing seepage pits and distribution box serving 28118 PCH will be properly abandoned. The existing sewer ejection pump, which is located within the wave uprush zone, will be relocated out of the wave uprush zone and a new duplex pump and force main will be installed. The City Environmental Health Administrator has reviewed and approved the proposal for compliance with the LCP, and determined the AOWTS proposed at 28126 PCH under CDP No. 11-034 has sufficient capacity to accommodate a design flow of 2,500 gallons per day and 176 fixture units, which exceeds the combined 1,950 gallons per day and 153 fixture units of both properties

(excluding the second unit). As required by the Malibu Plumbing Code, a condition of approval is included which stipulates that the two parcels must be held as one. The site is suitable for the proposed use.

Finding A4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.

The sending (28118 PCH) and receiving (28126 PCH) sites have historically been under common ownership and used together as a compound, as evidenced by the shared driveway access, offsite parking agreement, and interconnecting decks.

Finding A5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.

The site and surrounding area are located in the RR zone. The proposed use will be compatible with the existing and future land uses within the zone district and surrounding area as it allows for rural residential uses to be maintained on the properties as proposed under CDP No. 11-033, being processed concurrently for 28118 PCH, and CDP No. 11-034, which was approved by the Planning Commission in February 2013 for 28126 PCH.

Finding A6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.

The proposed system has been designed in accordance with all applicable M.M.C. and LCP policies and standards and approved for conformance by the City Environmental Health Administrator. The proposed wastewater system components will be located underground so there will be no impacts on solar access or private or public views.

Finding A7. There would be adequate provisions for public access to serve the subject proposal.

The proposal to provide wastewater treatment and disposal on the bluff-top of 28126 PCH rather than at the beach level of 28118 PCH allows for improved access for long term maintenance of the system since 28126 PCH has full vehicular access available from PCH, and access to 28118 PCH is limited to a cart path on the bluff face.

Finding A8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.

The proposed use furthers the purpose of the General Plan to ensure adequate wastewater treatment for development. The proposed offsite treatment does not result in greater development density or intensity than that which is allowed under the properties' RR-2 zoning designation.

Finding A9. The proposed project complies with all applicable requirements of state and local law.

The proposed water system will be in full compliance with all applicable State, county and City of

Malibu ordinances and laws. In accordance with the Malibu Plumbing Code, a condition of approval has been included requiring the property owner to record a covenant and agreement to hold the properties as a unit as long as offsite wastewater treatment is provided, in accordance with the requirements of Subsection M of Malibu Municipal Code Section 15.12.050, Amendments to Plumbing Code.

Finding A10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.

As discussed on Finding A1, disposing of the wastewater in the more landward, upgradient location offered by the bluff-top at 28126 PCH, rather than at the beach level of 28118 PCH, allows for more travel time as the treated effluent percolates through the ground and provides greater opportunity for polishing and removal of contaminants before it ultimately makes its way subsurface to the ocean. It also avoids the potential coastal resource impacts associated with construction of a new beach level leachfield and seaward bulkhead that would be necessary to provide tertiary onsite wastewater disposal at 28118 PCH. The proposed use will not be detrimental to the public interest, health, safety, convenience or welfare.

Finding A11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.

The proposed AOWTS will be located landward of the required geotechnical setback line for the bluff-top. As determined by the project geotechnical consultant, the bluff slope exhibits factors of safety which exceed the requirements of the LCP. The beach level terrace where the septic tank and ejector pump at 28118 PCH will be protected from wave uprush hazards by an understructure pile-supported retaining wall designed in accordance with the project coastal engineer and project structural engineer's recommendations. The project coastal engineer also found that the proposed wall will have no significant adverse impacts on coastal resources due to its extreme landward location on the design beach profile. The proposed offsite wastewater treatment has been determined to be safe from hazards associated with earth movement, flooding or liquefaction, and has been approved for conformance with LCP and M.M.C. standards by the City Geologist, City Coastal Engineer, and City Public Works Department, subject to the incorporation of the project geotechnical consultant's recommendations.

Section 4. Planning Commission Action.

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves CUP No. 13-014, subject to the following conditions.

Section 5. Conditions of Approval.

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

right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application is to allow for 28126 PCH to receive, treat and dispose of wastewater from 28118 Pacific Coast Highway in substantial conformance with the plot plan approved by the City Environmental Health Administrator on November 20, 2013.
3. This resolution, signed Acceptance of Conditions Affidavit and all Department Review Sheets attached to the agenda report for this project shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans submitted to the City of Malibu Environmental Sustainability Department for plan check.
4. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
5. All development shall conform to requirements of the City of Malibu Environmental Sustainability Department, City Geologist, City Biologist, City Public Works Department, and City Environmental Health Administrator, as applicable. Notwithstanding this review, all required permits shall be secured.
6. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. and the Local Coastal Program. Revised plans reflecting the minor changes and additional fees shall be required.

Fixed Conditions

7. The conditions under which this conditional use permit was approved maybe modified by the City without consent of the property owner if the Planning Commission finds that the use is creating a nuisance.
8. A conditional use permit that is valid and in effect, and was granted pursuant to the provisions of the M.M.C., shall run with the land and continue to be valid upon change of ownership of the land or any lawfully existing building or structure on the land.
9. This conditional use permit shall become null and void with the demolition of the residence at 28118 PCH.
10. The conditional use permit may be revoked if the Planning Commission finds that one or more of the following conditions exists:
 - a. The conditional use permit was obtained in a fraudulent manner.
 - b. One or more of the conditions found within this resolution have not been substantially met.
11. The conditional use permit shall become null and void should the use for which the conditional use permit was granted cease for six successive calendar months, except in the case of a natural disaster.

Deed Restriction

12. Prior to obtaining final Environmental Health approval for the proposed offsite wastewater treatment, in accordance with the requirements of Subsection M of Malibu Municipal Code Section 15.12.050, Amendments to Plumbing Code, a covenant running with the land shall be executed between the City of Malibu and the holder of the fee simple absolute as to the subject real property and recorded with the Los Angeles County Recorder's Office. The covenant shall serve as constructive notice to any future purchaser for value that the onsite wastewater treatment system serving 28118 PCH is located on 28126 PCH, and that the two properties shall be maintained as one property until and unless separate compliant onsite wastewater treatment systems are provided on each separate parcel and onsite wastewater treatment and disposal for said properties can otherwise be accomplished in conformity with the requirements of the Malibu Plumbing Code, the LCP and any other law or regulation.

Site Specific Conditions

13. Prior to issuance of a certificate of occupancy for the primary residence on the subject property, the applicant shall remove the portions of the unpermitted bluff-top retaining wall located within the subject property boundaries. The applicant shall also remediate the slope back to the contours shown in the 2003 survey on file for CDP No. 11-034. Engineered plans, along with the necessary soils, geology, drainage and structural documentation, shall be submitted for review and approval by City specialists during plan check.
14. The remediation work shall comply with all provisions of Chapter 33 (Safeguards During Construction) of the 2013 California Building Code.

Section 6. Certification.

The Planning Commission shall certify the adoption of this Resolution.

| PASSED, APPROVED AND ADOPTED this 5th 3rd-day of Mayreh 2014.

MIKKE PIERSON, Planning Commission Chair

ATTEST:

PATRICIA SALAZAR, Recording Secretary

LOCAL APPEAL - Pursuant to Local Coastal Program Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeal forms may be found online at www.malibucity.org, in person at City Hall, or by calling (310) 456-2489, ext. 245.

| I CERTIFY THAT THE FOREGOING RESOLUTION NO. 14-35 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 3rd 5th day of Mayreh 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

PATRICIA SALAZAR, Recording Secretary



City of Malibu

23925 Stuart Ranch Rd., Malibu, California CA 90265-4804
(310) 456-2489 FAX (310) 456-7650

FIRE DEPARTMENT REVIEW REFERRAL SHEET

TO: Los Angeles County Fire Department

DATE: ~~6/29/2011~~ 3/28/13

FROM: City of Malibu Planning Department

PROJECT NUMBER: CDP 11-033, OTD 12-008, VAR 12-033, DP 11-018

JOB ADDRESS: 28118 PACIFIC COAST HWY

APPLICANT / CONTACT: Jack & Amanda Ryan

APPLICANT ADDRESS: 32300 Pacific Coast Highway
Malibu, CA 90265

APPLICANT PHONE #: (310)589-0617

APPLICANT FAX #:

PROJECT DESCRIPTION: Substantial remodel of ESFR (replacement structure) with new pile foundation on beach

TO: Malibu Planning Department and/or Applicant
FROM: Fire Prevention Engineering Assistant

Compliance with the conditions checked below is required prior to Fire Department approval.

The project DOES require Fire Department Plan Review and Developer Fee payment

The project DOES NOT require Fire Department Plan Review ☒

The required fire flow for this project is _____ gallons per minute at 20 pounds per square inch for a 2 hour duration. (Provide flow information from the water dept.)

The project is required to have an interior automatic fire sprinkler system.

Final Fuel Modification Plan Approval is required prior to Fire Department Approval

Conditions below marked "not approved" shall be corrected on the site plan and resubmitted for Fire Department approval.

Required Fire Department vehicular access (including width and grade %)
as shown from the public street to the proposed project.

Required and/or proposed Fire Department Vehicular Turnaround

Required 5 foot wide Fire Department Walking Access (including grade %)

Width of proposed driveway/access roadway gates

App'd Napp'd

*County of Los Angeles Fire Department Approval Expires with City Planning permits expiration, revisions to the County of Los Angeles Fire Code or revisions to Fire Department regulations and standards.

**Minor changes may be approved by Fire Prevention Engineering, provided such changes achieve substantially the same results and the project maintains compliance with the County of Los Angeles Fire Code valid at the time revised plans are submitted. Applicable review fees shall be required.


SIGNATURE

4/10/13
DATE

Additional requirements/conditions may be imposed upon review of complete architectural plans.
The Fire Prevention Engineering may be contacted by phone at (818) 880-0341 or at the Fire Department Counter:
26600 Agoura Road, Suite 110, Calabasas, CA 91302; Hours: Monday - Thursday between 7:00 AM and 11:00 AM

Exhibit 6
Fire Department Referral Sheet
Appeal No. A-4-MAL-14-0047



Exhibit 7
Site Photos
Appeal No. A-4-MAL-14-0047



Approximate Property Line

